

VOLUME III OF III

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Calhoun County
Carmen T. Mullen, Circuit Court Judge

S.C. Supreme Court

WILLIE PELZER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000731

A P P E N D I X

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INDEX

INDEX i

TRIAL TRANSCRIPT (dated December 1-4, 2009) 1

APPLICATION FOR POST-CONVICTION RELIEF 964

RETURN 972

POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated November 1, 2012) 977

EXHIBITS TO PCR HEARING 1061

ORDER OF DISMISSAL 1070

CLERK OF COURT RECORDS 1088

1 he needed to tell you that might be a basis for those
2 roles being reversed? And by that, I mean him being in
3 an accessory role as opposed to being the shooter.

4 A. He denied any involvement.

5 Q. Okay. And, again, you have absolutely no
6 recollection of him asking to get another lawyer.

7 A. Never once. I think he had a really good -- we
8 had a good working relationship, and also with my staff.

9 MS. SHURLING: No further questions.

10 THE WITNESS: Thank you.

11 MS. HARRIGAN: Court's indulgence.

12 THE COURT: Yes, ma'am.

13 MS. HARRIGAN: May it please the Court.

14 CROSS-EXAMINATION

15 BY MS. HARRIGAN:

16 Q. Mr. Banks, how long have you been practicing law?

17 A. Twenty years.

18 Q. And what percentage would you say is criminal
19 defense?

20 A. About 30, I suppose.

21 Q. Have you had prior experience representing a
22 client charged with murder?

23 A. Oh, yeah.

24 Q. Roughly how many murder trials?

25 A. The first five years of my practice as public

1 defender, I've had -- I undertook five death penalty
2 cases before they changed the rules, and then I've had
3 probably half a dozen or more since, I suppose.

4 Q. Do you recall when you were appointed to this
5 case?

6 A. I don't remember the date, if that's what you
7 mean.

8 Q. A range, how long before trial?

9 A. Well, it wasn't suddenly -- there is a number of
10 months, I'm sure, probably -- approximately a year, I
11 suppose. It was a long time.

12 Q. And did you file discovery motions in this case?

13 A. Sure.

14 Q. Do you believe the State gave you everything they
15 were required to by law?

16 A. Yeah, they better have.

17 Q. And did you review this documentation and
18 discovery with your client?

19 A. Oh, yes.

20 Q. Would you briefly characterize the State's
21 evidence in this case against Applicant.

22 A. They had the two codefendants. They had, you
23 know, ballistics. They had those text messages. They
24 had other witnesses, but they had an expert that talked
25 about the phone that got shot at some point, but it

1 essentially boils down to the text messages and the two
2 codefendants.

3 Q. Was there any evidence regarding possible burned
4 clothing of the Applicant following the incident?

5 A. Yeah. I think there was some discussion about
6 that. I cannot recall how much of it got in at some
7 point, but, yeah, there was something about -- I think he
8 had blood on his clothing, and it was burned in the pit
9 in back of, I think, the vacant mobile home? I can't
10 remember.

11 Q. And based on reviewing all this with your client,
12 did you also discuss his version of facts of the case in
13 discovery?

14 A. Yes.

15 Q. How would you characterize his version, just total
16 denial of any of it?

17 A. Well, he had pieces of the case that he could help
18 me with because he could admit to being in certain
19 places, but as far as the killing and not being the
20 killer, that limited the exchange that we could have.

21 Q. What was your overall defense strategy in regards
22 to this case?

23 A. To put it on the other two guys, if at all
24 possible.

25 Q. Was there any sort of an alibi defense?

1 A. Yes, there was. Wasn't as complete as I would
2 have liked, but it's all we had.

3 Q. And in regards to presenting that alibi defense to
4 the jury, how did you feel was the best way to present
5 that to the jury?

6 A. Through his mother and, of course, himself, but
7 his mother was -- you could kind of get little pieces
8 from other witnesses, but, you know, quite frankly, I
9 think he thought his mother could get up there and lie
10 for him, but -- well, she didn't lie.

11 Q. You did indeed call his mother as your only
12 witness?

13 A. Yes.

14 Q. And by calling her, you forfeited your right to a
15 last argument, correct?

16 A. Yes.

17 Q. Do you think that prejudiced your client?

18 A. No. I didn't deem that very important. I think
19 we had to get -- if he's going to have an alibi we better
20 do something about that and have somebody up there to put
21 it forth.

22 Q. Did you file any pretrial motions in this case?

23 A. I'm sure I did, but I can't recall what they were
24 at this time.

25 Q. If the record reflects --

1 A. Yeah, whatever the record reflects, I filed it.

2 Q. And the record looks like there was a Jackson v
3 Denno hearing immediately before the trial?

4 A. Yes, that's true.

5 Q. What about in terms of a motion to suppress?

6 A. Yeah, because we suppressed maybe two text
7 messages as I recall. I know the one about the murder,
8 or catch a murder charge, and, let's see. I may have had
9 more. I don't remember.

10 Q. Was there any certain theory of the State that you
11 were able to get suppressed or a motion in limine that it
12 wasn't allowed to be presented to the jury, in regards
13 to --

14 A. A theory that they had that --

15 Q. In regards to how Mr. Pelzer might have ended up
16 around the abandoned gas station around that time?

17 A. Oh, yeah. They had this theory that Mr. Pelzer --
18 and I did. I kept this out. They had a theory that
19 Mr. Pelzer -- who didn't live too far from the scene. I
20 mean, it was far enough that we would maybe have an alibi
21 defense, but he didn't live too far from the scene, and
22 he -- he was a runner.

23 Mr. Pelzer actually ran to keep in shape. From
24 his experience, he was pretty good -- you know, in good
25 shape, but their theory was that there had been several

1 robberies, not at the very scene, but across the road at
2 a working gas station, and that they had long believed
3 that Mr. Pelzer was the person who was doing this
4 robbing, but they just couldn't prove it.

5 A lot of people wouldn't report it until two days
6 later and all this other stuff, but there was a string of
7 robberies. They weren't necessarily every week or every
8 day, but periodically over the months, and they believed
9 it was him, but they couldn't prove it, and the weapon
10 was a shotgun or sawed-off shotgun as I recall that they
11 kept hearing about. That's why they thought it was the
12 same guy and they thought it was him, and they were
13 thinking about putting forth the theory that -- because
14 my point in the trial was, how did -- you know, you don't
15 just go to rob nobody. You got to know there is somebody
16 to rob, and for him to purposely run to this place that
17 is ten minutes away, by running, knowing somebody is
18 going to be there to rob and then get back to this party,
19 it just didn't make any sense if he didn't know somebody
20 was there.

21 And there was testimony that he didn't ride by
22 there before and see this guy or anything. They were
23 somewhere else, and he just decided to go do this thing.
24 Their theory was that he was going to this gas station to
25 rob someone. The gas station closes at 8:00. This

1 happened around 11:00 or so, but the gas station -- and I
2 didn't know this until I talked to the deputies, but the
3 gas station across the road, working gas station, closed
4 at 8:00. They had a pump where you could stick your
5 credit card in and then you could get gas, even though
6 the place was locked, and it's a big Exxon station, so
7 it's well-known place.

8 So their theory was that he didn't have to know
9 because he knew that any minute somebody else would stop
10 by, across the road, and that he went there to rob the
11 person who would be there in five minutes or whatever,
12 there would be somebody there. And I kept their theory
13 out while actually advancing mine, that how could he know
14 and so forth and got that in, and they never, like,
15 opened that door and let their theory in. So, yeah, I
16 was able to get that theory out.

17 Q. In regard to Applicant's allegations with your
18 cross-examination of both of the codefendants he has
19 allegations against, you're crossing both of those, would
20 you categorize your overall strategy in crossing both of
21 these individuals?

22 A. Well, just credibility and trying to find a crack
23 in their testimony and in comparison of their
24 testimonies. I mean, that's the main gist of it, trying
25 to find inconsistencies.

1 Q. Did you highlight that they weren't charged with
2 reporting a false either burglary or --

3 A. Yeah, I believe I did.

4 Q. -- or the weapon was stolen and they made a false
5 police report?

6 A. Oh, and, by the way, their theory was even better
7 than I thought because I couldn't figure out if you had a
8 shotgun why would you need a pistol, and I think they
9 were thinking he was clever enough that he needed a
10 weapon because they were kind of on to him as far as that
11 same weapon on the time, but go ahead. I'm sorry.

12 Q. In regards to Applicant's application that you
13 were ineffective to allow Mr. Reed to read part of the
14 gun agreement into the record, do you think this
15 prejudiced your client at all?

16 A. No.

17 Q. Why not?

18 A. I think it did quite the opposite. I think it
19 hammered home that he actually signed a paper and this is
20 what he signed, and it was very clear he was lying on
21 that paper.

22 Q. And have you had a chance to review the transcript
23 since the trial?

24 A. You know, this case -- I think this case right
25 here is about a year old. I don't know. This is a

1 long -- and I read it when this first was scheduled, and
2 I haven't read it in a number of months, to be honest
3 with you.

4 Q. Okay. Based on your review of the transcript --
5 and you might not be able to answer this, saying you
6 haven't reviewed the transcript in a while, could you
7 tell -- obviously, no one else here in the courtroom
8 today besides the Applicant and you were present for the
9 trial -- could you tell Mr. Reed was having a difficult
10 time reading this document?

11 A. It seemed pretty normal reading to me, I do
12 remember that.

13 Q. In regards to Applicant's allegation that
14 electricity was cut off at a trailer that I believe was
15 owned by his mother and he formerly resided in around the
16 time he was 18 years old, what was your strategy in
17 presenting that information to the jury, that there was
18 no electricity?

19 A. Like I said, it went toward -- he didn't live
20 there, he lived with his mother, and so that made a
21 difference in the whole geography of this thing, alibi,
22 timeline, all of that.

23 Q. Do you think it prejudiced your client --

24 A. No.

25 Q. -- by showing that he was hard up for money,

1 couldn't even pay his electricity?

2 A. No. He had a cell phone.

3 Q. And I can't recall whose testimony it was. I
4 think it might have been through the direct of his
5 mother. His mother did indeed pay for most of his bills,
6 correct?

7 A. Uh-huh, that's right.

8 Q. And that did go against the State's theory that he
9 was trying to get money, texting all of these females for
10 money, and that's what caused the burglary to occur?

11 A. Sure.

12 Q. In regards to his allegation that he had
13 represented where he had no confidence in you, you have
14 no recollection of previously representing him?

15 A. No. So that meant it was uneventful.

16 Q. And he never indicated to you that he was
17 displeased with your service or your staff's services?

18 A. No.

19 Q. How you would characterize your working
20 relationship?

21 A. Good.

22 Q. In regards to Applicant's allegation that you
23 coerced him to address the Court during sentencing?

24 A. I didn't have time to coerce him to do anything.

25 Q. Is it your general practice to coerce your client

1 when they're in front of the Court?

2 A. No, no.

3 Q. Did you encourage him to show emotion or cry?

4 A. No. Gosh, no.

5 Q. If you can, and I realize it's been quite a while
6 since the trial, three years, do you recall what
7 conversation you had with your client between when the
8 verdict came down and when he addressed the Court?

9 A. Well, I repeated one, and I think I said something
10 like -- in addition to saying no, you will not say that.
11 I said something like -- sort of in the generic, Tell the
12 Court you're sorry for having to put the Court through
13 all this. You know, don't admit to any crime or anything
14 like that.

15 If -- and I didn't encourage him to say anything,
16 and I said if you must say something, say something
17 generic.

18 Q. Were you surprised when he got up and said what he
19 said to the Court?

20 A. I don't think there is a more surprised person in
21 the courtroom -- well, maybe my staff member who was with
22 us. Yes, I was shocked.

23 Q. And have you had an opportunity to review that
24 part of the transcript?

25 A. Yes. I actually have looked at parts of it over

1 the last few weeks, but yeah, there was one part that I
2 actually looked at.

3 Q. The part the State would direct your attention
4 to --

5 THE COURT: For the record, I've already read
6 it. Thank you.

7 BY MS. HARRIGAN:

8 Q. And do you recall his statements to the Court -- I
9 know he admitted that it was selfish for him to ask for a
10 trial, and he also admitted his guilt, based on your
11 reading the transcript?

12 A. Yes, and that's one of the things I kept going
13 back to when he said it was selfish of him. I think that
14 truly showed he was sorry because that's a really unusual
15 statement to make.

16 Q. In regards to his allegation that you failed to
17 file a direct appeal on his behalf, did he ever ask you
18 to file an appeal?

19 A. No, no.

20 Q. If he had asked you, would you have filed an
21 appeal?

22 A. Absolutely.

23 Q. Is it standard practice to file an appeal?

24 A. Yes, it is.

25 Q. Do you think you had any meritorious issues that

1 could be successfully presented for appellate appeal?

2 A. No. I will say this: His mother, I don't know
3 whether he sent her by or she just happened by, but
4 within a few days, she came by, and she's a very lovely
5 lady and I love her to death.

6 And she came by, and I think she told me that he
7 had asked for a transcript. And I told her to tell him
8 that I can't provide her with a transcript, that he can
9 order one and so forth and gave her the information, but
10 clearly he never asked for an appeal.

11 Q. And how do you think his comments to the Court
12 during sentencing and prior to his sentence being handed
13 down would have affected his direct appeal?

14 A. I think they would put -- actually, there may be a
15 case on that, but I would assume that it would naturally
16 dampen his ability to win on an appeal.

17 MS. HARRIGAN: Court's indulgence for a brief
18 moment.

19 No further questions.

20 REDIRECT EXAMINATION

21 BY MS. SHURLING:

22 Q. First, I'd like to apologize, Your Honor. I
23 misspoke. I think I was flashing back to my notes on
24 something else.

25 With regard to the reference to Reed referring to

1 the Applicant as cousin, and the record -- I frankly
2 can't tell you how I misinterpreted my notes on that, but
3 I was incorrect.

4 And Reed, in fact, testified he had known my
5 client for some 13 years; isn't that right, Mr. Banks?

6 A. If you say so.

7 Q. Somewhere in that neighborhood. Okay. Now, the
8 testimony of Willie Reed, Your Honor, it's page 115
9 through about 162 in the volume where his testimony is,
10 and the testimony of Jimmie Haygood, which is
11 approximately 285 through 309.

12 The testimony of both of these codefendants
13 confirms that they were with your client prior to and
14 after the shooting.

15 A. Right.

16 Q. Correct?

17 A. Uh-huh.

18 Q. And that they were involved with the gun that had
19 been ballistic identically tied to the shooting?

20 A. Prior to and after.

21 Q. Exactly. Now, we've already covered the fact that
22 you didn't get into the fact they could have been charged
23 with murder. I'm not going to beat a dead horse.

24 A. Yeah. It just seems speculative but, yeah, you're
25 right. I can see a solicitor objecting to a line of

1 questioning about what they could have been charged with.
2 It could have been something I could have explored.

3 Q. Let me ask you this: In your practice, there are
4 various ways for the State to give someone benefit for
5 cooperating, aren't there?

6 A. True.

7 Q. For example, if someone has multiple charges, the
8 State might drop some of them in exchange for
9 cooperation?

10 A. Or might not charge them, yes.

11 Q. Or if someone had a serious charge, the State
12 might ultimately allow that charge to be reduced to a
13 lesser included in exchange for cooperation?

14 A. Right.

15 Q. There can be an agreement as to a specific term of
16 years that will be negotiated on their behalf or a
17 recommendation that might be made. All those things are
18 within the menu available to the State when they're
19 rewarding someone, correct?

20 A. Sure, sure.

21 Q. What about if the facts are present from which the
22 State could charge someone as a principal, and rather
23 than charge them as a principal, they just go ahead and
24 charge them in a lesser fashion from the very beginning?
25 Would that not also be another form of potential benefit

1 in exchange for cooperation?

2 A. Sure.

3 Q. And under Giglio and related cases, that would be
4 something that would be subject to impeachment?

5 A. Right, yes.

6 Q. Okay. Thank you.

7 I want to go back to the mother for a moment
8 because the Respondent had advised me that I was going to
9 touch on the decision to put the mother up as an alibi
10 witness as a claim of ineffective assistance of counsel,
11 so let's talk about that for a second.

12 You said you thought my client expected perhaps
13 his mother to get up there and lie for him?

14 A. Not before trial, no reflection.

15 Q. Pardon?

16 A. On reflection. I think that's what he had hoped.

17 Q. Did you interview the mother prior to trial?

18 A. Sure, sure.

19 Q. And did the mother tell you prior to trial --

20 A. Nothing different than what she testified to, and
21 I indicated that to him. He thought when it came down to
22 crunch time, that's my opinion.

23 Q. Okay. Well, let me break that down a little bit.
24 You did interview the mother?

25 A. Absolutely.

1 Q. And the mother told you that the times that she
2 could recall were -- the times she told you in the
3 pretrial interview were entirely consistent with what she
4 said at trial?

5 A. Yeah. And, again, whether it was 100 percent or
6 99 percent, but it was very well along the lines of what
7 she told me prior to.

8 Q. And so you weren't shocked by what she said in
9 terms of the time frame of the alibi?

10 A. No.

11 Q. So would it be fair to say that you knew before
12 you called her --

13 A. What she was going to say.

14 Q. -- what she was going to say, and that given the
15 proximity of the locations that her testimony could be
16 what is characterized as an imperfect alibi?

17 A. Yes. She didn't complete the alibi, right.

18 Q. Did you discuss that with Your Honor before making
19 the decision to put the witness on the witness stand?

20 A. Yes.

21 Q. Did you explain to your client that if you put up
22 any evidence, any witnesses, or any kind of evidence,
23 that he would lose the right to the closing argument at
24 the trial?

25 A. That was not important to him at all. It might be

1 now, but it wasn't there.

2 Q. Then I don't think you directly answered my
3 question. Did you explain to him he would have the right
4 to the last argument to the jury if he didn't put up any
5 evidence?

6 A. Yes.

7 Q. And that he would lose that right if he put the
8 mama up?

9 A. Yes.

10 Q. And that in your judgment the mama's testimony was
11 going to be an imperfect alibi anyway?

12 A. Yes.

13 Q. And whose decision was it to put the mother up?

14 A. Well, ultimately it was his, but I made the
15 tactical decision, offering it to him. He said, Yes, do
16 it.

17 Q. Did you discuss with him what most defense lawyers
18 would argue, being the value of having the last word with
19 the jury before they begin their deliberations?

20 A. As a separate -- the discussion? I don't know how
21 deeply I may have delved into it, but, yeah, it was
22 brought out. I mean, it's clear that in this case I
23 don't know if it was an important as it might be on
24 another case because we needed an alibi of some kind.
25 She was the closest thing we had.

1 Q. Well, we've already agreed or -- pardon me, we've
2 discussed that the mother's testimony was an imperfect
3 alibi.

4 A. Uh-huh.

5 Q. It did not give him coverage, did it?

6 A. What it does is -- I think it's sowed doubt,
7 hopefully not enough doubt, but sowed doubt in the jury's
8 mind when you get the time frame of where you had to be
9 from this point to point B and back, I think it sowed
10 that doubt. It didn't slam the door shut on, you know, a
11 conviction by any means, but I think it sowed doubt.
12 Whether it was a reasonable doubt? Not at that time.

13 Q. Did the solicitor predictably argue what we expect
14 them to argue about a mother's motives for protecting her
15 son?

16 A. Yes, sure.

17 Q. Did you discuss with your client, Mr. Pelzer,
18 beforehand that any alibi testimony offered by a mother
19 would be subject to great scrutiny?

20 A. Diminished, yes.

21 MS. SHURLING: A moment's indulgence.

22 Nothing further, Your Honor.

23 MS. HARRIGAN: Just briefly, Your Honor.

24 RE-CROSS-EXAMINATION

25 BY MS. HARRIGAN:

1 Q. Were the codefendants in this case ever charged
2 with murder?

3 A. They were never indicted for murder.

4 Q. Did you have any information to believe that the
5 codefendants were not charged with murder as a benefit
6 for cooperating with the State and testifying against the
7 Applicant?

8 A. I never got that indication. I think they
9 believed their story, quite frankly.

10 Q. Did you have any foundation during the cross of
11 either Mr. Reed or Mr. Haygood to question them as to the
12 possible penalties for a crime that they were not charged
13 with ever?

14 A. Yeah. I think it's speculative. I don't think it
15 would have worked, but I should have tried it. That
16 wouldn't have been a bad, you know, thing I should have
17 jumped on.

18 MS. HARRIGAN: No additional questions, Your
19 Honor.

20 MS. SHURLING: I may have misheard, but did
21 you say they were indicted for murder?

22 THE WITNESS: No, I didn't. I said I
23 don't -- they were never indicted for murder.

24 MS. SHURLING: Thank you. I could not hear
25 you clearly. I was afraid I misheard that.

1 Thank you.

2 THE COURT: Anything further?

3 MS. HARRIGAN: No, Your Honor.

4 THE COURT: You may step down, sir. Any
5 objection to letting this witness be excused?

6 MS. SHURLING: Not at all, Your Honor.

7 MS. HARRIGAN: Well, actually, we would like
8 to hold him, based on what happened in the last case,
9 until after the Applicant has testified.

10 THE COURT: All right, sir. Hang around,
11 sir, if you don't mind.

12 MS. SHURLING: Thank you, Your Honor. My
13 next witness would be the Applicant, Mr. Willie Pelzer.

14 WILLIE PELZER,

15 having been first duly sworn,

16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 THE COURT: State your name for the record.

19 THE WITNESS: Willie Pelzer, III.

20 BY MS. SHURLING:

21 Q. Mr. Pelzer, like I do with most of my clients, I
22 told that you it was important that you speak up and
23 speak clearly. I should have warned you that in the
24 process of honoring that advice not to get too close to
25 the microphone or we'll have the opposite problem, okay?

1 A. Yes, ma'am.

2 Q. Just remember that the nice lady sitting here in
3 front of you has got to get down every word you say, and,
4 frankly, if Your Honor doesn't understand you, it won't
5 do us any good either, so we got to make sure she can
6 understand you. And you're a little soft spoken, okay?

7 Now, you've heard what's been going on in the
8 courtroom here today. Were you previously -- prior to
9 this murder charge, were you represented by Mr. Banks?

10 A. Yes, ma'am, I was.

11 Q. And what was the charge that you were represented
12 on?

13 A. It was grand larceny.

14 Q. Okay. And at the time of this trial, when you
15 were sentenced, you were on probation for that grand
16 larceny, weren't you?

17 A. Yes, ma'am.

18 Q. And, in fact, the record reflects during
19 sentencing that your probation was revoked and run --

20 A. Concurrent.

21 Q. I mean, sort of a moot point, but it was revoked
22 along with the life sentence you got for this murder,
23 correct?

24 A. Yes, ma'am.

25 Q. Okay.

1 MS. SHURLING: Your Honor, I have shown --

2 MS. HARRIGAN: No objection.

3 MS. SHURLING: -- the State a copy of the
4 SLED record that I would introduce as Applicant's 1.

5 MS. HARRIGAN: And the State would just note
6 his SCDC records are already in the record, and they do
7 reflect he does have those charges.

8 THE COURT: Okay. Thank you.

9 BY MS. SHURLING:

10 Q. Can you remember about when you got the grand
11 larceny charge that you're referring to?

12 A. I think, like, 2008, if I ain't mistaken.

13 Q. Okay. Would 2008 be a possible range?

14 A. Yes, somewhere around that time.

15 MS. SHURLING: Your Honor, the record
16 reflects a date of November 18, 2008.

17 BY MS. SHURLING:

18 Q. Does that sound about right?

19 A. Yes, ma'am.

20 Q. And that charge arose out of Calhoun County?

21 A. It did.

22 Q. Okay. Versus this murder charge came out of what
23 county?

24 A. It came out of Calhoun County as well.

25 Q. And Mr. Banks was the public defender for Calhoun

1 County?

2 A. Yes, ma'am.

3 Q. And did he represent you on the grand larceny
4 charge in the context of that grand larceny?

5 A. Yes, ma'am, he did.

6 Q. And pardon me, in the context of his duties as the
7 public defender.

8 A. Yes, ma'am.

9 Q. He was your public defender, not retained counsel
10 on both charges.

11 A. Yes, ma'am.

12 Q. Okay. You've heard me introduce a copy of your
13 SLED record, and it shows the Calhoun County grand
14 larceny charge and then it shows your murder charge that
15 we're here today on. Can you look over that for me?

16 A. Yes, ma'am.

17 Q. Does this SLED record indicate that you had any
18 prior charges prior to the grand larceny in 2008?

19 A. No, ma'am.

20 Q. It does not?

21 A. No. I had no charges prior to the grand larceny.
22 That was the first charge.

23 Q. Okay. Now, what bearing did the fact that
24 Mr. Banks represented you on the 2008 charge have on your
25 relationship with him at the time of this murder case?

1 How did it affect it?

2 A. I was under the impression that I was going to
3 receive PTI, pretrial intervention, if I'm not mistaken,
4 but I don't know too much about the law --

5 Q. Let's be clear. When you say you were under the
6 impression you would be eligible for PTI, you don't mean
7 on the murder, you mean on the 2008 grand larceny?

8 A. Yes, ma'am.

9 Q. Okay. Pick up where you were. I'm sorry.

10 A. I would just handle a lot of people talking, and I
11 had a family member that had a felony -- he had a charge,
12 I know that for a fact, and he was unqualified for PTI.
13 He qualified for PTI being that he never had been in
14 trouble before, so I was under the impression that I
15 would be able to get PTI, so I asked Mr. Banks about PTI.

16 When he asked me about PTI, the solicitor at the
17 time -- she was a female; I don't know her name -- she
18 said I didn't qualify because I had a petty larceny prior
19 to the grand larceny. I told him that that's absolutely
20 impossible because I never been in trouble before, never
21 been in the county jail before, never had a ticket
22 before. I told him that would be impossible. He was
23 saying tome, Well, this is what --

24 MS. HARRIGAN: Objection. Hearsay.

25 THE COURT: Okay. You can just testify as to

1 what you know, sir, but let's go ahead and let him
2 testify.

3 BY MS. SHURLING:

4 Q. Was Mr. Banks with you when you were told by the
5 prosecution that you did not qualify for PTI?

6 A. He was standing -- we were both standing up like
7 where you at. We were standing side by side, and she
8 came and she told both our families.

9 Q. Pardon me. Did -- as I understand your testimony,
10 you told your lawyer that you didn't have a prior petty
11 larceny?

12 A. Yes, ma'am, I did.

13 Q. Did you request that he research that claim by the
14 prosecution and the State that you didn't have a prior?

15 A. Yes, ma'am, I did.

16 Q. And did he ever do that for you?

17 A. No. He just simply stated that did you want to go
18 home or did you want to go back to the county.

19 Q. And so as a result of his failure to look into the
20 solicitor's position, you ended up going forward on the
21 criminal charge.

22 A. Yes, ma'am.

23 Q. Now, to use the expression you all use used when
24 you caught this charge, and you found that you were being
25 assigned once again to Martin Banks, how did you feel

1 about that?

2 A. I said, No way. I said, No way.

3 Q. Did you express to him the fact that you had
4 reservations about representing you?

5 A. Yes, ma'am. If I could elaborate a little more
6 about that, at the time I thought there were two public
7 defenders in the area of Calhoun County, Jeff Bloom. I
8 never met him, I just heard about it through a lot of
9 other people, so I figured that he was also a public
10 defender and somebody who was able to take my case.

11 I told him, I said, Listen, I don't want you to
12 be -- I don't want you as my lawyer, period. I didn't
13 tell him directly at the time why I told him I wasn't
14 comfortable with him, and then later on throughout the
15 preliminary hearing, he asked me why.

16 And I just told him because I believe he was
17 incompetent because of the fact that I received probation
18 for something that I could have just got PTI for, which I
19 really thought was crazy at the time and so I was, like,
20 No, this is my life on the line. I'm putting my life in
21 your hands, so there is no way possible I want you.

22 And his exact words to me were, I'm all you have.

23 Q. Did you ask him to see that you got another
24 lawyer?

25 A. Yes, ma'am.

1 Q. Did you ask him to make a motion to be relieved?

2 A. Yes, ma'am.

3 Q. And the quote you given us is the answer you got.

4 A. Yeah, and I'm cold. I'm not nervous, I'm cold.

5 Q. I've seen several people shivering in the
6 courtroom, so I won't argue with you.

7 Mr. Pelzer, did you consider speaking up in court
8 on your own and telling the judge you wanted a new
9 lawyer?

10 A. No, ma'am, because at the time I was young and I
11 was real passive and new to a lot, so when he said that
12 he was -- Jeff Bloom no longer practiced law and he was
13 the only lawyer there, I didn't really refute that. That
14 was really my only option, so he was basically saying he
15 was my only option, so I didn't see any reason to push it
16 any further.

17 Q. Okay. Now, the record reflects that Mark
18 Leiendecker was also your attorney?

19 A. Yes, ma'am.

20 Q. Between those two attorneys, who was lead counsel
21 in your case?

22 A. Martin did most of the talking.

23 Q. That answers the question. And did you have
24 meetings with Mark Leiendecker in addition to meetings
25 with Martin Banks, or did they meet with you together?

1 How did that work?

2 A. Not prior. My first time ever even meeting
3 Mr. Leiendecker was the day we picked the jury. We
4 selected the jury and also the day we started trial.
5 That's my first time ever meeting him, but I knew of him.
6 He's, like, how they had passed over, he's like a head of
7 the public defenders.

8 Q. Okay. And it's your recollection that he didn't
9 take an active role in your trial, that it was Mr. Banks?

10 A. No, ma'am, but I did ask him. I did ask him. I
11 did ask him to.

12 Q. You asked him to what?

13 A. I asked him if he could go up there because -- and
14 kind of scare Mark.

15 Q. I'm sorry. You asked him if he could do what?

16 A. If he could step in place of mark.

17 Q. You asked Mr. Mark Leiendecker that?

18 A. Yes.

19 Q. And what was his response to that?

20 A. He's doing fine.

21 Q. Did you tell Mr. Mark Leiendecker why you wanted
22 to replace Mr. Banks?

23 A. No, not -- I didn't go into detail about it. I
24 was just like, okay. Well, if you think you're going to
25 make it, you got more experience than I do, so I'm just

1 going to let him go ahead.

2 Q. All right. Once you were convicted, did you plan
3 on addressing the Court and making a statement prior to
4 your sentencing?

5 A. Yes, ma'am. Well, I didn't know that -- I didn't
6 know that I would be able to, but once it was presented,
7 once the judge said I could, I said yes, I would. I
8 wanted to.

9 Q. Okay. And did you have discussions with Mr. Banks
10 in advance about the kinds of statements you planned on
11 making to the jury?

12 A. Yes, ma'am.

13 Q. Okay. And you've heard what you said to the jury
14 characterized as confessing to the murder, but in your
15 mind, was it your intent to be confessing to actually
16 being the person that shot the deceased?

17 A. No, ma'am.

18 Q. Okay. Prior to your trial, did you have the
19 opportunity to review the discovery materials with your
20 lawyer?

21 A. No. Just another thing Mr. Banks said earlier, he
22 was talking about our relationship. Ms. Jenny, that was
23 his secretary, we had a beautiful relationship. She was
24 always there. She knew more about my case than I did, so
25 we, Jenny and I, we went through every piece of my case,

1 but as far as me and him going through the evidence, the
2 Rule 5, no, we didn't.

3 Q. But you did have an opportunity to review it with
4 a member of his staff.

5 A. Yes.

6 Q. So you were familiar prior to trial with what Mr.
7 Reed and Mr. Haygood were going to say about the case?

8 A. Yes, ma'am.

9 Q. Were there aspects of this case that you would
10 have discussed with Mr. Banks if you had had a better
11 relationship with him?

12 A. Yes, ma'am. I was his -- under the impression
13 that, you know, that if I just stayed away from him and
14 just let him do his thing -- because I knew for a fact
15 there was no way they could place me at the scene of the
16 crime. There was no way I had gunpowder or blood or
17 anything on me, so I figured that would be enough for him
18 to just paint the picture that I wasn't there because
19 there is no proof, period. I wasn't there.

20 I wasn't worried about ballistics showing my
21 fingerprints, GSR on my clothes or I wasn't worried about
22 a camera across the street at the ATM zooming in on me.
23 I wasn't worried about nothing like that, so I figured
24 just let him paint the picture on his own.

25 Q. Let's approach this very carefully, okay? Earlier

1 today you and I spoke briefly about this, and I made very
2 certain that you understood that anything you say on the
3 stand today under oath could potentially be used against
4 you at some future date if you had a retrial. Do you
5 understand that?

6 A. Yes, ma'am.

7 Q. And do you understand that you're under oath? I
8 mean, this is prior testimony that could be used to
9 impeach you if at some later date you tried to get up and
10 tell a different version of the truth.

11 A. Yes, ma'am.

12 Q. Okay? With that in mind, I asked if you wanted to
13 share with Her Honor what it was that you would have
14 wanted to share with Mr. Banks if you had had confidence
15 in him as your lawyer and you indicated that you did. Do
16 you still want to do that?

17 A. Yes.

18 Q. You understand you're entitled to an attorney, you
19 got one, me, and I've already advised you, you've got a
20 Fifth Amendment right against self-incrimination and you
21 don't have to explain anything to anybody, but once you
22 open your mouth and say it, you're stuck with it. You
23 understand that?

24 THE COURT: Yes for the record? Thank you.

25 THE WITNESS: Yes, ma'am.

1 THE COURT: And he did say he's fine.

2 BY MS. SHURLING:

3 Q. All right. So what is it that you -- knowing the
4 position that Reed and Haygood took, claiming that you
5 took the gun and they just dropped you off and you went
6 and murdered this man and then they helped you after the
7 fact, what is it that you would have wanted to share with
8 Mr. Banks if you had confidence in his representation at
9 the time of the preparation of your original trial?

10 A. Well, the whole thing was I didn't trust him
11 because I would have felt like I would be in trouble or
12 that it would look even worse on me if I admitted to the
13 fact that I was on the scene of the crime, but that's
14 what I wanted to admit to. I was at the scene of the
15 crime, but my role wasn't the shooter.

16 My role wasn't, Okay. Let's go find him. My role
17 was, Man, y'all got to be stupid to leave that there. I
18 wasn't the brightest kid at the time, but I watched a lot
19 of 48 Hours and a lot of crime cases, CSI, things of that
20 nature, and I know for a fact that if they find a shell,
21 they can find a gun.

22 Q. Let's back up for a moment. You know the story in
23 your head well, but we don't, so we need to break that up
24 a little bit. When you say you were at the scene of the
25 crime, are you saying you were at the scene of the crime

1 at the moment the victim was shot?

2 A. No, ma'am.

3 Q. Where were you -- were you with Haygood and Reed
4 earlier in the day?

5 A. We were together earlier in the day.

6 Q. And at some point did you leave their company?

7 A. Yes, ma'am.

8 Q. How did that happen? Did they drop you off
9 somewhere?

10 A. No. I stayed at the house on -- not , I
11 think the address is . That's Jimmie's
12 house.

13 Q. So you stayed at Jimmie's house?

14 A. Yes, ma'am.

15 Q. While they went off to go do something?

16 A. Yes, ma'am.

17 Q. Did they come back to that residence a while
18 later?

19 A. They did.

20 Q. And when they did, did they confess to you they
21 had committed this crime?

22 A. They was arguing amongst each other, saying this
23 dummy did this and this dummy did that, and I was just
24 upset with both of them because I couldn't understand
25 what they were saying, but I knew it was something big.

1 And he said, Well, you shouldn't have shot him,
2 and he said, You should have done this, and I said, What
3 are you talking about?

4 They went on around and around and around about
5 what happened. I didn't want to hear the details, I just
6 wanted to see if I could do my best to help them out of
7 this situation. I knew what they was going to do before
8 they did it. I do admit to that. That's the reason why
9 my cell phone was with Willie because Willie didn't have
10 a cell phone.

11 Q. You knew before they left that they were going to
12 go hit a lick, to use the parlance?

13 A. Yes, ma'am. I didn't know who, though.

14 Q. You didn't know who they were going to rob?

15 A. No.

16 Q. And did you have any role in planning it?

17 A. No, ma'am.

18 Q. Did you help them in any way to commit it?

19 A. No, ma'am.

20 Q. When they came back, you mentioned something about
21 shells. What were you talking about the shells? What
22 did you find out about shells and who told you?

23 A. Well, Willie was yelling at Jimmie because he was,
24 like, You shouldn't have shot the whole -- you shouldn't
25 have shot your whole clip. His exact words, Were you

1 shouldn't have shot that whole clip.

2 And he was, like, the clip was loaded with all the
3 shells and then he left, so I was just telling him to,
4 Shut up, man. Just go back and we'll pick them up and
5 get back on the plane.

6 So I didn't know at the time that somebody was
7 killed, I just know that somebody was shot or something
8 was shot up. I mean, I knew that for a fact, this guy
9 over here was saying, but I didn't want to hear no more
10 because we was just sitting there talking. So we rolled
11 all the way around the corners, a lot of paths, a lot of
12 alleyways and stuff like that, rolling on the bag.

13 I didn't see no blue light, so I guess nobody
14 heard the shots, and I guess the police wasn't there.
15 And once you pull over the path, you walk behind a truck
16 stop and we picked up some shells, and we got, like,
17 approximately seven shells. We picked up approximately
18 seven shells.

19 Q. And while you were at the scene, did you come in
20 any direct contact with the body?

21 A. Yes, ma'am.

22 Q. Okay. Did you help them move it?

23 A. Yes, ma'am.

24 Q. Now, why didn't you tell Mr. Banks that you were
25 someone who helped them out after they committed this

1 crime?

2 A. Because I figured if he didn't have enough common
3 sense to look up the PTI issue, I felt like it could only
4 get worse. The more he knew, the worse it got.

5 Q. Okay. And if you would have had a different
6 lawyer, one in whom you had more trust, would you have
7 confided the information you've shared with us today
8 here?

9 A. Yes, ma'am.

10 Q. And would you have wanted your lawyer to present
11 your version of the facts should the jury arguing that it
12 was, in fact, you that was the accessory after the fact,
13 not Haygood and Reed?

14 A. Yes, ma'am.

15 Q. Did you want an appeal, Mr. Pelzer?

16 A. Yes, ma'am.

17 Q. Once were you convicted and got a life sentence,
18 did you want a direct appeal?

19 A. Yes, ma'am. I had nothing else to lose.

20 Q. And would you ask Her Honor to grant you a belated
21 direct appeal at this time?

22 A. Yes, ma'am.

23 Q. Okay. Now, ordinarily this is the part of the
24 hearing where I ask somebody under oath whether I have
25 warned them about all the different consequences of them

1 going through a PCR, and that usually involves someone
2 getting less time than they could have gotten, and they
3 might get more on retrial, but you got life without
4 parole, didn't you?

5 A. Yes, ma'am.

6 Q. But there has been some discussion about the fact
7 that this could have been a death penalty case, hasn't
8 there?

9 A. Yes, ma'am.

10 Q. Were you ever threatened with the death penalty in
11 this case?

12 A. No. They said the family didn't want the death
13 penalty, so they weren't going to push for it.

14 Q. Well, you and I have discussed the fact that it
15 would be extremely unusual for the State to seek the
16 death penalty when they didn't the first time, but that
17 there would be some circumstances where they could. We
18 talked about that, didn't we?

19 A. Yes, ma'am.

20 Q. And knowing that that is even a slight risk, you
21 still want to go forward with your prayer for a new
22 trial?

23 A. Yes, ma'am. I would do that if. I get a new
24 trial, I will do that, if I testify, I believe.

25 Q. Okay. Now, you're only going to get -- barring

1 some pretty unusual circumstances that are not likely to
2 be present in your case, this is it. This is your one
3 PCR. You're not likely to get another one unless some
4 things happen that are just not likely to happen in your
5 case. There are a couple of rare circumstances, like a
6 new constitutional standard that would apply to your case
7 or after-discovered evidence that might open the door for
8 you to have another hearing pursuant to 17-27-45(b) and
9 (c). We've talked about that, haven't we?

10 A. Yes, ma'am.

11 Q. But barring that, this is your one opportunity for
12 collateral review, your one chance to try to get a new
13 trial, based on your belief that your right to effective
14 assistance of counsel was violated to and prior to your
15 jury trial. Do you understand that?

16 A. Yes, ma'am.

17 Q. Have you had an adequate opportunity to go over
18 your case with me and to tell me about issues that you
19 wanted to raise here today?

20 A. Yes, ma'am.

21 Q. Have I sufficiently raised for you here today all
22 of the issues you wanted me to bring to the attention of
23 the Court in support of your claim that you didn't get
24 reasonable professional assistance of counsel?

25 A. Yes, ma'am, I did, and some that I wasn't even

1 aware of.

2 Q. Thank you very much. There is nothing else you
3 feel you need to tell the Court?

4 A. I just want a new trial because I figured if I
5 would testify, I figure that if I would have testified, I
6 figure I could have shown a lot more --

7 MS. HARRIGAN: Your Honor, the State would
8 just object that that is not a ground that was raised in
9 his application and want to object to him amending the
10 application at this time to include that as a ground.

11 MS. SHURLING: Your Honor, our position is
12 that counsel was ineffective for failing to follow up on
13 his client's desire to have a new attorney and for
14 representing to the client that his lack of confidence in
15 him due to the manner in which a previous case had been
16 handled would not be a ground for requesting a new
17 counsel, and all of this other stuff would just follow as
18 an implication of that decision on the part of counsel.

19 So I have no further questions. I need you
20 to listen very carefully to what the State's lawyer has
21 to ask, and answer her questions truthfully, please.

22 MS. HARRIGAN: Court's indulgence for a
23 moment, please.

24 CROSS-EXAMINATION

25 BY MS. HARRIGAN:

1 Q. May it please the Court: One of your allegations
2 is that Mr. Banks had represented you previously, and
3 based on that, you didn't have any faith in him, correct?

4 A. Correct.

5 Q. Did you ever write to your attorney, asking that
6 he be removed from the case and you be appointed new
7 counsel?

8 A. I figured when I told him face to face, I figured
9 that was just point blank, there you go.

10 Q. So you never wrote him, the only proof you have is
11 you told him verbally?

12 A. Exactly, same proof he has that I did.

13 Q. Did you ever ask the Court to appoint a new
14 attorney for you?

15 A. No, ma'am. I just answered that from my lawyer as
16 well.

17 Q. Did you ever tell your other attorney, Mark
18 Leiendecker, that I know you only met briefly before
19 trial, but did you ever indicate to him that, I don't
20 want to be represented by Mr. Banks? Let's get a
21 continuance and get me a new attorney?

22 A. I don't know anything about a continuance. The
23 law isn't my strong suit.

24 Q. So you told Mr. Leiendecker, and he pretty much
25 told you stay with Mr. Banks?

1 A. Yes. I stay true with that testimony.

2 Q. I just want to make sure we have your testimony
3 correct, going over this testimony with you.

4 And your grounds for you didn't have any faith in
5 his abilities is that you had requested PTI for your
6 grand larceny and he didn't follow that up with you; he
7 told you you couldn't get it?

8 A. Yes, ma'am.

9 Q. Okay.

10 A. That coupled with the fact of more details.

11 Q. And what are the more details?

12 A. I asked for a bond, and his exact words to me
13 were, If they give you a bond in this case, I don't see
14 it being any lower than \$250,000. It might even be \$1
15 million but that wasn't our problem, because we don't
16 care about that because if I had \$1 million bond, we have
17 enough land in the state of South Carolina we would be
18 able to produce enough property for me to be able to come
19 home on the bond. I also spoke to my mother about that,
20 and she said I shouldn't have told him that.

21 Q. And Mr. Banks was appointed to represent you. He
22 was a public defender, correct?

23 A. Yes, ma'am.

24 Q. Are you aware that one of the qualifications for
25 PTI is that the victims must agree to you being placed on

1 PTI?

2 A. No, I didn't know that.

3 Q. So it's just speculative that you would have been
4 able to get PTI in your grand larceny case. You don't
5 know that you really -- that the Court would have gone
6 along with that?

7 A. I know for a fact that we didn't even raise the
8 issue or even try to present PTI as an issue on the
9 alternative to the probationary sentence.

10 Q. Do you recall addressing the Court prior to your
11 sentencing?

12 A. As of the grand larceny?

13 Q. No, in regards to this case. Do you recall after
14 the verdict came down when you addressed the Court?

15 A. Yes, ma'am, indeed I did.

16 Q. And I believe your testimony before was that you
17 were apologizing for making your family and the victim's
18 family go through with the trial, but you never admitted
19 your guilt in this case, correct?

20 A. I never admitted my guilt, no, ma'am.

21 Q. When you stated -- and this is a direct quote from
22 the record, I admit what I did was wrong. I admit to it,
23 what were you admitting to if you weren't admitting your
24 guilt?

25 A. Okay. This is what you didn't hear because it was

1 between my lawyer and I.

2 Q. I just need an answer to that.

3 A. Oh, I was just showing remorse from my lawyer told
4 me to say -- his exact words, which he got a little
5 twisted earlier, first thing when he said to me, he said,
6 Listen, do you want to say anything?

7 I said, Yes, I do.

8 He said, What do you want to say?

9 I said, I want to maintain my innocence and
10 let them people know that I didn't do it.

11 And his exact words to me, he said, I
12 guarantee you that if you go up there and say that, he's
13 going to give you natural life without the possibility of
14 parole.

15 Q. But when you said, I admit to it, what is the "it"
16 you're admitting to? What did you mean by that statement
17 to the Court?

18 A. Whatever the remorse he wanted me to admit to, if
19 I would have said that, Oh, I shot him, I didn't shoot
20 him.

21 I wasn't admitting to shooting him because
22 everything else was depicted in clear. What you're
23 trying to say, everything else is clear, you know, so if
24 I wanted to say, I apologize for shooting and robbing
25 Jason Rivenburg, that's what I would have said, but

1 that's not what I said because that's not what I meant.

2 He told me to show remorse, and that's wasn't what
3 was presented because that was only between my lawyer and
4 I.

5 Q. Okay. And it's just you're showing remorse,
6 that's what is meant by it.

7 A. Yes, ma'am. Yes, ma'am.

8 Q. Okay. In regards to your allegation that you
9 asked Mr. Banks to file -- or you asked for a direct
10 appeal, which one of your two attorneys did you ask to
11 file an appeal?

12 A. I asked Mr. Martin Banks.

13 Q. And did you ask him verbally or in writing?

14 A. I asked him verbally.

15 Q. Did you ever write him a letter when you got back
16 to the county jail --

17 A. You only have ten days, and the next day I was on
18 my way to Kirkland, so there was really no need to write
19 him.

20 Q. When did he ask you for -- or when did you ask him
21 for an appeal?

22 A. The moment they said I was found guilty, before
23 remorse, before the statement, that I asked him, I said,
24 Listen, I need an appeal.

25 Q. And what was his response to you?

1 A. Nothing. He didn't say anything.

2 Q. He just didn't respond when you said, I want to
3 appeal?

4 A. No. There was a whole bunch going on. The family
5 was reading letters and notes, and they was getting up
6 saying had something on my behalf and whatever.

7 MS. HARRIGAN: Court's indulgence.

8 THE COURT: Yes, ma'am.

9 BY MS. HARRIGAN:

10 Q. Did you ever once you -- I believe your testimony
11 was that the next day you were transferred to SCDC. You
12 quickly left Calhoun County and went to SCDC?

13 A. Yes, ma'am.

14 Q. Within that ten days at SCDC, did you ever try to
15 contact your attorney and ask for an appeal?

16 A. I was locked up for every day in my life, and I
17 have a feeling you don't understand because you're
18 standing in front of me.

19 Q. I just need an answer to my question. Did you
20 write him asking for an appeal?

21 A. There is no way possible that I could have written
22 him because I didn't have any legal mail or anything
23 saying that, okay, Martin Banks' address is such and such
24 and such and such within a ten-day period. I figured me
25 saying out of my mouth verbally at trial that I wanted

1 a -- direct appeal, I figured that was good enough right
2 there.

3 I didn't know that I needed to go expressly
4 through paperwork, make a copy, and send it to a judge.
5 I didn't know nothing like that. I didn't know that,
6 ma'am.

7 Q. After you asked him verbally for an appeal, did
8 you believe he was filing an appeal on your behalf?

9 A. I believe I was getting an appealed filed on my
10 behalf, so when I did ask -- I can't remember exactly
11 what I wrote because I believe the date was August of
12 2008, something like -- it was obviously some month that
13 I plead from my PCR. Before I plead for my PCR, one of
14 the grounds is you have to exhaust all your remedies.

15 They said if you didn't go through direct
16 appeal -- this is what I'm hearing from inmates. If you
17 didn't go through the direct appeal and you didn't
18 exhaust your remedies, there is no point in putting in a
19 PCR. You only have ten days, so I said maybe my lawyer
20 put in a PCR.

21 I don't remember who they are, so I can't tell
22 you. I wrote the proper people, and they said no. It's
23 not a direct appealed filed on your behalf. And then I
24 said, Well, then I'm going to get you a PCR, see if I can
25 get a direct appeal and exhaust my remedies first.

1 Q. So you never wrote to the proper people, but you
2 didn't write to Mr. Banks or Mr. Leiendecker regarding
3 the appeal?

4 A. No. I didn't see the need to, because it was a
5 ten-day deadline, and after ten days, what real contact
6 could I have with them?

7 MS. HARRIGAN: Okay. Court's indulgence.

8 THE COURT: Yes, ma'am.

9 MS. HARRIGAN: No further questions.

10 MS. SHURLING: Nothing further.

11 THE COURT: You may step down, sir.

12 MS. SHURLING: Your Honor, I have previously
13 marked Petitioner's Exhibit 1, which is copy of a SLED
14 record. I prior to today attempted to locate a number
15 that I could use to pull up an indictment or sentencing
16 sheet or something that would verify who his counsel was.

17 It has a central PPP number, which is a
18 designation I'm not familiar with, and a case number. I
19 would ask that the record be held open for ten days to
20 give me an opportunity to try to get these sentencing
21 records --

22 MS. HARRIGAN: The State would consent only
23 if it's a very definite short period of time.

24 THE COURT: We'll leave it open for ten days.

25 MS. SHURLING: Thank you.

1 THE COURT: That's fine. Anything further?

2 MS. SHURLING: Your Honor, I would summarize
3 that by arguing that my client was deprived of effective
4 assistance of counsel prior to enduring his jury trial
5 prior to --

6 MS. HARRIGAN: Are we going into closing,
7 because the State has a witness to call.

8 MS. SHURLING: I'm sorry.

9 THE COURT: Thank you. Do you have any
10 further witnesses?

11 MS. SHURLING: Thank you. I did not think
12 they did. I apologize. I have no further witnesses.

13 THE COURT: Ms. Harrigan?

14 MS. HARRIGAN: The State would call Mark
15 Leiendecker to the stand.

16 THE COURT: Please come forward to be sworn.

17 MARK LEIENDECKER,

18 having been first duly sworn,

19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MS. HARRIGAN:

22 Q. Good afternoon, Mr. Leiendecker.

23 A. Good afternoon.

24 Q. In regards to the Applicant's allegation that he
25 didn't have in faith in Mr. Banks due to previous

1 representation, did he ever say to you he wanted
2 Mr. Banks to be relieved as counsel?

3 A. I remember no such comment or conversation with
4 Mr. Pelzer. My observation of what I saw because I got
5 involved just weeks before the trial was that Mr. Pelzer,
6 as he discussed, had a great working relationship with
7 Jennifer Madonna, his paralegal, and that they had spent
8 a lot of time together going over the files and the
9 records, and that he and Ms. Madonna and Mr. Banks all
10 seemed to be working very well together.

11 I never received any correspondence from
12 Mr. Pelzer like I do on regularity from people in jail
13 asking me to remove their attorneys because they, of
14 course, know and discover I'm the chief public defender
15 for the circuit, so I never before today had any
16 indication Mr. Pelzer was dissatisfied with Mr. Banks.

17 Q. And if he had expressed -- and this might cause
18 you to speculate a bit, but in your role as chief public
19 defender, when you receive these letters, do you normally
20 do some sort of inquiry into the attorney-client
21 relationship with the public defenders under you?

22 A. Any time I receive such a letter, I have a review
23 of the facts contained within that letter and a
24 discussion with my attorneys. 99 percent of those I then
25 write a letter to the -- to the person who has written

1 me, explaining that I've hired this person, I have faith
2 and confidence in their ability to handle the case, and
3 that I don't see any conflict within the representation
4 that would lead me to remove or relieve that person, and
5 then, also, explaining to them that, you know, if they
6 were to choose to select other counsel outside the public
7 defender's office, we would do everything to assist them
8 in transferring the case but that I'm not going to remove
9 my attorney, absent some legal conflict.

10 Q. And had -- I know your testimony is that the
11 Applicant never expressed any dissatisfaction towards
12 Mr. Banks or any members of his staff, but if he had,
13 would you have done an inquiry from that to see if he
14 needed to be removed from the case?

15 A. I met Mr. Pelzer, as he described, the day of or
16 the day before the trial began. We certainly would have
17 discussed it and looked into it. It never happened, so
18 it's hard for me to speculate at that eleventh hour
19 exactly what we would have done regarding that, but it
20 just never happened.

21 Q. In regards to Applicant's claim that he was
22 coerced or encouraged to make his statements that have
23 been discussed a lot prior to sentencing, do you recall
24 what conversations took place before -- after the
25 verdict, before he was sentenced?

1 A. We were all sitting at counsel table, but as to
2 the exact words within the conversation, I'm not sure I
3 could repeat those for you today. I do know that
4 Mr. Pelzer wanted to speak to the Court. I do know that
5 Mr. Banks didn't want him to speak to the Court. I do
6 know that Mr. Banks had expressed concern that he was
7 going to get up there and say he didn't have anything to
8 do with this, he wasn't involved with it, and that he had
9 been advised that it would be best if he would just leave
10 Mr. Banks to present sentencing arguments on his behalf
11 and that Mr. Pelzer insisted on speaking to the Court.

12 Q. Did you ever encourage him to -- I believe
13 Applicant testified he was encouraged to express remorse,
14 and that's what he meant by his comments? You wouldn't
15 characterize the conversation as Mr. Banks encouraging
16 him or coercing him to tell the Court he had done
17 something he hadn't?

18 A. Again, I wasn't privy to their exact conversation.
19 I was sitting at the same table, but I did not ever have
20 the impression that Mr. Banks was encouraging or coercing
21 him to do anything regarding -- in fact, his
22 encouragement was that he not speak to the Court.

23 Q. Do you -- Court's indulgence.

24 Do you recall -- and I know you said the
25 conversation was mainly between the two other people at

1 the table. Do you recall why Mr. Banks encouraged him
2 not to speak to the Court?

3 A. My understanding of what their discussion was that
4 he was afraid that he would say something that would make
5 it more difficult to argue for a sentence less than the
6 maximum. He wanted to maximize his potential for a
7 sentence in the 30 year range, not the life range.

8 Q. Were there any conversations following
9 sentencing -- or, excuse me, following the verdict before
10 sentencing where you heard the Applicant state to either
11 yourself or Mr. Banks that he wanted an appeal?

12 A. No. I don't remember him ever mentioning the
13 desire for an appeal, and we were all right at the same
14 table.

15 Q. Did you ever have any discussions or receive any
16 correspondence with him following the sentencing where he
17 requested an appeal?

18 A. No. We had no correspondence since the trial, and
19 we had no correspondence ever.

20 Q. If he had requested that you file an appeal on his
21 behalf, would you have?

22 A. I was one of the of record trial counsel. I
23 certainly would have.

24 MS. HARRIGAN: Court's indulgence.

25 BY MS. HARRIGAN:

1 Q. Just briefly, Your Honor. There's been some
2 discussion that on Mr. Banks' previous representation for
3 grand larceny in 2008 of Applicant that he was
4 ineffective for not seeking PTI for him.

5 Could you state for the Court what the
6 requirements are for getting PTI? Maybe I can help
7 clarify that a little bit.

8 A. Are you concerned that the judge didn't know what
9 the requirements of PTI are?

10 THE COURT: I do, but I will tell you,
11 interestingly, I do have a question. Is it in your
12 circuit the policy that the victim has to agree to PTI?

13 THE WITNESS: Absolutely it is. It is a
14 requirement. Law enforcement and the victim must sign on
15 before the solicitor will consider PTI.

16 MS. HARRIGAN: Thank you, Your Honor, for
17 more eloquently asking what I was trying to.

18 THE COURT: I don't think that is the case in
19 every circuit. Certainly the solicitor has to agree to
20 it, and certainly the solicitor is often directed or well
21 on the consent of their victim consents, but --

22 THE WITNESS: I'm not saying our solicitor
23 can't; I'm saying our solicitor doesn't.

24 THE COURT: That's what I wanted to know, and
25 that would be a policy of consideration for your

1 solicitor in your circuit because I think that does
2 differ.

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

5 THE COURT: Ms. Shurling, anything?

6 CROSS-EXAMINATION

7 BY MS. SHURLING:

8 Q. Pardon me, I'm sorry I didn't recognize you. It's
9 been too many years.

10 A. Yes, ma'am.

11 Q. Good to see you. You didn't ever hear Mr. Pelzer
12 say he didn't want to appeal, did you?

13 A. Don't we love double negatives?

14 Q. Okay. I'm tired.

15 A. Yes, I never heard him say it; or, yes, I didn't
16 ever hear him say it.

17 Q. For someone who prides herself on being reasonably
18 articulate, that was a bad sentence.

19 A. Let me answer the question I think you're asking.
20 I never heard him ask and I don't know whether he did
21 ask.

22 Q. Okay. And the only point I was making is the
23 respondent made the point that you never heard him ask
24 for an appeal, and all I'm saying is you never heard him
25 say he didn't want to appeal either, did you?

1 A. I never heard him say the words, Please don't
2 appeal this case.

3 Q. Okay. Did you -- you said you met the defendant,
4 what, within a few days of the trial?

5 A. We met the week that that -- of that term of
6 Court. I had gotten involved in the case a number of
7 weeks before at Martin's request. This case, as I
8 remember it, was tried about nine months after the
9 incident, and so Martin wanted -- because it was involved
10 in serious case, he wanted a second set of eyes, and I
11 agreed to get involved.

12 I read the file and got prepared and got prepared
13 only to the extent that, you know, if he needed help in
14 the trial, I was there to observe and give him notes. I
15 was also there to help him with a few of the fact
16 witnesses and cross-examine the things that, you know,
17 based on records or facts or those kind of things.

18 Q. Would it be fair to say that although you are
19 technically his boss, you were his second chair, if you
20 will, on this trial?

21 A. It wouldn't be just technically right to say, it
22 would be accurate.

23 Q. Okay. Thank you very much.

24 And do you recall any specific discussions with
25 Mr. Banks concerning the scope of possible impeachment of

1 Reed and Haygood prior to or during their testimony?

2 A. I understood what Martin was eliciting from them,
3 but I don't remember having -- you know, he and I having
4 a strategy, sit down about that. The theory of the case
5 was that Mr. Pelzer didn't do it and that it was done and
6 that the gun belonged to these guys, and therefore they
7 must have been the ones that did it.

8 Q. Well, was there any physical evidence involved in
9 the case that was problematic to the position that he was
10 not there?

11 A. That Mr. Pelzer wasn't there?

12 Q. Correct.

13 A. I thought we shot holes in the State's case. I
14 thought we provided a sufficient summation of those
15 problems in the State's case. I thought we pointed to
16 the fact that the codefendants had every reason to lie
17 and be self-serving because they avoided being charged
18 with the crime. I thought we pointed out that they had
19 lied to the police the first few times they were talked
20 to and that their story had evolved to what the police
21 accepted as a simple theory that they didn't have to do
22 any further research that Mr. Pelzer committed the crime.

23 The problem being at the end, after that
24 presentation, the jury found beyond a reasonable doubt
25 that they didn't buy that theory, they bought the theory

1 that he committed the crime.

2 Q. Was there any physical evidence tying Mr. Pelzer
3 to the crime scene?

4 A. I don't remember there being any forensic things
5 like his fingerprints at the crime scene, but it's been
6 three years. I don't remember anything other than the
7 weapon, which there was testimony that he had taken from
8 the codefendants and the physical test -- the physical
9 evidence of the fact that the trailer that he had lived
10 at had a burn pit out back where he had burned clothes
11 that day after the murder.

12 That's the only physical evidence that I remember
13 the State bringing, and then they tied the ballistics and
14 tied the testimony.

15 Q. So absent any admission of any involvement in this
16 matter by your client, you were left with evidence that
17 there had been some clothing burned and not much of an
18 explanation for why he would have burned it, right?

19 A. Correct.

20 MS. SHURLING: Thank you. No further
21 questions.

22 MS. HARRIGAN: No further questions from the
23 State.

24 THE COURT: All right. Mr. Leiendecker you
25 can step down.

1 MS. HARRIGAN: And that's the State's case,
2 and if we could break for a brief moment before we go
3 into closing arguments.

4 MS. SHURLING: Either that, Your Honor, or
5 given the lateness of the day, if you would prefer, we
6 could do proposed orders from our respective positions.

7 THE COURT: I would be happy to do proposed
8 orders, and that way I don't need to hear any closing
9 argument. Let's go ahead and take five minutes. Thank
10 you.

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- - -

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(Whereupon, the proceedings were concluded.)

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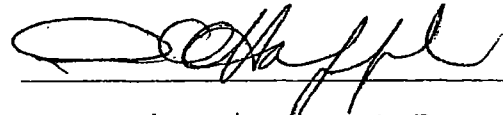
24

25

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Calhoun County, South Carolina, on the 1st of November 2012.

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

June 14, 2013



Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

EXHIBITS

Plaintiff(s) Willie Pelzer, III
vs.
Defendant(s) State of SC

<u>Petitioner's</u> PLAINTIFF'S EXHIBITS	DEFENDANT'S EXHIBITS	COURT'S EXHIBITS
① Arrest record	1	1
2	2	2
3	3	3
4	4	4
5	5	5
6	6	6
7	7	7
8	8	8
9	9	9
10	10	10
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2012 NOV 16 P 2:47
FILED
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
ST. MATTHEWS, SC

Court Reporter [Signature]
Clerk of Court [Signature]



SLED CATCH
Citizens Access to Criminal Histories
Results

Hello

Name **Willie Pelzer**
Date of Birth
Maiden Name
Gender **Male**
SSN
Transaction **004963902**
Date of Check **November 1, 2012 at 13:41**



This record is based on a search using Last name, First Initial, Gender, and Date of Birth only. Compare all identifying data given for record subject with screening subject. Fingerprint comparison is recommended as the most reliable means to identify a record subject.

INTERNET RAP SHEET REQUEST
ORI-SCLED0000 SID-SC01859649 FBI-***** PUR-E
ATN-WEB, ACCOUNT

AUTHORIZED USE ONLY. ***** CONTACT CONTRIBUTING AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS. BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

PAGE-01 DATE-11/01/2012 TIME-13:35:24
REQ ORI-SCLED0000 S C LAW ENF DIV
SID-SC01859649 FBI-
NAME-PELZER, WILLIE III SEX-M RACE-B
HEIGHT-600 WEIGHT-215 EYES-BRO HAIR-BLK SKIN- BORN-SC
FPC- HENRY-
PHOTOGRAPH AVAILABLE AUTHORIZED USE ONLY
1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAPIS

DATE RECORD ENTERED--N/A DATE OF LAST UPDATE--12/14/2009

ADDITIONAL IDENTIFIERS BIRTH
NAME DATES MARKS SOC SEC MISC NUM
TAT L ARM 000000000 PELZER, WILLIE
TAT R ARM 000000000

CONTRIBUTOR/SUBJECT DOA/RCVD CHARGE/DISPOSITION/ETC
SC040015G CENTRAL PPP 11/18/2008 CUSTODY STATUS-PROBATION
CASE-090000 START DATE-11/18/2008
CIT-16-13-30 (B) (1)-FELONY

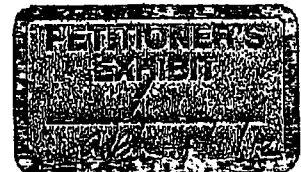
COURT CHARGE 01-GRAND LARCENY
VALUE >\$1,000 BUT <\$5,000
COURT DISP-CONVICTED;5 YRS
SS 5 YRS PROB \$7,500.00
RESTIT
ATN-990000449985

PELZER, WILLIE 03/08/2009
SC0090000 CALHOUN CNTY 30
CASE-NA
ATN-990000469890
WARR-092009030B e
CIT-16-3-10-FELONY

ARREST CHARGE 01-MURDER
OFFENSE DATE-03/08/2009

CIT-16-3-10-FELONY
DOC-09GS0900022

COURT CHARGE 01-MURDER



SLED State Criminal Records Check - DB Check & Display

Page 2 of 2

WARR-F402211

COURT DISP-CONVICTED;Defenden
t sentenced to Life withou
t Parole at SC D
COURT DATE-12/04/2009
ATN-990000469880

SC040015C SC DEPT CORRECTIONS 12/07/2009 CUSTODY STATUS-RECEIVED

CASE-003

382

START DATE-12/07/2009

CIT-16-3-10-FELONY

COURT CHARGE 01-MURDER
COURT DISP-CONVICTED;LIFE
WITHOUT PAROLE
ATN-50D100002205

CIT-16-13-30(B)(1)-FELONY

COURT CHARGE 02-GRAND LARCENY
, VALUE >\$1,000 BUT <\$5,000
COURT DISP-CONVICTED;VOP 5
YRS CC

Q -- WARRANT OCCURS WITH MORE THAN ONE SID NUMBER

BASED ON SEARCH OF SLED CCH FILE USING SID/SC01859649
THIS CRIMINAL HISTORY RECORD IS FOR SOUTH CAROLINA ARRESTS AND
CONVICTIONS ONLY AND IS BASED ON THE INFORMATION PROVIDED. SINCE
CHANGES MAY OCCUR DAILY A NEW INQUIRY SHOULD BE MADE AND NO SUBSEQUENT
USE OF THIS RECORD IS ALLOWED.

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING HANDGUN IN
SOUTH CAROLINA

INFORMATION SUBMITTED TO SLED CCH PURSUANT TO 16-23-10 (C) AND 23-31-110
(C) OF THE SOUTH CAROLINA CODE OF LAWS INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A CRIME OF VIOLENCE AND IS NOT PERMITTED TO POSSESS OR
ACQUIRE A HANDGUN.

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY
FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS
DEFINED BY THE GUN CONTROL ACT OF 1968 (18.U.S.C 922(G)).

** S C CJIS END OF RECORD **

Credit Card Transaction Number

LAW OFFICE OF



TARA DAWN SHURLING, PA

Attorney and Counselor at Law
3614 Landmark Drive
Suite A

Columbia, South Carolina 29204

E-Mail: tdslaw@shurlinglaw.com

(803) 738-8622

(Fax) (803) 738-1600

November 15, 2012

The Honorable Kenneth Hasty
Clerk of Court for Calhoun County
902 F. R. Huff Drive
St. Matthews, SC 29135

KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
ST. MATTHEWS, SC

FILED
2012 DEC 12 P 1:37

Re: Willie Pelzer, 338263 v. State of South Carolina; 2010-CP-09-00189.

Dear Mr. Hasty:

Please find enclosed an original and one (1) copy of the documents to be filed as an Applicant's Exhibit in the above referenced Post-Conviction Relief file. You may enter these documents as one exhibit. I apologize but I do not know what number the Court Reporter used last in entering exhibits during the Post-Conviction Relief hearing. The hearing was held on Thursday, November 1, 2012 before the Honorable Carmen Mullen in St. George, South Carolina. Judge Mullen left the record open to allow these documents to be entered as an Applicant's Exhibit. If you would be so kind as to have your assistant file this exhibit and return the extra clocked copy to my office in the self-addressed stamped envelope provided for your convenience. If you should have any questions or concerns please feel free to contact my office. Thank you so much for your time and assistance. I remain,

Sincerely yours,

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg

Enclosures

cc: The Honorable Carmen T. Mullen, Circuit Court Judge (w/enclosures)
Megan Harrigan, Assistant Attorney General (w/enclosures)
Willie Pelzer, 338263 (w/enclosures)

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

Defendant

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

ATTEST TRUE COPY

KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY

Defendant
Witness:
C.C.C. PLS. AND G.S.

2008 NOV 14 P 1:09

DOCKET NO. 2008GS09-0191

The State of South Carolina
County of CALHOUN

COURT OF GENERAL SESSIONS

November 17, 2008 TERM

THE STATE
vs.

Willie Pelzer III

Indictment for

GRAND LARCENY, VALUE \$5,000 OR MORE

KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
SOUTH CAROLINA

2017 DEC 12 P 1:37

FILED

SC Code: 16-13-35(B)

WITNESSES

Stan Graham

Calhoun County Sheriff

ARREST WARRANT NUMBER
K345410

Arrested: July 30, 2008

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: November 14, 2008

VERDICT

Foreperson of Petit Jury

Date:

1066

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN
STATE

IN THE COURT OF GENERAL SESSIONS

Willie vs. Pelzer, III

INDICTMENT/CASE#: 2008-GS-09-0191

AKA: _____

AW#: K345410

Race: B Sex: M Age: _____

Date of Offense: 6-23-08

DOB: _____ SS#: _____

S.C. Code §: 16-13-30(B)

CDR Code #: 0478

Address: _____

City, State, Zip: St Matthews, SC 29135

DL# _____ SID# _____

SENTENCE SHEET
FILED
2008 DEC 12 10 37 AM
CLERK OF COURT
SOUTH CAROLINA
CALHOUN COUNTY

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADED GUILTY TO: GRAND LARCENY > \$5000

in violation of 16-13-30(B) of the S.C. Code of Laws, bearing CDR Code # 0478

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC w/minor 1st or Lewd Act) \$17.25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (defendant initial)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

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

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 5 ~~days~~ months/years or under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____, plus costs and assessments as applicable*; the balance is suspended with probation for 5 months/years

and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference. CONCURRENT or CONSECUTIVE to sentence on: _____

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

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-35.

SPECIAL CONDITIONS:
 RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment

Total: \$7500.00 plus 20% fee: _____ \$ _____

Payment Terms: _____
 set by SCDPPPS _____

Recipient: _____

*Fine:	\$ _____
§14-1-208 (Assessments 107.5%)	\$ _____
§14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ <u>100.00</u>
§14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
§56-5-2995 (DUI Assessment)	\$12 \$ _____
§35-13 (Public Def/Prob)	\$500 \$ <u>500.00</u>
§73.3, 1B TP (Law Enforce. Funding)	\$25 \$ <u>25.00</u>
§33.7, 1B TP (Drug Court Surcharge)	\$100 \$ _____
§50-21-114(BUI Breath Test Fee)	\$50 \$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
3% to County (if paid in installments)	\$ <u>18.90</u>
§90.11 TP (SCCJA Surcharge)	\$5 \$ <u>5.00</u>
TOTAL	\$ <u>648.90</u>

Obtain GED
Attend Voc. Rehab. or Job Corp. 2
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: _____

ATTEST TRUE COPY

[Signature]
KENNETH HASTY
CLERK OF COURT

Appointed PD or appointed other _____
 Requires \$500 be paid to Clerk during probation.

Claudia St. Paulding
Clerk of Court/Deputy Clerk

Court Reporter: Harry D. Walker

Presiding Judge [Signature]

Judge Code: 101141

Sentence Date: 11-18-08

(JAIL) W/I SCDC

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF DORCHESTER CALHOUN) FIRST JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA ORDER OF APPOINTMENT OF LEGAL
VS. COUNSEL FOR INDIGENT DEFENDANT

Willie Pelzer
Defendant. SSN#

Age: 22 Birthdate: _____ Race/Sex: B/M Date of Arrest: June 24, 2008

Address: St. Matthews, S.C. 29135 Address/Friend or Relative

City: St. Matthews, S.C. 29135 State: _____ Zip: _____
City State Zip City State Zip

Telephone: _____ Telephone: _____

Offense: Grand Larceny

Magistrate: _____ Warrant No.: K-345410

Bond: \$ _____ Type: Signature Recog Property Bondsman: _____

Offense: _____

Magistrate: _____ Warrant No.: _____

Bond: \$ _____ Type: Signature Recog Property Bondsman: _____

Offense: _____

Magistrate: _____ Warrant No.: _____

Bond: \$ _____ Type: Signature Recog Property Bondsman: _____

The defendant contends that he is indigent and in need of services of an attorney as certified by law.

THEREFORE, Martin Banks is appointed as counsel for the defendant.

ATTEST TRUE COPY
Kenneth Hasty
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
Attorney at Law

This 18 day of NOV., 20 08
at 11:25 (am) - pm)

White - Clerk of Court
Green - Attorney
Canary - Criminal Justice Coordinator
Pink - Solicitor
Goldentrod - Defendant

Jenny Madonia
Criminal Justice Coordinator

NOV 19 P 1:37
FILED
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
ST. MATTHEWS, S.C.



SLED CATCH
Citizens Access to Criminal Histories
Results

Hello

Name **Willie Pelzer**
Date of Birth
Maiden Name
Gender **Male**
SSN
Transaction **004963902**
Date of Check **November 1, 2012 at 13:41**

ARREST RECORD
S.C. Law Enforcement Division
WWW

This record is based on a search using Last name, First Initial, Gender, and Date of Birth only. Compare all identifying data given for record subject with screening subject. Fingerprint comparison is recommended as the most reliable means to identify a record subject.

INTERNET RAP SHEET REQUEST
ORI-SCLEDD000 SID-SCC1659649 FBI-***** PUR-E
ATN-WEB, ACCOUNT

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PAGE-01 DATE-11/01/2012 TIME-13:35:24
REQ ORI-SCLEDD000 S C LAW ENF DIV
SID-SC01959649 FBI-
NAME-PELZER, WILLIE III SEX-M RACE-B
HEIGHT-600 WEIGHT-215 EYES-BRO HAIR-BLK SKIN- BORN-SC
FPC- HENRY-
PHOTOGRAPH AVAILABLE AUTHORIZED USE ONLY
1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--N/A DATE OF LAST UPDATE--12/14/2009

ADDITIONAL IDENTIFIERS BIRTH
NAME DATES MARKS SOC SEC MISC NUM
TAT R ARM 00000000 TAT L ARM 00000000 PELZER, WILLIE

CONTRIBUTOR/SUBJECT DOA/RCVD CHARGE/DISPOSITION/ETC
SC040015G CENTRAL PPP 11/18/2008 CUSTODY STATUS-PROBATION
CASE-090000 START DATE-11/18/2008
CIT-16-13-30(B)(1)-FELONY
COURT CHARGE 01-GRAND LARCENY
, VALUE >\$1,000 BUT <\$5,000
COURT DISP-CONVICTED; 5 YRS
\$5 5 YRS PROB \$7,500.00
RESTIT
ATN-990000449985

PELZER, WILLIE 03/08/2009
SC0090000 GALHOUN CNTY SC
CASE-NA
ATN-990000459880
WARR-0920090308 @
CIT-16-3-10-FELONY
ARREST CHARGE 01-MURDER
OFFENSE DATE-03/08/2009
CIT-16-3-10-FELONY
DOC-09GS0900022
COURT CHARGE 01-MURDER

2012 DEC 12 P 1:37
FILED
KENNETH HASTY
CLERK OF COURT
CALEHOON COUNTY
Spartanburg, SC

SLED State Criminal Records Check - DB Check & Display

WARR-F402211

COURT DISP-CONVICTED;Defendan
t sentenced to Life withou
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COURT DATE-12/04/2009
ATN-990000469880

SC040015C SC DEPT CORRECTIONS 12/07/2009 CUSTODY STATUS-RECEIVED

CASE-003

382

CIT-16-3-10-FELONY

START DATE-12/07/2009

COURT CHARGE 01-MURDER
COURT DISP-CONVICTED;LIFE
WITHOUT PAROLE
ATN-50D100002205

CIT-16-13-30(B)(1)-FELONY

COURT CHARGE 02-GRAND LARCENY
, VALUE >\$1,000 BUT <\$5,000
COURT DISP-CONVICTED;VOP 5
YRS CC

@ - WARRANT OCCURS WITH MORE THAN ONE SID NUMBER

BASED ON SEARCH OF SLED CJIS CCH FILE USING SID/SC01859649
THIS CRIMINAL HISTORY RECORD IS FOR SOUTH CAROLINA ARRESTS AND
CONVICTIONS ONLY AND IS BASED ON THE INFORMATION PROVIDED. SINCE
CHANGES MAY OCCUR DAILY A NEW INQUIRY SHOULD BE MADE AND NO SUBSEQUENT
USE OF THIS RECORD IS ALLOWED.

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING HANDGUN IN
SOUTH CAROLINA

INFORMATION SUBMITTED TO SLED CCH PURSUANT TO 16-23-10 (C) AND 23-31-110
(C) OF THE SOUTH CAROLINA CODE OF LAWS INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A CRIME OF VIOLENCE AND IS NOT PERMITTED TO POSSESS OR
ACQUIRE A HANDGUN.

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY
FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS
DEFINED BY THE GUN CONTROL ACT OF 1968 (18 USC 922(G)).

** S C CJIS END OF RECORD **

Credit Card Transaction Number

FILED
2012 DEC 12 P 1:37
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF CALHOUN)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Willie Pelzer, III, #338263,)

Case No. 2010-CP-09-0189

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

FILED
2013 MAR 13 P 2
KERNETH HASTON
CLERK OF COURT
CALHOUN COUNTY
SIT. MATTHEWS.

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post conviction relief filed August 4, 2010. The Respondent made its Return on February 4, 2011. An evidentiary hearing into the matter was convened on November 1, 2012, at the Dorchester County Courthouse. The Applicant was present at the hearing and was represented by Tara D. Shurling, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan and Senior Assistant Deputy Attorney General Salley W. Elliott 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 Calhoun County Clerk of Court. Applicant was indicted at the April 2009 term of the Calhoun County Grand Jury for Murder (2009-GS-09-0022). Martin Banks, Esquire, and Mark Leiendecker, Esquire, represented Applicant. On December 1-4, 2009, Applicant proceeded to a jury trial before the Honorable James C. Williams, Jr., where he was found guilty as indicted. On December 4, 2009, Judge Williams sentenced Applicant to life imprisonment. Applicant did not appeal his conviction or sentence.

In his application for post-conviction relief, Applicant alleged he is being held in custody unlawfully for the following allegations of ineffective assistance of counsel:

1. Counsel was ineffective for failing to file a direct appeal on Applicant's behalf;
2. Counsel was ineffective for failing to request a jury charge on manslaughter;
3. Counsel was ineffective for failing to call witnesses to testify on his behalf; and
4. Counsel was ineffective for failing to investigate witnesses.

Applicant did not amend his application in writing; however, at the start of the evidentiary hearing, his counsel moved to orally amend his application to include the following additional allegations of ineffective assistance of counsel:

5. Counsel was ineffective for allowing witness Willie Reed to read part of a gun agreement into the record;
6. Counsel was ineffective for offering into evidence, through his cross-examination of witnesses, that the trailer Applicant had previously lived was without electricity;
7. Counsel was ineffective for calling Applicant's mother as a witness;
8. Counsel was ineffective for failing to move to be relieved, once Applicant notified him that he was dissatisfied with his previous representation on an unrelated matter and wished to be appointed new counsel;
9. Counsel was ineffective for urging Applicant to address the court prior during his sentencing hearing and encouraging him to cry;
10. Counsel was ineffective for failing to cross examine witnesses Reed and Haygood concerning possible life sentences if they had been charged with murder pursuant to State v. Gracely, 731 S.E.2d 880 (Sup. Ct. 2012).

The State objected to these amendments, citing a lack of notice. This Court granted Applicant's motion to amend his application over the State's objection and allowed him to proceed forward on all grounds.

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from lead trial counsel Martin Banks, Esquire ("Counsel"). The State presented testimony from

co-counsel Mark Lejendecker, Esquire, who assisted in Applicant's defense at trial; however, Applicant's allegations solely focus on the performance of Martin Banks. This Court also had before it a copy of the Applicant's trial transcript, the records of the Calhoun County Clerk of Court, and the Applicant's records from the South Carolina Department of Corrections.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). 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.

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

Counsel was ineffective for failing to file a direct appeal on Applicant's behalf

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), as Counsel failed to file a direct appeal on his behalf.

At the evidentiary hearing, Counsel testified that it is his standard practice to consult with his clients regarding their appellate rights during his representation. Counsel testified that he files appeals for most of his clients, particularly those who proceed to trial. Counsel testified that Applicant never informed him that he wished to appeal his conviction or sentence. Counsel elaborated that due to Applicant's comments to the trial court and the victim's family during sentencing, where Applicant expressed his guilt and sorrow for his actions, it made Applicant's trial seem more like a guilty plea. Counsel testified that he understood those comments and Applicant's overall demeanor to show that Applicant had "come to terms" with his conviction

and sentence and did not want to pursue any appellate action. Counsel testified that at the conclusion of the trial and after a review of the trial transcript, he does not believe that Applicant had any meritorious issue on which to appeal. Counsel testified that within a few days after the trial's conclusion, Applicant's mother visited his office to thank him for representing her son. Counsel stated that she inquired as to how she could obtain a trial transcript, but never asked him to file an appeal on her son's behalf. Counsel stated that this was the last direct or indirect contact he had with Applicant.

Co-counsel Mark Leiendecker, who assisted with Applicant's defense at trial, testified that he was present throughout the entire trial, including after the verdict was read and throughout Applicant's sentencing. Leiendecker testified that Applicant never asked him any questions regarding an appeal or requested that he file an appeal on his behalf. Additionally, he testified that he was present for Applicant's post-verdict conversations with Counsel and he did not hear Applicant request that Counsel file an appeal on his behalf. Leiendecker testified that following the trial, he had no direct or indirect contact with Applicant.

Applicant testified that he would now like to pursue an appeal of his conviction and sentence. Applicant testified that he did ask Counsel to file an appeal on his behalf directly after the verdict was handed down, but acknowledges that he did not attempt to contact either of his attorneys following his trial to inquire about an appeal.

Based on the testimony presented at the hearing in conjunction with a thorough review of the transcript, this Court finds that Counsel was not ineffective for failing to properly perfect a direct appeal. Further, this Court finds Counsel's testimony to be very credible and finds Applicant's testimony to not be credible. When the question is whether counsel was ineffective in failing to file a direct appeal from a conviction and sentence, the United States Supreme Court

has held that counsel has a constitutionally-imposed duty to consult with a 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, 120 S.Ct. 1029 (2000).

Counsel's credible testimony reflected that he consulted and advised Applicant of his right to appeal his conviction and sentence. Counsel, as well as co-counsel Leiendecker, stated that Applicant never inquired about or asked his counsel to pursue an appeal on his behalf. This Court finds that Counsel's performance was reasonable and effective. Therefore, this Court finds that this allegation must be denied and dismissed.

Counsel was ineffective for failing to request a jury charge on manslaughter

This Court finds that Applicant abandoned this allegation, as he did not present any evidence or testimony in its regard. Therefore, this Court finds that this allegation of ineffective assistance of counsel must be denied and dismissed with prejudice.

Counsel was ineffective for failing to call witnesses to testify on his behalf

This Court finds that Applicant abandoned this allegation, as he did not present sufficient evidence or testimony in its regard. Applicant did not state with specificity any additional witnesses he wished Counsel to have called at his trial and did not present any evidence or testimony as to how these additional witnesses would have impacted his trial. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself,

satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the post-conviction relief hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Therefore, this Court finds that this allegation of ineffective assistance of counsel must be denied and dismissed with prejudice.

Counsel was ineffective for failing to investigate witnesses

This Court finds that Applicant abandoned this allegation, as he did not present any evidence or testimony in its regard. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the post-conviction relief hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Therefore, this Court finds that this allegation of ineffective assistance of counsel must be denied and dismissed with prejudice.

Counsel was ineffective for having witness Reed read part of a gun agreement into the record

Applicant asserts that Counsel was ineffective for asking witness Willie Reed to read part of a gun agreement into the record during his cross-examination of Reed, as Reed had poor

reading skills, resulting in prejudice to Applicant. Counsel testified that he introduced the form that Reed filled out and signed at Woody's Pawn Shop, where Reed purchased the .45 caliber handgun that was used to kill the victim in this case, into evidence as Defendant's Exhibit No. 2, and that he asked Reed to read portions of the form during his cross-examination of Reed. See Trial Tr. Vol. II p. 165-168. Specifically, Counsel requested that Reed read the following portions of Defendant's Exhibit No. 2:

Q. Mr. Reed, I want you to read Question 11. I want you to read a portion of both the highlighted portions and those two highlighted portions for me.

A. Answer questions. Are you the actual transferring buyer of the firearm listed on this form. If you are not the actual buyer, if you acquiring the firearm on behalf of another person. If you are not the actual buyer the dealer cannot transfer the firearm to you. Exception. If you are picking up a repaired firearm for another person you are not required to answer Question No. 11A and may proceed to question under B.

Read that also?

Q. Yes, sir.

A. All right. Are you under indictment for information in any court for a felony or any crime for which the judge could imprison you for more than one year. Have you ever been convicted in any court of a felony or any other crime for which the judge could not imprison you for more than one year even if you receive a shorter sentence including probation.

Trial Tr. Vol. II p. 166 line 14- p. 167 line 10. Counsel testified that he made the strategic decision to introduce this form into evidence and asked that highlighted portions of this agreement be read to the jury so that he could impeach Reed on inconsistencies between this

form he acknowledged with his signature and his behavior following his acquisition of the firearm. Specifically, Counsel stated he wanted to show that jury that Reed almost immediately transferred the firearm to Jimmy Haygood in violation of this signed agreement (See, Trial Tr. Vol. II p. 167- 168). Counsel elaborated that he was "trying to hammer home to the jury" that Reed had previously lied about his intent to transfer the firearm on a signed document. Counsel testified that he did not recall Reed having any difficulty reading these portions of Defendant's Exhibit No. 2. Counsel testified that he did not have any concerns regarding Reed reading this portion of Defendant's Exhibit No. 2 to the jury because it clearly exemplified to the jury that Reed was a "liar" and that he was not a credible witness.

Based on the testimony above, this Court finds that Counsel was not deficient in regards to this allegation of ineffective assistance of counsel. Our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Here, Counsel articulated valid strategic reasons for admitted Defendant's Exhibit No. 2 into evidence and having Reed read portions of this document to the jury. Applicant has not shown that counsel was deficient in his choice of tactics. Therefore, this allegation must be denied and dismissed with prejudice.

Counsel was ineffective for offering into to evidence, through his cross examination of witnesses, that the trailer Applicant had previously lived was without electricity

Applicant alleges that Counsel was ineffective for introducing into evidence through testimony of various witnesses on cross-examination that the trailer where Applicant had

previously lived was without electricity. Applicant contends that Counsel's performance was deficient by revealing this information to the jury, as it shows he was destitute and more likely to have attempted to rob the victim due to his dire financial situation. Such an exchange occurred during the cross-examination of State's witness Willie Reed:

Q. And is there power to that address that you indicate that Mr. Pelzer lived at?

A. No, sir.

Q. And was there power in March of that year?

A. No, sir.

Q. February of that year?

A. No, sir.

Q. January of that year?

A. I'm not sure about that, sir.

Q. So how could he live there if there wasn't any power?

A. Defendant didn't stay there.

Q. I'm sorry?

A. The defendant didn't stay at that house. It was stated that defendant stayed at Walsh Lane.

Q. I thought you said that it was his place.

A. He used to stay there -- that was his residence.

Q. So he stayed there--

A. Before that.

Q. --many months before that, before the power went off?

A. Yes, sir.

Q. All right. So but no where near up to March?

A. No --

Q. He didn't live there then?

A. No, sir.

Trial Tr. Vol. II p. 178 line 5- p. 179 line 3. At the evidentiary hearing, Counsel testified that he intentionally elicited this information from witnesses, as it was further evidence to show that Applicant was not residing at his former trailer on the night of the murder. Counsel elaborated that the crime scene was a short distance from this trailer and a crucial aspect of the State's case was Applicant's close proximity to the crime scene during the time of the incident. Counsel testified that he wanted to conclusively show the jury that this trailer was uninhabitable during the time of the incident and a lack of electricity helped him establish this.

Additionally, Counsel testified that he strategically asked questions of various witnesses on cross-examination to show that Applicant lived with his mother and not in this particular trailer during the time of the incident. Counsel expounded that Applicant not only lived with his mother at the time of the murder, but his mother also paid all of his bills, including his cellular phone bill. Counsel testified that he wanted to show the jury that Applicant was not desperate for money, as he had no personal expenses for which he was responsible.

Applicant has not shown that counsel was deficient in that choice of tactics. Therefore, this allegation must be denied and dismissed with prejudice.

Counsel was ineffective for calling Applicant's mother to testify as a witness

Applicant asserts that Counsel was ineffective for calling Applicant's mother, Carolyn Murph, to testify as a witness. Specifically, Applicant contends that Counsel was aware that Ms. Murph would only be able to offer an imperfect alibi, but that by calling her as a witness, Applicant was forfeiting the last argument before the jury. Counsel testified that he had previously interviewed Ms. Murph prior to the trial and he was aware of the substance of her testimony. Counsel elaborated that he was aware that Ms. Murph would only be able to provide an imperfect alibi and that he had discussed this with Applicant prior to trial. Counsel also stated

that he advised Applicant that if he decided to call witnesses to testify in his defense, he would no longer have the last opportunity to address the jury. Counsel stated that after these discussions with his client, a joint decision was made to call his mother as a witness. Counsel testified that this was a "tactical decision" to call Ms. Murph to the stand, despite the lack of a perfect alibi, as it would hopefully "sow doubt in the jury's minds" regarding Applicant's guilt.

Additionally, Counsel testified that he wanted to call Ms. Murph to the stand to counteract the State's position that Applicant was desperate for money and murdered the victim during a botched armed robbery. Counsel stated that in addition to Ms. Murph providing an alternative location for her son during the time of the crime, Ms. Murph also was called to provide testimony on her financial support of Applicant. Counsel stated that Ms. Murph was able to testify that she paid all of her son's bills and he was not in need of money at the time of the incident.

Again, Counsel articulated valid strategic reasons for calling Carolyn Murph to the stand in her son's defense. Applicant has not shown that counsel was deficient in that choice of tactics. Therefore, this allegation must be denied and dismissed with prejudice.

Counsel was ineffective for failing to move to be relieved, once Applicant notified him that he was dissatisfied with his previous representation on an unrelated matter and wished to be appointed new counsel

Applicant asserts that Counsel was ineffective for failing to move to be relieved as Applicant's counsel, as Applicant informed Counsel that he was dissatisfied with Counsel's previous representation on an unrelated case and wished to have new counsel appointed. At the evidentiary hearing, Applicant testified that Counsel previously represented him on an unrelated Grand Larceny charge and that he was not pleased with Counsel's prior representation. Specifically, Applicant testified that he asked Counsel several times to seek Pre-Trial

Intervention (PTI) on this charge and that Counsel refused to do so. Applicant stated that he told Counsel numerous times that he did not want Counsel to represent him on this case due to his prior representation, where Applicant felt Counsel had performed "incompetently." Applicant stated that Counsel replied, "Well, I'm all you've got," and refused to seek new counsel for Applicant. Applicant acknowledged that he never sought the court's assistance in receiving a new attorney. In support of this allegation, Applicant, through his counsel, supplemented the record after the hearing to include the indictment, sentencing sheet, Order of Appointment of Counsel for Indigent Defendant, and Applicant's arrest record; these documents show that Counsel did represent Applicant on a prior Grand Larceny, More than \$5,000 charge (2008-GS-09-0191).

Counsel testified that he had "no recollection" of representing Applicant on a prior charge, but that Applicant had never mentioned this to him during his representation on the present matter. Counsel testified that there was never an issue of Applicant requesting he be relieved as Counsel or of Applicant expressing any dissatisfaction with his performance on this or any other matter.

Co-counsel Leiendecker, who assisted in Applicant's defense during the trial, testified that Applicant never told him he was dissatisfied with Counsel's performance or wanted new counsel to represent him. He elaborated that he observed a good working relationship between Counsel and Applicant and noted that Applicant also developed a good working relationship with Counsel's paralegal. Leiendecker testified that he is the Chief Public Defender for the First Judicial Circuit and he never received a complaint from Applicant in regards to Counsel's performance on this case or any previous cases involving Applicant.

Based on the testimony presented at the hearing, this Court finds that Counsel's performance was not deficient for not moving to be relieved from Applicant's case. This Court finds Counsel's testimony to be very credible and finds Applicant's testimony to not be credible. Counsel testified although he could not specifically recollect representing Applicant on a previous unrelated charge, for which Applicant received a probationary sentence, Applicant never indicated in any way, he was dissatisfied with Counsel's performance or requested new counsel. Additionally, co-counsel Leiendecker testified that he observed a good working relationship between Counsel and Applicant and that Applicant never informed him he wished to receive new counsel. This Court finds that Counsel's performance in this matter was reasonable and effective. Therefore, this Court finds that this allegation must be denied and dismissed.

Counsel was ineffective for encouraging Applicant to address the trial court during sentencing and encouraging him to cry

Applicant alleges that Counsel was ineffective for encouraging him to address the trial court during his sentencing and encouraging him to cry. At the conclusion of Applicant's trial, Applicant addressed the trial court, where he apologized to the victim's family and admitted "what I did was wrong." Trial Tr. p. 123-124. At the evidentiary hearing, Applicant testified that he did not want to address the trial court during his sentencing, but that he was coerced to do so by Counsel. Applicant elaborated, Counsel encouraged him to cry and display emotion during sentencing. Applicant stated that following the trial, he did want to address the court, but only to deny his involvement and guilt.

Counsel testified that following the jury's verdict, Applicant told him that he wished to address the trial court and deny any involvement in the crime. Counsel stated that he strongly encouraged Applicant not to address the court at all, and that he certainly did not ever encourage

Applicant to apologize to the victim's family or show emotion. Counsel testified that he was in complete shock when Applicant made his comments to the trial court.

Co-counsel Leiendecker testified that at the conclusion on the trial, Applicant insisted on speaking to the court and that he and Counsel both advised Applicant against making any comments to the court. Leiendecker testified that he was surprised by Applicant's comments to the court.

Based on the testimony presented at the hearing, this Court finds that Counsel was not ineffective. This Court finds Counsel's testimony, as well as co-counsel Leiendecker's testimony, to be very credible and finds Applicant's testimony to not be credible. Counsel and Leiendecker testified that they both encouraged Applicant not to address the court during sentencing, despite Applicant's insistence that he wanted to deny his guilt. This Court finds that Counsel's performance was reasonable and effective. Therefore, this Court finds that this allegation must be denied and dismissed.

Counsel was ineffective for failing to cross-examine witnesses Reed and Haygood concerning possible life sentences if they had been charged with murder pursuant to State v. Gracely, 731 S.E.2d 880 (Sup. Ct. 2012)

Applicant asserts that Counsel was ineffective for failing to cross-examine the State's witnesses Willie Reed and Jimmy Haygood about the possible life sentences they could have received if they had been charged with murder in this case pursuant to State v. Gracely, 731 S.E.2d 880 (Sup. Ct. 2012). Applicant contends that Reed and Haygood were not charged with murder, in exchange for their cooperation with the State and their testimony in Applicant's trial, and that Counsel should have cross-examined both witnesses as to the mandatory minimum and potential maximum sentences for murder. In support of this assertion, Applicant relies on Gracely, where our Supreme Court held that a trial court may not limit the scope of defense

counsel's cross-examination of the State's witnesses to exclude testimony regarding a reduction in the mandatory minimum sentence a witness may receive in exchange for testifying against the defendant. The case before us is distinguishable from Gracely in several ways.

First, in Gracely, the State's witnesses were originally charged with the more serious crimes for which cross-examination was limited and these witnesses were allowed to plead down to lesser included offenses in exchange for their cooperation with the State and their favorable testimony against the defendant. Here, State's witnesses Reed and Haygood were never charged with or indicted for murder; each witness was only charged with accessory after the fact to murder for their assistance in helping to dispose of the murder weapon in Charleston following the murder. Counsel testified that he was able to fully cross-examine each Reed and Haygood regarding benefits derived in exchange for cooperation with the State in its prosecution of Applicant as a possible motive. Additionally, Counsel testified that he had no reason to believe that Reed and Haygood were not charged with murder in exchange for their cooperation in testimony. This Court finds that it would not be proper for Counsel to be held deficient for not cross-examining the State's witnesses regarding mandatory minimum sentences for crimes in which neither witness was ever indicted or charged.

Second, Applicant was tried December 1 - 4, 2009. Gracely was not decided until August 29, 2012, more than two and a half years after Applicant's trial. Our Supreme Court has stated, "[w]e have never required an attorney to be clairvoyant or anticipate changes in the law which were not in existence at the time of trial." Gilmore v. State, 314 S.C. 453, 445 S.E.2d 454 (1994), overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999). See also Thornes v. State, 310 S.C. 306, 426 S.E.2d 764 (1993); see also Robinson v. State, 308 S.C. 74, 417 S.E.2d 88 (1992); Arnette v. State, 306 S.C. 556, 413 S.E.2d 803 (1992);

Kirkpatrick v. State, 306 S.C. 359, 412 S.E.2d 389 (1991). This Court finds that Counsel cannot be deemed deficient in his performance for a standard that was not established at the time of trial.

Based on the foregoing, this Court determines that Counsel was effective and reasonable in his cross-examination of the State's witnesses Willie Reed and Jimmy Haygood. 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.

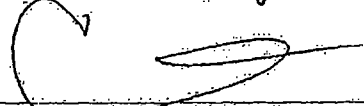
This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right 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 20 day of February 2013.


CARMEN T. MULLEN
Presiding Judge
First Judicial Circuit

Blair, South Carolina

1089

WITNESSES

Stan Graham

Calhoun County Sheriff

ARREST WARRANT NUMBER

F402211

Arrested: March 7, 2009

ACTION OF GRAND JURY

TRUE BILL

Margaret W. Nelson

Foreperson of Grand Jury

Date: April 24, 2009

VERDICT

Guilty

Foreperson of Petit Jury

Date: *Jeffrey Hill* 12-4-09

BOOKING NO. 20090000000000000000

The State of South Carolina

County of CALHOUN

COURT OF GENERAL SESSIONS

April 27, 2009 TERM

THE STATE

vs.

Willie Pelzer III

Indictment for

MURDER

SC Code: 16-3-10

I, the undersigned, being duly sworn, do hereby certify that the rights, I hereby waive presentment to the Grand Jury.

Defendant

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

Defendant

Witness:

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

KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
ST. MATTHEWS, SC

2009 APR 24 A 11:47

FILED

ATTEST TRUE COPY

K. Hasty
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY

STATE OF SOUTH CAROLINA)
)
COUNTY OF CALHOUN)

INDICTMENT
2009GS09-0022

At a Court of General Sessions, convened on April 27, 2009 the Grand Jurors of Calhoun County present upon their oath:

MURDER

That in Calhoun County on or about March 5, 2009, with malice aforethought, the defendant, Willie Pelzer III did kill one Jason Rivenburg by means of shooting the victim with a gun. The victim did die as a proximate result thereof. This offense being in violation of the Common Law and Section 16-3-10, of the South Carolina Code of Laws, as amended.

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



Donald N. Sorenson, Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CALHOUN
STATE

INDICTMENT/CASE#: 2009 GS 09 -00022

VS.
Willie Peter III

AM#:
Date of Offense: March 5, 2009
S.C. Code #: 16-3-10
CDR Code #: 0116

AKA:
Race: B Sex: M Age:
DOB: SS#:
Address:
City, State, Zip:
DL# * SID#

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: MURDER

CONVICTED OF or PLEADS

In violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or Lowd Act)

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

ATTEST: [Signature] 9512
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of Life days/months/years or Life days/months/years and or payment
and/or to pay a fine of \$ 0; provided that upon the service of Life days/months/years and or payment
of \$ 0; plus costs and assessments as applicable; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the 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 18-28-20 or 18-25-65 (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 _____
Substance Abuse Counseling

*Fine:	\$	
§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$	100
§14-1-211 (A)(2)(DUI Surcharge)	\$	
§58-5-2905 (DUI Assessment)	\$	
§58-1-286 (DUI Breath Test)	\$	
§47.12 (Public Def/Prob)	\$	500
§14-1-212 (Law Enforc. Funding)	\$	25
§14-1-213 (Drug Court Surcharge)	\$	
§50-21-114 (BUI Breath Test Fee)	\$	
§58-5-2942(J) (Vehicle Assessment)	\$	
§90.7(SCCJA Surcharge)	\$	5
3% to County (if paid in installments)	\$	16.90
TOTAL	\$	648.90

Clerk of Court/Deputy Clerk [Signature]
Court Reporter: [Signature]

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: 0114
Sentence Date: Dec 4, 2009