

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Edgefield County

Honorable Eugene C. Griffith, Circuit Court Judge

JODY RAY JONES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001394

APPENDIX

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1 State of South Carolina

Court of General Sessions

2 County of Edgefield

3
4
5 State)

6 v.)

7 Jody Ray Jones)

8 Defendant.)

Transcript of Record
15-GS-19-110

9
10 April 10, 2017

11 Lexington, South Carolina

12
13 B E F O R E:

14 The Honorable Eugene C. Griffith, Jr., Judge.

15
16 A P P E A R A N C E S:

17 Samuel R. Hubbard, III, Solicitor
Attorney for the State

18 Bennett E. Casto, Assist. Public Defender
19 Attorney for the Defendant

20
21
22
23
24 Stacy L. Sheppard, RPR
25 Official Court Reporter

1

I N D E X

2

WITNESSESDIRECTCROSSREDIRECTRECROSS

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(There were no witnesses.)

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E X H I B I T S

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NO.DESCRIPTIONID.EVD.

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(There were no exhibits.)

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1 (The following proceedings were held on
2 April 10, 2017.)

3 **THE CLERK:** Indictment 2015-GS-19-110, the
4 State versus Jody Ray Jones, indicted for murder.
5 He's put to the bar and arraigned. Upon his
6 arraignment, he is pleading to voluntary
7 manslaughter. It is signed and properly attested
8 to, true billed. He is waiving jurisdiction. And
9 he's represented by Mr. Bennett Casto.

10 JODY RAY JONES,
11 having been duly sworn, testified as follows:

12 **THE COURT:** All right, sir. Your name is Jody
13 Ray Jones?

14 **DEFENDANT:** Yes, sir.

15 **THE COURT:** I have an indictment, number
16 15-GS-19, indictment, 110. This indictment is for
17 murder. It alleges that you, while in Edgefield
18 County, on January 11th of '15, did with malice
19 aforethought kill one Patricia Love by means of a
20 firearm. The victim did pass as a result of this
21 act, being in violation of 16-3-10.

22 It is my understanding that you're going to
23 plead guilty to the lesser offense of voluntary
24 manslaughter; is that right?

25 **DEFENDANT:** Yes, sir.

1 **THE COURT:** Mr. Casto, you represent Mr. Jones?

2 **MR. CASTO:** Yes, sir.

3 **THE COURT:** And you've explained to him the
4 elements of voluntary manslaughter and the potential
5 punishment which he faces?

6 **MR. CASTO:** Yes, sir, I have.

7 **THE COURT:** Do you have a belief, after
8 conducting your investigation, interviewing your
9 witnesses, as well as reviewing the State's
10 discovery, that more probably than not, he would be
11 convicted if he went to trial?

12 **MR. CASTO:** Yes, sir, I do.

13 **THE COURT:** And are you in agreement with his
14 decision to enter his plea?

15 **MR. CASTO:** Yes, sir, I am.

16 **THE COURT:** All right, sir. You're already
17 under oath. In the last 24 hours, have you taken
18 any alcohol, drugs, or medications?

19 **DEFENDANT:** No, sir.

20 **THE COURT:** Are you clearheaded right now?

21 **DEFENDANT:** Yes, sir.

22 **THE COURT:** Do you suffer from any issues of
23 mental health, physical or otherwise, which would
24 affect your ability to understand what's going on?

25 **DEFENDANT:** No, sir.

1 **THE COURT:** You have a constitutional right to
2 have this matter heard in the county of Edgefield.
3 It's my understanding you're waiving venue and
4 allowing the case to be heard here in Lexington
5 County, which is also within the same circuit, but
6 are you aware that you can have this case heard in
7 Edgefield?

8 **DEFENDANT:** Yes, sir.

9 **THE COURT:** Are you okay and have you consented
10 to the venue of the case being heard today here in
11 Lexington?

12 **DEFENDANT:** Yes, sir.

13 **THE COURT:** You have a constitutional right to
14 plead not guilty and have a jury trial in Edgefield.
15 Do you understand that if you were to enter that
16 plea, you will receive a trial, and I believe it was
17 on the roster for next week; is that your
18 understanding?

19 **DEFENDANT:** Yes, sir.

20 **THE COURT:** And do you understand that -- I
21 guess you don't get the benefit of the judge. I'm
22 the judge next week and I'm the judge today. Either
23 way, you get the same guy. Do you understand that?

24 **DEFENDANT:** Yes, sir.

25 **THE COURT:** If you were to plead not guilty and

1 ask for a trial, the State would bear the burden of
2 proving your guilt beyond a reasonable doubt. For
3 the State to meet that burden, the State would be
4 required to present its case first by calling
5 witnesses, presenting evidence, presenting
6 testimony. Your attorney will be allowed the
7 opportunity to cross-examine each and every witness
8 the State called; he could challenge the
9 introduction of any of the evidence the State tried
10 to introduce; he could present defenses on your
11 behalf, if any you have, under our statutes.

12 Do you understand your rights to confront those
13 accusing you of this crime?

14 **DEFENDANT:** Yes, sir.

15 **THE COURT:** Also, the State would not be
16 allowed to call you as a witness in its case in
17 chief. You could testify, but it'll be during your
18 portion of the case after the State has rested. Do
19 you understand that if you chose to not testify,
20 that the State would not be allowed to comment on
21 your silence in any way in the presence of the jury?
22 You understand?

23 **DEFENDANT:** Yes, sir.

24 **THE COURT:** So understanding your rights to
25 defend yourself against these people accusing you of

1 this crime, is it your decision today to waive all
2 of those rights for defense at trial in order to
3 plead guilty before me?

4 **DEFENDANT:** Yes, sir.

5 **THE COURT:** Are you waiving all of these rights
6 freely and voluntarily?

7 **DEFENDANT:** Yes, sir.

8 **THE COURT:** All right. Solicitor Hubbard is
9 going to give me a summary of the facts. I want you
10 listen to them, because I'm going to, and then when
11 he's done, I'm going to come back and ask you is
12 that what happened. Okay?

13 **DEFENDANT:** Yes, sir.

14 **THE COURT:** All right. Solicitor.

15 **MR. HUBBARD:** Thank you, Your Honor.

16 Your Honor, I'll begin by just letting Your
17 Honor know that we have Chris Flaurr. She is the
18 mother of Patricia, the victim in this case. She's
19 here with Patricia's -- a couple of Patricia's
20 grandchildren, we don't have them in the courtroom,
21 but Madison and James. They're nine and eight years
22 old. We have them in another room.

23 I wanted to let Your Honor know she is here.
24 And, at some point, she has written up some stuff
25 she'd like to convey. She may actually try to

1 convey it personally to Your Honor.

2 We also have Jimmy Smith, the detective from
3 Edgefield who worked this case, headed it up, and
4 worked with our office in making it.

5 As the indictment says, Your Honor, this
6 happened January 11th. It was late at night. Both
7 Mr. Jones and Patricia Love worked for a carnival.
8 And they lived -- basically, it was like a camper
9 community, mobile community, but they lived out in
10 Edgefield. It was way out in the country.

11 On this particular night, it was pouring down
12 rain. Most of the folks slept in campers, but there
13 was a mobile home that night, that is where
14 Mr. Jones and Ms. Love were. They were seated on a
15 love seat in this mobile home. And there are some
16 other folks that had gone to bed in that mobile
17 home. And that night, folks say they heard a pop,
18 what sounded like a gunshot. And some ten minutes
19 elapsed before the defendant came knocking on the
20 door saying what had happened.

21 Law enforcement got there. They found
22 Mr. Jones holding a paper towel or a towel next to
23 Ms. Love's head. They rushed her to the hospital.
24 And, Your Honor, she actually lived for two days,
25 gunshot wound to the head. She passed away on the

1 13th.

2 Law enforcement immediately started talking to
3 Mr. Jones, read him his Miranda rights, I believe --
4 I can't tell you how many times, but they made sure
5 that they read him his rights. And that night,
6 early morning hours on the 12th, Jimmy Smith
7 interviews him and says, Well, what happened?

8 That they were seated side by side. Our victim
9 was to the defendant's left. He says they're
10 getting ready to go to bed. He claims Patricia kept
11 a handgun with her, hands it to him, and he's going
12 to clear it by racking the round -- racking the
13 round out. He says, when he does that, the gun goes
14 off.

15 Your Honor, that didn't make sense. Now, at
16 the time, the detective didn't know -- we knew it
17 was a head wound, but it was on the left side.
18 She's sitting to his left. That was impossible. So
19 he brings him in the next day on the 13th and says,
20 I need to follow up with you. Can you tell me a
21 little bit more because it didn't make sense?

22 Mr. Jones gives pretty much the same
23 explanation: I'm clearing the gun; the gun goes
24 off, but we're facing one another.

25 Well, that still didn't make sense. How did it

1 get -- how do we get a shot on the left side, just
2 around the temple area?

3 On the 14th, interview him again. He again
4 talks about clearing the pistol by racking the
5 rounds. Instead of dropping the magazine and just
6 clearing that one round in the chamber, he's racking
7 rounds, because we did find a few rounds on the
8 floor we couldn't understand. And he says, The gun
9 just goes off and fires.

10 Well, at that point, law enforcement, Detective
11 Smith, knew the gunshot wound is not just to the
12 left side of the head, it's a contact wound.
13 Absolutely impossible to get that wound by the way
14 he was describing it. When he's confronted with
15 that, he has no response.

16 Well, Your Honor, those are three interviews,
17 but we had, actually, another interview. He took a
18 BA that night, because he had been drinking. He
19 clearly had been impaired. So he takes a
20 breathalyzer. And I can't remember -- he blew a 18?
21 Blew an 18.

22 Well, as Your Honor knows, that's on video. On
23 the video, he's talking the whole time explaining
24 what's happened. And he's demonstrating on video
25 how he's clearing the chambers of the gun, racking

1 the rounds. You can tell how he's doing it. But
2 even his explanation then is absolutely impossible.
3 It just does not comport with what we found.

4 Well, Your Honor, the pistol that we recovered,
5 it's a 9mm pistol. SLED will say, This is the
6 weapon that was used. And, initially, they just
7 said it was in good working order and sent it back
8 to us.

9 The pathologist does an autopsy and says again,
10 Contact wound. Well, we start with her, Dr. Ross up
11 in Newberry. Your Honor knows her. Said, Dr. Ross,
12 based on his explanation, is it possible for this
13 gun to just go off? She goes, No, it's a contact
14 wound. The gun is literally against the head, and
15 it's in a downward angle. It would not even appear
16 to be a self-inflicted wound at the angle.
17 Impossible.

18 We get back with SLED. Our office says --
19 Susan Cromer out there who does firearms -- Will you
20 take another look at this pistol and tell us a
21 little bit more about it? She goes, It's an
22 eight-pound trigger pull, semiautomatic Smith &
23 Wesson, good working order.

24 Well, we were getting vibes that he might claim
25 that this gun is defective. And we had heard the

1 term slamfire. Your Honor probably has heard that.
2 Some people have used it, particularly with rifles,
3 a floating firing pin. She said, Absolutely not.

4 But what she did for us is take that same
5 pistol, tried to make it misfire some 50 times,
6 could not do it. She said, This is a good weapon.

7 In fact, she was prepared to come to court and
8 even do a video display to show how this gun works
9 and that it would be impossible for this gun to just
10 go off. And with that eight-pound trigger pull, and
11 she was prepared to demonstrate what that was to
12 each juror, the pressure you would feel on a finger.
13 Impossible. You'd have to intend to fire this
14 weapon. So science and medicine rule out his
15 explanation of what transpired.

16 Well, our office started talking to some
17 witnesses. Now, Detective Smith, they had reached a
18 number of people, and there were some folks that we
19 reinterviewed with him present. Your Honor, if we
20 would have gone to trial, we would have presented
21 that at least two witnesses that night in that
22 mobile home say that when the defendant came to
23 them, after waiting some ten minutes, comes to them
24 and his statement to them is, I shot the bitch. Two
25 separate people would have testified to that.

1 Your Honor, we would have also had some
2 witnesses saying that the defendant and Ms. Patricia
3 Love, they had a very volatile relationship. They
4 would argue, fight. Next thing you know, they're
5 getting along just great.

6 That night somebody had seen them on that same
7 love seat and said they heard both of them saying, I
8 love you, to one another. Yet about a week before,
9 we would have been able to produce a witness said,
10 Patricia confided in me that he held a gun to me in
11 one of their many arguments. Very volatile
12 relationship.

13 Your Honor, based on that and knowing that our
14 case, more than anything else, ran -- hinged on what
15 he said versus the forensics, we sat down and
16 explored the option of a plea, and that if the
17 defendant had testified, Your Honor may very well
18 have felt compelled to offer a jury two chances --
19 two alternatives, voluntary manslaughter or murder,
20 so it only made sense to offer this.

21 What we did, though, is offer a range, and
22 we've asked Your Honor to please treat it as
23 negotiated, if Your Honor would do so, 15 to 25.
24 Obviously, the defense gets the benefit of taking
25 the top end off, and our victim's family and the

1 State gets the benefit of taking the low end off.

2 I would like to say that in looking at prior
3 records, he has nothing violent, but here's what he
4 does have: Out of the state of Georgia, from 1993,
5 he has a theft by conversion. The following year in
6 '94, he has a theft by taking. He has a parole
7 violation based on those charges in 1998 in the
8 state of Georgia. And then in 2006, it looks like
9 there's a series of charges from one incident, a
10 reckless driving, unauthorized use of vehicle,
11 fleeing from an officer, and a DUI. Again, that's
12 2006. Nothing particularly violent.

13 Your Honor, again, as I said, the victim's
14 mother, Chris Flaurr, would like to speak or at
15 least be heard at the appropriate time.

16 **THE COURT:** All right.

17 All right. Let me talk back to Mr. Jones.
18 Mr. Jones, that summary of the facts provided by
19 Solicitor Hubbard, and you're pleading guilty to a
20 involuntary manslaughter, are those facts accurate
21 as to the plea you're making today to voluntary
22 manslaughter?

23 **DEFENDANT:** Yes, sir.

24 **THE COURT:** Now, I'm told that the negotiation
25 in this case include a stepdown from murder to the

1 lesser-included voluntary manslaughter and a range
2 of a sentence between 15 and 25 years.

3 Were there any other related charges dismissed,
4 Solicitor?

5 **MR. HUBBARD:** No, sir, Your Honor. It's just a
6 murder charge being pled down --

7 Is there a weapon charge?

8 **MR. CASTO:** There's a firing while intoxicated,
9 and there's also --

10 **MR. HUBBARD:** We'll dismiss those, Your Honor,
11 any related charges based on this.

12 (There was a discussion held off the
13 record.)

14 **THE COURT:** I was anticipating exactly what
15 your lawyer's asking. There was two weapons charges
16 involved. The Solicitor's representing to the Court
17 that those would be dismissed as a result of the
18 plea to this one, which this is the -- this is the
19 charge that carries the weight. The other ones are
20 not near as significant as a voluntary manslaughter.

21 But pleading to voluntary manslaughter, 15- to
22 25-year sentencing range, dismissal of the other
23 related charges, has anything else, by way of plea
24 or offer or promise, been offered to you to get you
25 to plead guilty?

1 **DEFENDANT:** No, sir.

2 **THE COURT:** Has anyone threatened you or
3 coerced you to get you to plead guilty?

4 **DEFENDANT:** No, sir.

5 **THE COURT:** Now, you understand if I accept
6 this plea, voluntary manslaughter is classified as a
7 violent crime, which means that you'll be classified
8 as a violent offender in the department of
9 corrections, which means that you will not be
10 entitled to the same programs in the department of
11 corrections as the nonviolent offenders are entitled
12 to; do you understand that?

13 **DEFENDANT:** Yes, sir.

14 **THE COURT:** Is this day for day, this 15 to 25,
15 or is this 85?

16 **MR. CASTO:** 85 percent, Your Honor.

17 **THE COURT:** Okay. One of the two. All right.
18 You understand, being a violent crime, that any
19 sentence imposed by the Court, you will have to
20 serve no more -- or no less than 85 percent of the
21 sentence imposed before you'll be eligible for a
22 community supervision release; do you understand
23 that?

24 **DEFENDANT:** Yes, sir.

25 **THE COURT:** Do you also understand there is no

1 parole on an 85 percent sentence? The early release
2 is after 85 percent is done, and it's called
3 community supervision not parole. So there is no
4 parole eligibility here; do you understand?

5 **DEFENDANT:** Yes, sir.

6 **THE COURT:** Do you also understand that by way
7 of accepting this plea, you'd have a conviction for
8 a crime which will be classified as a most serious
9 crime, which is a big strike in the scheme of two
10 strikes you're out? Do you understand that this
11 will be a conviction that will be classified on your
12 record as most serious?

13 **DEFENDANT:** Yes, sir.

14 **THE COURT:** So understanding you'll have a
15 violent conviction classification, as well as a most
16 serious conviction on your record, are you still
17 willing to accept responsibility and plead guilty?

18 **DEFENDANT:** Yes, sir.

19 **THE COURT:** Now, your attorney, Mr. Casto, has
20 been over everything with you?

21 **DEFENDANT:** Yes, sir.

22 **THE COURT:** The State's file in this
23 investigation?

24 **DEFENDANT:** Yes, sir.

25 **THE COURT:** Has Mr. Casto explained your rights

1 to defend yourself at trial fully so that you
2 understand them?

3 **DEFENDANT:** Yes, sir.

4 **THE COURT:** Have you understood your
5 conversations with him?

6 **DEFENDANT:** Yes, sir.

7 **THE COURT:** Are you satisfied with the advice
8 and counsel he's given you thus far?

9 **DEFENDANT:** Yes, sir.

10 **THE COURT:** Do you need any further time with
11 him today or right now to discuss anything which I
12 may have brought up?

13 **DEFENDANT:** No, sir.

14 **THE COURT:** Any complaints against the Eleventh
15 Circuit Solicitor's Office or the Edgefield County
16 Sheriff's Department in their handling the
17 prosecution of this charge?

18 **DEFENDANT:** No, sir.

19 **THE COURT:** You understand you have a limited
20 number of days after I accept this plea during which
21 time you're allowed to file a notice of intent to
22 appeal if you believe some procedures have not been
23 adhered to that are required to by the State and the
24 Court; do you understand?

25 **DEFENDANT:** Yes, sir.

1 **THE COURT:** Are you pleading guilty freely and
2 voluntarily?

3 **DEFENDANT:** Yes, sir.

4 **THE COURT:** And are you waiving jurisdiction --
5 venue to have the case heard in Edgefield and
6 allowing it to be heard, by your consent, to be
7 heard in Lexington?

8 **DEFENDANT:** Yes, sir.

9 **THE COURT:** And you signed this document with
10 advice of your attorney?

11 **DEFENDANT:** Yes, sir.

12 **THE COURT:** About having the case heard here in
13 Lexington County?

14 **DEFENDANT:** Yes, sir.

15 **THE COURT:** Are you pleading guilty because you
16 are, in fact, guilty?

17 **DEFENDANT:** Yes, sir.

18 **THE COURT:** Regarding indictment 15-GS-19,
19 indictment number, 110, I find that Jody Ray Jones
20 has made a free, knowing, intelligent plea of guilt
21 to the offense of voluntary manslaughter. He's
22 entered it as a negotiated plea down from murder, as
23 well as a negotiated sentencing range of no less
24 than 15, but no more than 25 years. He's entered
25 this plea with the advice and counsel of an attorney

1 of whom he states, while under oath, that he's
2 satisfied and understood. Also, the State has
3 provided more than ample facts upon which to base
4 this plea.

5 All right. Solicitor, let's hear from
6 Ms. Flaurr first, and then I'll hear from Mr. Jones
7 and/or Mr. Casto.

8 **MR. HUBBARD:** And, Your Honor, I'll have a
9 couple of -- or about three letters to pass up.
10 Mr. Casto has the copies of those.

11 **THE COURT:** Okay.

12 **MS. FLAURR:** I'm going to really -- try really
13 hard to speak to you, Your Honor, because my
14 daughter did not deserve to die that night. When
15 they asked me to speak, I said, I don't think I can;
16 I just don't think I can. And then I realized that
17 I'd already been through the hardest day of my life,
18 watching her die too young.

19 We got a call in the middle of the night to
20 hear that Jody had, what I heard was, finally
21 snapped and shot her. We're in Indiana, and we
22 tried so hard to get flights down. It was going to
23 take too long, and we just drove. We drove as fast
24 as we could to Atlanta, Georgia.

25 We got stuck in traffic, and we couldn't find

1 the hospital. It's the only time my husband's
2 raised a hand to me because I lost it. And I said,
3 If you can't get me there, I will run; I'll find out
4 where she is. And he shook me. And he said, You've
5 got to straighten up. We've got to hold it together
6 for her.

7 We found the hospital. And we found her room.
8 She knew we were there. The nurses said they
9 weren't sure. I'm a nurse. And all nursing
10 judgment says that she probably didn't know, but she
11 knew. She knew we were there, Your Honor.

12 I told her that if it happened, we would look
13 after her kids. They were safe with us.

14 She's in coma. After we were there, there was
15 no change in her condition. We were sent to get
16 some rest. I would stay with her for hours and
17 hours and hours. And we left, and we got another
18 call to say her condition had worsened.

19 We raced down to the hospital. The neurologist
20 was there. And he said, Due to swelling in her
21 brain, the damage the bullet caused, it split,
22 because of the angle she was shot, that she wasn't
23 going to make it. Then we were left with the
24 decision to turn off life support on our oldest
25 child. I pray nobody in this courtroom ever has to

1 go through that.

2 We were told she's young and healthy other than
3 the bullet wound. She'll probably survive another
4 eight or ten hours with you sitting at her bedside
5 waiting for her to die.

6 Your Honor, all through that, I was the strong
7 one for our family. Her brother was with us and my
8 husband. And everybody else was obviously on the
9 phone. But Patricia chose to be the strong one when
10 they turned off life support, and she never took
11 another breath. She -- she did that for us because
12 there was no medical reason that she shouldn't have
13 kept breathing on her own. She was breathing over
14 the vent. Just the head wound was -- she wouldn't
15 survive it eventually.

16 This trauma, it will continue for generations.
17 I'm now raising two of her babies, one of them is
18 with her dad. So the siblings are split. They
19 haven't been split before. They're in different
20 states now. They see each other on vacations and
21 special occasions.

22 They're going to grow up not just without
23 having a mom, but with having the trauma of someone
24 deliberately taking her life. That's different than
25 if my mom died of cancer and my mom had a car

1 accident, a bit traumatic, but Somebody shot my mom,
2 that's just something they can't comprehend.

3 Trislynn is the oldest. And like I said, she's
4 living in Indiana. She's probably the most affected
5 by it.

6 We've done research on how children get through
7 this and what we can do to help them. And it's very
8 well documented now that children who have -- who go
9 through any kind of trauma like this at a young age
10 have serious health conditions during their life
11 span if it's not addressed and they're not taken
12 care of. It causes enough trauma in their little
13 brains that it affects their health.

14 They have to live with this forever. I mean,
15 this is it. You know, when my granddaughter has a
16 baby, Where's my grandma? She was shot.

17 This man chose to take her life. He chose to
18 take her away from us. He chose it. I can't even
19 imagine -- if it was an accident, if it was they
20 were arguing, he pushed her down and she -- she
21 landed -- hit her head and died from that, if they
22 were a loving couple and it was just an -- I can do
23 accident. Deliberate, I can't do. Deliberate is
24 destroying my family.

25 I'm sorry.

1 I've tried to ask my children how they feel
2 about it. I tried to ask them to write a statement.
3 This is what they told me. My daughter, who was
4 still a young teen when this happened: How do I
5 explain the impact of losing my only sister, my
6 confidant, my protector, the one I can laugh with
7 and cry with? I can't do that. There are no words.

8 I can't write anything to that judge, is what
9 she told me. It hurts daily. I'm trying to deal.
10 I just hope he never hurts another family the way
11 he's hurt us.

12 My son, he just graduated nursing school, but
13 he just hasn't quite been the same since. He said:
14 I'm mad. I'm just really angry. I'm angry at a
15 man, a man -- capital letters -- A man who's so weak
16 that he would shoot and kill an unarmed woman,
17 someone he cared for, or said he cared for. You
18 know, what kind of man does that?

19 So he's dealing with the anger side of it
20 because he hasn't even got to the hurt side of it
21 yet, two years later.

22 Her brother from birth, birth brother, he
23 talked about his PTSD from serving a tour in the
24 Marines and how his sister's death has amplified
25 this, and that he struggles daily to be a good dad

1 and a husband and a productive member of society.
2 But what keeps him going is trying to be brave for
3 P.K. and give, you know, honor her memory. But he
4 said he hurts daily and there's a gaping hole in his
5 life. Her personality and love and loyalty to
6 family and friends will always be missed.

7 His son -- he said, My son will never know his
8 aunt. He'll never get to be loved and hugged by
9 her. And he said, I can still hear her laugh and
10 smile.

11 And then he just started crying. I didn't get
12 anymore.

13 We have a son that lives in Hawaii. He's in
14 the Army. And this came up so fast, it's kind of
15 difficult to get ahold of him at this time with
16 what's going on in the country. He said that -- but
17 he has told us that he's not dealing very well. And
18 he tends to just pretend it hasn't happened, because
19 he is out of the country. But he, again, just
20 doesn't want any family to suffer this way again.

21 I think that seems to sum up the family's
22 feelings is that, you know, we just feel that -- I
23 don't feel that given the chance, that this wouldn't
24 happen again maybe with this man. I don't trust
25 that he's going to be reformed. I don't trust that

1 he's going to be safe. I understand sentencing, and
2 I understand prison. I just -- I understand
3 everything. I'm just not speaking very coherently
4 right now, but I just -- it scares me that when he's
5 released, that he could hurt somebody again. I feel
6 it would be more likely when not if.

7 And as parents -- like, my husband couldn't be
8 here today because he would lose his job if he came
9 with me. Luckily, my job is very understanding, and
10 I got time. He -- we've talked about this and what
11 to say. And my husband said, We just live it daily.
12 We relive it daily. We live it every time we look
13 at these two children. They're so like her.

14 If you want to meet her, meet these kids.
15 Little James has her heart and her kindness. And
16 Mattie, her red hair and personality and spark for
17 life and sense of humor. So every time we look at
18 them when they do something, we're like, There's
19 P.K. all over again, all over again, which is good
20 and bad. It's good and bad.

21 We have few friends now. We feel really on the
22 outside of a lot of things. You cannot have a child
23 murdered and just kind of live a normal life. You
24 feel kind of like, like there's a wall between you
25 and society, between you and people. You have

1 trouble trusting. You seem to be on a different
2 plane, not better than, not worse than, just
3 slightly over. It's just very difficult.

4 We just ask that -- you can't bring our
5 daughter back, but, please, make sure no other
6 family has to go through this trauma. That's really
7 it. And I can't believe I made it through. And
8 thank you for listening.

9 **THE COURT:** Thank you, ma'am.

10 **MR. HUBBARD:** Your Honor, I have three letters
11 on behalf of the victim. And P.K. is Patricia K.
12 Love.

13 **THE COURT:** All right. Mr. Casto.

14 **MR. CASTO:** Yes, sir, Your Honor. And may it
15 please the Court. One thing I wanted to share from
16 the outset is, you know, that representing Jody, you
17 know, when you represent folks for over two years,
18 you get to know them and a little bit more insight
19 than other clients that you see just momentarily
20 just for a few visits and it's time to go to court,
21 but I feel like I've gotten to know Jody somewhat.

22 And, Your Honor, the story goes like this:
23 This happened January 11th of 2015. And it was ten
24 days later that I walked in and met Jody for the
25 first time. You know, at the first meeting that you

1 have with a client, you try and get a piece of their
2 story or really who they are, but I didn't know, at
3 that time, that it really wouldn't flesh itself out
4 as much as kind of in the later stages of me
5 representing Jody for two years.

6 Jody's 44 years of age now. He has his GED.
7 And so he grew up in a small town in Georgia. He
8 had a mother and a father. I don't get the sense
9 from listening that -- to his -- Jody's siblings,
10 that that was the best of guidance and leadership,
11 in listening to them, Your Honor.

12 When -- when he was a teenager, he had done
13 some warehouse work. He had done some drilling
14 work. But when he was 18 years old is when he left
15 town. And from, I believe, 1991, he left that small
16 town in Georgia and joined the carnival, and that he
17 worked there ever since for the next 25 years.

18 Jody, when he first joined, you know, made \$165
19 a week. And, you know, he had progressed up, that
20 he was a ride supervisor before this trouble
21 happened.

22 And, Judge, let me tell you this: That's kind
23 of a misnomer so to speak. Ultimately, he was in
24 charge, it's much like an engineer, of, you know,
25 the setup. And, you know, when these folks pull up,

1 they essentially pull up to an open field and set
2 up. He's responsible for all 13 rides and breakdown
3 and maintenance and knows the ins and outs of these
4 just huge machines, and was actually making a decent
5 living at that time.

6 Your Honor, he's been all over the country
7 several times, even parts of Mexico and Canada,
8 through this type of work. When, you know, pressed,
9 you know, Do you have any real roots, where have you
10 -- where have you lived, and it's basically, Been
11 all over.

12 So to describe the setup, Judge, you know,
13 where this incident happened, well, this is where
14 the carnival went to roost so to speak or winter, I
15 guess. They would arrive, I believe, in December.
16 They would stay until February or March, and then it
17 was time to just go all over the country again.

18 Jody does have three children, a 25-year-old
19 that's grown, a 17-year-old, and an 11-year-old.

20 When I pressed him with regard to addiction
21 issues, like all clients, no drug use or anything
22 like that. And his prior record doesn't spell that
23 out at all. But he has, in fairness to him,
24 confided to me that, you know, he had wrestled with
25 drinking. And sure enough, that was something that

1 was very much the backdrop when this incident
2 happened.

3 He has lots of family and friends that support
4 him. And I, too, have things to share, and I'll get
5 to that momentarily. But jumping right in, Judge,
6 to what happened, in one -- one single instant,
7 everything changed. And, you know, it's one of
8 those things where you have somebody and they just
9 have this long stream of, you know, violent conduct
10 or history or what have you, and it's just a matter
11 of time before you say, Hey, look, you know, this
12 thing was headed there.

13 But he has a very -- he has a very minor
14 criminal background, just the -- the theft by taking
15 in Georgia, which was in 1993, is probably the most
16 trouble he'd been in before this, Judge.

17 As he kind of began to trust me and open up
18 somewhat, you know, and as we go over his discovery
19 and things, he described that moment as it's almost
20 like just time stood still. It was, you know, it's
21 not an instance of a matter of time, but more in the
22 category, too, of, Oh, my God, you know, what have I
23 done? And that's very much what led us here, you
24 know, in front of you to speak to today.

25 Judge, he -- when it first happened, I don't

1 think that he could get his mind around what he had
2 done. And I want to be clear about that because
3 that's very much, you know, what he had done and he
4 takes ownership of that. You know, there was just a
5 pause and eventually he did alert people. He ran
6 down the hall and alerted a Mr. Roy Fare, and then
7 there was another person that he alerted as well.

8 And, Judge, I will say this, you know, with
9 regard to, you know, any attempt to flee, he never
10 left the trailer where this happened. There's no
11 evidence that I've heard in any of the interviews or
12 anything like that, and -- and they lived there, but
13 he had, actually, a couple of personal vehicles
14 there, but he stayed there.

15 Judge, I'll tell you this: Initially, he did
16 not face the music initially because he was scared
17 of the penalty. I'll just be totally candid about
18 that. I hope that that speaks, you know, truth as
19 opposed to, you know, hurting my client, but he's
20 taking ownership of what he's done here.

21 Your Honor, one thing that we wanted to let the
22 Court know was Mr. Hubbard, when he was speaking
23 about exploring a plea, you know, one of the -- he
24 had offered to -- and was decent enough to sit down
25 with myself and with Jody and let Jody know, Hey,

1 you know, essentially, the trial's coming and here's
2 what I hope to prove and what I hope to show. And,
3 you know, I felt that was very, you know,
4 transparent and good.

5 And just being honest, Jody's the type of
6 client that, I told Mr. Hubbard, I said, I can't do
7 that with every client I've got; I mean, I just
8 can't. And, you know, they were good and decent
9 about that and went and explained it to him. And it
10 was just like he just kind of melted in meetings
11 that I had with him after that.

12 And one question that he asked, and I haven't
13 shared this with the solicitor's office, is, Hey,
14 you know, I need to, you know, step up to the plate,
15 this is what happened, and take ownership of this.
16 Since I sat down with them, does that mean that
17 they're going to come after me harder, you know, or
18 more intensely prosecute me just, you know, even
19 worse or what have you?

20 No, because if that was the case, they wouldn't
21 have sat down with us in the future.

22 Let me say it like this: Where we started
23 several -- several months ago, there was another
24 assistant solicitor, not in the courtroom, that had
25 the case and whose offer was 15. We had a lot of

1 our discovery then, but these gentlemen stepped in,
2 reinterviewed witnesses, and began to analyze that,
3 Your Honor. And we know that that, you know, that
4 ship has sailed, pure, plain and simple. But,
5 Judge, we would ask the Court consider the minimum
6 in the case.

7 Your Honor, I wanted to say that once we had --
8 that Jody had elected, you know, to step up to the
9 plate and take ownership of this, whether he knows
10 it or not, we've never said this term at all, but
11 there's been a relief. He knows, Judge, that with
12 regard to the range that's in front of the Court,
13 that, you know, that -- that he has the penalty to
14 pay, and, Judge, that he wants to take ownership of
15 that. And, at the appropriate time, he did want to
16 say something to Your Honor.

17 But before I get there, I wanted to tell you
18 how, you know, my role in all this shifted because,
19 you know, with regard to mitigation, it's very, very
20 different. He didn't have ties to Edgefield or
21 anything. And so when you kind of live pillar to
22 post and, you know, go where the show goes, your
23 folks are all over.

24 But, Judge, I wanted you to know that -- that I
25 had contacted a lot of folks. I met his sister

1 early on and her husband early on. They can't be
2 here because their granddaughter is in an emergency
3 adoption, I believe, up in Pennsylvania somewhere,
4 but they gave me a letter and I've given a copy of
5 that to the Solicitor. I wanted to read it because
6 it does address Jody.

7 There are some other letters that I wanted to
8 pass up. Judge, you know, Your Honor can read
9 those, but if I can read this one aloud just to let
10 you know that he does have folks out there that care
11 about him, and there are several. This is verbatim:

12 Bennett, this is in a heartfelt attempt to
13 address the courts on behalf of my brother, Jody
14 Jones. My sincere apologies for not being able to
15 personally address the Judge given my daughter's in
16 the middle of a private out-of-state adoption and we
17 got our phone call to depart to Pennsylvania to pick
18 up her baby.

19 I'm his older sister. And I reside in
20 Whitesburg, Georgia. And I was eight years old when
21 Jody was born. A bit older than him, yet I had the
22 privilege of watching him grow up.

23 We are grateful you would consider us to speak
24 on Jody's behalf. My brother has great value in
25 this world. And I please -- I plead for his chance

1 to restore his life in what I know will be a
2 positive impact for life change and rehabilitation.

3 During the course of the last two years, we, my
4 husband and I, have tried to instill healing and
5 good godly values back into his life. He has a
6 responsibility to work and to make a difference in
7 society. And we've backed him, coached him and
8 encouraged him in hopes of his release. He has a
9 good soul and has a big light in him to shine.

10 He's bruised from some of life's bumps, yet a
11 gentle, loving person. I've witnessed genuine
12 change in him. I believe in everything -- with
13 everything in our heart, if you would consider
14 allowing him the opportunity, as well as the
15 responsibility to anchor his life in a positive
16 environment, he would be one day of great value to
17 the world and back to our family, not just some
18 other statistic that no one cares about, because, in
19 fact, we do -- we love Jody, we believe in him. I'm
20 asking you to please consider him as a man of value
21 with a good heart.

22 I'll close in saying to you, if you want
23 change, change starts with each one of us to lead by
24 example. Let's be a world to show love, compassion,
25 and forgiveness. He's worthy. And I thank you for

1 allowing Bennett to read this for me.

2 It ends with: Jody, I pray you hear this. And
3 I'm sorry I cannot be with you today. Your sister
4 and brother-in-law, Angie and Joe Mobley.

5 Your Honor, there are other sisters and
6 friends. And so it was kind of interesting, you
7 know, when you do mitigation and you're trying to
8 learn about, you know, someone's past and folks that
9 they met with. When you work at the carnival,
10 there's -- very rarely you're really working with
11 somebody for more than, you know, a couple of years,
12 anything like that at all, but there were these
13 relationships that he had had. And I'm pleased to
14 pass those letters up, if the Court would consider
15 those as well.

16 **THE COURT:** Sure.

17 (Pause.)

18 **THE COURT:** All right. Anything else,
19 Mr. Casto?

20 **MR. CASTO:** Just very briefly, Your Honor. In
21 addition to that, I was able to track down other
22 folks. These are folks in Missouri. Actually,
23 believe it or not, persons -- an ex-wife of Jody's
24 and then also her now fiancé. And they both were
25 shocked and saddened by this news. This isn't, you

1 know, the Jody Jones that they knew at all. They
2 remember him. And they knew him through this
3 carnival.

4 They would be here themselves, but they live in
5 Missouri now, Your Honor, much like so many folks
6 that are scattered all over the country, that he was
7 helpful, that he took care of Michelle's -- well,
8 his ex-wife's kids, and she had those kids from a
9 previous marriage, and would provide for them. They
10 describe him as highly skilled and a hard worker and
11 somebody that, you know, would help anybody. And
12 they were all just shocked and saddened, that this
13 is not who they know.

14 And, Judge, there was an additional person, and
15 I'll -- the final person is another friend. She's
16 up in Wisconsin, again, another person. But I
17 tracked all of these folks down to give the Court a
18 full presentation because I didn't want to give the
19 appearance that these bridges were burned.

20 And often times that's the case, as a public
21 defender, that the bridges were burned with family
22 members or friends, and not just recently, years and
23 years ago. But these are folks that are, some of
24 them, he doesn't have any actual brothers, but are
25 close like brothers, close like sisters.

1 There's another person, Kristin Osborne, kind
2 of a best friend. And this is not the person that
3 she knows, she met through the carnival, and could
4 not even, you know, fathom this.

5 Judge, I would say this in close, and I know
6 that I've been going on, but I think it's
7 appropriate that the Court know that he has all of
8 these folks. I know that -- and we understand that
9 Jody had made a terrible decision. I mean, that's
10 an understatement. We know that. And, you know,
11 there's no words that I can say to adequately
12 describe what's been done to even give it -- to even
13 lend any -- to kind of underscore the feelings
14 behind what the family must feel, you know, in any
15 way, shape or form.

16 Judge, we feel that some mercy is appropriate
17 with regard to him, you know, admitting guilt and
18 stepping up to the plate here, Your Honor. And he
19 is somebody that really couldn't put into words how
20 sorry he is for everything that's happened. And I
21 did want the Court to hear from him briefly, if the
22 Court would at this time.

23 **THE COURT:** Sure.

24 **DEFENDANT:** I would just like to say, sir, that
25 night, we'd been drinking. I made a -- I made the

1 wrong decision. I done something terrible that I
2 can never go back from. I can never take it back.
3 I can't replace her. If I can swap my life for
4 hers, I would. I accept responsibility for my
5 actions.

6 **MR. CASTO:** And, Your Honor, the only thing
7 that I would say is, you know, often times I think
8 that people use that, Hey, I was drinking or we were
9 doing drugs. And, you know, these cases come along,
10 there's no real evidence that that was going on or
11 anything like that. But, you know, Judge, he was
12 given a breathalyzer that night, and he blew a .18.

13 And, Your Honor, he -- voluntary intoxication
14 is no excuse. Okay? Pure, plain and simple.
15 That's not where we're going. But, Judge, you know,
16 did that have an impact on this horrible, horrible,
17 horrible decision? I believe the answer is
18 absolutely.

19 Judge, we'd ask for mercy in the case. You
20 know, and we'd ask the Court to consider everything
21 that we've passed up.

22 **THE COURT:** Anything else, Solicitor?

23 **MR. HUBBARD:** Just a couple matters, Your
24 Honor. Briefly, Mr. Casto brought up the fact that
25 we had met with his client. Mr. Casto allowed us to

1 do that, and I appreciate that. He's been in
2 constant contact with us.

3 We've turned over everything we have. We
4 talked to him about what we had and why we thought
5 that this was a murder case and that it might
6 behoove his client to listen to us. He gave us that
7 opportunity. That was a strategic call on his part.
8 And I, frankly, think it was to the benefit of his
9 client because it resulted in a plea offer.

10 That brings up the second thing. There was
11 mention of a plea offer. Your Honor, that was
12 before I was Solicitor. There was an offer to
13 ABHAN, 15 years. I don't think it was ever conveyed
14 to the family. And it was done with no work. And,
15 Your Honor, that will never happen while I'm elected
16 Solicitor, that anyone will ever make an offer on
17 facts like this because everything about this case
18 looked like a murder to us, so that will never
19 happen as long as I am here. And I wanted Your
20 Honor to know that.

21 In fact, the amount of work that went into this
22 case was phenomenal, not just by law enforcement,
23 but by this office. Shawn Graham, Deputy Solicitor,
24 and my investigator, Matt Martin, even went so far
25 as to get in a car and drove to Macon, Georgia, to

1 talk to other people who had worked with both the
2 defendant and Patricia just to prepare for this
3 case. But for that meeting that Mr. Casto allowed
4 us to have with his client, we wouldn't be here,
5 we'd be seeing you next week.

6 But, Your Honor, our take on this from the
7 whole time, this was just an act of mercy on our
8 part, not knowing how trials go, but we saw it as a
9 murder. Thank you.

10 **THE COURT:** What days credit does he have?
11 When was he --

12 **MR. CASTO:** Your Honor, thank goodness I have
13 an app on my phone that totals that up. He was
14 incarcerated January 11th of 2015. All the days up
15 through today is 820 days up through today, Judge.

16 **THE COURT:** 813?

17 **MR. CASTO:** 820.

18 (Pause.)

19 **THE COURT:** All right. I accept the plea.
20 Considering everything I've been told, the letters
21 I've been presented, sentence of the Court is you be
22 confined to the department of corrections for the
23 determinate term of 22 1/2 years, his days earned
24 since January 11th of '15.

25 Just based on the facts that I was told, I

1 believe that the sentence should have been on the
2 upper end of the negotiated range, and that's why I
3 went there. So I hope that will bring some closure
4 to both sides. Good luck.

5 **MR. HUBBARD:** Thank you, Your Honor.

6 **MR. CASTO:** Thank you, Your Honor.

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8 END OF PROCEEDINGS

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF EDGEFIELD

I, the undersigned, Stacy L. Sheppard, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Edgefield County, South Carolina, on the 10th of April, 2017.

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

October 28, 2019

s/Stacy L. Sheppard

Stacy L. Sheppard, RPR
Official Court Reporter

Sennett Castro

WITNESSES

ECSO

SMITH

ARREST WARRANT NUMBER

2015A1910100014

ACTION OF GRAND JURY

TRUE BILL

Peter A. Hoffmann
Foreperson of Grand Jury
Date: **MAR 25 2015**

VERDICT

DOCKET NO. 2015-GS-19- 110

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

MARCH TERM 2015

THE STATE

vs.

JODY RAY JONES

CDR#0116

Indictment for

MURDER

DONALD V. MYERS, SOLICITOR

Plea to lesser included

Voluntary Manslaughter

0-30 years

Negotiated Range

15-25 years

Most Serious

Violent

No Parole

THE ABOVE IS A TRUE COPY OF THE ORIGINAL WHICH IS ON FILE IN THE OFFICE OF THE CLERK OF COURT OF EDGEFIELD COUNTY, SC

Charles L. Reel

CHARLES L. REEL, CLERK OF COURT OF GENERAL SESSIONS AND COMMON PLEAS, E.C.S.C.

4/7/2017
DATED

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF EDGEFIELD)

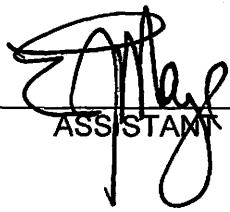
INDICTMENT FOR

MURDER

At a Court of General Sessions, convened on March 25, 2015 the Grand Jurors of Edgefield County present upon their oath:

That JODY RAY JONES, did in Edgefield County on or about January 11, 2015, feloniously, willfully and with malice aforethought, kill Patricia Love, the victim, by means of a firearm and that the said victim died in Edgefield County as a proximate result thereof, in violation of the Common Law and §16-3-10, South Carolina Code of Laws, 1976, as amended.

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



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Edgefield
 STATE VS.
Jody Ray Jones

AKA: _____

Race: White Sex: M Age: 44DOB: [REDACTED] SS#: _____Address: [REDACTED]City, State, Zip: [REDACTED]

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Manslaughter / Voluntary manslaughter

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS1900110A/W#: 2015A1910100014Date of Offense: 1/11/2015S.C. Code § : 16-03-0010CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or Lewd 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] [Signature] [Signature] 76708
 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 225 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
 Department of Corrections. Since Jan 11, 2015 (820 days)

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§ 14-1-206 (Assessments 107.5 %) _____ \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100 -

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

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

Proviso 61.6 (Public Def/Probation) \$500 \$ _____

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

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

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

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

3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75Clerk of Court/ Deputy Clerk [Signature]Court Reporter: [Signature]

SCCA/217 (07/2016)

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 §Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge [Signature]Judge Code: 2154Sentence Date: 4-10-17

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

STATE OF SOUTH CAROLINA)

2020 JAN 24 PM 3: 29

THE COURT OF COMMON PLEAS

COUNTY OF EDGEFIELD)

Jody Ray Jones)

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

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

2020-CP-19-00030

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Kirkland Correctional Institution
2. Name and location of Court which imposed sentence General Sessions, Edgefield County, but the plea was taken in Lexington County General Sessions.
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 15-GS-1900-110 (Voluntary Manslaughter)
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 4/10/2017

RECEIVED

JAN 29 2020

Revised 3/2007

Referred to _____

Answered _____

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

2020 JAN 24 PM 3: 29

- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty XXX
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I did not believe there was a valid reason.
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

2020 JAN 24 PM 3: 29

custody unlawfully:

- (a) I have been informed that the Solicitor's Office may have acted unethically.
- (b) engaged in ex parte contact; and
- (c) pressured witnesses to change statements.

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

- (a) Statements by a former employee(s) of Solicitor's Office
- (b) Potential law enforcement witnesses
- (c) _____

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

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

- i. _____
- ii. _____

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

2020 JAN 24 PM 3: 29

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) I was just made aware of this information in January 2020.

(b) _____

(c) _____

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

2020 JAN 24 PM 3:29

17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
 - (b) your trial, if any? _____
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Bennett Casto-Post Office Box 1852, McCormick, South Carolina 29835
 - ii. _____
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Plea
 - ii. Sentencing
 - iii. _____
19. State clearly the relief you seek in filing this application:
A new trial and/or enforcement of original plea offer.
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

County of

2020 JAN 24 PM 3: 29

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 21st
day of January, 2020.

 (L.S.)
Notary Public

BETH A. MANGOLD
Notary Public, State of South Carolina
My Commission Expires: 8/10/2028

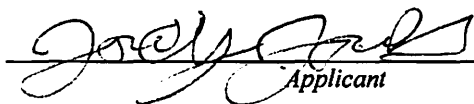
EDDIE COUNTY
CLERK OF COURT
CHARLES L. REEL

2020 JAN 24 PM 3:29

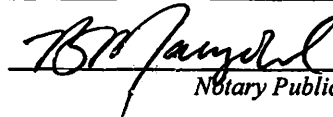
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

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

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


Applicant

SWORN or affirmed to and subscribed before me this
21st day of January, 2020.


Notary Public

BETH A. MANGOLD
Notary Public, State of South Carolina
My Commission Expires 8/10/2028

My Commission Expires: _____

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF EDGEFIELD) FOR THE ELEVENTH JUDICIAL CIRCUIT
2020 DEC 31 AM 11: 27)
)
)
Jody Ray Jones, SCDC #372132,) Case No. 2020-CP-19-0030
)
) Applicant,)
)
v.) RETURN AND MOTION TO DISMISS
)
)
State of South Carolina,)
)
) Respondent.)
)
)
_____)

In response to the post-conviction relief (PCR) action commenced by Jody Ray Jones (Applicant) on January 24, 2020, the State makes this return:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Edgefield County Clerk of Court. Applicant was arrested on January 14, 2015 following an investigation into the shooting death of Patricia Love. During its March 2015 term, the Edgefield County Grand Jury indicted Applicant for murder (2015-GS-19-0110); possession of a weapon during the commission of a violent crime (2015-GS-19-0109); and use of firearm while under the influence of alcohol or drugs (2015-GS-19-1111).

On April 10, 2017, Applicant appeared before the Honorable Eugene C. Griffith, Jr., and pleaded guilty to the lesser-included offense of voluntary manslaughter. The remaining indictments were dismissed in exchange for Applicant's plea. Assistant Public Defender Bennett. E. Casto, Esquire (Counsel) represented Applicant. Eleventh Circuit Solicitor Samuel R. Hubbard, III, prosecuted the case. Pursuant to negotiations entered into between Applicant and the State,

Judge Griffith sentenced Applicant to 22.5 years' imprisonment.¹ Applicant did not appeal his guilty plea or sentence.

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (verbatim):

1. "I have been informed that the Solicitor's Office may have acted unethically, engaged in ex parte conduct, and pressured witnesses to change statements."
 - a. "Statements by a former employee(s) of the Solicitor's Office"
 - b. "Potential law enforcement witness"

Applicant requests relief as follows:

"A new trial and/or enforcement of original plea offer"

Attached to this return and incorporated by reference are the Edgefield County Clerk of Court records regarding the subject conviction; Applicant's records from the South Carolina Department of Corrections; the plea transcript; and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

III. MOTION TO DISMISS

The State moves for summary dismissal pursuant to section 17-27-70 of the South Carolina Code on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing. Because there is no question of law or fact to necessitate a hearing, the State requests this Court issue a conditional order of dismissal indicating the Court's intent to dismiss the application and its reasons for so doing.² See S.C. Code Ann. § 17-27-70(b) (establishing

¹ The negotiated sentencing range was between fifteen and twenty-five years.

² A proposed Conditional Order of Dismissal consistent with this return and motion to dismiss is concurrently submitted for the Court's consideration.

procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief). In making its return in support of the motion for summary judgment, the State would respectfully show this court:

Statute of Limitations

Applicant's allegations, to the extent they are separate and distinct from Applicant's claim of newly-discovered evidence, should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act (Act). S.C. Code Ann. § 17-27-10 to - 160 (2014). Specifically, the Act requires as follows:

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

S.C. Code Ann. § 17-27-45(A).

Our Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, section 17-27-70(c) authorizes this Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *See also Leamon*, 363 S.C. at 434, 611 S.E.2d at 495 (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief).

Applicant pleaded guilty on April 10, 2017, and did not file a direct appeal. This application

was filed on January 24, 2020—almost three years after the requisite filing period expired. Accordingly, this action should be summarily dismissed for failure to file within the time mandated by the Act.

Newly-Discovered Evidence

Applicant's assertion he is being held in custody unlawfully as a result of newly-discovered evidence, such that he should be entitled to an evidentiary hearing, is without merit. The Act states a person may institute a PCR action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of a material fact not previously presented, the PCR application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C).

In South Carolina, a guilty plea is regarded as a waiver of non-jurisdictional defects and claims of violations of constitutional rights. *State v. Rice*, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485–86 (2013). An applicant requesting a new trial based on after-discovered evidence following a guilty plea must show that:

(1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions.

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing he is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965). Applicant's current allegations involve unspecified "facts" regarding alleged prosecutorial misconduct that do not satisfy either requirement under *Jamison*. Applicant has failed to provide any evidence regarding these "facts." Therefore, Applicant has failed to meet his burden, and this application should be summarily dismissed as untimely.

IV. ALL OTHER CLAIMS

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

[*Conclusion and signature on following page*]

V. CONCLUSION

WHEREFORE, having made its return, the State moves to summarily dismiss the application because it was filed after the statute of limitations had expired and because Applicant failed to make a *prima facie* case of newly-discovered evidence;

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LILLIAN L. MEADOWS
Assistant Attorney General

By: s/LillianMeadows
ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

December 22, 2020

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

2020 DEC 31 AM 11:27

STATE OF SOUTH CAROLINA	)	
	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF EDGEFIELD	)	
	)	2020-CP-19-0030
	)	
JODY RAY JONES, #372132	)	
	)	
Applicant,	)	
	)	
vs	)	
	)	CERTIFICATE OF SERVICE BY MAIL
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

**Jody Ray Jones, #37132
Kirkland Correctional Institution
4344 Broad River Road
Columbia, South Carolina 29210**

DATED this 22nd day of December, 2020.


Camille Henry
Legal Assistant
For Respondent

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REE

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF EDGEFIELD) FOR THE ELEVENTH JUDICIAL CIRCUIT

2021 JAN -6) AM 10:36

Jody Ray Jones, SCDC #372132,) Case No. 2020-CP-19-0030

Applicant,)

v.) **CONDITIONAL ORDER OF DISMISSAL**

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of a post-conviction relief (PCR) action commenced by Jody Ray Jones (Applicant) on January 24, 2020. The State made its return on December 22, 2020, requesting the action be summarily dismissed.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Edgefield County Clerk of Court. Applicant was arrested on January 14, 2015 following an investigation into the shooting death of Patricia Love. During its March 2015 term, the Edgefield County Grand Jury indicted Applicant for murder (2015-GS-19-0110); possession of a weapon during the commission of a violent crime (2015-GS-19-0109); and use of firearm while under the influence of alcohol or drugs (2015-GS-19-1111).

On April 10, 2017, Applicant appeared before the Honorable Eugene C. Griffith, Jr., and pleaded guilty to the lesser-included offense of voluntary manslaughter. The remaining indictments were dismissed in exchange for Applicant's plea. Assistant Public Defender Bennett. E. Casto, Esquire (Counsel) represented Applicant. Eleventh Circuit Solicitor Samuel R. Hubbard, III, prosecuted the case. Pursuant to negotiations entered into between Applicant and the State,

Judge Griffith sentenced Applicant to 22.5 years' imprisonment.¹ Applicant did not appeal his guilty plea or sentence.

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (verbatim):

1. "I have been informed that the Solicitor's Office may have acted unethically, engaged in ex parte conduct, and pressured witnesses to change statements."
 - a. "Statements by a former employee(s) of the Solicitor's Office"
 - b. "Potential law enforcement witness"

Applicant requests relief as follows:

"A new trial and/or enforcement of original plea offer"

Before this Court are the Edgefield County Clerk of Court records regarding the subject conviction; Applicant's records from the South Carolina Department of Corrections; the plea transcript; and the records of the current PCR action.

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law. This Court finds there is no genuine issue of material fact which would necessitate an evidentiary hearing. *See* S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief). Pursuant to South Carolina Code Annotated Sections 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application based upon the following findings:

¹ The negotiated sentencing range was between fifteen and twenty-five years.

Statute of Limitations

This Court finds Applicant's allegations, to the extent they are separate and distinct from Applicant's claim of newly-discovered evidence, must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act (Act). S.C. Code Ann. § 17-27-10 to -160 (2014). Specifically, the Act requires as follows:

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

S.C. Code Ann. § 17-27-45(A).

Our Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, section 17-27-70(c) authorizes this Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *See also Leamon*, 363 S.C. at 434, 611 S.E.2d at 495 (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief).

Applicant pleaded guilty on April 10, 2017, and did not file a direct appeal. This application was filed on January 24, 2020—almost three years after the requisite filing period expired. Accordingly, this action must be summarily dismissed for failure to file within the time mandated by the Act.

Newly-Discovered Evidence

This Court finds Applicant's assertion he is being held in custody unlawfully as a result of newly-discovered evidence, such that he should be entitled to an evidentiary hearing, to be without merit. The Act states a person may institute a PCR action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of a material fact not previously presented, the PCR application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C).

In South Carolina, a guilty plea is regarded as a waiver of non-jurisdictional defects and claims of violations of constitutional rights. *State v. Rice*, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485–86 (2013). An applicant requesting a new trial based on after-discovered evidence following a guilty plea must show that:

(1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions.

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing he is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965). Applicant's current allegations involve unspecified "facts" regarding alleged prosecutorial

misconduct that do not satisfy either requirement under *Jamison*. Applicant has failed to provide any evidence regarding these “facts.” Therefore, this Court finds Applicant has failed to meet his burden, and this application must be summarily dismissed as successive to Applicant’s previous PCR actions.

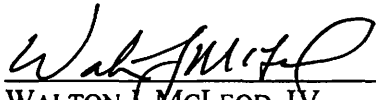
IV. CONCLUSION

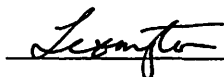
Pursuant to S.C. Code Ann. § 17-27-70(b), this Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order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

Office of the Attorney General
Lillian L. Meadows
Post-Conviction Relief Division – 11th Circuit
Post Office Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Edgefield County Clerk of Court and opposing counsel within twenty (20) days, and this Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 31 day of DECEMBER, 2020.


WALTON J. MCLEOD, IV
Chief Administrative Judge
Eleventh Judicial Circuit

 _____, South Carolina

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOR THE 11 th JUDICIAL CIRCUIT
COUNTY OF EDGEFIELD	)	Case No.: 2020-CP-19-00030
Jody Ray Jones, #372132,	)	
	)	
Applicant,	)	AMENDED POST-CONVICTION
	)	RELIEF APPLICATION
v.	)	
	)	
State of South Carolina.	)	
	)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on January 24, 2020, to add the following:

Newly Discovered Evidence

Under SC Code §17-27-20(A)(4), a person may seek a post-conviction relief action if “there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.” When a PCR applicant seeks relief on the basis of newly discovered evidence following a guilty plea, relief is appropriate only where the applicant presents evidence showing that (1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the “interest of justice” requires the applicant's guilty plea to be vacated. Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014), *reh'g denied* (Dec. 3, 2014)

Recently discovered evidence related to the handling of Mr. Jones guilty plea has surfaced. Mr. Madsen, the Public Defender, was informed of some mishandling regarding the prosecution of the Applicant's criminal case.

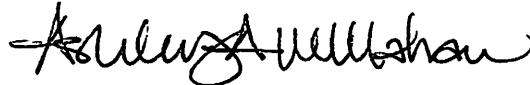
The Statute of Limitations Should be Equitably Tolled

While SC Code §17-27-45 provides for a one-year statute of limitations, the statute of limitations can be equitably tolled. *See e.g. Mose v. State*, 803 S.E.2d 718 (2017). Equitable tolling of the statute of limitations is reserved for extraordinary circumstances. *See Hooper v. Ebenezer Senior Svcs. and Rehabilitation Ctr.*, 377 S.C. 217, 659 S.E.2d 213, (Ct.App.2008). “Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period to ensure fundamental practicality and fairness.” *Id.* Equitable tolling applies when the plaintiff is prevented in some way from asserting their

rights. See Pelzer v. State, 378 S.C. 516, 662 S.E.2d 618 (2008). In this case the extraordinary circumstances will be shown.

Furthermore, the Applicant requests that she be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



ASHLEY A. MCMAHAN, ESQUIRE

MCMAHAN & TAYLOR, ATTORNEYS, PC

PO Box 50536

Columbia, SC 29250

803-219-1110

ashley@mcmahantaylor.com

SC Bar No. 71676

ATTORNEY FOR APPLICANT

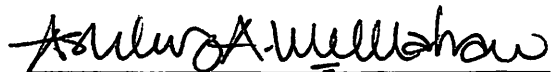
August 4, 2021

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Lillian H. Meadows
Taylor Z. Smith
Assistant Attorneys General
SC Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

This 4th Day of August, 2021.



ASHLEY A. MCMAHAN, ESQUIRE

MCMAHAN & TAYLOR, ATTORNEYS, PC

PO Box 50536

COLUMBIA, SC 29250

803-219-1110

State of South Carolina)	In the Court of Common Pleas
)	Eleventh Judicial Circuit
County of Edgefield)	2020-CP-19-00030

Jody Ray Jones,	)	
	)	
Applicant,	)	
	)	
vs.	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
_____	)	

August 30, 2021
 HEARING CONDUCTED REMOTELY
 VIA WEBEX VIDEOCONFERENCE

B E F O R E:

The Honorable Donald B. Hocker, Judge

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

Ashley A. McMahan, Esquire
 Attorney for Applicant

Taylor Z. Smith, Assistant Attorney General
 Lillian L. Meadows, Assistant Attorney General
 Attorneys for Respondent

Maryann S. Nevers, CVR-M-CM, RVR, RVR-M
 Circuit Court Reporter (Retired)
 Certified Verbatim Reporter - Master
 Certificate of Merit
 Realtime Verbatim Reporter - Master

I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
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No exhibits were marked during proceeding.

TRANSCRIPT OF RECORD

(Whereupon, proceedings commenced via Webex Meetings videoconference in the matter of *Jody Ray Jones v. State of South Carolina*, Edgefield County Case 2020-CP-19-0030, beginning at 10:02 a.m. on Monday, August 30, 2021. Applicant and all counsel were present.)

THE COURT: Okay. I'm going to go ahead and call the case, and then we'll -- we'll get started. This is the postconviction relief application filed by Jody Ray Jones, Inmate No. 372132. It is an Edgefield case. The case number is 2020-CP-29-0030.

Appearing on behalf of the applicant is Ashley McMahan. Appearing on behalf of the state is Lilly Meadows and Taylor Smith.

And it's my understanding that the matter is before the Court upon the state's motion to dismiss.

Ms. Meadows, is that a correct statement?

MS. MEADOWS: Yes, sir. And if I just may give a little bit more recent background information on why we're here: So Mr. Jones, he pleaded guilty in 2017. He then filed the application for PCR in January of 2020.

We moved for summary dismissal because the application was untimely. And Judge McLeod, then-chief administrative

1 judge, issued a conditional order of dismissal on January
2 6th of this year.

3 Shortly thereafter, on January 20th, Mr. Casto called
4 me after receiving several -- several letters from Mr.
5 Jones about getting an attorney appointed in his PCR. Mr.
6 Casto also informed me that he and Chief Public Defender
7 Rob Madsen were contacted by Ervin Maye -- he was the
8 former assistant solicitor who originally handled Mr.
9 Jones' case back in 2015 -- regarding allegations of
10 prosecutorial misconduct against Solicitor Hubbard and
11 Deputy Solicitor Graham.

12 So I then sent a letter to Judge Keesley, requesting
13 hearing and appointment of counsel. And Ms. McMahan was
14 appointed.

15 THE COURT: Okay. All right. Very good.

16 Ms. McMahan, by way of background, do you -- do you
17 want to add anything to what Ms. Meadows just put on the
18 record?

19 MS. MCMAHAN: Just a little bit. It's not really ---

20 THE COURT: Sure.

21 MS. MCMAHAN: --- background so much. I've just
22 realized, looking at the file, that I sent the amended
23 application to the Saluda clerk for some reason, instead of
24 the Edgefield clerk. So I would just ask that, since it's
25 not officially clocked in yet, that I get the opportunity

1 to clock it in with the correct clerk's office ---

2 THE COURT: Sure.

3 MS. MCMAHAN: --- and go forward with that. But it's
4 the same ---

5 THE COURT: Sure.

6 MS. MCMAHAN: --- thing. But ---

7 THE COURT: Okay.

8 MS. MCMAHAN: --- other than background-wise, yes. I
9 was -- I talked to Mr. Madsen, who's in -- about all this.
10 And my intention was to call him as a witness to, sort of,
11 glean some information behind all the ---

12 THE COURT: Okay. All right.

13 All right. Well, since we're before the Court on a
14 motion to dismiss procedurally, typically, the applicant,
15 if -- if it's a merits hearing, the applicant would put up
16 their case. But since we're here on a motion to dismiss,
17 let me ask you, Ms. McMahan and -- and Ms. Meadows, how --
18 how do we want to go on that? Do we want to go ahead and
19 allow Ms. McMahan to call Mr. Madsen and then take argument
20 on the motion to dismiss or do it in another fashion?

21 MS. MCMAHAN: I think we can do both at the same time.
22 And I think Lilly's -- Ms. -- excuse me -- Ms. Meadows'
23 motion could start, because that will, kind of, give you
24 the background. And then, my ---

25 THE COURT: Okay.

1 MS. MCMAHAN: --- my response to her motion is a
2 motion.

3 THE COURT: Okay.

4 MS. MCMAHAN: So ---

5 THE COURT: All right.

6 MS. MCMAHAN: But ---

7 THE COURT: We can -- we can handle it that way, then.

8 Ms. Meadows, I'm going to turn the record over to you.

9 MS. MEADOWS: Okay. Just for -- well, let me be
10 honest with you, Judge. After talking to Mr. Casto and Mr.
11 Madsen, I -- I now believe that the application is likely
12 timely. We just wanted to get some testimony on that.

13 THE COURT: Okay.

14 MS. MEADOWS: And, you know, I guess I don't
15 necessarily want to withdraw our motion. But I'll just
16 say, after the testimony, that it speaks for itself.

17 THE COURT: Okay. All right. Just -- just so you're
18 aware, I have read everything that has been provided to me.
19 And ---

20 MS. MEADOWS: Yes, sir.

21 THE COURT: Hold on just a minute. I got somebody
22 else in my waiting room.

23 (Off the record briefly.)

24 THE COURT: Okay. All right. I just brought a couple
25 more in.

1 But I have read -- read everything. I -- and, of
2 course, as we all know, that Mr. Maye is, unfortunately,
3 deceased and I was just curious, in light of that, that
4 certainly has some effect, some bearing, on -- on the
5 issues at hand. But we can ---

6 MS. MEADOWS: Yes, sir.

7 THE COURT: --- I guess we can certainly deal with
8 that at the -- at the appropriate time.

9 So as far as from the state's perspective, what -- who
10 do you believe needs to testify? Ms. McMahan's already
11 indicated that she wants to elicit some testimony from Mr.
12 Madsen. Who does the state want to testify?

13 MS. MEADOWS: Probably Mr. Madsen and Mr. Casto, just
14 because ---

15 THE COURT: Okay.

16 MS. MEADOWS: --- Mr. Casto is plea counsel and he --
17 he's the ---

18 THE COURT: Sure.

19 MS. MEADOWS: -- one that contacted me.

20 THE COURT: Okay.

21 MS. MEADOWS: So ---

22 THE COURT: All right. Okay. All right.

23 Ms. McMahan, you fine to -- I think what Ms. Meadows
24 is asking is to just, kind of, lay argument aside
25 concerning her motion to dismiss until after testimony

1 is -- is placed on the record and then -- then she, on
2 behalf of the state, can make a determination whether or
3 not she wants to go forward with the motion or withdraw it.
4 So you -- you good for us proceeding in this manner?

5 MS. MCMAHAN: Yes, Your Honor. Actually, and my last
6 name's McMahan, not McMahan, but it's okay.

7 THE COURT: I'm sorry. I apologize.

8 MS. MCMAHAN: Judge, everybody does it. And no
9 relation to Knox either, so ---

10 THE COURT: Okay. Okay. All right.

11 MS. MCMAHAN: Yeah. That's ---

12 THE COURT: And -- and ---

13 MS. MCMAHAN: -- fine with me.

14 THE COURT: --- it's not like this is the first time
15 I've dealt with you, so I -- I -- I do apologize.

16 MS. MCMAHAN: It's okay.

17 THE COURT: All right. Well, let's -- let's go ahead
18 and -- Mr. Madsen and Mr. Casto, I -- Casto, I know that
19 you've logged on. If you will get your audio and your
20 video up and running and then I'll place both of you under
21 oath, and then we can -- we can take off. Okay.

22 All right. Okay. There's Rob and -- well, Mr. Casto
23 seems to be fading in and out -- (audio loss) -- wait a
24 minute. There he is.

25 There you are. Bennett, how are you?

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1 MR. CASTO: I'm doing well. How about you? Can you
2 hear me?

3 THE COURT: Yeah, I can hear you.

4 Rob, you good?

5 MR. MADSEN: I am, Judge. How are you?

6 THE COURT: I'm -- I'm fine. Thank you.

7 Okay. Mr. Casto, Mr. Madsen, raise your right hands,
8 please.

9 MR. MADSEN: (Complied.)

10 MR. CASTO: (Complied.)

11 ROBERT MADSEN and BENNETT CASTO, having been
12 first duly sworn, testified as follows:

13 THE COURT: All right. Thank you very much. You can
14 put your hands down.

15 All right. Who -- who do we want to go first?

16 MS. MCMAHAN: Let's start with Mr. Madsen.

17 THE COURT: Okay. All right. Okay. You may proceed.

18 DIRECT EXAMINATION

19 BY MS. MCMAHAN:

20 Q. Mr. Madsen, we're in the case of Jody Jones, as you
21 heard the introduction earlier. Did you ever go visit Mr.
22 Jones about anything related ---

23 A. I ---

24 Q. --- to this?

25 A. I did.

1 Q. And tell me about that and why.

2 A. So I received a call from Assistant Solicitor Ervin
3 Maye, alleging that there was prosecutorial misconduct on
4 Mr. Jones's case. I had never met with Mr. Jones before
5 that, but I was aware of the case. Bennett, who was the
6 assigned public defender, had spoke to me about it numerous
7 times. I think I might've even reviewed the discovery in
8 the past. So I was aware of the case.

9 But I received a call from Solicitor Mayes, alleging
10 some prosecutorial misconduct. I didn't get a lot of the
11 specifics as to what -- in fact, I didn't get hardly any of
12 the specifics, except for just a -- a few allegations.
13 What I did then is I scheduled an appointment at SCDC. I
14 believe Mr. Jones was at Kirkland Correctional.

15 I actually took it upon myself to fill out a PCR
16 application for him. I -- I did it for a couple of
17 reasons: (a) I didn't want to go speak with Mr. Jones and
18 then him put something in the application that I had not
19 told him.

20 I've dealt with enough clients that sometimes clients
21 can be a little bit optimistic after you tell them
22 something. If you say, "Hey, this carries probation to 30
23 years," they will say: "Hey, he told me I was getting
24 probation."

25 So I filled out a PCR application. And I took it with

1 me. I explained to Mr. Jones who I was and why I was
2 there. I also explained to him that there had been some
3 allegations of prosecutorial misconduct on his case and
4 that I was informing him of those and that, since I was
5 informing him, he had one year from that date with which to
6 file an application and -- and that if he did not, he would
7 be barred.

8 I've gone back through my files, and I provided a copy
9 of the letter. It looks like I sent Mr. Jones a letter on
10 January 13th of 2020, confirming our meeting the day before
11 and confirming that he had one year from our meeting the
12 day before to file the PCR application. When I left Mr.
13 Jones, he said he would talk to some other folks and make a
14 decision at some point in time. He obviously filed that
15 PCR application.

16 Q. And when you said, you know, you weren't given
17 specifics and stuff like that, was some of the stuff you
18 were told regarding, like, threatening and intimidation of
19 the witness and talking to Judge Griffith and things like
20 that, just a, kind of ---

21 A. Yes.

22 Q. --- overview -- okay.

23 A. Yes. Yes. They were ---

24 Q. Okay.

25 A. --- just broad. The allegations were -- is that there

1 was ex parte contact with Judge Griffith about the case and
2 that there were some threatening and intimidating
3 witnesses. But like I said, I did not ask for any type of
4 specifics, and he did not give me any specifics.

5 Q. So how ---

6 A. I think that -- that that would ---

7 (Indistinguishable cross-talk.)

8 Q. I -- I'm sorry.

9 A. I -- I figured that would all be fleshed out in the
10 PCR.

11 Q. How soon after your conversation with Ervin did you go
12 see Mr. Jones?

13 A. I would guess it was within two weeks. But I -- I
14 would guess it would be in a week. It would've been
15 however long it took me to get an appointment at SCDC. But
16 it was -- it was very soon after the conversation.

17 Q. So at the -- it could've been at the beginning of 2020
18 or at the very end of December of 2019?

19 A. Yes.

20 Q. Okay. And then ---

21 A. My ---

22 Q. --- Mr. Jones ---

23 A. --- guess is it would've been -- it would've been in
24 the beginning of 2020.

25 Q. Okay.

1 A. It wouldn't have ---

2 Q. And did ---

3 A. --- taken me that long. I -- I don't have in my
4 notes ---

5 Q. So then, you would've gone to see him January 12th?

6 A. Yes.

7 Q. And then, Mr. Jones filed this about 12 days later?

8 A. I -- I guess. I -- you know --

9 Q. In the ---

10 A. --- until this popped up, I -- I didn't know. But ---

11 Q. If the record reflects that Mr. Jones filed this
12 application 12 days later, would you dispute that?

13 A. No.

14 Q. Okay. I have no further questions right now. Answer
15 any questions Ms. Meadows may have.

16 THE COURT: Okay. Ms. Meadows, any questions of Mr.
17 Madsen?

18 MS. MEADOWS: Just one.

19 CROSS-EXAMINATION

20 BY MS. MEADOWS:

21 Q. Mr. Madsen, did you have any reason to believe that
22 any -- any of these things occurred prior to your
23 conversation with Mr. Maye?

24 A. I -- I did not. I -- like I said, other than speaking
25 with Mr. Casto and reviewing the file at Mr. Casto's

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1 request, I had never spoken to Mr. Maye about this case or
2 anyone else, other than Mr. Casto.

3 Q. Okay.

4 MS. MEADOWS: That's all I have, Judge.

5 THE COURT: Okay.

6 MS. MCMAHAN: Your Honor, the applicant would like to
7 call Bennett Casto.

8 THE COURT: Okay. All right. Mr. Casto, you're
9 already sworn in.

10 You may proceed.

11 DIRECT EXAMINATION

12 BY MS. MCMAHAN:

13 Q. Mr. Casto, what's your knowledge of the issues that we
14 are talking about today?

15 A. So as I understand it -- yes. I was -- I was actually
16 Mr. Jones's counsel. You know, ultimately, I was assigned
17 to represent him out of an -- excuse me -- out in Edgefield
18 County. It looked like we were headed to trial. We
19 eventually wound up pleaing him guilty.

20 And I didn't hear anything after that for quite some
21 time, until I -- I believe that the next thing that I had
22 heard was Mr. Madsen let me know that Jody Jones had filed
23 a PCR and the reasons behind that PCR. And this was based
24 on a conversation that -- Mr. Maye had apparently reached
25 out to Mr. Madsen and let him know about these allegations

1 and things that he saw that were wrong, you know, in the
2 case.

3 But the interesting thing -- and to be clear -- is
4 that, so we're all on the same page -- is that
5 interestingly enough, Mr. Maye didn't reach out to me or --
6 or anything like that. It was just to Mr. Madsen. I, kind
7 of, learned about things that way. And then, ultimately,
8 Mr. Jones files the PCR and -- and, you know, that I learn
9 about everything through that.

10 Q. And as his plea -- well, as the attorney in general,
11 what was the issues related to some of the plea offers?
12 Would I -- because I'm -- I'm -- obviously, when you're
13 reading everything, Ervin was the initial solicitor,
14 correct?

15 A. I -- I'm sorry. I was having trouble hearing you.
16 What ---

17 Q. I said: So you were his attorney. Was Ervin the
18 initial solicitor on the case?

19 A. Yes. That's right.

20 Q. And then, at some point, did Rick take it over?

21 A. He did. Yes.

22 Q. And -- and about when did that happen?

23 A. I want to say that case had been pending for -- and
24 again, my memory is a little fuzzy. But the -- the case
25 had been pending for at least a year, I want to say. There

1 were some -- there were some issues with that case.

2 And just for everybody's edification here, it was
3 unusual in the sense that -- well, what would happen is
4 this case dealt with carnival workers, folks that actually
5 really would work with the carnival. And they would go all
6 over the United States. But at a certain point of the
7 year, they would, kind of, roost, if you will, in Edgefield
8 County. And that's when this shooting happened.

9 And so they would be in Edgefield County, I think,
10 to -- to roost, so to speak, when the carnival was not
11 going on for maybe one to two months out of the year. And
12 then, from there, they could be anywhere in the United
13 States. And I'm not sure if the carnival traveled outside
14 of the U.S. But for most of the year, those witnesses and
15 things in the case would be miles and miles and miles --
16 you know, thousands of miles away from Edgefield County.

17 So it had been pending for a while. I would say at
18 least a year -- probably at least a year and a half.

19 Q. And had -- had Ervin given you a plea offer for him?

20 A. Yes, he did.

21 Q. What was the offer?

22 A. The offer was 15 years on assault and battery of a
23 high and aggravated nature.

24 Q. And this was statutory ABHAN or common law?

25 A. Statutory.

1 Q. And have you had a chance to speak to Mr. Jones about
2 that? Was he willing to accept that offer?

3 A. At the time it -- you have a -- yes. I did speak with
4 him. And I spoke with him extensively. He did think about
5 it.

6 But when you've got someone charged with murder and
7 the state offers you 15 on an ABHAN, I think something in
8 his mind was glaringly wrong with the case or the evidence
9 against him. And I think that the way that the case had
10 been worked up and what we knew about the case at that
11 point, he felt -- he was more optimistic about his chances,
12 should he elect to go to trial at that point. And he
13 eventually declined the offer.

14 Q. So based on your observations of him and talking to
15 him about that plea offer, is it safe to say he felt like
16 maybe the state's case wasn't that strong?

17 A. Yes.

18 Q. Okay. And then, what happened once Rick took it over?

19 A. So I -- I'll tell you this: In -- I always felt like
20 the state had a -- had a good case. I had really advised
21 him to think about that offer.

22 When Rick Hubbard took it over, I believe that there
23 was some additional contact and -- and, you know, touching
24 base with many of the witnesses. So these folks show up in
25 the initial discovery, but, you know, they hadn't been

1 talked to, but just because, you know, they -- working with
2 the carnival and the nature of their work. And sometime I
3 believe that we began to get more and more witness
4 statements, things like that, with regard to, you know,
5 folks that were on the compound, as it were, when these
6 folks were in Edgefield County.

7 You -- you know, the layout of this thing was just a
8 series of campers. So everybody was in fairly close
9 proximity when they were, you know, here in Edgefield
10 County when the carnival wasn't going on. So there were a
11 lot of witnesses out there that I believe that they -- they
12 either reconnected with or connected with.

13 Q. Okay. And -- and at that point, did you have any
14 indication that -- (audio loss) -- of -- based on what
15 Ervin had alleged prior to his death?

16 A. I'm sorry?

17 Q. So at this point when Rick takes it over, ultimately,
18 Mr. Jones pleads guilty to a charge. Did you have -- or a
19 sense of anything going on that might've been awry, based
20 on what Mr. Maye's telling everybody prior to his death?

21 A. I didn't.

22 MS. MCMAHAN: I have no further questions.

23 THE COURT: Okay. Ms. Meadows, any examination of Mr.
24 Casto?

25 MS. MEADOWS: Just briefly.

CROSS-EXAMINATION

BY MS. MEADOWS:

Q. So -- Mr. Casto, so even though this was your case, you never actually spoke with Mr. Maye about these allegations, correct?

A. I want to say that after Mr. Maye had spoken with Mr. Madsen, I believe -- you know, I would still talk with Mr. Maye while he was alive. What -- you -- you know, he wasn't an employee of the solicitor's office. But there was a time when we had talked.

We -- we really didn't talk much about work or anything like that. But he -- there was a time that he had alluded to something, you know, in that. But it was with regard to these allegations with Mr. Jones.

But it never really went beyond that, because I knew that Mr. Maye was -- had -- had grieved Solicitor Hubbard and also, I believe at that time, may have been suing him for a wrongful-termination ---

Q. Okay.

A. --- type of lawsuit. He --

MS. MEADOWS: And, Judge, I believe all of that was in the materials we sent.

THE COURT: It -- it -- it -- it was. It was.

MS. MEADOWS: And I believe that suit was filed at the end of December 2019.

1 Q. (By Ms. Meadows) But -- all right. So at the time of
2 the plea offer, did you have any idea what kind of
3 investigation Mr. Maye had done at that point, as far as
4 talking to witnesses or anything like that?

5 A. I believe so, just -- just because I -- I felt like --
6 I -- I don't know if those folks had been -- all of those
7 witnesses had spoken with again at the time. I mean, we
8 did have their initial statements from when the event
9 happened. But -- but the development of all that, I -- I
10 wasn't entirely sure.

11 Q. Okay. But then -- and then, after Rick and Shawn came
12 in, I -- they did -- they did more investigation and spoke
13 to those witnesses again, correct?

14 A. That's my understanding.

15 Q. Okay. All right. And Ashley basically asked this,
16 but did you -- prior to being contacted by Mr. Maye, did
17 you have any reason to believe any of these allegations
18 occurred at the time ---

19 A. No.

20 Q. --- of the case? Okay.

21 MS. MEADOWS: All right. That's all I have, Judge.

22 THE COURT: Okay. Anything in follow-up, Ms. McMahan?

23 MS. MCMAHAN: No, Judge. Just some brief argument, I
24 guess, but I guess I need to see what Lilly wants to
25 argue ---

1 THE COURT: Okay.

2 MS. MCMAHAN: --- first.

3 THE COURT: All right. Okay.

4 Ms. Meadows, you want to put any argument on the --
5 I -- I assume that's all the testimony that we need to
6 take. Assuming that, Ms. Meadows, any argument you want to
7 put on the record?

8 MS. MEADOWS: It is, Judge. And I guess I would just
9 ask you to make a ruling. I'm not going to put any
10 argument on the record. But I -- I guess I -- I don't want
11 to withdraw our motion. But I'd just ask for a ruling,
12 based ---

13 THE COURT: Okay.

14 MS. MEADOWS: --- on that testimony.

15 THE COURT: All right.

16 Ms. McMahan, anything?

17 MS. MCMAHAN: Just briefly. So the -- basically,
18 right now, procedurally, it's -- the state moved to dismiss
19 the PCR application. I replied with a request to, you
20 know, toll the statute of limitations.

21 In the alternative, you know, it's newly discovered
22 evidence. It has been filed within one year of its
23 discovery, which Mr. Madsen testified to.

24 What we're asking for is to be able just go forward in
25 a full PCR hearing on these issues. And -- and that's

1 basically it. And if the Court is so inclined to allow us
2 to continue forward on the PCR application in order to,
3 kind of, dig into these issues, I would just also ask for
4 funding for a private investigator to be able to do that.

5 THE COURT: Okay. All right.

6 Well, I mean, the -- the allegations -- and certainly,
7 they are just allegations at this point. But they
8 certainly are serious allegations, as we all would
9 recognize. And I -- I think, at this point, Mr. Jones
10 should be entitled to proceed forward.

11 Now, again, as I observed at the outset, you know,
12 it -- it does certainly weaken his case considerably, the
13 fact that Mr. Maye is deceased. But with that said, you
14 know, an investigation into these allegations may provide
15 other sources of information.

16 And I think, certainly, Mr. Jones is entitled to have
17 that explored. You know, at the end of the day, it may
18 turn out to where there's nothing other than what has been
19 stated by Mr. Maye, who is deceased. But I think Mr. Jones
20 and Ms. McMahan should be entitled to -- should be entitled
21 to explore it.

22 So what I'm going to do, Ms. Meadows, I'm going to
23 dismiss -- not -- not dismiss -- deny your motion to
24 dismiss, but grant you leave at some point in time in the
25 future to revive your motion to dismiss, depending upon

1 what -- what transpires and what develops.

2 MS. MEADOWS: Yes, sir.

3 THE COURT: So who would like to prepare that -- that
4 order? I guess, Ms. McMahan, probably it would fall on
5 you.

6 MS. MCMAHAN: I have no problem. I just wanted to
7 clarify that, for investigation purposes, I can put in that
8 order funding for an investigator.

9 THE COURT: Sure. Yeah.

10 MS. MCMAHAN: Okay.

11 THE COURT: Yeah. Yeah. You can -- well, I think it
12 probably needs to go in a separate order, a separate
13 funding order. I think it -- just to -- because those --
14 even though it's -- you're -- you're not making the request
15 ex parte, which normally is -- is done, but I think it
16 needs to be in a -- in a separate -- separate order. Okay?

17 MS. MEADOWS: And the state has no objection to the
18 funding for an investigator. But obviously, at the
19 evidentiary hearing, we would have Solicitor Hubbard and
20 Deputy Solicitor Graham testify.

21 THE COURT: Sure. Sure. And -- and -- and I
22 certainly -- I'm -- I'm certainly aware of Solicitor
23 Hubbard's response to the allegations that have been levied
24 against him, and he appears to be very adamant against ---

25 MS. MEADOWS: Yes, sir.

1 THE COURT: --- those allegations. But with all that
2 said, I -- again, I think Mr. Jones is entitled to a -- an
3 exploration, if you will, of these allegations and see what
4 -- see what turns out. Okay?

5 MS. MEADOWS: Great.

6 THE COURT: All right. Anything else, Ms. Meadows,
7 Ms. McMahan ---

8 MS. MCMAHAN: I just have some housekeeping matters
9 related to one on Wednesday. That's it.

10 THE COURT: Okay. All right. Well, let's -- let's go
11 ahead and --

12 Mr. Casto, Mr. Madsen, good seeing you both. And if
13 you want to go ahead and log off, you're more than --
14 you're more than welcome to. Or if you want to hang out
15 with us, that's -- that -- that's fine too. I don't know.
16 You may have some other matters for the rest of the week.
17 I -- I don't know.

18 MR. MADSEN: I think that's it for me, Judge. I
19 appreciate it. Good to see y'all.

20 THE COURT: Yeah. Y'all too. Okay.

21 MR. CASTO: Good to see you, Judge.

22 THE COURT: All right. Thank you.

23 MS. MEADOWS: Thank you.

24 (Whereupon, the proceeding was concluded at 10:29 a.m.)

25 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, the undersigned Maryann S. Nevers, CVR-M-CM, RVR, RVR-M, Official Court Reporter (Retired) for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Edgefield County, South Carolina, on the 30th day of August, 2021.

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



Maryann S. Nevers, CVR-M-CM, RVR, RVR-M
Official Court Reporter (Retired)

Wilmington, North Carolina
October 16, 2025

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

EDGEFIELD COUNTY
CLERK OF COURT
REEL
SEP 20 AM 9:30

IN THE COURT OF COMMON PLEAS
FOR THE 11th JUDICIAL CIRCUIT
Case No.: 2020-CP-19-00030

Jody Ray Jones, #372132,

vs.

State of South Carolina,

Respondent.

**ORDER DENYING THE STATE'S
MOTION TO DISMISS AND GRANTING
THE APPLICANT'S MOTION**

This matter is before the Court by way of a Motion to Dismiss made by the State. The Applicant filed an amended PCR application that included a request to proceed based on newly discovered evidence and/or in the alternative requesting that the statute of limitations be equitably tolled.

A hearing was held on August 30, 2021 via the WebEx platform. Present at the hearing was Ashley A. McMahan, Esquire, on behalf of the Applicant. The State was represented by Assistant Attorney General Lillian L. Meadows.

Under SC Code §17-27-20(A)(4), a person may seek a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." When a PCR applicant seeks relief on the basis of newly discovered evidence following a guilty plea, relief is appropriate only where the applicant presents evidence showing that (1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea to be vacated. Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014), *reh'g denied* (Dec. 3, 2014).

S.C. Code § 17-27-45(c) requires a newly-discovered evidence claim be timely raised within one year of actual discovery. At the hearing, 11th Circuit Public Defender, Robert Madsen, testified that he found out about the issues related to Mr. Jones' case after a

#1
DBA

phone call with Ervin Maye sometime at the very end of December 2019 or the very beginning of January 2020. After this call, Mr. Madsen visited Mr. Jones on January 12, 2020, explained to him about the phone call and the information gleaned from that phone call, and instructed Mr. Jones' to file the current PCR application. The current PCR application was filed on or about January 24, 2020. This was well within the one-year requirement set forth in the statute.

This Court finds that the Applicant has met their burden in showing that the application was filed within one year of the newly discovered evidence and that the application for post-conviction relief shall move forward with the grounds related to the newly discovered evidence claim. The State is granted leave to revive their motion in the future depending on the development of this case.

IT IS SO ORDERED!



~~The Honorable~~ Donald B. Hocker
Presiding Circuit Court Judge

Lamers, South Carolina
9-10, 2021



STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT 11
COUNTY OF EDGEFIELD) DOCKET NO. 2020-CP-19-00030

JODY JONES,)
)
Plaintiff,)
versus)
)
STATE OF SOUTH CAROLINA,)
)
Defendant.)
_____)

H E A R I N G
BEFORE THE HONORABLE KRISTI F. CURTIS

DATE: April 4, 2023
TIME: 9:44 A.M.
LOCATION: South Carolina Circuit Court 11
TRANSCRIBER: Jessica Antonucci

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(No Exhibits Were Marked)

(THIS TRANSCRIPT MAYE CONTAIN QUOTE MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 MS. MCMAHAN: This is 2020-CP-19-00030, Jody Jones
2 versus State of South Carolina. It's an Edgefield County
3 case. Just a little bit of background, Your Honor. Mr.
4 Jones initially had filed his application outside of the
5 statutory -- the statute of limitations. I filed an
6 amended application. We had a hearing on that on August
7 30th. The issue being whether or not there were -- there
8 was mishandling of his guilty plea by a member of the
9 Solicitor's office, and whether or not some witnesses had
10 been pressured. We did get the services of a PI. Four
11 attorneys are here and we're ready to go. So, just to
12 kind of talk about that issue, and that's really the only
13 issue that we have to go forward on at this time.

14 JUDGE CURTIS: Okay, Mr. Jones, I need to address a
15 few issues with you before we get started, sir.

16 MR. JONES: Yes, ma'am.

17 JUDGE CURTIS: Good morning. So, you understand in
18 a PCR action there's only two things that I can do. I
19 can either grant your application or I can deny your
20 application. If I grant your application, and I believe
21 everything you tell me and I agree with your lawyer, it
22 means your case goes back to square one as if your plea
23 never took place.

24 So, the original indictments for murder, possession
25 of a weapon during a violent crime, use of firearm while

1 under the influence, those original charges are back in
2 play.

3 And so you understand -- my understanding is this
4 was a negotiated -- well, it was a negotiated range, I
5 believe, and you got 22 and a half years. You understand
6 that if this goes back, you can be tried for murder,
7 which carries a mandatory minimum of 30 years, and that's
8 a day for day sentence, it carries up to life in prison.

9 So, I mean, that's the main concern. Of course,
10 possession of a weapon during a violent crime carries
11 another five, and I don't know what use of a firearm
12 while under the influence carries, but obviously the most
13 concerning issue is that you could be tried for murder
14 which carries up to life.

15 So, that is what the consequence is of me granting
16 the PCR is you go back for a new trial. If I deny your
17 application, it means that you continue to serve out the
18 remainder of your sentence. And so do you understand
19 that?

20 MR. JONES: Yes, ma'am.

21 JUDGE CURTIS: And you've talked with your attorney
22 about the consequences of being successful in this
23 action?

24 MR. JONES: Yes, ma'am.

25 JUDGE CURTIS: And do you have any other questions

1 about that before we go forward?

2 MR. JONES: No, ma'am.

3 JUDGE CURTIS: Is it still your desire to go
4 forward?

5 MR. JONES: Yes, ma'am.

6 JUDGE CURTIS: Okay. Anything from the State before
7 we get started?

8 MR. SMITH: No, Your Honor.

9 JUDGE CURTIS: Ms. McMahan?

10 MS. MCMAHAN: Judge, at this time the Applicant
11 calls Shawn Graham.

12 DAVID SHAWN GRAHAM

13 Being duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. MCMAHAN:

16 Q. Would you please state your name for the
17 record?

18 A. David Shawn Graham.

19 Q. And during Mr. Jones's case, what was your
20 role?

21 A. I was a Deputy Solicitor, the prosecutor, one
22 of the prosecutors working with Solicitor Hubbard on the
23 case.

24 Q. And that was my next follow-up, what was your
25 involvement with the case?

1 A. I'm sorry?

2 Q. What was your involvement with the case?

3 A. So, Solicitor Hubbard was elected in November
4 of 2016. He took office in January of 2017. When he
5 came in, one of the first things that he had the Circuit
6 do was to look at outstanding cases where people, such as
7 murder, homicide, manslaughter cases, the serious cases
8 where people had been in the local jails for a
9 significant period of time. Myself and Deputy Solicitor
10 Suzanne Mayes focused on Lexington County, Al Eargle
11 reviewed the cases out in the tri-county, he was a deputy
12 solicitor I believe at that time as well.

13 Q. So when you say tri-county, what do you mean?

14 A. Saluda, McCormick, and Edgefield counties. And
15 then when Deputy Solicitor Eargle was reviewing those
16 counties, one of the cases that he found, I know that
17 Solicitor Hubbard was asking to be actively involved, and
18 so Deputy Solicitor Eargle gave him the file on Jody
19 Jones, and then Solicitor Hubbard asked me to assist him
20 working on that case.

21 So, I actually took the case and I had an
22 investigator assigned in our office, which was Matt
23 Martin. And Matt and I reviewed the file and then we
24 began to talk to witnesses.

25 Q. Do you recall which witnesses you talked to?

1 A. No, not by name. We would've talked with all
2 the law enforcement involved. We would've talked with
3 SLED, which I know Susan Cromer was the firearms examiner
4 on the case. We would've talked with Dr. Ross, the
5 pathologist who was on the case.

6 Q. Did you talk to any of like the lay witnesses
7 or anything?

8 A. We did. There were not very many lay witnesses
9 local anymore. At the time of the death of the victim,
10 they were wintering in Edgefield County from travelling
11 on the fair and circus events and tours around the east
12 coast, up and down the east coast. So we ended up
13 tracking down, I believe, at least two or three
14 witnesses. Matt and I went to Alabama and met some of the
15 witnesses who were there at a local fair.

16 Q. And when you were meeting with them, were they
17 -- were you meeting them in like a law enforcement center
18 or in person, where they were, or --

19 A. We went to their work. We were at a fair
20 grounds.

21 Q. Did y'all have any weapons on you or anything
22 at the time you were interviewing them?

23 A. I didn't carry any weapons. I would imagine
24 that Investigator Martin had a weapon on his hip.

25 Q. Was there any pressure on them to talk to you

1 or force them to talk to you?

2 A. No. I mean, they'd talk to us. We were in
3 another state. We didn't have subpoenas. They were
4 talking to us of their own free will.

5 Q. As a Lexington County deputy, would you have
6 any authority in Alabama?

7 A. No. As a Deputy Solicitor I have no authority
8 in Alabama.

9 Q. Do you have any arrest power as a Deputy
10 Solicitor?

11 A. No.

12 Q. Do you recall what they said to you at all?

13 A. I don't. I don't remember. I know that
14 between reviewing the file and Mr. Jones made four, I
15 believe, different statements, or he was interviewed four
16 times shortly after the incident, and in taking that and
17 with what everybody said, his stories didn't make sense.

18 And so that was kind of the finding that we came
19 back and, you know, after -- it looked to me as -- I
20 mean, reviewing the case, it was a murder case. You
21 know, depending on whether Mr. Jones changed his story,
22 it could've been a manslaughter. There was some -- some
23 of the witnesses talked about rough relations between
24 them and there was arguments going on.

25 She was looking at leaving him is what we had

1 discovered during our investigation. So, it was a much
2 more -- it was a very triable case. It became a stronger
3 case, which most cases do, they either fall apart or they
4 get stronger as you work on them, and this one became
5 much stronger as we started working on it.

6 Q. Did the witnesses you talked to out of state
7 indicate they would be willing to come back to testify?

8 A. I'm sorry?

9 Q. When you were speaking to the witnesses out of
10 state, did they indicate that they would be willing to
11 come back and testify?

12 A. I don't remember anybody saying that they
13 wouldn't.

14 Q. And the results of your conversations with
15 them, you said that you learned that there had been a
16 fight between Mr. Jones and his significant other?

17 A. There had been an argument I believe that
18 night, yes, and that people had overhead loud voices.

19 Q. I have no further questions.

20 CROSS-EXAMINATION

21 BY MR. SMITH:

22 Q. Mr. Graham, when you began working on the case,
23 was Ervin Maye still working on the case with the
24 Solicitor's office?

25 A. He was -- I don't know when Ervin left the

1 office. He was still working for the Solicitor at that
2 time, but he was no longer working on the case.

3 Q. Okay. In reviewing the case, did you get a
4 sense of how much work Mr. Maye had put into the case
5 before you took over?

6 A. I don't believe that I ever talked directly to
7 Ervin about what he did. Reviewing the file itself,
8 there was not an indication that really much had been
9 done. I don't remember very many notes or any new
10 information that law enforcement hadn't had from the time
11 of the arrest.

12 Q. Okay. Did you get the sense that the witnesses
13 you were speaking to, were they being interviewed for the
14 second time or was it the first interview?

15 A. I would say that -- I don't know that we found
16 anybody necessarily new. I don't think that -- you know,
17 this happens a lot of time law enforcement is reacting
18 and so they're not -- you know, it may be as simple as
19 they hand a statement form and say write down what
20 happened, but then people weren't following up.

21 So, there hadn't been -- there wasn't a lot of --
22 their statements that they gave were short, and talking
23 to them -- you know, witnesses usually after the fact
24 it's not uncommon to get more information. And that's
25 what happened in this case, you know, as time separates

1 from the crime and their fear or concern of anything
2 happening to them from, you know, a defendant or anybody
3 else that's being accused goes away, and so usually
4 you're more willing to share information.

5 Q. Okay. Had you worked on many prosecutions of
6 violent crimes during your career?

7 A. Yeah, several hundred.

8 Q. Is that a common practice to go back and speak
9 to witnesses as trial dates near?

10 A. Oh, yeah, I wouldn't have tried a case without
11 talking to witnesses beforehand.

12 Q. Okay. Did you have any part in the plea
13 negotiations in the case?

14 A. If I remember, you know, what would happen is
15 Matt and I would've done our investigation. We would've
16 met with Rick. We would've talked about the case. We
17 would've made -- he and I would've discussed an offer.
18 He -- it was ultimately his case. I mean, as all cases
19 in the Solicitor's are, the elected official, it's their
20 case. He was in charge of this case. He's the one that
21 actually made the offer -- the offer, but we would've
22 talked about it beforehand.

23 Q. Okay.

24 A. I would've been part of that conversation with
25 him.

1 Q. Did the additional discovery and additional
2 investigation that you did, did it change your estimation
3 of the strength of the case?

4 A. Oh, much so. It was -- it became a very
5 winnable case, there's no question. When we first became
6 involved I learned, I guess, and I honestly don't
7 remember whether it was an email or whether it was
8 talking to the defense counsel on the case or whatever,
9 that there had been an offer of assault and battery of a
10 high and aggravated nature, and I believe it was a cap of
11 15 years. Or I don't think it was negotiated, I think it
12 was a cap of 15 years and Mr. Jones had let that offer
13 expire, so he had never taken up on it.

14 And then so that's -- that was the posture that we
15 took the case over and started investigating it. His
16 statements didn't -- you know, when we started looking,
17 his statements didn't align with the physical facts. He
18 claimed that it was an accident. She was shot in the
19 left head and I believe left temple, and there was soot
20 wounds. And the case just, you know, it got better. We
21 talked to witnesses. We had several lay witnesses who
22 were going to come forward and talk about their
23 relationship. As we were preparing for trial Solicitor
24 Hubbard and I went out to Edgefield, and several of those
25 witnesses came in and we spoke to them at the courthouse

1 and I was there present for that. And it was a very
2 winnable case.

3 Q. When you went out to speak with these
4 witnesses, did you and Investigator Martin speak to them
5 together?

6 A. Yes, I don't think I would've talked to any --
7 I mean, I normally don't talk to anybody without law
8 enforcement or one of the investigators in our office
9 present, and I don't remember doing that in this case.

10 Q. Do you know if he went to speak to these lay
11 witnesses out of state without you?

12 A. No, I don't believe Matt would've talked to
13 them without me, other than talking to them on the phone
14 to coordinate meetings.

15 Q. Okay. Did you see Investigator Martin do
16 anything that seemed like it was coercive --

17 A. No, not at all --

18 Q. -- when you were speaking to these witnesses?

19 A. I worked -- I was a prosecutor for 25 years. I
20 was 23 years in Lexington, and I worked with Solicitor
21 Hubbard all that time, and I worked with Investigator
22 Martin for probably 18 years or so at that time, and
23 neither one of them I seen would I say anything they did
24 was coercive or threatening.

25 Q. Okay. How about your interactions with the

1 people? Did you do anything that was coercive to them?

2 A. No.

3 Q. Okay. Were they willing to speak to you?

4 A. They were.

5 Q. Was it casual, tense?

6 A. I mean, you know, everything is different.

7 Sometimes -- you know, nobody was threatened by any
8 means. There's people who have information they don't
9 necessarily want to tell, and you have to gain their
10 trust and, you know, go through the process and explain
11 it to them. But nobody was threatened or coerced to talk
12 to us.

13 Q. And speaking to someone to gain their trust, is
14 that a normal thing you've had to do as a prosecutor?

15 A. Sure. I mean, they don't know who you are and
16 you've got to explain to them what your job is and who
17 you are and that they can trust you.

18 Q. Okay. How was it that Mr. Jones ended up
19 pleading guilty in front of Judge Griffith?

20 A. I don't remember. I know that there was some
21 discussion of him being transported to Lexington, and
22 then ultimately we decided to do it out in, I believe,
23 Edgefield. No, maybe Saluda. It was out in the tri-
24 counties. I remember traveling out there. I honestly
25 don't know how we ended up there.

1 Q. Okay. When you were interviewing these
2 witnesses, did Solicitor Hubbard go with you?

3 A. I remember him being one time at the Edgefield
4 courthouse up in the -- where they held Family Court
5 where we met with witnesses, and he would've been there
6 with us. I -- as far as I know Solicitor Hubbard never
7 talked with anybody without myself and Investigator
8 Martin present.

9 Q. Did you observe anything coercive in his
10 interactions with the witnesses?

11 A. No.

12 Q. Okay. Did you have any discussions with
13 Solicitor Hubbard about Mr. Jones pleading in front of
14 Judge Griffith that indicated that he was judge shopping?

15 A. No. I don't -- no.

16 Q. Okay.

17 A. And I know that we would've had conversations
18 with -- I mean, it wouldn't -- it wouldn't have happened
19 if Bennett Casto, his counsel, wasn't okay with it.

20 Q. Okay.

21 A. Obviously, he agreed to sign off on whatever we
22 were doing. But, no, I don't -- I'm assuming that Judge
23 Griffith was the Chief Administrative Judge for the
24 circuit at the time, but I don't -- I'm not 100 percent
25 sure of that.

1 Q. Did you have any policy in the office about
2 defendants pleading guilty in front of the trial judge?

3 A. Normally -- yeah, normally if the trial had
4 already been scheduled and it was on the docket, they
5 would plead in front of the -- who was going to be the
6 trial judge.

7 Q. Okay. And what was the purpose of that policy?

8 A. To basically hold the defendant's feet to the
9 fire. I mean, that's what was going to happen. Any
10 pretrial's would've been held in front of that person.
11 They were noticed, offers, you know, expired and for the
12 -- just the administration of justice and the office and
13 how it would run.

14 You know, if -- if we scheduled trials in front of a
15 certain judge and those are everybody's expectations and
16 then a judge who may be an easier sentencer was somehow,
17 you know, brought into the equation then it's an unknown
18 factor and it would cause court to fall apart. If you --
19 you know, the idea would be to stick -- once it's on the
20 trial docket, you would stick with that trial judge, that
21 way both the Defense and the State know in their head
22 what's going on.

23 Q. Okay. Do you know of any ex parte
24 communications that Solicitor Hubbard had with Judge
25 Griffith about Mr. Jones' case?

1 A. No.

2 Q. Okay.

3 A. I do not.

4 Q. Did you have any ex parte communications with
5 Judge Griffith about the case?

6 A. No.

7 MR. SMITH: Okay. No more questions. Thank you.

8 JUDGE CURTIS: Any re-direct?

9 MS. MCMAHAN: No redirect, Your Honor.

10 JUDGE CURTIS: Thank you, sir, you can step down.

11 MR. GRAHAM: Thank you, Judge.

12 MR. SMITH: Your Honor, may Mr. Graham be excused?

13 MS. MCMAHAN: No objection.

14 JUDGE CURTIS: Sure.

15 MS. MCMAHAN: Your Honor, the applicant calls Rob
16 Madsen.

17 ROBERT MADSEN

18 Being duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. MCMAHAN:

21 Q. Could you please state your name for the
22 record?

23 A. Robert Madsen.

24 Q. And at the time of Mr. Jones' guilty plea, what
25 was your role here in the 11th Circuit?

1 A. I was the Circuit Public Defender for the 11th
2 Circuit.

3 Q. And have you since left that position?

4 A. I have. I have retired.

5 Q. Are you enjoying that?

6 A. I am, every day.

7 Q. And how is it that you got involved with Mr.
8 Jones and his PCR and all that?

9 A. So, as a Circuit Public Defender I would've
10 been aware of just about every murder in the office or
11 any kind of high profile case. And so, I had initially
12 knew about Mr. Jones' case because our tri-county public
13 defender Bennett Casto was handling it and had talked
14 with me about the facts, the issues, and the case. That
15 was just kind of normal.

16 As far as getting involved in the PCR, I received a
17 call from Ervin Maye who was a former Solicitor for the
18 tri-counties in either late December of 2019 or early
19 January of 2019, making some allegations of misconduct on
20 behalf of the Solicitor's office, who was his former
21 employer at that point in time.

22 And so that's -- once I got that information, I
23 scheduled an appointment to go visit Mr. Jones at SCDC as
24 soon as was available.

25 Q. And were some of those allegations involved in

1 threatening or intimidating witnesses?

2 A. They were.

3 Q. And possible ex parte communication with Judge
4 Griffith?

5 A. They were.

6 Q. And so you went to talk -- well, let me back up
7 a little bit, Ervin Maye is no longer with us, is he?

8 A. Correct, he committed suicide.

9 Q. And so he's been deceased for quite some time -
10 - well, not quite -- a few years, a couple years.

11 A. Yes, ma'am.

12 Q. And so you said that you went to Mr. Jones at
13 SCDC, tell me about that.

14 A. Well, so obviously if there's anything -- or a
15 situation as the head of the office when a former
16 solicitor makes allegations like that, I felt like Mr.
17 Jones needed to be aware of those allegations just in
18 case he wanted to file a PCR.

19 So, I -- like I said, I had my office schedule an
20 appointment. I went to go see Mr. Jones. I think he was
21 local, maybe at Kirkland, but I'm not 100 percent sure.
22 But I went out there. I told him what Ervin Maye had
23 told me. I did not get a lot of specifics from Mr. Maye,
24 just because I figured that the PCR attorney, that that
25 would be their job to investigate those allegations.

1 But I told him what I had -- what Mr. Maye had told
2 me. I then explained to him about the PCR process and
3 what would happen even if he was -- or successful, which
4 was similar to what the judge told him today that he
5 would go back to square one, it's not like that this just
6 all goes away. And so he obviously had to make that
7 decision for himself.

8 I don't remember if at that point in time I had done
9 a PCR for -- or his PCR application for him, or if I
10 mailed that to him afterwards, but I did do that just
11 because I've done this long enough that I didn't want him
12 to, you know, unintentionally misquote me or something
13 that I had said.

14 And like I said I didn't have any specifics about
15 the allegations, but I did the PCR application for him.
16 I explained everything to him. At the end of that he --
17 Mr. Jones told me he was going to talk to some other
18 friends or family or people in SCDC and that he would let
19 me know. I then got back to the office and I sent him a
20 follow-up letter just confirming, and also letting him
21 know now that I had informed him about this information,
22 that a one year clock would be running as far as
23 potentially after discovered evidence.

24 Q. So, you informed him of the one year statute of
25 limitations from the (inaudible)?

1 A. I did. Like I said, I followed up with a
2 letter to him.

3 Q. And so you said that you actually filled out
4 the PCR application for him?

5 A. I did. I can't remember if I took it with me,
6 or like I said, did it afterwards and mailed it to him.
7 But I just didn't want to be, you know, misquoted or have
8 him get something wrong as far as what -- what I had told
9 him. And so I had done it for him, so that he wouldn't
10 make a mistake on it.

11 Q. Before you went to see Mr. Jones did you have a
12 chance to talk to Al Eargle or Mr. Graham?

13 A. I did not.

14 Q. Were you ever able to follow up with Mr. Maye
15 about some of these allegations?

16 A. I did not. Like I said, I thought that my job
17 at that point in time, since our representation had
18 ended, would be to inform him about that there are
19 allegations, and then I figured that whoever was assigned
20 his attorney would follow-up with those specifics.

21 Q. I have nothing further, Your Honor.

22 JUDGE CURTIS: Mr. Smith?

23 CROSS-EXAMINATION

24 BY MR. SMITH:

25 Q. Mr. Madsen, the allegations in the application,

1 are those the things that Ervin Maye told you?

2 A. Yeah, so he had mentioned a few things. He had
3 said that the Solicitor Hubbard and -- had ex parte'd the
4 judge. He had indicated that the Solicitor's office had
5 forced witnesses to change their statements and some
6 other unethical conduct. I remember him saying something
7 about that I think Jimmy Smith was the investigator who
8 was also deceased, had mentioned to Ervin that he felt
9 very uncomfortable about what the Solicitor's office was
10 doing.

11 But like I said, I didn't ask for any specifics
12 'cause I figured that someone down the road, that would
13 be their job to investigate that.

14 Q. Okay. And did you talk to investigator Smith
15 or did you rely on what Mr. Maye told you?

16 A. I just relied on what Mr. Maye told me. In
17 fact, I'm not 100 percent sure that Jimmy wasn't --
18 hadn't died by then.

19 Q. Okay.

20 A. I'm -- like I said, he died right around that
21 time.

22 Q. Okay. Did Mr. Maye mention any specific names
23 other than Solicitor Hubbard's --

24 A. He had --

25 Q. -- those he was accusing of misconduct?

1 A. No, he -- well, he basically said that
2 Solicitor Hubbard had -- had ex parte'd with Judge
3 Griffith about -- and that -- it said that he was kind of
4 bragging that he was going to have Mr. Casto bring Mr.
5 Jones to Lexington to plead in front of Judge Griffith,
6 as compared to being in front of, I think it was Brooks
7 Goldsmith, who Mr. Maye said was one of the easiest
8 sentencing judges in the state, and that he was going to
9 get him to come up to Lexington.

10 Other than that, the witness intimidation, which he
11 didn't say any particular witnesses or any coercion, he
12 didn't -- he didn't give me any names and I didn't ask.

13 Q. Okay. All right. No more questions, thank
14 you.

15 MS. MCMAHAN: I have no further questions, Your
16 Honor.

17 JUDGE CURTIS: You can step down.

18 MR. MADSEN: May I be excused?

19 JUDGE CURTIS: Any objections?

20 MR. SMITH: No objection.

21 MS. MCMAHAN: No objection.

22 JUDGE CURTIS: Yes, sir.

23 MS. MCMAHAN: Your Honor, the Applicant calls
24 Bennett Casto.

25 BENNETT CASTO

1 Being duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. MCMAHAN:

4 Q. Would you please state your name for the
5 record?

6 A. Sure, it's Bennett Casto.

7 Q. And back in the time of Mr. Jones' guilty plea,
8 what was your role here in the 11th Circuit?

9 A. So, I was what we call the tri-county Public
10 Defender. And again, it's been stated that what we would
11 refer to the tri-county as the Saluda, Edgefield, and
12 McCormick counties. And so, I was the head person with
13 the 11th Circuit in those parts.

14 Q. Did you represent Mr. Jones?

15 A. Yes, ma'am.

16 Q. And what was the initial offer that you got on
17 this case, do you remember?

18 A. Fifteen years.

19 Q. Obviously, it wasn't for murder, was it for a
20 different charge?

21 A. It was not. And if memory serves it would have
22 been, I believe, assault and battery of a high and
23 aggravated nature, if memory serves.

24 Q. And at that time did Mr. Jones indicate to you
25 one way or another whether or not he wanted to accept a

1 guilty plea?

2 A. He did.

3 Q. What was -- he did want to take it?

4 A. He indicated to me about what he wanted to do,
5 and he did not want to take the guilty plea, that's
6 correct.

7 Q. Did he tell you a reason for that?

8 A. I don't specifically remember. I -- I think
9 that he thought with an offer like that maybe there are -
10 - we could press, we could get something better, maybe
11 there were some weaknesses in the State's case.

12 Q. And as far as a murder offer goes, was that a
13 really good offer for a murder?

14 A. Yes.

15 Q. And did you have any conversations with Mr.
16 Maye about this case while it was pending?

17 A. I did.

18 Q. And what did you learn from those conversations
19 with him?

20 A. From what I recall -- so it's -- it was Mr.
21 Maye that offered that plea offer, and I don't really
22 remember the specifics as to why that offer was extended.

23 And I don't know if he shared that information with me.

24 Q. Had you had a chance to try to contact any of
25 the witnesses that had been involved in that case?

1 A. I can't recall if I did reach out to -- I
2 believe that we did attempt to contact some of the
3 witnesses in the case. The problem being is that, as it
4 was testified to earlier, these were folks that worked
5 with the carnival so we -- we all had some considerable
6 restraints on us in the case. These were folks that
7 would essentially roost, if you will, in Edgefield County
8 while the carnival wasn't going on.

9 But when the carnival was going on, these folks
10 could be all over country in -- at any given time of
11 year. So, that was a considerable limitation I believe
12 for everyone involved in the case.

13 Q. So what kind of months are we talking about
14 when the carnival is done that they're maybe not in
15 Edgefield?

16 A. I want to say that it was in the -- in the
17 wintertime.

18 Q. And so would it be for a couple months -- I
19 mean, your understanding of it?

20 A. That's my understanding, yes.

21 Q. I understand you're not involved in the
22 carnival, so you probably don't have personal knowledge
23 of that. Did you have any indication from Ervin whether
24 or not he thought it was a strong case or not?

25 A. I think that from him to get an offer like

1 that, I think on its face it kind of says that there were
2 some issues in the case. I knew that he had the same
3 constraints on him that these were going to be witnesses
4 that were going to be very difficult to track down and
5 find. And there was a very, very small window with which
6 they would come back to Edgefield County that he or local
7 law enforcement would have access to them.

8 Q. Were you involved in any conversations with Mr.
9 Maye about any possible unethical issues with Mr. Hubbard
10 and them?

11 A. No. So, all of that was something I didn't
12 know anything about and it -- the first I had heard about
13 it the plea had been entered, it was done.

14 Q. And was there an issue with which judge you
15 were going to have the plea in front of?

16 A. I honestly don't recall, and when Mr. Graham
17 was up on the stand I couldn't remember whether Judge
18 Griffith was going to be our trial judge and he heard
19 this plea the week before. But, if memory serves, Judge
20 Griffith was our Chief Admin Judge for General Sessions
21 in those days, I believe. I'm not 100 percent, but I
22 think that is correct.

23 Q. Has Judge Griffith been the Chief Admin here
24 before in other years?

25 A. Yes.

1 Q. Is it common to do guilty plea like that in
2 front of a Chief Administrative Judge?

3 A. It is.

4 Q. I have nothing further.

5 JUDGE CURTIS: Mr. Smith?

6 CROSS-EXAMINATION

7 BY MR. SMITH:

8 Q. Mr. Casto, on how many occasions did you
9 discuss this case with Ervin Maye, before Mr. Jones pled
10 guilty?

11 A. I would say, that I'm just gonna ballpark it,
12 five to 10, somewhere around there.

13 Q. Did you get any sense from those conversations
14 about the extent of the investigation that Mr. Maye had
15 done?

16 A. No, I did not. His practice was, he was very,
17 very deferential to law enforcement, and I did not have a
18 real good feel for what, if anything, he had done.

19 Q. At what point did Shawn Graham and Solicitor
20 Hubbard get involved in this case?

21 A. Well, I'm looking at my ledger and my file, I
22 think that their involvement must have been sometime in
23 2016, if memory serves, probably later 2016, I think.

24 Q. Did you have further communications with Mr.
25 Maye about this case, once it was reassigned in the

1 Solicitor's office?

2 A. No.

3 Q. Okay. Did you have any knowledge about
4 additional investigation that others in the Solicitor's
5 office did after the case was reassigned?

6 A. Yes. So, ultimately as a result of those
7 witnesses being tracked down, located, interviewed, that
8 information was then forwarded to me as part of
9 discovery.

10 Q. Okay. Did you personally observe anything that
11 you considered witness tampering --

12 A. No, sir.

13 Q. -- on the part of the Solicitor's office?

14 A. No, sir.

15 Q. How did the plea negotiations evolve after the
16 case was reassigned?

17 A. The offer was extended for 15 years; it was not
18 accepted by Mr. Jones. At some point, and forgive me, I
19 don't recall --

20 Q. The offer was from Mr. Maye, right; the 15 year
21 offer?

22 A. Yes, that is correct. And then ultimately Mr.
23 Hubbard is elected. I can't specifically remember when
24 Mr. Hubbard and Mr. Graham had basically taken over the
25 case. But ultimately they knew that an offer had been

1 extended, it was rejected.

2 They started working the case up, and then for quite
3 a while, while I believe they were investigating the
4 case, that they did not extend an offer initially, and
5 that was brought about later. And I can't remember if
6 they initiated, hey, if Mr. Jones would plea, the offer
7 now is this, or whether I went to them and said hey, what
8 can you do if he was considering a plea. Look, the
9 initial offer was 15 years, would you consider offering
10 something short of murder on this thing.

11 What I can tell you is, regardless of how it
12 developed, the plea offer that was eventually extended
13 was a negotiated range of 15 to 25 years.

14 Q. Okay. Did you have any communications with
15 Solicitor Hubbard about that final plea offer in Mr.
16 Jones' presence? Or were there any group discussions
17 about that?

18 A. There -- yes and no. What I mean is this,
19 there was a time that Mr. Hubbard had -- and Mr. Graham
20 sat down with myself and my client to talk about the
21 case, what they had found, and just so that Mr. Jones
22 could just listen to what they believed the evidence was.

23 And based on that meeting, I believe that after that
24 -- it wasn't talked about at that meeting, I don't
25 believe, but after that as a result of that I believe a

1 plea offer was extended, and that would've been the 15 to
2 -- negotiated 15 to 25 years.

3 Q. Okay. And did you see anything in this case
4 that indicated to you that the Solicitor's office was
5 judge shopping?

6 A. No, sir.

7 Q. Okay. Are you aware of any -- do you have any
8 personal knowledge about ex parte communications on the
9 part of Solicitor Hubbard with Judge Griffith about the
10 case?

11 A. I have no first-hand knowledge of any of that
12 stuff. Have I heard about it? Yes. But, once I became
13 aware of that, like I say, that was something the plea
14 had already been entered, you know, I -- when -- before
15 the plea, no, nothing at all.

16 Q. Okay. When you say you'd heard about it, who
17 did you hear about it from? Was it in the context of
18 this ongoing post-conviction relief case?

19 A. It -- it was not if memory serves. So, what I
20 mean is this, ultimately Mr. Maye was terminated by Mr.
21 Hubbard. After that, if memory serves, Mr. Maye
22 initiated a lawsuit against Mr. Hubbard -- well -- yes,
23 had initiated a lawsuit for wrongful termination and
24 other things. That could've -- once we heard about that,
25 that could've been a source. It's my understanding that

1 Mr. Maye had filed a grievance motion against Mr.
2 Hubbard. Again, all of that was subsequent to the plea,
3 all of which was, you know, done without me having any
4 first-hand knowledge of those things.

5 Q. Okay. No more questions, thank you.

6 RE-DIRECT EXAMINATION

7 BY MS. MCMAHAN:

8 Q. If it had been first-hand knowledge then you've
9 been there when it happened, right?

10 A. That's correct.

11 Q. So, if it was ex parte you couldn't have been
12 there, there would be no first-hand knowledge; is that
13 right?

14 A. That's correct.

15 Q. I have nothing further.

16 JUDGE CURTIS: Thank you, sir, you may step down.

17 MR. CASTO: Thank you, yes, ma'am.

18 MR. SMITH: And, Your Honor, may Mr. Casto be
19 excused?

20 MS. MCMAHAN: No objection.

21 JUDGE CURTIS: Yes.

22 MS. MCMAHAN: The Applicant rests, Your Honor.

23 JUDGE CURTIS: Okay. Mr. Smith?

24 MR. SMITH: Yes, Your Honor. I call Mr. Al Eargle.

25 AL EARGLE

1 Being duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. SMITH:

4 Q. Mr. Eargle, can you tell me about your
5 involvement in Mr. Jones' criminal case?

6 A. Yes, sir. After Solicitor Hubbard was elected
7 Solicitor and took office in 2017, I was assigned -- I
8 was assigned prior to that to the tri-counties,
9 Edgefield, Saluda, McCormick. He had requested that I
10 look at older cases that were pending, and specifically
11 those that involved individuals that were incarcerated
12 waiting in jail on pending cases.

13 As a result of that, I pulled the Jody Jones case
14 file, being that it was in Edgefield County it was, I
15 believe, the oldest pending case in Edgefield where the
16 individual was sitting in jail.

17 Q. Okay. Who at the Solicitor's office had been
18 working on that case before that point?

19 A. Ervin Jermon Maye was the assigned prosecutor
20 on the case. Initially after Mr. Jones was charged in
21 his initial bond hearing, I conducted that for the
22 Solicitor's office.

23 Q. Okay.

24 A. Mr. Maye was the assigned solicitor.

25 Q. Okay. So you're the person who identified the

1 case and presented it to Solicitor Hubbard?

2 A. That's correct.

3 Q. Did you have any further involvement in the
4 case after that point?

5 A. No, sir.

6 Q. Okay. No more questions, thank you.

7 CROSS-EXAMINATION

8 BY MS. MCMAHAN:

9 Q. Did you ever talk to Mr. Madsen or Mr. Casto
10 about anything that happened after the fact on this case?

11 A. No, ma'am.

12 Q. Who was the solicitor of the tri-counties
13 before you?

14 A. The solicitor over the tri-counties?

15 Q. Who was Deputy Solicitor that was kind of
16 handling most of the tri-counties?

17 A. Ervin Jerome Maye.

18 Q. I have no further questions, Your Honor.

19 JUDGE CURTIS: I apologize, can you tell me your
20 name again?

21 MR. EARGLE: Yes, Al Eargle, E-A-R-G-L-E.

22 JUDGE CURTIS: Great, thank you so much.

23 MR. EARGLE: Yes, Your Honor. Thank you.

24 MR. SMITH: And, Your Honor, may Mr. Eargle be
25 excused?

1 MS. MCMAHAN: No objection.

2 JUDGE CURTIS: Yes.

3 MR. SMITH: And my next witness would be Solicitor
4 Rick Hubbard.

5 RICK HUBBARD

6 Being duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. SMITH:

9 Q. Solicitor Hubbard, when were you elected to
10 your current office?

11 A. The election was in 2016; I took office January
12 11th, 2017.

13 Q. Okay. And what were some of your first actions
14 as elected solicitor in regards to the tri-county area?

15 A. The first thing I did -- my biggest concern
16 coming into office were old cases, because out of the
17 tri-county there was a couple of cases called the
18 Hunsberger cases, Ervin Maye cases, that were sat for 12
19 years before they were tried, the Supreme Court reversed
20 and vacated those murder sentences.

21 So, every solicitor in the state at that point was
22 on notice, if you have a case two and a half, three years
23 old, it doesn't matter if there's a speedy trial motion,
24 we're going to treat it as that. So I put a priority
25 when I came in I wanted to know all of our old cases. I

1 wanted a triage.

2 So, I had Shawn Graham and Suzanne Mayes, my deputy
3 solicitor's here working on it. Al Eargle, who was not
4 yet a deputy solicitor, did the same thing in the tri-
5 county for Edgefield, McCormick, and Saluda. And I also
6 asked him, whatever you find, put me in the mix, give me
7 a case, I don't care what it is, just make sure it's one
8 of those old ones.

9 Q. And how did you first hear about the Jody Jones
10 case?

11 A. Al Eargle actually brought the file to me.
12 It's the first time I heard anything about Jody Jones,
13 didn't know anything about it until that file hit my
14 desk.

15 Q. Okay. And did you have any observations about
16 the extent of Mr. Mayes work on the case when you
17 reviewed it?

18 A. I did. When I went through that file there was
19 not a single note or anything indicating anybody had done
20 anything. There were notches on the front of the file
21 indicating a bond hearing had been held. I saw that was
22 Al Eargle's writing. And an indictment for murder and
23 these other charges were drawn up by Ervin Maye, but
24 nothing indicating that anybody had touched that file.

25 Q. And did you have conversations with Mr. Maye

1 about the situation?

2 A. I did not. And I will tell you why.

3 Q. All right.

4 A. The second day in office after my swearing in,
5 I had a office meeting. Prior to that meeting, I pulled
6 Ervin Maye aside with Al Eargle and my chief deputy at
7 the time, Chris Somalis (sic), and informed him he was
8 not going to be a deputy solicitor. He was not going to
9 be in charge of the tri-county. Things have been done
10 so, in my opinion, improperly out there. I was going to
11 retain him, but he had to play by my rules. And he was
12 not at all happy with that.

13 So Ervin and I really didn't talk after my first day
14 in this office. Al Eargle had gone to law school with
15 Ervin, and so I left it to Al to kind of work with Ervin
16 to make sure he got on board, but if he didn't I was
17 going to show him the door.

18 Q. Okay.

19 A. And just so you know how this ties into this
20 case, one week prior to the plea of this case, the plea
21 was April 10th, April 3rd I actually brought Ervin Maye
22 into my office with Al Eargle for the purpose of firing
23 him. He had done no work. He was undermining me, going
24 to law enforcement, telling them don't trust Rick because
25 I had demoted him. And he relent -- I relented when he

1 said Rick I don't have anywhere to go. I said, well
2 listen you got to play by rules. I reinstated him.

3 I ultimately fired him July 31st of 2017. I had
4 known the man for 20 plus years. We had started about
5 the same time. But I wasn't going to play favorites, you
6 have to work, and he wasn't working. In fact, he was
7 undermining me.

8 And this PCR, which was filed January 24th of 2020,
9 came along with a grievance filed January 3rd of 2020,
10 and a lawsuit December 31st of 2019, all in tandem, by
11 Ervin Maye when I was up for reelection.

12 Q. So, it's safe to say he did not take his
13 termination well?

14 A. He did not. I knew he was trying to recruit
15 somebody to run against me. And also, you know, this
16 whole notion that I had done something so horrible, he
17 let a man sit in jail for two years and done nothing but
18 offer an ABHAN of 15 years.

19 Then, if he truly believed Mr. Jones was innocent,
20 he let him sit in prison for two and a half years before
21 he filed this -- or reached out to assist in filing a
22 PCR. To me it just underscored how trite this was. And
23 by the way, the grievance and lawsuit was also filed on
24 Al Eargle, because they had gone to law school together
25 and Al ended up running the tri-county.

1 Q. Okay.

2 A. He claimed Al had done stuff on this case. Al
3 never touched this case.

4 Q. Did Mr. Maye have any involvement in the case
5 after you took over the case from Mr. Eargle?

6 A. Absolutely not. I didn't speak to him at all
7 about this case. I gave him his distance to see if he'd
8 get on board. But this was my case at this point. Ervin
9 had his assigned cases, Al had his. This was mine.

10 Q. Okay.

11 A. And I brought Sean and Matt Martin in. We had
12 tried countless murders and capital cases, and basically
13 what we introduced out there was a team approach to
14 trying cases. No one person now is in charge. We do a
15 team, and that involves an investigator, a paralegal,
16 which is Paul Taylor out in the tri-county, and we didn't
17 even have a VA at the time; no victim's advocate. I had
18 to hire one after this.

19 Q. Okay. So, once you take over the case what
20 sort of investigation did you do?

21 A. Initially what we did we met with Jimmy Smith
22 and his supervisor Randy Durand, they had been in
23 Edgefield for quite a while, I knew these guys. I
24 actually went out with Sean, Matt, and these officers to
25 this campground, and there were still some folks there at

1 the time, this was winter time, it's probably January,
2 and this was a -- they worked a carnival so they
3 travelled, but in the winter months they would lodge
4 there.

5 There was one mobile home, which is where this
6 incident occurred, where Mr. Jones, I think, was residing
7 with Patricia Love, the victim. And there were other
8 what I'd call almost like U-haul trailers, but converted
9 to live in. And so we talked to witnesses we could find
10 there, those that Jimmy Smith had talked to, anybody that
11 would talk to us.

12 And then I know Sean and Matt once the carnival got
13 on the road, they followed that carnival to talk to other
14 witnesses, to just talk to lay people, and that way we
15 kind of knew where that carnival would be going, so that
16 if it did go to trial we knew their whereabouts, we knew
17 how to lay hold of them.

18 Q. Okay. So let's focus in on those lay
19 witnesses. Tell me about your conversations with those
20 people. What were the circumstances and --

21 A. Basically initially it was introductions, why
22 we were there. A lot of them obviously were hesitant to
23 talk initially just because, you know, Matt Martin's
24 wearing a badge and there's police officers out there.
25 But once we told them what we were up to, that we're out

1 there about Patricia Love, people talked. And basically
2 were saying the same things they had said in their
3 reports and their statements to law enforcement and let
4 us know that Patricia and Jody Jones had a relationship.

5 I think -- I truly believe they both loved one
6 another, but it was a volatile relationship. There was
7 drinking involved in that relationship. I know Jody
8 Jones admitted as much, eventually, he had a drinking
9 problem, and that one moment they would be hugging and
10 love one another, and the next moment fighting. So,
11 that's -- that seed was laid as we were investigating
12 this.

13 Obviously we also -- what happened and nobody's
14 really mentioned the facts, this happened two years
15 before I was sworn in, January 11th of 2015. And we
16 wanted to flesh that out, who was in that mobile home.
17 Jody Jones had basically -- he's in the mobile home with
18 Patricia Love, sitting on a loveseat. The people who
19 were down the hall sleeping in the mobile home said they
20 heard a pop, and some 10 minutes later a knocking on a
21 door and it's Mr. Jones.

22 So, we wanted to talk to those people, did you hear
23 any screaming, fighting? None. We wanted to know, was
24 the furniture knocked over? None. You hear a pop and 10
25 minutes later who's knocking at your door, it's Mr.

1 Jones. What, if anything, did he say? And his words
2 were, I shot the, and he used the B word. They called
3 911. Law enforcement gets there. Jody Jones is the one
4 holding a towel to Patricia's head. They had to
5 literally pull him off of her.

6 So, we knew that, and we were able to corroborate
7 some of that. Other people obviously did not see what
8 happened. Lay people in this case were mostly for the
9 relationship. The critical evidence was the forensics.
10 And that involved Dr. Ross out of Newberry who did the
11 autopsy.

12 Initially what she found was a contact wound to the
13 left temple, which meant that gun was pressed there and
14 it was a downward angle, so she ruled out accident; said
15 it was a homicide. We followed up with her and she -- we
16 said, could it have been a suicide, self-inflicted. She
17 said no, due to the angle, to hold the pistol that way,
18 she said I -- it just would be almost impossible and
19 implausible.

20 The other key witness that we talked to was with
21 SLED and that was Patricia -- no, Susan Comer. She was a
22 firearms expert. Initially what she had done when we got
23 the case, she had just said this gun fired this bullet,
24 because the bullet was retrieved from Patricia's head.

25 We asked her, look, Mr. Jones has made four

1 statements where he's claimed this is an accident, the
2 gun just went off. He was unloading it, dropped the
3 clip, and when he's racking that last round out it goes
4 off, and he was sitting to her right side, and it shoots
5 her in the left temple, contact wound. We wanted to know
6 how would this gun go off? Would it go off?

7 So, she tested the trigger pull. It was an eight
8 pound trigger pull, which is almost like a revolver,
9 that's a heavy pull. She also tried to make it misfire
10 50 times and couldn't. She was prepared to come into
11 court to even demonstrate what she had done and the
12 trigger weight to say this is an operable gun, and she
13 could not make it do what Mr. Jones said it actually did.
14 And that was the one thing that just I think took
15 accident off the table.

16 And once that happened we knew, all right, Mr. Jones
17 is either got to get on the stand and claim maybe we got
18 in an argument and wrestled and I shot her, that's a
19 manslaughter, or it's a murder. And we were looking at
20 it as a murder with a contact wound; basically pressing a
21 gun against someone else's head.

22 We got with Bennett Casto at that point, having done
23 this -- because none of this had been done by Mr. Maye.
24 None of it. He made an offer -- he did not even speak to
25 the victim's family. They're out of Indiana. We reached

1 out to them. I spoke to the mother and she goes, the
2 last person that talked to her was law enforcement the
3 night her daughter was shot. Patricia lived for two
4 days; her family came down here and was with her when she
5 died. They heard nothing from Mr. Maye for two years.
6 Didn't even know who he was. We contacted them. She
7 came down. She's in the transcript; she spoke at length
8 in the plea. She cared about her daughter.

9 Patricia Love was a woman who was cared for. And so
10 going into trial we sat down with Bennett Casto and said
11 listen, this is what we got; you've got our discovery
12 Bennett. My concern with Mr. Jones is that he had been
13 given this offer of 15 years ABHAN, and that the message
14 it sent to him was either we don't care about this case
15 or we don't have a good case, and that wasn't true on
16 either count.

17 And I feel like I owed Mr. Jones the duty and
18 courtesy to let him know what he's looking at, and that
19 he would be looking in the eyes of somebody who cared. I
20 know he cared about Patricia Jones. I truly believe
21 that, but we did too. And I wanted him to see that. I
22 wanted him to read me.

23 And Bennett was agreeable to that and I -- the way I
24 worked it out is I don't want Mr. Jones talking to me. I
25 want him to hear what I'm prepared to do in court with

1 this evidence. I've done this before. I did it with
2 Dick Harpootlian. I've done it with other members of the
3 PD's office, private attorneys, it's something where
4 attorneys see what's going to happen in court and this
5 gives the defendant an opportunity to take a full measure
6 of what's happening, and that's what I did.

7 In meeting with Mr. Jones, there was no screaming,
8 no raising of voices. Just this is what we have. This
9 is what we plan to do. This is how we will -- how I can
10 prove this was not an accident. And this is why we're
11 going to trial.

12 We extended that offer of 15 to 25, and the reason
13 why that offer was made, it took back into effect that
14 original offer of 15 years, and took it up to 25 years
15 just so he still had the benefit of that 15. He could
16 argue for it now. That's why we made that offer. 'Cause
17 I felt -- I probably would not have gone that low but for
18 that original offer, and I think Mr. Jones was really
19 misled by that initial offer about what our office had
20 and about the level of care. So, that's why it was the
21 bottom was 15.

22 As far as judge shopping, our policy had long been,
23 when you have a trial judge, you go in front of that
24 judge. Judge Griffith was our chief judge. I work
25 dockets with him constantly. Never ex parte'd him. We

1 talked schedule. And we were a week out from trial.
2 This plea went on April 10th. The trial was April 17th.
3 Judge Goldsmith was coming into Edgefield. I'd never
4 been in front of Judge Goldsmith. I didn't care who the
5 judge was, I had a range. I could've lived with 15; I
6 could've lived with 25. It didn't matter to me.

7 But I knew I have a chief judge who's expecting this
8 on his trial docket. I reached out to him, said Judge,
9 would you like to hear this plea, and of course if
10 Bennett was willing to go to Lexington that's what we'd
11 do, and he said yes, let's do that. Bennett and Mr.
12 Jones were willing to do that, that's how we got in front
13 of Judge Griffith. There was no shopping. No ex parte
14 communication at all. That's why we handled the case the
15 way we did.

16 Q. Okay. So, just backing up just a second, these
17 conversations with these witnesses, did you do anything
18 to intimidate, coerce, harass the witnesses, lay or
19 expert?

20 A. Absolutely not. And the whole notion that you
21 would even do that particularly when these people are out
22 of state who can disappear like that, our goal is always
23 to earn trust by being truthful and upfront. I did
24 nothing, nothing to intimidate these people. I just
25 wanted to get down to the truth, what happened.

1 In investigating cases like this, there have been
2 times we have seen that we can't prove a case, or that
3 it's self-defense, and we've dismissed it. I've
4 dismissed plenty of homicide cases. Nothing like that
5 occurred though in this case. Mr. Maye was not involved
6 in any of these conversations. He didn't go to Georgia,
7 Alabama; he didn't go to Edgefield or the park where
8 these people stayed. He didn't do anything, didn't talk
9 to these people. Pure fabrication. He was not in the
10 back room when Mr. Casto and I were talking to Mr. Jones.
11 Pure fabrication about what happened.

12 Mr. Maye had a bull's-eye on me, and that was fine.
13 You know, he sued me, he grieved me, all those were
14 dismissed. In fact, ODC wanted me to file on him. He
15 tape recorded me in one conversation and tried to turn it
16 into something else. All that was pending. I know they
17 were looking at him when he committed suicide. And I
18 never wished him ill, but he had no business being a
19 prosecutor in this circuit or anywhere.

20 Q. Did you see or have any indication that anyone
21 in your office or in law enforcement intimidated,
22 coerced, or harassed these witnesses to --

23 A. No.

24 Q. -- make statements?

25 A. I will tell you, Jimmy Smith, who is the lead

1 investigator, is probably one of the nicest souls you'd
2 ever meet. He's almost too nice to be a police officer,
3 'cause he would take people at their word without
4 following up. That's why his supervisor Randy Durand was
5 usually with him, because they worked well as a team.
6 Jimmy -- people were obviously drawn to him, they would
7 speak to him, he was great at that. But Randy was always
8 there to follow up those questions.

9 Shawn Graham basically was our ethical guide in our
10 office. He's a straight-laced guy. He is a -- he's had
11 a long career and he's well known for being just upfront
12 and honest. Matt Martin was trusted by all of us,
13 probably one of the best investigators I've ever worked
14 with in my career. He was up front. He would speak out
15 if he thought something was wrong. He didn't care what
16 title I had. I was Rick, not boss. And that's the type
17 of people I want around me and I had good people on here.
18 None of them did anything inappropriate.

19 Q. Okay. No more questions, thank you.

20 CROSS-EXAMINATION

21 BY MS. MCMAHAN:

22 Q. Were you with all of those individuals at all
23 times to determine whether or not (inaudible)
24 intimidated?

25 A. No, and I tell you if I felt like I needed to,

1 they wouldn't work for me.

2 Q. You said that Mr. Ervin -- Mr. Maye had
3 reported you, is that related to Mr. Jones' case?

4 A. No, it was -- it was another case with Judge
5 Griffith that he said I tried to ex parte him on that
6 too. And interestingly enough, this April 3rd is the day
7 I pull him initially to fire him. You know, this plea
8 goes down April 10th. It was like a week after that,
9 after all of this that Ervin comes into my office and
10 does the taping. And --

11 Q. It was between the initial attempt at firing
12 and the actual firing?

13 A. Yes. But it was in April.

14 Q. I mean there is case law that says that you
15 can't record a conversation (inaudible).

16 A. Right, that's correct. You have to notice the
17 other --

18 Q. All parties have to agree (inaudible).

19 A. Right. And we were convinced he was wearing a
20 wire. He was good friends with some folks in narcotics
21 in Edgefield, that was part of the issue I was having out
22 there. Basically trying to change the regime out there.
23 They have a new sheriff now. We have a new one in
24 Saluda. I campaigned against the old sheriff. It was
25 about cleaning house. And all of them were affiliated

1 with Ervin.

2 Q. I'm really bad at talking into the microphone
3 apparently, so I've been told.

4 A. I think these go straight into the machine so
5 they don't even pick your voice up.

6 Q. I've been instructed to move back here closer
7 to the microphone.

8 A. Okay.

9 Q. The conversations with the witnesses, were
10 those turned over to the defense?

11 A. Yes, every bit of discovery was documented. I
12 know in particularly going through the (inaudible)
13 process and lawsuit, we went through all the emails to
14 Mr. Casto, to basically make sure he had gotten
15 everything, and he had. Everything -- all the updates
16 with -- what we would do when we'd interview lay
17 witnesses, Matt Martin would do a new summary. We would
18 turn that over. That's still our practice. So, you can
19 almost follow how we investigate a case now when we're
20 preparing for trial. We turn over lay witness
21 statements.

22 Q. So, it would've been a summary of kind of what
23 the witnesses said?

24 A. Yes.

25 Q. Written by Mr. Martin?

1 A. Right.

2 Q. So it wouldn't have just -- it wouldn't have
3 been recorded or anything?

4 A. No.

5 Q. So what is a negotiated range mean though?

6 A. Basically it allows both the State and the
7 Defense to know that the defendant will either get 15 or
8 25 or something in between. That everybody can walk in
9 the courtroom, the victim's family knowing that it won't
10 be less than 15, and the defendant can walk into the
11 courtroom and know it won't be more than 25. And I
12 didn't ask for a specific amount of time. I just said
13 Judge, we viewed it as a murder, but here's why we're
14 offering manslaughter, and he was even made aware of the
15 prior offer.

16 Q. Were these conversations you also would've had
17 with the victim's family?

18 A. Yes.

19 Q. And did you have conversations with them about
20 this? Did you have conversations with the victim's family
21 kind of about what was going on with the case?

22 A. Yes. Yes. The mother Chris, and I can't
23 pronounce her last name, but it's Flaurr, it's like F-L-
24 A-U-R-R.

25 Q. Flower?

1 A. Flower, something like that. But she was very
2 much wanting to know what was going on and the status.
3 And so we were very eager to make sure she knew
4 everything.

5 Q. Were you up for reelection again sometime
6 around 2020?

7 A. 2020, up for reelection, and I knew Mr. Maye
8 was actively recruiting someone to run, no one did. I
9 got re-elected in 2021 -- or took office again in 2021.

10 Q. How did you know he was actively recruiting
11 people against you?

12 A. Law enforcement was telling me out there. By
13 that point, particularly out in Saluda, I had officers --
14 'cause I was campaigning against the Sheriff out there.
15 He wasn't a (inaudible) his number two guy. There was
16 zero trust. I didn't like the way they did business. I
17 thought they profiled; they did other things.

18 And so there was a real divide in those law
19 enforcement agencies, people that were disturbed about
20 how things had been done. And so when I campaigned, I
21 appealed to them, but they actively let me know when
22 Ervin Maye would come around and what he was up to, just
23 saying be warned (inaudible) wasn't particularly worried
24 about it, but --

25 Q. Had there been issues in Saluda County related

1 to the Sheriff before?

2 A. Yes.

3 Q. So, after Ervin left your office in July 2017,
4 do you know where he ended up?

5 A. He ended up initially going to the Eighth
6 Circuit as a prosecutor. David Stumbo called me and said
7 hey, do you have an issue if I hire him. I said, I don't
8 wish ill on the guy. I don't want him working here. I
9 let him know here's what you're getting into, and I know
10 they parted ways at some point too.

11 Q. What was the -- I mean, I know there was some
12 conversation that the lawsuit was something to do with
13 employment, but what was his general allegation in the
14 lawsuit?

15 A. His general allegation was that I had promised
16 him orally that I would leave him alone in the tri-
17 county, let him do whatever he wanted. That I would let
18 him retain his deputy title, which I wasn't even aware he
19 had. That I wouldn't touch his pay. I didn't even know
20 what his salary was, but he was the highest paid person
21 in the office. He made more money than I ever did. And
22 that I would not touch his vehicle.

23 He drove around in a well-appointed Ford Excursion.
24 And I -- obviously I never made that promise. I would
25 never make a promise like that to anyone. I do remember

1 him approaching me about that. And what I did tell him
2 is that, Ervin, I don't have an exact plan on the tri-
3 county. My plan is upon election, following court, see
4 what's going on, and I'll know what changes I'm making at
5 that time. But I don't promise anything.

6 Q. Just out of curiosity, where's the Excursion
7 now?

8 A. Well, we sold it. But Ervin was assigned
9 another car. Here's what we did. I didn't touch his pay
10 for six months. I told him that would give him a full
11 year at the pay that he was getting. Then I'd bump him
12 down to be the second highest paid person in the office.
13 The vehicle, he'd still get a vehicle, but I took I think
14 two vehicles out there -- three vehicles, old vehicles,
15 plus that Excursion, and got new vehicles that were what
16 I call rice burners, they were economy vehicles, save
17 money on travel. And I also said with vehicles you can
18 longer use them as your personal vehicle, you have to
19 park them on the deck, that was a policy for everyone in
20 the office.

21 Q. Was Ervin --

22 A. Park it on the deck before you leave.

23 Q. Was Ervin using the Excursion as his personal
24 vehicle?

25 A. Yes, he was. He in a couple years he had put

1 like 140 something thousand miles on that vehicle. We
2 even found he was on a dating site and listed it as his
3 personal vehicle.

4 Q. The Court's indulgence, Your Honor. Were you
5 aware that -- I mean, at the beginning when Ervin started
6 calling around to Mr. Madsen and all that, were you aware
7 that Ervin was doing that?

8 A. I wasn't. I wasn't until I got wind, I can't
9 remember exactly how it happened if -- or how I became
10 aware there's going to be a PCR. And when I saw it was
11 Jody Jones it was kind of a red flag, I knew what was
12 happening there. And then ended up talking to Rob.

13 Q. Okay.

14 A. And I don't know that Mr. Casto knew at the
15 time, but Rob talked to me about it.

16 MS. MCMAHAN: I have nothing further, Your Honor.

17 JUDGE CURTIS: Anything further from the State?

18 MR. SMITH: No, Your Honor, thank you.

19 MR. HUBBARD: Thank you.

20 MR. SMITH: And the State rests.

21 JUDGE CURTIS: Okay. Anything that y'all want to
22 say in the way of a closing statement?

23 MS. MCMAHAN: Judge, again, I just ask that you take
24 your time to review the record as a whole before making a
25 decision; take into account that obviously there was a

1 lot of hullabaloo that Mr. Maye has created surrounding
2 Mr. Jones' case, and I ask that you take that into
3 consideration.

4 MR. SMITH: Your Honor, Mr. Jones has no evidence
5 that the Solicitor's office committed any impropriety in
6 this case. As a matter of fact, all the evidence goes
7 the other way. And I think it's clear from the record
8 today that Mr. Maye had a personal vendetta against Mr.
9 Hubbard specifically, and the allegations were stemming
10 from that. Thank you.

11 JUDGE CURTIS: Thank you both. It is my practice
12 that I do not rule on PCR's at the hearing. I'll
13 certainly go back and take a careful look at these
14 materials. I will email you all with my ruling. Thank
15 you.

16

17 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED)

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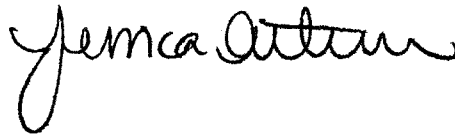
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CERTIFICATE OF TRANSCRIBER

I, JESSICA ANTONUCCI, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had, and evidence introduced in the hearing of the captioned case, relative to appeal, in South Carolina Circuit Court 11, Edgefield County, South Carolina, on the 4th day of April, 2023.

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

A handwritten signature in black ink, appearing to read "Jessica N. Antonucci". The signature is fluid and cursive, with the first letter of the first name being a large, stylized 'J'.

Jessica N. Antonucci

Transcriber

August 22, 2025

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

Jody Ray Jones, SCDC #372132,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No. 2020-CP-19-0030

ORDER OF DISMISSAL

2023 JUL 08 PM 04:10

EDGEFIELD COUNTY SOUTH CAROLINA
CLERK OF COURT CHARLES REED

This matter comes before this Court by way of an application for post-conviction relief filed January 24, 2020, by Jody Ray Jones (Applicant). The Respondent made a return and motion to dismiss on December 22, 2022. On December 31, 2020, the Honorable Walton J. McLeod, IV, entered a Conditional Order of Dismissal filed January 6, 2021. On July 7, 2021, Ashley A. McMahan was appointed to represent the Applicant. On August 4, 2021, an amended application was filed. On August 30, 2021, a hearing was held on the state's motion to dismiss for failure to file within the statute of limitations. On September 20, 2021, the Honorable Donald Hocker issued an Order allowing the matter to proceed and denying the State's motion to dismiss.

On April 4, 2023, an evidentiary hearing was held before this Court. The Applicant was present and represented by appointed counsel, Ashley A. McMahan. The Respondent was represented by Assistant Attorney General Taylor Smith.¹ Testimony was received from David Shawn Graham, Robert Madsen, Bennett Casto, Deputy Solicitor Al Eargle, and Solicitor Rick Hubbard. On May 29, 2023, this Court advised the parties of its intent to dismiss the application.

¹ The transcript of the PCR hearing misidentifies respondent's counsel as J. Emory Smith, a different member of the South Carolina Attorney General's Office.

After further review, the application is denied. I find the applicant has failed to meet his burden of proving ineffective assistance of counsel and has failed to show any prosecutorial misconduct or manifest injustice. I find no credible evidence that the solicitor's office acted unethically in this matter.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Edgefield County Clerk of Court. Applicant was arrested on January 14, 2015, following an investigation into the shooting death of Patricia Love. During its March 2015 term, the Edgefield County Grand Jury indicted Applicant for murder (2015-GS-19-0110); possession of a weapon during the commission of a violent crime (2015-GS-19-0109); and use of firearm while under the influence of alcohol or drugs (2015-GS-19-1111).

On April 10, 2017, Applicant appeared before the Honorable Eugene C. Griffith, Jr., and pleaded guilty to the lesser-included offense of voluntary manslaughter. The remaining indictments were dismissed in exchange for Applicant's plea. Assistant Public Defender Bennett E. Casto, Esquire (Counsel) represented Applicant. Eleventh Circuit Solicitor Samuel R. Hubbard, III, prosecuted the case. Pursuant to negotiations entered into between Applicant and the State, Judge Griffith sentenced Applicant to 22 ½ years imprisonment.² Applicant did not appeal his guilty plea or sentence.

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (verbatim):

² The negotiated sentencing range was between fifteen and twenty-five years.

1. "I have been informed that the Solicitor's Office may have acted unethically, engaged in ex parte conduct, and pressured witnesses to change statements."
 - a. "Statements by a former employee(s) of the Solicitor's Office"
 - b. "Potential law enforcement witness"

Applicant requests relief as follows:

"A new trial and/or enforcement of original plea offer"

In the Amended application for post-conviction relief filed by appointed counsel McMahan dated August 4, 2021, the Applicant asserted that that the statute of limitations should be tolled under his newly discovered evidence claims related to the handling of the guilty plea.

FINDINGS AND CONCLUSIONS

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant's records from the South Carolina Department of Corrections, the records of the Edgefield County Clerk of Court regarding the subject convictions and this proceeding, Applicant's guilty plea transcript, the original application for post-conviction relief, the Respondent's Return and Motion to Dismiss, the Amended Application, and the transcript of the April 4, 2023 PCR hearing. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented during the guilty plea and this evidentiary hearing.

Newly Discovered Evidence Claim

Applicant's assertion he is being held in custody unlawfully as a result of newly-discovered evidence, such that he should be entitled to an evidentiary hearing, is without merit. The Act states

a person may institute a PCR action if “there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.” S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of a material fact not previously presented, the PCR application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C).

In South Carolina, a guilty plea is regarded as a waiver of non-jurisdictional defects and claims of violations of constitutional rights. *State v. Rice*, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485–86 (2013). An applicant requesting a new trial based on after-discovered evidence following a guilty plea must show that:

(1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the “interest of justice” requires the applicant’s guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions.

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

Factual Basis of the Guilty Plea

This case arises from the entry of a guilty plea involving the shooting death of Patricia Love. The factual basis of the plea presented by Solicitor Hubbard revealed the following:

As the indictment says, Your Honor, this happened January 11th. It was late at night. Both Mr. Jones and Patricia Love worked for a carnival. And they lived - - basically, it was like a camper community, mobile community, but they lived out in Edgefield. It was way out in the country.

On this particular night, it was pouring down rain. Most of the folks slept in campers, but there was a mobile home that night, that is where Mr. Jones and Ms. Love were. They were seated on a love seat in this mobile home. And there are some other folks that had gone to bed in that mobile home. And that night, folks say they heard a pop, what sounded like a gunshot. And some ten minutes elapsed before the defendant came knocking on the door saying what had happened.

Law enforcement got there. They found Mr. Jones holding a paper towel or a towel next to Ms. Love's head. They rushed her to the hospital. And, Your Honor, she actually lived for two days, gunshot wound to the head. She passed away on the 13th.

Law enforcement immediately started talking to Mr. Jones, read him his Miranda rights, I believe -- I can't tell you how many times, but they made sure that they read him his rights. And that night, early morning hours on the 12th, Jimmy Smith interviews him and says, Well, what happened? That they were seated side by side. Our victim was to the defendant's left. He says they're getting ready to go to bed. He claims Patricia kept a handgun with her, hands it to him, and he's going to clear it by racking the round -- racking the round out. He says, when he does that, the gun goes off.

Your Honor, that didn't make sense. Now, at the time, the detective didn't know -- we knew it was a head wound, but it was on the left side. She's sitting to his left. That was impossible. So he brings him in the next day on the 13th and says, I need to follow up with you. Can you tell me a little bit more because it didn't make sense? Mr. Jones gives pretty much the same explanation: I'm clearing the gun; the gun goes off, but we're facing one another. Well, that still didn't make sense. How did it get -- how do we get a shot on the left side, just around the temple area?

On the 14th, interview him again. He again talks about clearing the pistol by racking the rounds. Instead of dropping the magazine and just clearing that one round in the chamber, he's racking rounds, because we did find a few rounds on the floor we couldn't understand. And he says, the gun just goes off and fires.

Well, at that point, law enforcement, Detective Smith, knew the gunshot wound is not just to the left side of the head, it's a contact wound. Absolutely impossible to get that wound by the way he was describing it. When he's confronted with that, he has no response.

Well, Your Honor, those are three interviews, but we had, actually, another interview. He took a BA that night, because he had been drinking. He clearly had been impaired. So he takes a breathalyzer. And I can't remember -- he blew a 18? Blew an 18.

Well, as Your Honor knows, that's on video. On the video, he's talking the whole time explaining what's happened. And he's demonstrating on video how he's

clearing the chambers of the gun, racking the rounds. You can tell how he's doing it. But even his explanation then is absolutely impossible. It just does not comport with what we found.

Well, Your Honor, the pistol that we recovered, it's a 9mm pistol. SLED will say, this is the weapon that was used. And, initially, they just said it was in good working order and sent it back to us.

The pathologist does an autopsy and says again, contact wound. Well, we start with her, Dr. Ross up in Newberry. Your Honor knows her. Said, Dr. Ross, based on his explanation, is it possible for this gun to just go off? She goes, no, it's a contact wound. The gun is literally against the head, and it's in a downward angle. It would not even appear to be a self-inflicted wound at the angle. Impossible.

We get back with SLED. Our office says -- Susan Cromer out there who does firearms -- Will you take another look at this pistol and tell us a little bit more about it? She goes, It's an eight-pound trigger pull, semiautomatic Smith & Wesson, good working order. Well, we were getting vibes that he might claim that this gun is defective. And we had heard the term slamfire. Your Honor probably has heard that. Some people have used it, particularly with rifles, a floating firing pin. She said, Absolutely not. But what she did for us is take that same pistol, tried to make it misfire some 50 times, could not do it. She said, This is a good weapon.

In fact, she was prepared to come to court and even do a video display to show how this gun works and that it would be impossible for this gun to just go off. And with that eight-pound trigger pull, and she was prepared to demonstrate what that was to each juror, the pressure you would feel on a finger. Impossible. You'd have to intend to fire this weapon. So science and medicine rule out his explanation of what transpired.

Well, our office started talking to some witnesses. Now, Detective Smith, they had reached a number of people, and there were some folks that we reinterviewed with him present. Your Honor, if we would have gone to trial, we would have presented that at least two witnesses that night in that mobile home say that when the defendant came to them, after waiting some ten minutes, comes to them and his statement to them is, "I shot the bitch." Two separate people would have testified to that.

Your Honor, we would have also had some witnesses saying that the defendant and Ms. Patricia Love, they had a very volatile relationship. They would argue, fight. Next thing you know, they're getting along just great. That night somebody had seen them on that same love seat and said they heard both of them saying, I love you, to one another. Yet about a week before, we would have been able to produce a witness said, Patricia confided in me that he held a gun to me in one of their many arguments. Very volatile relationship.

Your Honor, based on that and knowing that our case, more than anything else, ran -- hinged on what he said versus the forensics, we sat down and explored the option of a plea, and that if the defendant had testified, Your Honor may very well have felt compelled to offer a jury two [choices] -- two alternatives, voluntary manslaughter or murder, so it only made sense to offer this.

What we did, though, is offer a range, and we've asked Your Honor to please treat it as negotiated, if Your Honor would do so, 15 to 25. Obviously, the defense gets the benefit of taking the top end off, and our victim's family and the State gets the benefit of taking the low end off. . . .

[Plea Tr. p. 8, l. 5 – p. 14, l. 1.]

The Solicitor confirmed that two weapons charges were also being dismissed. [Plea Tr. p.15.]

Summary of Post-conviction Relief Hearing Testimony

Testimony of Deputy Solicitor Shawn Graham

During the PCR Hearing, Applicant called Deputy Solicitor Shawn Graham to testify. Concerning his involvement in the case, Graham stated that when Solicitor Hubbard was elected in 2016, it led to a review of outstanding cases, particularly murder, homicide, and manslaughter cases that had been pending with defendants in jail for a significant period of time. [PCR Tr.p. 6-7.] Graham stated that he and Deputy Solicitor Suzanne Mayes focused on Lexington while Deputy Solicitor Al Eargle focused on the tri-county dockets in McCormick, Saluda, and Edgefield. During Deputy Solicitor Eargle's review of the matters, he presented the Solicitor with the Jody Jones case and Solicitor Hubbard asked Graham to assist in the case. Graham stated that he began working on the cases with the assistance of Investigator Matt Martin. He stated that he reviewed the file and began talking to witnesses. These included all the law enforcement officers involved, including SLED firearms examiner Susan Cromer and Dr. Ross, the pathologist. [PCR Tr.p. 7.] Graham stated that there were not many witnesses remaining in the area. He stated that at the time of the crime the victims were wintering in Edgefield, because they were traveling in the fairs and

circus events around the East Coast. They were, however, able to track down two or three witnesses. Graham described meeting with his investigator and some witnesses at a local fair in Alabama at the fairgrounds. [PCR Tr.p. 7.] Although Graham did not have any weapons with him, he imagined that Investigator Martin was armed. He stated that the witnesses were speaking with them of their own free will because they had no authority in Alabama nor any subpoenas.

Graham recalled that Jones had made four different statements during police interviews after the incident. He believed the facts supported a manslaughter charge rather than a murder. [PCR Tr.p. 9.] He learned from the witnesses that Jones and the victim were in a volatile relationship. They had recently argued and victim was threatening to leave Jones. Id. [PCR Tr.p. 9-10.] Graham opined that it was a very triable case which became stronger as they worked on it. [PCR Tr.p. 9.] Graham stated that he expected the witnesses he spoke with would come to a trial. [PCR Tr.p. 9-10.]

On cross-examination, Graham confirmed that when he got on the case Eryn Maye was still employed in the office. It was his opinion when he reviewed the prosecution file that not much work had been done by Maye, as the file lacked any new information that law enforcement had not had at the time of the arrest. [PCR Tr.p. 10.] Graham stated that he found the original statements by the witnesses to be very short and there was no indication that Investigators had followed up with the witnesses. Graham noted that as time passes, witnesses' fears about something happening to them goes away and they frequently become more willing to share information. Graham explained this is the reason why it is his practice to speak with witnesses again before a trial. [PCR Tr.p. 11.]

Concerning plea negotiations, Graham stated that he and Matt Martin would have done the investigation and then met with Solicitor Hubbard to talk about the case and discuss a plea offer.

[PCR Tr.p. 11.] Graham stated it was ultimately Solicitor Hubbard's decision.

Graham opined that with the additional discovery in the case, he felt it was a very winnable case. He stated that in looking at the original file he saw that Maye had been talking with defense counsel and had made an offer of assault and battery of a high and aggravated nature with a cap of 15 years, but Jones had let that offer expire. [PCR Tr.p. 12, l. 10-14.] Graham stated that this was the posture when they took over the case from Maye. Graham stated that they started looking at Jones's statements which did not line up with the physical facts concerning his claim that it was an accident. Graham noted that the victim was shot in the left temple. [PCR Tr.p. 12.] The case just got better as they spoke with the several lay witnesses who were going to come forward and talk about the relationship. He recalled as they were preparing for trial, he and Solicitor Hubbard went to Edgefield and spoke with several of the witnesses at the courthouse which resolved to him it was a "very winnable case." [PCR Tr.p. 12-13.]

Graham stated that he did not think that Matt Martin spoke with any witnesses out of his presence, unless he was setting up a meeting by phone. During their meetings, he denied that Investigator Martin ever became coercive. [PCR Tr.p. 13.] Graham testified that he had been a prosecutor for 25 years and had worked with Martin for 18 years and he had never seen him do anything that was either coercive or threatening. Graham found that the witnesses were willing to speak with them. [PCR Tr.p. 14.]

Concerning the involvement of Solicitor Hubbard, Graham recalled meeting with witnesses at the Edgefield County Courthouse. He did not find anything coercive in Solicitor Hubbard's interaction with the witnesses.

Graham expressly denied that any *ex parte* conversations took place between himself, Solicitor Hubbard, and Judge Griffith. [PCR Tr.p. 16.]

Testimony of Robert Madsen

The Applicant called former Public Defender Rob Madsen who indicated that he was the circuit public defender at the time of Applicant's guilty plea. He stated he became involved in the Applicant's PCR matter because as public defender he had become aware of the Applicant's case when the tr-county public defender Bennett Casto was handling it. He stated that he later received a call from Ervin Maye, in either late December 2019 or January, making allegations of misconduct on behalf of the Solicitor's Office, his former employer. At that point, Madsen stated that he scheduled an appointment with the Applicant. Madsen stated the allegations from Maye included claims of threatening or intimidating witnesses and possible *ex parte* communications with Judge Griffith. [PCR Tr.p. 18.] Madsen noted that Ervin Maye subsequently committed suicide.

Madsen described his meeting with Applicant at the prison, where he told Jones about Maye's allegations. Madsen stated that he did not go into a lot of specifics with Jones because he assumed his assigned PCR lawyer would investigate the allegations. [PCR Tr.p. 19, 21.] Madsen stated that he explained the PCR process with Jones and what would happen if he was successful. At some point, Madsen stated that he provided Applicant with a PCR application. [PCR Tr.p. 19.] He concluded the meeting with explaining everything to him, but not getting into specifics. At that point, the Applicant told Madsen that he was going to talk with his friends and family or others and he would let Madsen know. Madsen stated that he followed up confirming the information and advising him of the one-year Statute of Limitation applicable to after discovered evidence. Madsen was clear that he prepared the application so that he would not be misquoted, but did not recall whether he took it with him or whether he mailed it to Jones afterwards. [PCR Tr.p. 20.]

Madsen stated that he did not contact Deputy Solicitors Eargle or Graham about Maye's allegations. Madsen also stated that he did not follow up with Maye. Madsen felt that his job at

that point, since his office's representation had ended, was to tell Jones about the allegations. [Tr.p. 21.]

On cross-examination, Madsen described the allegations that Maye had told him included an assertion that Solicitor Hubbard had forced witnesses to change their statements and some other unethical conduct. Madsen recalled Maye contended deceased investigator Jimmy Smith had mentioned to him that he was uncomfortable with what the Solicitor's office was doing, but he did not ask for specifics because he thought that would be someone else's job. [PCR Tr.p. 21.] Madsen stated that he did not talk with Smith at that time and thinks Smith may have already died at that time. [PCR Tr.p. 22.³] According to Madsen, Maye claimed that Solicitor Hubbard had ex parte conversations with Judge Griffith and was bragging that he was going to have Mr. Jones brought to Lexington to plead in front of Judge Griffith. As to the witness intimidation, Madsen stated Maye did not give him any witness names and Madsen did not ask. [PCR Tr.p. 22.]

Testimony of Bennett Casto

The Applicant called former Tri-County Public Defender Bennett Casto to testify. He stated that his role as public defender was to cover Edgefield, McCormick and Saluda counties. Jones stated that the State initially offered a 15-year sentence in exchange for Jones' plea to assault and battery of a high and aggravated nature. [PCR Tr.p. 23-24.] Casto testified that Jones refused the initial offer, hoping to get a better offer in the future because of possible weaknesses in the state's case. Casto conceded that the initial offer was a really good offer for a murder case. Casto stated it was difficult to locate the witnesses because they worked in a carnival, and traveled throughout the country. [PCR Tr.p. 25.] This difficulty impacted the defense and the state, equally. Casto speculated that the State's favorable offer was likely the result of this difficulty in locating

³ Edgefield County Sheriff Department Investigator Jimmy C. Smith died October 18, 2019 according to his obituary in the *Augusta Chronicle*.

witnesses. [PCR TR p. 25-26]

Casto stated that he never had any discussion with Maye about his allegations against Hubbard.

Casto did not recall any issue with the judge and could not remember whether Judge Griffith was going to be the trial judge, although he thought Judge Griffith may have been the circuit administrative judge at that time. [PCR Tr.p. 26.] It was common practice for the chief administrative judge to take guilty pleas. [PCR Tr.p. 26-27.]

On cross-examination, Casto indicated that he spoke with Maye 5 to 10 times prior to Jones' guilty plea. Casto testified that the 15-year offer was made prior to Solicitor Hubbard's election. Casto stated that the Solicitor and Deputy Solicitor Graham took over the case in 2016. Casto stated he became aware of the additional investigation that Solicitor Hubbard's team did. Solicitor Hubbard's team located and interviewed the carnival witnesses then forwarded them to him. As a result of those witnesses being tracked down, located, and interviewed, that additional information was forwarded the additional information to him. Casto stated that he saw no evidence of witness tampering by the Solicitor's Office. [PCR Tr.p. 27.]

Casto recalled at some point Solicitor Hubbard and Deputy Solicitor Graham sat down with Casto and his client to talk about that case and review the discovery. [PCR Tr.p. 29.] After that meeting, the State made a plea offer.

Casto stated he was unaware of any so-called "judge shopping". Casto was also not aware of any ex parte communications between Solicitor Hubbard and Judge Griffith. After Maye was terminated he filed a lawsuit as well as a grievance against the Solicitor, but Casto had no firsthand knowledge about Maye's allegations. [PCR Tr.p. 29-31.]

Testimony of Deputy Solicitor Al Eargle

The State called Deputy Solicitor Al Eargle to testify. He stated that after Solicitor Hubbard was elected and took office in 2017, he was assigned to the tri-counties. Solicitor Hubbard requested that he review the older cases that were pending and particularly where the defendants were incarcerated. [PCR Tr.p. 31.] As a result, Eargle reviewed Applicant's case, which he recalls was the oldest pending matter in Edgefield for a jail detainee. He stated that Ervin Maye was the assigned prosecutor at that time, after Eargle had initially handled the original bond hearing. [PCR Tr.p. 32.]

On cross-examination, Eargle testified that he never spoke with either Mr. Madsen or Mr. Casto about the case. He stated that the Ervin Maye was the deputy solicitor over the tri-counties before him. [PCR Tr.p. 33.]

Testimony of Solicitor Rick Hubbard

Solicitor Hubbard testified that he was elected in 2016 and took office on January 11, 2017. [PCR Tr.p. 33.] He testified that when he took over, his biggest concern was resolving the oldest cases. He recalled Maye had handled the Hunsberger murder cases, that languished for 12 years before trial and were ultimately reversed and vacated. He stated that based upon the Hunsberger cases, every solicitor was instructed to try cases in a timely fashion. Hubbard stated that he put a priority on resolving the oldest cases. "And I also asked him whatever you find, put me in the mix, give me a case, I don't care what it is, just make sure it's one of the old cases." [PCR Tr.p. 34.] Hubbard testified that Eargle brought him the Jody Jones file, which he did not know anything about at that time.

Hubard stated that in reviewing the file, he found there was not a single note or any indication that an investigation had been conducted. [PCR Tr.p. 35.] Solicitor Hubbard testified he

had concerns about Maye's performance and lack of follow through. He initially retained Maye, but continued to be dissatisfied with Maye's performance and ultimately fired Maye on July 31, 2017. [PCR Tr.p. 35]

Hubbard stated that Maye did not take his termination well and was actively trying to recruit someone to run against him for Solicitor.

Hubbard confirmed that Maye did not have any involvement in Applicant's case after Hubbard took it over. [PCR Tr.p. 37.]

Hubbard stated when he took over the case he met with Edgefield investigator Jimmy Smith and his supervisor Randy Doran. [PCR Tr.p. 37.] The three men went to the mobile home, where the incident occurred, where Jones was residing with Patricia Love. They spoke with witnesses present at the campground and eventually tracked down some of the key witnesses.

Hubbard initially found the witnesses reluctant to speak to law enforcement. Hubbard stated that once they told them they were investigating Patricia Love's death, they would talk. Hubbard stated that the witnesses indicated Love and Jones were in a volatile relationship and both drank heavily. The witnesses described that the couple would be loving and affectionate one moment and then fighting the next. Witnesses who were sleeping down the hall at the time of the incident stated they heard a pop and the 10 minutes later a knock on the door. [PCR Tr.p. 39.] Witnesses told Hubbard that Jones stated "I shot the b__."

Hubbard testified that the forensic evidence was very important in the case. Hubbard testified that Dr. Ross, who did the autopsy, determined the existence of a contact wound to the left temple, which meant the gun had been pressed there. Furthermore, the wound was at a downward angle, which ruled out an accidental discharge or suicide. [PCR Tr.p. 40.] Hubbard denied he or his investigators did anything to intimidate the witnesses.

Hubbard stated that another key witness they spoke with was SLED firearms investigator Susan Cromer. Hubbard noted that in her initial report, she confirmed that Jones' gun fired the bullet that was retrieved from the Love's head. Hubbard stated that asked her to look at Jones's four different statements where he claimed that it was an accidental discharge. Hubbard stated that Cromer tested the trigger pull which was a heavy eight - pound pull. He stated that Cromer was unable to make the gun misfire after 50 tries. Hubbard stated that Agent Cromer was prepared to come to court and testify to refute Jones' claim of an accidental discharge. [PCR Tr.p. 41.] This took accident off the table for Hubbard. Hubbard stated that the forensic evidence was a significant problem for Jones' defense.

Hubbard stated that they reached out to Love's family in Indiana and spoke with her mother. She advised Hubbard that the last person she talked with from law enforcement was on the day her daughter was shot. Solicitor Maye had not contacted then in the two years since Love's death. [PCR Tr.p. 41.] Hubbard stated the family came down and spoke at the guilty plea.

Hubbard stated that after interviewing witnesses and going over the forensic evidence, they met with Casto and Jones to review the evidence. Hubbard reviewed the evidence with Jones and explained why they were extending an offer of 15-25 years and the reason they had rescinded the 15-year offer. Hubbard felt that Jones was misled about the strength of the State's case by the original low offer. [PCR Tr.p. 43.]

Hubbard denied the State had engaged in "judge shopping" or that he had any *ex parte* communication with Griffith. Hubbard stated they were a week out from the April 17th trial date when Jones pled guilty on April 10th. Hubbard stated that Judge Goldsmith was scheduled for the April 10 Edgefield term and he had never been in front of Judge Goldsmith. Hubbard testified that he did not care who the judge was or what sentence Jones received, as long as it was within the

recommended range. Hubbard stated that he knew he had a chief judge who was expecting this case to be on the trial docket. Hubbard stated he reached out to Judge Griffith about whether he would like to hear this plea if Casto was willing to go to Lexington. Judge Griffith agreed to take the plea. [PCR Tr.p. 43-44.]

Hubbard testified he felt that Maye's complaints against him all stemmed from the fact that Hubbard had demoted him, taken away his state-issued vehicle, and ultimately fired him for job performance issues. He denied any unethical conduct and testified he and his team had thoroughly investigated Jones' case and prepared the case for trial, while Maye had done virtually no work at all on the case.

Conclusions of Law Based Upon Findings of Fact.

This Court finds that the allegations raised by the Applicant arise from claims of prosecutorial misconduct which he asserts should require the court to vacate his guilty plea to voluntary manslaughter. The allegations arise from unspecified allegations made by the late Ervin Maye about his former employers, Solicitor Rick Hubbard and Deputy Solicitor Al Eargle. Due to Mr. Maye's suicide, the full extent of Maye's claims may be unknown, however, this Court believes the essential substance of his claims have been presented before this Court. In summary, the Applicant is contending that:

1. The prosecution threatened and bullied potential witnesses against the Applicant.
2. The prosecution met with the Applicant and his counsel and coerced the guilty plea.
3. The prosecution had *ex parte* communication with the plea judge in order to ensure the plea judge would be the one to sentence him.

Based upon this Court's review of the guilty plea transcript of April 10, 2017, the post-conviction relief hearing transcript of April 4, 2023, and a review of records of the clerk of court this Court must deny the request for post-conviction relief in its entirety.

At the outset, this Court finds that the Applicant's guilty plea entered on April 10, 2017 was freely and voluntarily entered within the mandates of *Boykin v. Alabama*, 395 U.S. 238 (1969). “[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced.” *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755; *see also United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir. 1971) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant “must be aware of the nature and crucial elements of the offense, the maximum and any mandatory

minimum penalty, and the nature of the constitutional rights being waived.” *Pittman*, 337 S.C. at 599, 524 S.E.2d at 624.

The defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); *see generally Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the plea judge “usually questions the defendant about the facts surrounding the crime and punishment that could be imposed.” *Dover v. State*, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the plea judge “does not have to direct the defendant’s attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea.” *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

An applicant who enters a plea on the advice of counsel may “only attack the voluntary, knowing and intelligent character of the plea by showing that plea counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the [applicant] would not have pled guilty, but would have insisted on going to trial.” *Roscoe*, 345 S.C. at 20, 546 S.E.2d at 419. In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. *Wolfe*, 326 S.C. at 165, 458 S.E.2d at 370; *cf. Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding

refuted applicant's claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him). The voluntariness of a guilty plea "is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984).

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). It is "well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment." *United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) (citing *Brady*, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750–53, or by increasing the risks of punishment on those who do not. *Alford*, 400 U.S. at 37.

"Surmounting *Strickland*'s high bar is never an easy task, and the strong societal interest in finality has 'special force with respect to convictions based on guilty pleas.'" *Lee v. U.S.*, 582 U.S. 357, (2017) (internal citations omitted); *cf. Hill v. Lockhart*, 474 U.S. 52, 58 (1985) ("[R]equiring a 'showing of 'prejudice' from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel will serve the fundamental interest in the finality of guilty pleas."). "A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977); *see also Jamison v. State*,

410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”); *cf. United States v. Broce*, 488 U.S. 563, 569 (1989) (“A plea of guilty and the ensuing conviction comprehend all of the factual and legal elements necessary to sustain a binding, final judgment of guilty and a lawful sentence. Accordingly, when the judgment of conviction upon a guilty plea has become final and the offender seeks to reopen the proceeding, the inquiry is ordinarily confined to whether the underlying plea was both counseled and voluntary. If the answer is in the affirmative then the conviction and the plea, as a general rule, foreclose the collateral attack.”).

Of import here, a defendant is “bound,” absent clear and convincing evidence to the contrary, “by the representations he made under oath during a plea colloquy.” *Fields v. Attorney Gen. of Md.*, 956 F.2d 1290, 1299 (4th Cir. 1992). Indeed, “a defendant’s solemn declarations in open court affirming a [plea] agreement ... ‘carry a strong presumption of verity.’” *Lemaster*, 403 F.3d at 221 (*quoting Blackledge*, 431 U.S. at 74, 97 S.Ct. 1621).

“What is at stake in this phase of the case is not the integrity of the state convictions obtained on guilty pleas, but whether, years later, defendants must be permitted to withdraw their pleas, which were perfectly valid when made, and be given another choice between admitting their guilt and putting the State to its proof.” *McMann v. Richardson*, 397 U.S. 759, 773 (1970) (noting the compelling interests in maintaining the finality of guilty-plea convictions validly obtained).

Applicant was arrested for murder on January 14, 2015. He was represented by public defender Bennett Casto. At some point, then Deputy Solicitor Maye made a plea offer of a negotiated sentence of 15 years for assault and battery of a high and aggravated nature, which the

Applicant rejected. Applicant remained in custody at that time, and a motion for speedy trial was filed on July 20, 2016.

Subsequently in January 2017, Solicitor Rick Hubbard took over the prosecution of Applicant and re-evaluated the case with the assistance of Deputy Solicitor Shawn Graham and Eleventh Circuit Solicitor Office investigator Matt Miller. As a result of their investigation, they prepared for trial scheduled before the Honorable Judge Eugene C. Griffith, set for the April 17th, 2017 term of court.

This Court finds that prior to that term, Solicitor Hubbard met with Plea Counsel and Applicant. In the meeting, Hubbard went over the strength of the State's case and what the State intended to prove based upon the forensic evidence and witness statements. This Court finds that the State provided the results of its investigation to Plea Counsel and Applicant as required by Rule 5.

This Court further finds that after this meeting, the State offered a negotiated sentence range of 15 to 25 years, in exchange for Applicant's plea to the lesser offense of voluntary manslaughter. Applicant agreed accept the plea offer with the negotiated range.

This Court finds that an agreement was reached between the parties to have the matter heard on Monday April 10th in Lexington before Circuit Chief Administrative Judge Griffith who was set to be the April 17 trial judge in Edgefield, consistent with the expressed practice in the Eleventh Circuit to have the assigned trial judge on the docket to handle the pleas.

During the plea, Applicant affirmed the truth of the factual basis for the plea set forth by the Solicitor. [Tr.p. 14, l. 16-23.] Applicant further denied the existence of any threats or coercion to get him to plead guilty. [Tr.p. 16, l. 2-4.] He further confirmed that his attorney had been over everything with him, including the State's file, and explained his rights. [Tr.p. 17-18,] Applicant

asserted that he understood his discussions with Plea Counsel and was satisfied with the advice he received, and indicated that he did not need further discussion with Plea Counsel. [Tr.p. 18, l. 7-12.] Importantly, Judge Griffith asked Applicant the following:

THE COURT: Any complaints against the Eleventh Circuit Solicitor's Office or the Edgefield County Sheriff's Department in their handling the prosecution of this charge?

DEFENDANT: No, sir.

[Tr.p. 18, l. 14-18.] During the plea, Applicant also waived venue in allowing the case to be heard in Lexington rather than Edgefield. [Tr.p. 19, l. 4-17.]

During Applicant's plea hearing, Plea Counsel pointed out that Solicitor Hubbard had met with Applicant and Plea Counsel to review the State's evidence. Plea Counsel described the meeting as very transparent and good. [Tr.p. 31-32.]

Applicant admitted his guilt during the plea, stating "we had been drinking" and "I made the wrong decision. I done something terrible that I can never go back from. I can never take it back, I can't replace her. If I can swap my life for hers, I would. I accept responsibility for my actions." [Tr.p. 38, l. 24 – p. 39, l. 5.]

This Court finds that these comments during the plea are persuasive in this setting. "For the representations of the defendant, his lawyer, and the prosecutor at such a hearing, as well as any findings made by the judge accepting the plea, constitute a formidable barrier in any subsequent collateral proceedings. Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible. *Blackledge v. Allison*, 431 U.S. 63, 73–74, 97 S. Ct. 1621, 1629, 52 L. Ed. 2d 136 (1977).

Traditionally, in South Carolina, " '[t]o obtain a new trial based on after discovered

evidence, the party must show that the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching.’ ” *McCoy v. State*, 401 S.C. 363, 368 n. 1, 737 S.E.2d 623, 625 n. 1 (2013) (quoting *Clark v. State*, 315 S.C. 385, 387–88, 434 S.E.2d 266, 267 (1993)).

“[I]n South Carolina, a guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.” *State v. Rice*, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485–86 (2013) (citing *Hyman v. State*, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). “A guilty plea represents a break in the chain of events which has preceded it in the criminal process.” *Id.* at 332, 737 S.E.2d at 486 (quoting *Tollett v. Henderson*, 411 U.S. 258, 267, 93 S.Ct. 1602, 36 L.Ed.2d 235 (1973)). By entering a guilty plea, “[a]n accused [] waives the right to trial and the incidents thereof and the constitutional guarantees with respect to criminal prosecutions.” *Rivers v. Strickland*, 264 S.C. 121, 124, 213 S.E.2d 97, 98 (1975) (citation omitted). “A plea of guilty is an admission or a confession of guilt, and [is] as conclusive as a verdict of a jury; it admits all material fact averments of the accusation, leaving no issue for the jury, except in those instances where the extent of the punishment is to be imposed or found by the jury.” *State v. Fuller*, 254 S.C. 260, 266, 174 S.E.2d 774, 777 (1970) (citations omitted); see *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) (noting guilty pleas constitute a waiver of trial and an express admission of guilt upon which a sentence may be imposed). Thus, “[w]hen a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” *Rice*, 401 S.C. at 332, 737 S.E.2d at 486 (quoting *Tollett*, 411 U.S. at 267, 93 S.Ct. 1602).

Nevertheless, the PCR Act provides that “[a]ny person who has been convicted of, or sentenced for, a crime and who claims ... that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice” is entitled to seek post-conviction relief. S. C. Code Ann. § 17–27–20(A)(4) (2014). Thus, by its plain language, the PCR Act affords “any person” the ability to seek post-conviction relief on the basis of newly discovered evidence—not just individuals convicted and sentenced following trial. *Jamison v. State*, 410 S.C. 456, 467–69, 765 S.E.2d 123, 128–29 (2014)

Although the Court in *Jamison* found that a guilty plea does not preclude post-conviction relief following a guilty plea in all circumstances, it nonetheless concluded that the traditional, five-factor newly discovered evidence test is not the proper test for analyzing whether a PCR applicant is entitled to relief on the basis of newly discovered evidence following a guilty plea. As the Supreme Court of Colorado has noted, in the case of a guilty plea:

[I]t was not an independent trier of fact that determined the defendant's guilt based upon sworn trial testimony—it was the defendant who acknowledged his own guilt. Because of that simple fact, the trial court handling the postconviction proceeding is necessarily in a different position. That court does not have the full record of the prior trial, but it does have the defendant's own statements of guilt. [The traditional, five-factor newly discovered evidence test] presumes that the [PCR] judge is in a position to weigh the new testimony against that provided at the prior trial and assess whether an acquittal verdict would enter based upon new evidence. In the circumstance in which there never was a trial on the charges, the [PCR] court is hampered in that assessment.

Id. Indeed, the traditional, newly discovered evidence factors are “difficult, if not impossible to apply when the moving party pleaded guilty instead of standing trial.” *In re Reise*, 192 P.3d 949, 954 (2008).

In *Jamison*, in a guilty plea setting the Court addressed the appropriate review:

Guided by the language of section 17–27–20(A)(4) of the PCR Act, we hold that, when a PCR applicant seeks relief on the basis of newly discovered evidence following a guilty plea, relief is appropriate only where the applicant presents

evidence showing that (1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the “interest of justice” requires the applicant’s guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions. In so holding, we caution that it will be the rare case indeed where the interests of justice will require that a knowing and voluntary guilty plea be vacated through post-conviction relief on the basis of newly discovered evidence, for an unconditional guilty plea involving an admission of guilt and a waiver of trial and all defenses will generally preclude any subsequent challenge to factual guilt. *Cf. Reise*, 192 P.3d at 955 (finding a defendant may withdraw his guilty plea on the basis of newly discovered evidence only when necessary to correct manifest injustice). Such a determination will not be resolved in a formulaic manner, but will necessarily be context dependent.

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

Turning to the issues before this Court, the Applicant has not met his burden of proof. The Applicant’s initial claim is that the prosecution threatened and bullied potential witnesses against the Applicant. This Court finds that the Applicant made an inadequate showing of the existence of improper intimidation on the part of the solicitor’s office prior to the entry of the plea.

“The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant’s version of the facts as well as the prosecutions to the jury so it may decide where the truth lies.” *Washington v. Texas*, 388 U.S. 14, 19 (1967). “This right is a fundamental element of due process of law.” *Id.*

As the Court has recognized, the constitutional right of a defendant to call witnesses requires that they be called without intimidation from the State. *State v. Williams*, 326 S.C. 130, 485 S.E.2d 99 (1997). In *Williams*, the Supreme Court explained:

Improper intimidation of a witness may violate a defendant’s due process right to present his defense witnesses freely if the intimidation amounts to ‘substantial government interference with a defense witness’ free and unhampered choice to testify.’ ... Where substantial interference is found, the next issue is whether the

error can be deemed harmless. The rule in the Fourth Circuit appears to be that governmental intimidation can be deemed harmless error where the witness nonetheless testifies. Compare *United States v. Teague*, 737 F.2d 378 (4th Cir.1984) (harmless where defendant was not denied either all or the helpful part of the witness' testimony as a result of the attempted intimidation) with *United States v. MacCloskey*, 682 F.2d 468 (4th Cir.1982). Under this rule, the intimidation in this case could not be deemed harmless. We decline, however, to adopt such an automatic reversal rule and hold that in order to obtain relief, a defendant must demonstrate both substantial interference and prejudice.

Id. at 135, 485 S.E.2d at 102. However, even if the defendant demonstrates substantial interference and prejudice, a new trial is not always the requisite remedy. Instead, “[t]he remedy to be afforded a defendant in this situation is determined by the facts and circumstances of each case, depending on the prejudice suffered by the defendant.” *Id.* at 136, 485 S.E.2d at 103.

In analyzing a claim of prosecutorial misconduct based on alleged witness intimidation, the Supreme Court acknowledged the prosecutor's “fundamental power” to “bring charges against a person the prosecutor believes has committed a crime.” *State v. Needs*, 333 S.C. 134, 145, 508 S.E.2d 857, 862 (1998). This power is, nevertheless, subject to “constitutional constraints.” *Id.* For example, a prosecutor may not “lob baseless threats or charges at a potential defense witness in an effort to prevent the witness from testifying.” *Id.* at 146, 508 S.E.2d at 863; see Lisa A. Wenger, Annotation, *Admonitions Against Perjury or Threats to Prosecute Potential Defense Witness, Inducing Refusal to Testify, As Prejudicial Error*, 88 A.L.R.4th 388 (1991 & Supp.2011) (analyzing state and federal cases where prosecutor informs defense witness that that witness could face perjury charges or other prosecution if the witness testified).

This Court finds that the Applicant has completely failed in his burden of proof to show the existence of any witness intimidation. Contrary to the speculation suggested in the allegation, the Applicant failed to show the existence of any lay witness who claimed that they were subject to any intimidation or coercion by the prosecution prior to the plea. This Court finds credible the

testimony of Shawn Graham and Solicitor Hubbard that they did not use intimidation tactics in their investigation and trial preparation concerning the lay witnesses. Mere speculation over matters relating to the interaction by the prosecution team with the witnesses does not create credible evidence that this Court can rely upon to prove a manifest injustice. As shown by the credible testimony of both Shawn Graham and Solicitor Hubbard, the added investigation by their office was completed because of concerns that the earlier investigation was lacking. This is professionally consistent with ethical standards. It does not show manifest injustice. The Applicant's initial claim must be denied.

In the Applicant's second assertion he claims that the prosecution improperly coerced Applicant into a guilty plea in a meeting with defense Plea Counsel. The Court finds no evidence of improper conduct on the part of Solicitor Hubbard. This Court finds credible the testimony of Solicitor Hubbard and Plea Counsel Casto, as well as the persuasive statements made during the guilty plea, that the meeting was evidence of professional courtesy and entirely appropriate. There was no credible evidence presented that reflected inappropriate demeanor or bullying by the Solicitor during the meeting. To the contrary, this Court finds based upon the credible statements of Hubbard and Casto that the meeting was an informative disclosure by the prosecution of the nature of its entire case and their expectation on how possible defenses would be challenged when the murder case was tried. Furthermore, this was a meeting agreed to by the Plea Counsel and Applicant. The allegation must therefore be denied.

Applicant claims the prosecution engaged in improper *ex parte* communication Judge Griffith to allow the plea to be heard by him. This Court finds credible Solicitor Hubbard's testimony that his communication with Judge Griffith related to scheduling, not the substance of any sentencing related to the Applicant. As stated above, Applicant's case was scheduled to be

tried before Judge Griffith in Edgefield on April 17, 2017.

Rule 501, SCACR, Canon 3 addresses *ex parte* communication in the following manner:

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ***ex parte* communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized;** provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the *ex parte* communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the *ex parte* communication and allows an opportunity to respond.

Ex parte communications are strongly disfavored. *Bakala v. Bakala*, 352 S.C. 612, 623, 576 S.E.2d 156, 162 (2003). However, “prejudice must be shown to obtain a reversal on this ground.” *Id.* Cf. *State v. Quinn*, 430 S.C. 115, 843 S.E.2d 355 (2020) (no evidence of improper *ex parte* communication).

This Court finds credible Solicitor Hubbard’s testimony that his communication with Judge Griffith about Applicant’s case was solely related to scheduling purposes in light of the possible guilty plea. This was permissible under Canon 3 and appropriate conduct on his part. The solicitor was authorized also under the administrative judge’s order to communicate with the administrative judge about case dockets and scheduling. The communication was shared with Plea Counsel based upon the added need for his client to waive venue to Lexington for the entry of the plea. Since this communication was not improper, it does not provide a ground to vacate the guilty plea. Manifest injustice has not been shown. Post-conviction relief must be denied on this ground.

In his final specification, the Applicant contends that there was improper “judge shopping.” He essentially claims that the prosecution sought to avoid the guilty plea presentation to Judge Goldsmith in Edgefield on April 10 in Edgefield and to enter the plea instead in front of Judge Griffith in Lexington on that date. This Court rejects this claim based upon the lack of a cognizable claim for relief. This Court finds that the Applicant’s trial was scheduled to be heard at the April 17, 2017 Edgefield term of court before Judge Griffith, who was also the chief administrative judge for the 11th Circuit. Credible testimony presented to this Court was that the Eleventh Circuit had a practice to have the assigned trial judge over the case to handle the guilty pleas to avoid “judge shopping.”

In *State v. Langford*, 400 S.C. 421, 437, 735 S.E.2d 471, 479 (2012) the Court declared:

A criminal defendant has a due process right to have his case heard by a fair and impartial judge. *See Schweiker v. McClure*, 456 U.S. 188, 195, 102 S.Ct. 1665, 72 L.Ed.2d 1 (1982) (“[D]ue process demands impartiality on the part of those who function in judicial or quasi-judicial capacities.”). Similarly, he has the right to have a judge assigned to his case “in a manner free from bias or the desire to influence the outcome of the proceedings.” *Cruz v. Abbate*, 812 F.2d 571, 574 (9th Cir.1987) (Kozinski, J.). On the other hand, he does not have a right to “any particular procedure for the selection of the judge.” *Id.* Thus, there is no right to have one’s judge selected randomly, nor is there one to have a case heard by any particular judge. *Sinito v. United States*, 750 F.2d 512, 515 (6th Cir.1984).

State v. Langford, 400 S.C. 421, 437, 735 S.E.2d 471, 479 (2012).

Here, the Court finds Applicant agreed to appear before Judge Griffith in Lexington, and affirmatively waived venue in Edgefield County. Having agreed, Applicant waived any claim that he was prejudiced by having Judge Griffith as the plea judge and this claim must be denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. His claim of newly discovered evidence must fail because he failed to show a manifest

injustice from his entry of a free and voluntary guilty plea and sentence within the negotiated range. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED WITH PREJUDICE**.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 22nd day of June, 2025.



THE HONORABLE KRISTI F. CURTIS
Presiding Judge
Eleventh Judicial Circuit



, South Carolina