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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Georgetown County

Honorable Dale E. Van Slambrook, Circuit Court Judge

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JAVON HAIR,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001559

---

APPENDIX

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STATE OF SOUTH CAROLINA ) TRANSCRIPT OF RECORD  
COUNTY OF GEORGETOWN ) CASE NO. 2020-GS-22-01702

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July 11, 2022

BEFORE: The Honorable Jennifer B. McCoy  
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State of South Carolina,  
Plaintiff,

vs.

Javon J. Hair,  
Defendant.  
-----

APPEARANCES:

Elizabeth Smith, Esq.  
Solicitor for the State.

B. Alex Hyman, Esq.  
Attorney for the Defendant.

Official Court Reporter,  
Cynthia D. Weaver

P-R-O-C-E-E-D-I-N-G-S

THE COURT: Thank you. Please be seated.

MS. SMITH: Your Honor, this is the State of South Carolina versus Javon Jacob Hair. These are True Billed Indictments 2022-GS-22-01072 for murder; 1073, possession of a weapon during a violent crime; and 1074 for armed robbery.

We're here today on a lesser included offense of voluntary manslaughter.

If I may approach with the sentencing sheet?

THE COURT: Yes, ma'am.

MS. SMITH: The plea offer is a negotiated range of 25 to 30 years. It is our understanding that the defendant is here today to plead guilty. We do have the victim's family present. Several of them would like to speak at the appropriate time.

THE COURT: I'll be happy to hear from them at that time. Okay. All right.

Javon Jacob Hair, is that your name?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right.

MS. SMITH: Your Honor, I do believe that he has not been sworn in I apologize.

THE COURT: All right. Go ahead.

JAVON JACOB HAIR, having been duly sworn testified as followed:

THE COURT: All right. Mr. Hair, good morning.

You are represented today by Mr. Hyman standing by your side; is that correct?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. And Mr. Hair, I understand that you are going to plead guilty today to the crime of voluntary manslaughter; is that your understanding as well?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right that can carry between 2 to 30 years in the State of South Carolina.

Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: And there was an offer extended by the Solicitor's Office of a negotiated range of 25 to 40.

Is that also your understanding?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. Mr. Hair, are you under the influence of any medications or drugs or anything that would keep you from understanding what's going on in court today.

THE DEFENDANT: No, ma'am.

THE COURT: All right. And, Mr. Hair, have you had the opportunity to discuss your decision to plead today with your attorney?

THE DEFENDANT: Yes, ma'am.

THE COURT: Do you need any more time with him?

THE DEFENDANT: No ma'am.

THE COURT: All right. Are you satisfied with his representation of you so far?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. Mr. Hyman, do you believe your client understands what he's doing today?

MR. HYMAN: He does, Your Honor.

THE COURT: Mr. Hair, this charge of voluntary manslaughter in the State of South Carolina is classified as both violent and most serious. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: That means you will incur two strikes on your record today as a result of this plea. South Carolina is a three strike state so if you incur another strike at sometime in the future you would be eligible for life without parole. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. Mr. Hair, I'm required to tell you that when you plead guilty you give up several Constitutional Rights. You're giving up your right to a jury trial. You're giving up your right to confront the State's witnesses they would have to call to prove you guilty at trial. You're also giving up your right to remain silent, among several others. You want to give up all these

rights and go forward?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. Has anyone promised you anything or threatened you or forced you to plead guilty today?

THE DEFENDANT: No, ma'am.

THE COURT: All right. How far did you go in school.

THE DEFENDANT: Twelve grade.

THE COURT: Okay. Able to read and write?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. All right. Mr. Hair, I'm going to ask that you listen carefully to the Solicitor, she's going to tell me a little bit more about the facts that led up to your arrest on this charge and then we'll come back to you and your lawyer, okay?

THE WITNESS: Yes, ma'am.

THE COURT: All right. Go ahead.

MS. SMITH: On or about February 5th of 2020, right here in the city limits of Georgetown, there's a little tire place called In and Out Used Tires. If you go up on Merriman it's right's behind the Money Saver Gas Station. The victim is Herman McCray, Jr. He was at In and Out Used Tires with several of his friends when the defendant pulled up with the co-defendant. At that point in

time the defendant and the victim saw each other and they knew each other and words were exchanged. The defendant then chased the victim around the building with a gun. A bag was stolen. Tensions were extremely high during this time period and when the victim came back to the front after being chased by the defendant, the defendant got back into the vehicle that he had arrived in and the victim did throw and object at the car.

At that point in time the defendant did get out of the vehicles, Mr. McCray started running away and this defendant did shoot the victim in back. That did cause the victim's death.

THE COURT: Okay. All right. Mr. Hair, are those facts correct that lead up to the elements that lead up to the voluntary manslaughter charge?

THE WITNESS: Would you mind repeating that?

THE COURT: Sure. Regarding the charge that you're pleading to, voluntary manslaughter, are those facts correct that the Solicitor read out?

THE WITNESS: Yes, ma'am.

THE COURT: Okay. I'll accept your plea. I find you're entering into the plea willingly, voluntarily, with the advice of an excellent attorney.

At this time I'm happy to hear from the victim's family if they wish to speak at this time.

MS. ELLINGTON: Good morning, Your Honor. I'm Yvette McCray Ellington. Y-V-E-T-T-E, M-C-C-R-A-Y, ELLINGTON, E-L-L-I-N-G-T-O-N.

I am the sister of Herman McCray, Jr. And he has been our light. He was our light in so, so many things. Like our day, like, everything is disrupted. I know we're here today because he murdered my brother in cold blood. And my brother was our life. At every event he brought us joy. He was my best friend. He was my best friend. And it was he and I that our parents had and he lived such a short life because it was taken from him in cold blood. Life is gone.

And he had two very small babies and they were a few months old. And those babies now are finally able to talk. They ask, Where's our daddy? And every day, you know, he was my brother, he was just that type of guy that could put a smile on anybody's face no matter what. I mean, he would come and just knock on my door, I'm like, Who's that? And it's him. And no matter time of day, no matter what's going on, he was there, he was with smiles. Anything you asked of him, he was there. And he was my best friend and all we had was each other, all we had. And he was just such an amazing, amazing guy. And, you know, he said, Hey, Yvette, I want to make a difference, I want to be that, you know, I want go to school so I can do what I can for my

kids. And just -- he went -- I said, Well, do it. And he said, Okay. He went to college. He finished. He said I want to finish for my children, I'm a daddy now.

And, I mean, you just don't know what his death done to us. Everything -- I get up -- I'm a nurse, a registered nurse, every day I get up and go to work and when I'm at work -- I'm trying my best. And when things arise, situation arise when I'm in a life or death situation and I'm caring for my patient and I'm saving my patient's life, the only thing that I can think of -- I'm sorry.

THE COURT: That's okay.

MS. ELLINGTON: The only think I can think about is this recurring -- this recurring dream and the same dream over and over and over, save JR and I'm trying to save him, I'm trying to save him. This is not a temporary thing, this is a lifetime. Everything -- I wake up, everything reminds me of him. No amount of therapy. We're in therapy. I mean, everybody so loved him, he was so loved by so many people. People always -- he got so much respect and good mannerisms. And he was trying -- he was trying to be his very best to make it and live. And that was taken away from him. This wasn't a temporary situation where he'll be able to get up and walk away and live again.

But my best friend. I woke up and one day and I cooked some food and I got a call and I was walking in the

kitchen, Your Honor, and it was so -- it was so odd because I cooked, I was off, I said, I'll cook something and I had the rice and the beans and I'm pulling up the chicken and I put it there and then I got a phone call and -- and it was like the wind was still outside, the wind had been blowing, but there was this feeling. I was like, What is this feeling? I got a call, but that call said your brother has been shot. Your best friend has been shot. And you don't know if he is alive or if he is dead. I said, No, not him, not him. He is such a light, he's got a different kind of blessing on his life, he going to make it through this.

But, Your Honor, he was murdered in cold blood and it was wrong, it was wrong. So I ask that you take all of this into consideration. This is not a light thing for the rest of our lives, for the rest of his children's lives. I haven't even begun talking about the things, the attachment his babies has for him, he couldn't sleep. Every time he said, Daddy, my heart broke a million times more.

Your Honor, it's just -- it's one of those things that you can't believe it. It was like a movie, it's like a movie that comes -- comes on again and you close your eyes and you see it again and again. It's a tattoo of the mind.

THE COURT: Well, I'm so sorry, obviously, that you have to be here under these circumstances. You have wonderful words that you're -- I'm grateful that you could

come in and speak about your brother and your best friend this morning. And I'm glad you could speak on behalf of your family. It's important that you take a part in the process and that you be here today and that you understand that nothing, which you already know this, nothing I do is going to undo anything. I wish it would, if there was something I could do to undo that day, I certainly would do it.

At least I hope that y'all can have some closure and one little tiny piece of this puzzle today and move on. And I really do appreciate your words. You did an excellent job speaking and I appreciate you being here today okay?

MS. ELLINGTON: Yes, ma'am.

THE COURT: Thank you.

MS. SMITH: Your Honor, I do believe his mother would like to address the Court, as well.

THE COURT: Okay. Good morning.

MS. MCCOLLOUGH: Good morning. I'm Yvonne McCray McCollough. I am Herman Elton McCray, Jr., mother.

Herman -- Herman is the youngest child that I had. Herman was so special and he was just so determined to try do what he needed to do to fix his life. He had children, and he said, Momma, I'm not going to be here with you long. I said, What are you talking about? And he said, Momma, I have to get you some grandchildren so that you can remember

me. I said, No, you have time. He said, No, Momma, I won't.

He got -- he has two children. He says, I'm going to be father. I'm going to school. He went to Midlands Tech in Columbia, South Carolina. He drove everyday. He's an electrician, journeyman. And, in the meantime, he was working in Georgetown at the power plant. He said, Momma, I have been in trouble before. He said, But I am a changed man. And he looked up family maintenance plans. Anything we had in church. Anybody in the community who he passed by and saw. Some of the community, doing something outside, he would stop. And he was just really honestly and truly the light of our life. You could be down, it doesn't matter, he's going to pick you up before you leave.

And when his baby -- his baby birthday was [REDACTED], and he came to see me four days before the birthday. He said, Momma, I came to see you. I was cleaning out the closet, he said, Momma, where is my blue suit? That's why I wore this blue skirt, it doesn't match my black, but the black is my mourning and the blue is him, because it's his favorite color. I said, JR, your suit is in the closet. You know how boys keep their room one piece was behind the closet door and the other piece was still in the closet.

But backing up, that Christmas, as I was cleaning

out his room and cleaning it up, when I found the vest to his suit, I took it and I hung it in the closet. And when I hung the hanger in the closet I heard a voice that said this is the suit that your son will be buried in. I jerked away. I said, No.

So, when my son asked me two months later where was his suit, I said, It's in the closet. I said, Oh, God, no. He said, Momma, how do I look in that suit? I said, Boy, you look good. He said, I do look good in that suit, don't I? He said, You sure you know where it is? I said, Yes. I said, Do you want to see it. He said, No, no as long as you got that right.

He said, Momma, I just want to thank you for doing everything that you have done for me and my children. He said, I cannot pay you to watch over them. He said, But Momma, I love you and I will always be with you. I said, JR, you're scaring me, don't talk like this. He said, No, Momma, I need you to listen. He went in his pocket, he gave me his driver's license and his Social Security Number. I said, Boy, you know now the police is in Georgetown? He said, Yes. He said, But I won't need these no more, Momma. I said, JR, please. He said, Momma, if I make it to Monday morning -- this was on a Thursday he told me this -- if I make it -- this was -- wait a minute, I'm sorry, this was four days before his death -- he said, If I make it to next

week, I've already been to New York. Already have me another job, he has a sister in New York, he said, I will be doing electrician work up there. I said, Well, that is good. He said, I have everything already in order. I said, Well, I'm so glad you're still going to be here because your baby birthday is Sunday. He said, Momma, I would, but I can't. I said, Well, you're not leaving before then. He said, Momma, I won't be here. I said, JR, what are you saying? He said Momma, I would if I could but I can't. He said, Momma, when they kill me I want you to make sure that you give them life. I said, Well, JR, please don't say that. He said, Momma, I've already seen it.

So the day -- the morning that he -- the day that he died I was in the bed and I heard his car horn blow in my yard and I stood still because every I've heard and I recognize different people in my family car horn, and it comes to my house and blow and knock on the window, I know it's death.

I got up, I said, Oh, God. I got up at 4:30 that morning and I washed the two plates. The one of the plates is the one he gave out. I said, Lord, I said this is your kids, I said, I need you to protect my son. I said, God, I hadn't heard from you in a while, I need you to speak to me, because something is going on and I need to check.

Well, I put the dishing water, the liquid in the

sink, and when I went to stick my hand in the sink, the Lord spoke. He said, Sunday, you will not have a birthday party. That was my grandson first one-year old birthday party. He said, Sunday, you will be burying your son. I fell on the floor. I could not believe it. I said, Lord, I said, I've done everything always what you've asked me to. I said, I provide, I protect. I said, I'm a Christian. I said, I get out here and do what I got to do regardless of what I feel.

I'm a school bus driver for the little small three and four-year old kids. I'm a cosmetologist for the last 40 years. And I'm a maintenance worker for my family. They have rental properties and stuff and their maintenance person. And my son, he was taught to do that, as well.

And that day when I got off the bus, I was praying all day. I said, Lord, I got to get home for my son, because today is the day. I left my keys, my pocketbook on the bus and I ran to my car as fast as I could. And I said, oh, my God, I don't have enough gas to get to Georgetown to find my son. So I stopped by my Daddy's store, which is McCullough's Grocery in Kingstree, I said, Daddy, buy me some gas and I left my pocketbook at -- he said, Don't worry about that, baby. He said, Come on in. He said, I wanted you to come anyhow because my TV's not working and I need you to see what's wrong with it, because I like to mess with a little technology stuff. I said, Okay, Daddy. So when I

bend down and make sure everything was connected and when I stood up I heard, Boom. I said, Daddy, what was that? He said, Baby, I don't know. I said, Daddy, that's my baby. He said -- he said, No. I said, Daddy, I've got to get my sister. We've got to go to Georgetown and find Herman. Hermon is shot. He's shot? She said, You think so? I said, I know so, I heard it and my Daddy heard it, I fell on the floor and my Daddy picked me up, he heard it too.

When I got my shoes and, again, my sister, my sister said, Give me a few minutes. I said, No, Lisa, we got to come now, somebody done shot JR, I heard it. When we got in the car on the way, his baby mother called and said Ms. Yvonne, Herman, Jr. has been shot. I said, what? I said, I am sorry, but my son is dead. And she, No, Ms. Yvonne, he's going to be all right. God done told me, and my sone told me who before he was dead.

So this just -- I cannot believe it every day of my life. And I see his kids I'm practically raising. And Momma, Where's Daddy? Daddy's up there? I say, He is and he's watching over you.

So I'm asking you, Your Honor, Court, I am so sorry that everybody is here. I'm so sorry, but his family, I'm so sorry for his mother and his children as well, this cannot even be rectified. My whole life has changed. And being a Christian woman it is very hard and very painful

when you're trying to do everything right and something just comes in and just cuts your whole life down. But I know that I have to keep myself going for my family, for his children. And I just have to keep his memory alive.

He got so many records that's unsung but was recorded and licensed and ready to go and I have to take care of all of this stuff so his children can live. He already even set it up money for his kids. He was putting a hundred dollars a week out of his working paycheck for his kids college. He said, Momma, I won't be here to see them go to college. He said, But I want them to have something.

So anybody else knows, but I am a shell of a woman. I'm sad. I am dead. I'm dead. And right now and tell my kids when God get ready for me, I'm ready to go. Thank you. And I just pray that from this -- I just pray that everything will be all right. I'm going to try to hold on the best I can and keep doing the things that I'm doing, but it's not easy. It's not easy. I feel deceived. Thank you, Your Honor.

THE COURT: Yes, ma'am. I'm so sorry. I know words don't mean a whole lot, but I really am. And, you know, no parent should ever have to bury a child, certainly -- certainly not something any parent should have ever have to go through at all. So having to watch my dad do that, too, that's tough and I really appreciate y'all

being here and speaking.

All right. Anybody else, Solicitor, or is that it?

MS. SMITH: That's it. To my understanding, that's it.

THE COURT: Okay. All right.

Well, at this point in time, Mr. Hyman, you know, I'm happy to hear from you. And, of course, if he has any family members, I'll hear from them, as well.

MR. HYMAN: Judge, thank you. I spoke with his family, he's got his brother and his fiancée and his sister here in support. His mother was going to be here, but for health reasons, couldn't be.

Judge, in listening to Herman's mother and sister talk, my condolences do go out to them. This is an unfortunate and severely tragic thing that happened.

Judge, listening to it there are so many parallels between Herman and Javon. Both musicians. Both in that industry. Both two small children. Javon has a two-year old and six-year old that he was raising. In fact, Javon's sister is also in healthcare. Javon's fiancée is a registered nurse. I mean, it was like hearing two families that just paralleled each other.

And I know, as a result of that, Javon, he and I have talked a good bit about his remorse and the fact that

he is remorseful. He understands that a split-second decision has changed the paths of two families.

There will be four children that are going to be raised without a dad. Herman's children and Javon's. And that, in itself, is a tragedy. The only positive that I feel like could come out of that it does appear that Herman's got a great family and it appears that Javon's has a great family and they'll help raise those kids and I hope and pray that that will be the case.

Judge, just a little bit about Javon. As I said, his fiancée is here. I called her his wife, I don't know how many times, because she acts like his wife. They've been together for quite some time. Judge, she's a registered nurse. Javon is originally from New York but moved here when he was 13. He attended Conway High School but, for the most part of his life, has lived right here in Georgetown in the Pawleys Island section.

Judge, and as I stated a little bit in our pretrial conference, all of this revolves around unfortunate passion in both of what they do as far as the music, but -- and also in stuff that we would consider petty. And unfortunately it has led to a tragedy.

Judge, in talking with Javon, again, he is very, very remorseful. He's remorseful and has told me quite a few times that he did want to give his condolences to

Herman's family. I know that he is very remorseful to his own family. I think he understands that this action has made it so that his children are going to have to be raised by someone other than him. I have given him or he does realize that he's got the opportunity of one day getting out and being with those children and I hope that he can take solace in that.

Judge, we would just ask that in sentencing that he be given the 25-year sentence on this. We're not asking for anything less than that. He understands that, as a result of this, he's going to have two strikes and 25 years is a long time. And, Judge, I do believe that he would like to address the Court. I spoke with his family about addressing the Court and they basically have just told me what they wanted to be told.

THE COURT: Okay. All right. Mr. Hair, I'm happy to hear from you.

THE DEFENDANT: First of all, I'd like to give my deepest condolences to his family. By any tragedy, no matter how it happened, is remorseful, sorry. I was remorseful of this situation since the day that it happened. I don't wish death or harm on anybody, the same way, I have kids, he have kids. And like Mr. Hyman says, they all four of them will grow up without their fathers. And I'm sorry for that. The actions that happened that day don't define

me as a person. And if I could change those actions, I would, but there's nothing I can do to change that and I'm sorry.

THE COURT: I appreciate that. That's a sincere apology, so I do appreciate that. I hear apologies a lot doing what I do for a living. So I appreciate that. I hope the family of the victim does. Of course, you know, as we all know, your family will get you back one day, eventually. Right. That's the hope. Of course, his family won't and that's a difficult thing to have to think about.

All right. Anything else, Mr. Hyman?

MR. HYMAN: No, Your Honor.

THE COURT: Anything else from the State?

MS. SMITH: No, Your Honor, there's nothing from the State.

THE COURT: Okay. I mean, understanding this is a negotiation with a very small range, so really we're not talking about much of a difference here.

Mr. Hair, you're 29; is that right?

THE DEFENDANT: I'm 30.

MR. HYMAN: He just turned 30.

THE COURT: How old are you now? You just turned 30, so you're going to be an aged man by the time you are able to get out. As you indicated you're basically missing your children's growing up. And, you know, I don't envy

that position for your children or your family. But, obviously, this is a serious crime. I do appreciate your sincere apology. And I appreciate the victim's family most of all for being here and speaking up against this act of violence. I think it's important that the victim's stay in part of the process so that hopefully this type of thing, you know, doesn't happen any more often than it already does.

The sentence on 2020-GS-22-01702, is going to be 25 years in the State Penitentiary. That's a two-strike offense. You now have strikes on your record. You'll then be followed by the Department of Parole upon your release. After that time period, for a period of time, you'll need to make sure you comply with everything they want you to do. At that point in time, but you've got a long, long time to be thinking about what happened that day and wish everybody here the best of luck.

And I really -- I can't echo my condolences enough for the victim's family. As I said earlier, a parent should never have to bury a child. So I'm really -- I'm really sorry. Thank y'all for being here. All right.

MR. HYMAN: Thank you, Judge.

END OF REQUESTED PROCEEDINGS

CERTIFICATE OF REPORTER

State of South Carolina            )

County of Georgetown            )

I, Cynthia D. Weaver, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the Court of General Sessions for Georgetown County, South Carolina, on the 11th day of July, 2022.

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

March 23, 2023



Cynthia D. Weaver,  
Official Court Reporter  
State of South Carolina

FORM 5

STATE OF SOUTH CAROLINA )

County of Georgetown )

Levon Jacob Hair #3881395 )

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

v. )

State of South Carolina )

IN THE COURT OF COMMON PLEAS

2023-CP-22-00077

APPLICATION FOR

POST-CONVICTION RELIEF

2023 JAN 23 PM 3:18  
LINA Y. WHITE  
CLERK OF COURT

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 Evans Correctional Institution  
610 Highway 9 West Bennettsville S.C. 29512
2. Name and location of Court which imposed sentence 204 Cleveland St  
Georgetown, South Carolina 29440
3. Name(s) of co-defendant(s) (if any) ~~\_\_\_\_\_~~  
Dyshan Frasier
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) Murder reduce to Manslaughter
  - (b) \_\_\_\_\_

2020A-2220200079  
2020GS22 01072

- (o) \_\_\_\_\_
- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty
  - (b) after a plea of not guilty \_\_\_\_\_
  - (c) after a plea of nolo contendere \_\_\_\_\_
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?  
No

- 8. If you answered "yes" to (7), list:
  - (a) the name of each Court to which you appealed:
    - i. \_\_\_\_\_
    - 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) \_\_\_\_\_ see attached
  - (b) \_\_\_\_\_ sheet p 1
  - (c) \_\_\_\_\_

- 10. State concisely the grounds on which you base your allegation that you are being held in onstody unlawfully: see 28 U.S.C.A. 2254 (2) also  
see sheet p 2 attached

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

11. State concisely and in the same order the facts which support each of the grounds set out in (10): see issue #1 (no. 16) grounds in

(a) support of held unlawfully, see

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

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

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

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

(a) the specific nature thereof:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

4. 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

5. 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. \_\_\_\_\_

6. 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) \_\_\_\_\_ *the applicant has not exhausted the*
- (b) \_\_\_\_\_ *remedies available in the Courts*
- (c) \_\_\_\_\_ *of the state*

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

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

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.    *B. Alex Hymon of THE Hymon Law Group, P.A.*
  - ii.    *1204 3rd Avenue*
  - iii.    *Conway, S.C. 29526*
- (b) the proceedings at which each such attorney represented you:
  - i.    *From the moment after arrest*
  - ii.    *through the course of proceedings*
  - iii.

9. State clearly the relief you seek in filing this application: see attached sheet page 1 issue de relief sought

10. Are you now under sentence from any other court that you have not challenged? No

STATE OF SOUTH CAROLINA )

County of )

VERIFICATION

I, ~~788395~~ 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.

*Saverio - Truck Driver 788395*

SWORN to and subscribed before me this 19th  
day of January, 2023

*Saxena Duttaw* (L.S.)  
Notary Public

My Commission Expires: 2/17/23

2023 JAN 23 PM 3:18  
ALPHA Y. WHITE  
CLERK OF COURT

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

I, 388345 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.

Sarona Jacob White 588395  
Applicant

SWORN or affirmed to and subscribed before me this  
19th day of January, 2023  
Sarona Outlaw  
Notary Public

ALPHA Y. WHITE  
CLERK OF COURT  
2023 JAN 23 PM 3:18

My Commission Expires: 2/17/24

Page 1 attached sheet continuing  
from Application page 2 no 9

Substantive Grounds For  
Post Conviction Relief

Application for relief filed pursuant to  
S.C. Code Ann. § 17-27-45 in accorded  
with S.C. Code Ann. § 17-27-20

- 1) Applicant contends Affidavit  
must provide probable cause for  
issuance of an arrest warrant, but  
need not contain allegations  
sufficient, if true, to establish  
guilt beyond a reasonable doubt
- 2) Applicant contends this criminal  
proceeding not previously recognized  
is evidence of material facts not  
previously heard.
- 3) Applicant claims that his trial  
attorney provided ineffective assistance  
by unreasonable failing to object  
to Affidavit presentment or to  
file appeal or direct appeal after  
sentencing during the course of  
proceedings

see next sheet issue (1)

Issue (1)

4) Prior to guilty plea "affidavit duly sworn"  
by Allen W. Morris - 0250 on 2/5/2020 states  
Applicant did with Malice aforethought  
cause the death of Victim.

5) "The statement made by Affiant  
before the arrest places Affiant (A)  
Witness to the Crime that Applicant  
did with Malice aforethought cause  
the death of Victim."

6) "This Affidavit made by Affiant also  
sufficient enough to support a Conviction  
on a Verdict of guilty establishing guilty  
beyond a reasonable doubt is totally up to a  
jury to decide."

Grounds in support of issue (1)

Affidavit's language refer to guilty  
of Applicant, clearly states, that  
Applicant did with Malice aforethought  
cause the death of Victim, is Contrary  
to Murder defined see S.C. code Ann. §  
16-3-10. Murder is the killing of any  
person with Malice aforethought, either  
express or implied.

(Issue (1)) Continuing next sheet)

Issue (1)

this statute language 16-3-10 is totally up to a jury to decide a Conviction or Verdict of guilty establishing guilty beyond a reasonable doubt or Applicant pleading guilty to the offense of Murder, "is not up to Affiant Member to find Applicant did with Malice aforethought Cause the death of Victim is Criminal proceedings of Material Facts not, previously recognized or previously heard" but, found within one year of July 14, 2002 of Applicant discovering this Material Fact Fall's within the discovery rule of Applicant's discover of trial attorney's error's prior to guilty plea involuntary not knowing that this Material fact existed. "should entitle Applicant to an evidentiary hearing to determine if Applicant is held unlawful."

Issue (2)

7). Prior to guilty plea, Counsel did not object to indictment defect on Malice to quash such indictment before the jury shall be sworn, due to the defect of affidavit.

see Issue (2) next sheet

Issue (2)

should entitle Applicant an evidentiary hearing to determine if indictment should have been quashed.

Issue (3)

8) Indictment for Murder would have been insufficient to charge offense of Murder to apprise the Applicant of the elements of the offense intended to be charged due to the fact, "that Affidavit had already found Applicant guilty."

Issue (4)

9) Prior to guilty plea to the offense of Manslaughter with no exception of describing the offense elements in indictment for Manslaughter would "would make indictment insufficient because there is no indictment charging Applicant with the offense elements of Manslaughter, to apprise the Applicant of the elements of the offense intended to be charged."

Issue (5)

10) Prior to guilty plea, Applicant shall have a right to due process" on the advise to be advised that Applicant Applicant been subjected to Double Jeopardy by his during the Course of Criminal proceedings

see next sheet issue (5)

issue (5)

11) To be advised by representation of Counsel prior to guilty plea that Applicant subject to double jeopardy or punish Applicant when there is no punishment to seek. The failure of Counsel to object to Affidavit allowed the government to punish Applicant when the Affidavit had already found Applicant guilty without due course of substantive proceedings. The failure of Counsel to object after sentencing due to the Court not advising Applicant that he had a right to appeal of a lower Court's decision to be reviewed in a higher Court by direct appeal see

according to Rule 201, SPCR  
and  
according to Rule 72, SPCRP

In accordance with Federal Rule of Criminal Procedure, Rule 32.

Title VII. Post Conviction Procedure  
U.S.C.A. Rule 32. (XIX B)

"after sentencing regardless of Applicant plea the Court must advise Applicant of any right to Appeal"

see issue (6) next sheet

(Issue 6)

12. ApplicantRelief Sought

Claims that the Conviction or the sentence was in Violation of the Constitution of the United States and South Carolina's Constitution or Laws of this state.

In support of Relief Sought

under U.S. C. A. 5 Amendment due process clause, Applicant was injured by Law see Affidavit in record, during the Course of Criminal proceedings, South Carolina did not follow Rules and Procedures of there Law which has Violated Applicant's due process under Amendment 5 due process clause. Due to the due process of the 14th Amendment of the United States Constitution, No state shall make, or enforce any Law which shall abridge. see S.C. Const. art 1 § 3 Applicant's right to due process of Law, which subjects Applicant to the jurisdiction of South Carolina wherein Applicant reside. and subjects him to its Laws, not to be abridged of its Laws, Rules or Procedures.

see Issue 6 Relief Sought  
next sheet

Issue 6  
Relief Sought

Applicant requests, representation  
of Counsel throughout the proceedings  
provided by Attorney General's office

In accordance with Applicant's Post  
Conviction Relief proceedings

In accordance with the U.S.C.A. 6  
provides, "that Counsel be provided  
throughout all proceedings."

see also "in support of Relief Sought"

White v. State, 263 S.C. 110, 208 S.E. 2d  
35 (1974)

Jackson v. Virginia, 443 U.S. 307, 99 S.Ct.  
2781 (1979)

Strickland v. Washington, 466 U.S. 668,  
104 S.Ct. 2052 (1984)

End of Application

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(Attached sheet Page 2)

United States Code Annotated

Title 28. Judiciary and Judicial Procedure

Part VI. Particular Proceedings

Chapter 153. Habeas Corpus

Effective: April 24, 1996

28 U.S.C.A. § 2254

§ 2254. State custody; remedies in Federal Courts

Applicant Continuing From Page 2 number 10. of  
APPLICATION FOR POST-CONVICTION RELIEF

Accordingly:

According to,

§ 2254. (2) An application for a writ of habeas corpus may be denied on the merits notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the state.

End of Application

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

Javon J. Hair, #388395, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

IN THE COURT OF COMMON PLEAS )  
FOR THE FIFTEENTH JUDICIAL CIRCUIT )

Case No.: 2023-CP-22-00077 )

RETURN AND )  
PARTIAL MOTION TO DIMISS )

(Counsel Appointed) )

FILED  
2024 SEP 20 - AM 11:57  
CLERK OF COURT  
GEORGETOWN COUNTY, S.C.

The State of South Carolina (“Respondent” or “the State”) hereby makes its Return to the Court in response to the post-conviction relief (“PCR”) application filed by Javon J. Hair (“Applicant”) on January 23, 2023. Respondent would respectfully show this Court:

**I. PROCEDURAL HISTORY**

Applicant is presently confined to the South Carolina Department of Corrections (“SCDC”), serving a twenty-five (25) year sentence. On October 28, 2020, the Georgetown County Grand Jury indicted Applicant for murder (2020-GS-22-01072), armed robbery (-01074), and possession of a weapon during the commission of a violent crime (-01073). On July 11, 2022, Applicant pled guilty before the Honorable Jennifer B. McCoy. Assistant Solicitor Elizabeth Smith prosecuted the case. Applicant was represented by B. Alex Hyman, Esq. (“Counsel”). In exchange for his guilty plea, Applicant pled to voluntary manslaughter, the lesser included offense. Pursuant

<sup>1</sup> Respondent’s Return was due to be filed within sixty days of receipt. See Rule 12(a), SCRPC (“[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.”) Now, having completed the Return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this Return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that “respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application”); *Gulnyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court).

to a negotiated sentencing range of twenty-five (25) to thirty (30) years, Judge McCoy sentenced Applicant to twenty-five (25) years for voluntary manslaughter. Applicant did not appeal.

## II. FACTUAL HISTORY

On February 5, 2020, Herman McCray, Jr. (“Victim”) was at a tire shop in Georgetown when Applicant and his co-defendant pulled up. (Tr. 5). Applicant and Victim, who knew each other, got into a verbal altercation. (Tr. 6). Applicant chased Victim around the building with a gun. (Tr. 6). A bag was stolen. (Tr. 6). Applicant and his co-defendant got back into their car, and Victim threw an object at the car. (Tr. 6). Applicant got out of the car, and Victim began to run away. (Tr. 6). Applicant shot Victim in the back, causing Victim’s death. (Tr. 6).

## III. CURRENT APPLICATION

In his current PCR application, Applicant alleges he is being held unlawfully based on the following:<sup>2</sup>

- I. Ineffective Assistance of Counsel
  - a. Failure to object to affidavit presentment.
  - b. Failure to file a direct appeal.
  - c. Failure to file a motion to quash indictment for insufficiency prior to Applicant’s guilty plea.
  - d. Failure to advise Applicant on double jeopardy.
- II. Involuntary Plea
- III. Newly Discovered Evidence
  - a. Applicant contends affidavit does not contain sufficient facts to establish guilt beyond a reasonable doubt to support a conviction for a jury to decide. Applicant alleges the affidavit is evidence of material facts not previously heard.

Applicant requests relief as follows: evidentiary hearing with counsel appointed.<sup>3</sup>

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<sup>2</sup> Unless quoted, Applicant’s allegations have been summarized for brevity and clarity.

<sup>3</sup> If this Court finds a defect in the original proceedings, the appropriate remedy is to grant a new trial on the original indictments. *Gilstrap v. State*, 252 S.C. 625, 628, 168 S.E.2d 88, 89 (1969) (stating the relief to be granted is remand for a new trial); *Smith v. State*, 413 S.C. 194, 195, 775 S.E.2d 696, 696 (2015) (“We now clarify the proper remedy is a new trial”).

Attached to this Return and incorporated herein are the records of the Georgetown County Clerk of Court records regarding the subject convictions, Applicant's records from SCDC, and the PCR application. The State reserves the right to amend this Return upon receipt of any relevant materials.

IV. RESPONSE TO INEFFECTIVE ASSISTANCE OF COUNSEL ALLEGATION

*Ineffective Assistance of Counsel, Generally.*

The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to "assistance by an attorney, whether retained or appointed, who play a necessary role to ensure the trial is fair. *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (2014) (enumerating cognizable claims in PCR actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a PCR action, Applicant bears the burden of proving the allegations in his application by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland*, 466 U.S. at 668; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*.

To obtain relief for an allegation of ineffective assistance of counsel, a PCR applicant must prove (1) counsel's performance was deficient and fell below an objective standard of reasonableness, measured under "prevailing professional norms," and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland*, 466 U.S. at 687-88; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18.

#### *Strategic Decisions of Counsel*

*Strickland* requires that trial counsel be given leeway to make reasonable strategic decisions. *Strickland*, at 688-89 (stating "[n]o particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant"). Judicial scrutiny of counsel's performance must be highly deferential. *Id.* at 689. Reviewing courts "should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." *Strickland*, 466 U.S. at 690.

#### *Failure to Object*

Failing to object does not automatically constitute ineffective assistance of counsel. *See Millidge v. State*, 422 S.C. 366, 374, 811 S.E.2d 769, 800-01 (2018) (stating an applicant must prove both deficiency and prejudice to establish ineffective assistance of counsel for failing to preserve an issue); *see also id.* at 380. (“[T]he proper inquiry for determining prejudice...is whether there is evidence in the record to support the trial court’s finding... if so, an appellate would necessarily have affirmed the trial court’s [ruling]....”). An ineffective assistance claim based on failure to object is tied to the admissibility of the underlying evidence. *Hough v. Anderson*, 272 F.3d 878, 898 (7th Cir. 2001). “If evidence admitted without objection was admissible, then the complained of action fails both prongs of *Strickland*: failing to object to admissible evidence cannot be professionally unreasonable, nor can it prejudice the defendant against whom the evidence was admitted.” *Id.*

#### V. RESPONSE TO INVOLUNTARY GUILTY PLEA ALLEGATION

A PCR applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel’s errors, the applicant would not have plead guilty but would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985); *Dalton v. State*, 376 S.C. 130, 136, 654 S.E.2d 870, 873 (Ct. App. 2007). Counsel is presumed to have rendered competent advice at the time their clients considered pleading guilty. *Padilla v. Kentucky*, 559 U.S. 356, 372 (2010). Additionally, the burden is on the applicant to convince the court that rejecting a plea or plea bargain would have been rational under the circumstances. *Id.*

To find a defendant entered a guilty plea knowingly and voluntarily, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874. This involves awareness of “the privilege

against self-incrimination, the right to a jury trial, and the right to confront one's accusers" and "the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing *Boykin v. Alabama*, 395 U.S. 238 (1969)). Statements made during a guilty plea should be considered conclusive unless the applicant presents valid reasons why he should be allowed to depart from the truthfulness of his statements. *Dalton*, 376 S.C. at 137-38, 654 S.E.2d at 874.

The record establishes Applicant pled guilty knowingly and intelligently. Applicant indicated to the plea judge that he understood that he was pleading guilty to voluntary manslaughter, which carried between two (2) and thirty (30) years. (Tr. 3). Applicant indicated that he understood he was pleading guilty to a negotiated range of twenty-five (25) to forty (40) years and is a violent and most serious offense.<sup>4</sup> Applicant indicated to the plea judge that by pleading guilty, he understood he was giving up his constitutional right to a jury trial, right to confront witnesses, and right to remain silent. (Tr. 4). Applicant indicated that he had the opportunity to speak with his attorney about the plea, did not need more time to speak with him, and was satisfied with his representation. (Tr. 3-4).

The record establishes Applicant pled guilty freely and voluntarily. Applicant indicated that he was not under the influence of drugs or anything that would prevent him from understanding what was going on. (Tr. 3). Applicant indicated that no one promised him anything, threatened, or forced him to plead guilty. (Tr. 5). Thus, Applicant cannot meet his burden.

#### **VI. MOTION TO DISMISS INSUFFICIENCY OF EVIDENCE ALLEGATION**

The State moves to dismiss Applicant's allegation of insufficient evidence to support his

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<sup>4</sup> Sentence sheet states the negotiated sentencing range as twenty-five (25) to thirty (30).

conviction. Summary dismissal without a hearing is appropriate if (1) it is apparent on the face of the application that there is no need for a hearing to develop facts, and (2) the applicant is not entitled to post-conviction relief. S.C. Code Ann. § 17-27-70(b)-(c) (2014); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005). When considering the State's motion for summary dismissal, the court must assume the facts presented in the application are true and view those facts in the light most favorable to the Applicant. *Leamon*, 363 S.C. at 434, 611 S.E.2d at 495.

Cognizable PCR claims are enumerated in S.C. Code Ann § 17-27-20(A). PCR "is a proper avenue of relief only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence." *Al-Shabazz v. State*, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000). However, the Uniform Post Conviction Relief Act does not permit PCR applications on the grounds that the evidence was insufficient to support a conviction. *Id.* § 17-27-20(A)(6) (2014); *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1975).

Applicant's claim that there was insufficient evidence to support his guilty plea should be dismissed. Further, Applicant agreed to and pled guilty to the facts as recited by the solicitor at this guilty plea hearing. (Tr. 6). Therefore, this Court should dismiss this allegation because there is no genuine issue of material fact which would necessitate an evidentiary hearing on this issue, and this allegation should be dismissed as a matter of law.

#### VII. REQUEST FOR AN EVIDENTIARY HEARING

Because the record likely does not refute or disprove Applicant's claims, additional testimony is likely needed to resolve Applicant's allegations. Therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges

specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

#### **VIII. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS**

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Applicant’s attorney is required to file amendments to this application, as necessary. Rule 71.1(a), SCRPC; *see* Rule 11, SCRPC. *Pro se* filings should not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State, or alternatively, the State will request a continuance in the matter.<sup>5</sup> If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss any claim(s) or allegation(s). S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRPC; *see also* Rules 15(a)-(b), SCRPC.

Pursuant to S.C. Code Ann. § 17-27-150 (2014), Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing.

#### **IX. GENERAL DENIAL**

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

*[Space left blank intentionally. Conclusion and signature follow on next page.]*

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<sup>5</sup> *See Love v. State*, 428 S.C. 231, 245, 834 S.E.2d 196, 203 (2019) (Kittredge, J., dissenting) (“If, however, the proposed amendment... would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments”).

**X. CONCLUSION**

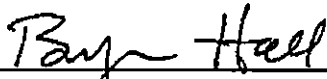
WHEREFORE, the State respectfully requests this Court grant its partial motion for summary dismissal as set forth in section V, and thereafter, convene an evidentiary hearing.

Respectfully submitted,

ALAN WILSON  
Attorney General

DON ZELENKA  
Deputy Attorney General

BRYAN T. HALL  
Assistant Attorney General

By:   
ATTORNEYS FOR THE STATE  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29212

September 17, 2024

1 State of South Carolina )

**TRANSCRIPT OF RECORD**

2 COUNTY OF GEORGETOWN )

CASE NO. : 2023-CP-22-00077

3 -----

4 March 20, 2025

5 **BEFORE:** The Honorable Dale E. Van Slambrook

6 -----

7 Javon J. Hair, )

8 Applicant, )

9 vs. )

10 State of South Carolina, )

11 -----

12 **APPEARANCES:**

13 Ryan T. Kowalski, Esquire  
14 Bryan Hall, Esquire  
15 Assistant Attorney General for the Respondent

16 Steven W. Fowler, Esquire  
17 For the Applicant

18 Julie A. Kevish  
19 Official Court Reporter

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**I-N-D-E-X**

**Applicant Witnesses**

**PAGE**

**Javon Jacob Hair**

Direct by Mr. Fowler 6

Cross by Mr. Kowalski 34

Redirect by Mr. Fowler 35

**Honorable Benjamin Alex Hyman**

Direct by Mr. Kowalski 38

Cross by Mr. Fowler 47

**E-X-H-I-B-I-T-S**

**(NO EXHIBITS)**

1 March 20, 2025

2 **P-R-O-C-E-E-D-I-N-G-S**

3 MR. KOWALSKI: Your Honor, may it please the Court?  
4 Ryan Kowalski on behalf of the State of South Carolina. This  
5 is the PCR matter of Javon J. Hair versus the State of South  
6 Carolina, Case Number 2023-CP-22-00077, out of Georgetown  
7 County. The Applicant is presently confined to the South  
8 Carolina Department of Corrections serving a 25-year sentence.  
9 On October 28, 2020, the Georgetown County Grand Jury indicted  
10 Applicant for murder, armed robbery and possession of a weapon  
11 during the commission of a violent crime. On July 11, 2022,  
12 the Applicant pled guilty before the Honorable Jennifer B.  
13 McCoy. Assistant Solicitor Elizabeth Smith prosecuted the  
14 case. The Applicant was represented by B. Alex Hyman, Esquire.  
15 In exchange for his guilty plea, the Applicant pled to  
16 voluntary manslaughter, the lesser included offense. Pursuant  
17 to a negotiated sentencing range of 25 to 30 years, Judge McCoy  
18 sentenced Applicant to 25 years for voluntary manslaughter.  
19 The Applicant did not appeal. In his current PCR application,  
20 the Applicant alleges he is being held unlawfully based on  
21 multiple allegations of ineffective assistance counsel and an  
22 involuntary guilty plea and newly discovered evidence. The  
23 Applicant requests relief in the form of an evidentiary hearing  
24 with counsel appointed. Before this Court are the records of  
25 the Georgetown County Clerk of Court Records regarding the

1 subject convictions, Applicant's records from SCDC, and his PCR  
2 application.

3 At this time, the State moves to dismiss Applicant's  
4 allegation of insufficient evidence. The PCR is a proper  
5 avenue of relief, only when the Applicant mounts a collateral  
6 attack challenging the validity of his conviction or sentence,  
7 and that's Al Shabazz versus State, however, the uniform  
8 post-conviction relief act does not permit PCR applications on  
9 the grounds that evidence was insufficient to support a  
10 conviction. Further, insufficient evidence is not one of the  
11 enumerated cognizable PCR claims in South Carolina Code, and  
12 that's Statute 17-27-28. I will note, I didn't read off the  
13 allegations, but that's in reference to allegation (1)(c)  
14 regarding the insufficient -- failure to file a motion to quash  
15 indictment for insufficiency, as well as allegation three where  
16 the Applicant contends the affidavit does not contain  
17 sufficient facts to establish guilt beyond a reasonable doubt  
18 to support a conviction for a jury to decide, and at this time  
19 the State is prepared to move forward on the remaining  
20 allegations.

21 THE COURT: Alright. Mr. Fowler, I'll hear from you  
22 regarding the motion.

23 MR. FOWLER: Your Honor, first of all, we object to  
24 that motion. Mr. Hair is here in the courtroom. His former  
25 attorney is, as well, and we move to dismiss that motion, and

1 also, in the alternative, we move that it be held in abeyance  
2 until after this hearing. Your Honor, we plan to put on  
3 evidence about his application. Mr. Hair can articulate issues  
4 as to that, what the State has brought up, and that he can put  
5 that in context with the remaining allegations to the PCR  
6 application. So we ask that that motion be dismissed based on  
7 what testimony we'll be providing today and in the alternative  
8 for it to be held in abeyance until testimony has been heard, a  
9 full hearing is being done today, Your Honor.

10 THE COURT: Alright. I anticipate that any  
11 allegations as they go beyond the normal scope of the  
12 post-conviction relief application, bases would be excluded and  
13 not allowed, I'm not going to make a dismissal at this point of  
14 any of the specific allegations. I'll hold it in abeyance  
15 until I've issued the final order, but if we get into the realm  
16 of things that are not appropriate that bore on to things that  
17 could have been raised by the appeal, or otherwise outside the  
18 scope of post-conviction relief, then I would expect that  
19 there'll be objections and we'll address those as we go on.

20 MR. KOWALSKI: Thank you, Your Honor.

21 MR. FOWLER: Thank you, Your Honor.

22 THE COURT: All right. Are you ready to proceed, Mr.  
23 Fowler?

24 MR. FOWLER: Your Honor, we would like to call Mr.  
25 Javon J. Hair to the stand, please.

1 THE COURT: Mr. Hair, come on up to the stand.

2 THE CLERK: Please raise your right hand. Do you  
3 solemnly swear or affirm that the testimony you're about to  
4 give is the truth, the whole truth, and nothing but the truth,  
5 so help you God?

6 THE DEFENDANT: Yes.

7 **JAVON JACOB HAIR WAS DULY SWORN AT THIS TIME AND**  
8 **TESTIFIED AS FOLLOWS:**

9 THE CLERK: Please state your full name for the  
10 record.

11 THE DEFENDANT: Javon Jacob Hair.

12 THE COURT: Mr. Hair, would you please spell that for  
13 the court reporter, please?

14 THE DEFENDANT: J-a-v-o-n, Jacob, J-a-c-o-b, H-a-i-r,  
15 Hair.

16 **DIRECT EXAMINATION**

17 BY MR. FOWLER:

18 Q. Mr. Hair, you and I spoke on February 27th by telephone,  
19 correct?

20 A. Yes, sir.

21 Q. And we spoke a couple of times in the holding cell here  
22 before we started today, right?

23 A. Yes, sir.

24 Q. And you wish to go forward with this PCR; is that  
25 correct?

1 A. Yes, sir.

2 Q. Okay. And one thing I, just a little bit of  
3 housekeeping, if you would speak into the microphone so that  
4 the court reporter can hear it, I don't want to put it in the  
5 wrong spot, but is that good for you, Mr. Hair?

6 A. Yes, sir.

7 Q. Okay. Mr. Hair, you filed an application for  
8 post-conviction relief; is that correct?

9 A. Yes, sir.

10 Q. And this is the application, correct?

11 A. Yes, sir.

12 Q. And there's various attachments of facts, several pages,  
13 that serve as your application, correct?

14 A. Yes, sir.

15 Q. Do you have a copy of that with you?

16 A. Yes, sir.

17 MR. FOWLER: Just a moment, please. And Your Honor,  
18 may I approach the witness somewhat liberally today?

19 THE COURT: Certainly.

20 MR. FOWLER: Thank you, Your Honor.

21 Q. And here's the verification page in the back; is that  
22 correct?

23 A. Yes, sir.

24 Q. And that's your signature notarized, correct?

25 A. Yes, sir.

1 Q. And do you stand by that application today?

2 A. Yes, sir.

3 Q. And do you wish to go forward today?

4 A. Yes, sir.

5 Q. Mr. Hair, in this application, you indicate several  
6 items, particularly under number 10 and 11 of this, and that  
7 goes directly back to the attachment at the end of the  
8 application; is that correct?

9 A. Yes, sir.

10 Q. Okay. First it says page one, attached sheet continuing  
11 from application, page two and number nine, can you see that,  
12 correct?

13 A. Yes, sir.

14 Q. Okay. And it says: Substantive grounds for  
15 post-application relief. It says: The application for relief  
16 filed pursuant to SC Code Annotated 17-27-45 in accordance with  
17 South Carolina Code Annotated 17-27-20. That's your  
18 handwriting, and you stand by that, correct?

19 A. Yes, sir.

20 Q. Okay. It says: Number one, Applicant contends  
21 affidavit must provide probable cause for issuance of an arrest  
22 warrant, but need not contain allegations sufficient, if true,  
23 to establish guilt beyond a reasonable doubt. Now, you  
24 understand what a PCR hearing is, correct?

25 A. Yes, sir.

1 Q. And we provided you information on that, correct?

2 A. Yes, sir.

3 Q. And is it your understanding that this goes to your  
4 attorney's performance in representing you in this case?

5 A. Yes, sir.

6 Q. Okay. In the underlying General Sessions case, right?

7 A. Yes, sir.

8 Q. Okay. So with that number one being said, you know, the  
9 certain allegations, need not -- okay, without re-reading it,  
10 the number one that I'm pointing to you here, how does that  
11 relate to your attorney's performance in the underlying General  
12 Sessions case?

13 A. I feel like that only relates to my attorney's  
14 performance because, basically in my warrants I was already  
15 proven guilty by the officer saying that I did these things  
16 instead of just basically hitting on what happened in the case  
17 or whatever happened to get the warrant, they already said I  
18 was guilty by the word form that they used in it, and that's  
19 not how arrest warrants should be wrote up.

20 Q. So what do you mean when you say you were proven guilty  
21 with this?

22 A. Basically, when he says that, right here, it says:  
23 Affidavit language referred to guilty as Applicant clearly  
24 states that Applicant did with the matters of fault or caused  
25 the death of the victim. That's saying that I did it already

1 before I was proven guilty.

2 Q. Okay. So how does that relate to your attorney's  
3 performance? Is there something that you wish that he would  
4 have done or could have done in opposition to that?

5 A. Yes. I feel like that that was saying that my attorney  
6 should have had quashed and --

7 Q. Could have had what?

8 A. Should have had quashed, if I'm saying it right.

9 Q. Yes, sir.

10 A. Basically, because that's not the way a warrant is  
11 supposed to be written up. It's for a jury to confirm that I'm  
12 guilty, not for the officer, so I feel like that's something  
13 that my attorney should have put more effort into getting rid  
14 of at the time.

15 Q. So you feel like the warrant was --

16 A. Insufficient.

17 Q. It was insufficient. Okay. And you're saying that your  
18 attorney, who's Mr. Hyman, correct?

19 A. Yes, sir.

20 Q. Okay. And he's in the courtroom today, correct?

21 A. Yes, sir, yeah.

22 Q. You feel like he should have moved to quash it or do  
23 something?

24 A. Yes, sir.

25 Q. How do you feel like that prejudiced you in this case,

1 the warrant that you're referring to?

2 A. I feel like when it was brought in front of the grand  
3 jury, the way it was wrote up, it already said that I was  
4 guilty, and it was sworn in by a judge and an officer, so they  
5 were more likely to take their side being that they're a sworn  
6 officer and supposed to do the right thing, and you understand  
7 what I'm saying?

8 Q. Well, you're the one that's answering questions today.  
9 So did you ever go over that with your attorney?

10 A. No, I actually didn't go over this with my attorney  
11 because the things that's in my PCR now --

12 MR. KOWALSKI: Objection. That's not a cognizable  
13 PCR claim.

14 THE COURT: Alright. I'm going to allow it to go  
15 forward. Go ahead.

16 A. Like I was saying, these are things that I learned after  
17 being incarcerated at Evans Correctional Facility, because at  
18 Georgetown County we wasn't, like, privy to the law library.  
19 We would write certain things to get legal work, but they would  
20 give us what they wanted to give us, so once I got to Evans  
21 Correctional Facility I was able to go to the law library and  
22 learn different things about my case.

23 Q. Okay. So just to reiterate, you're saying that once you  
24 got to SCDC --

25 A. Yes.

1 Q. -- and particularly, Evans Correctional, you were  
2 allowed access to the law library; is that correct?

3 A. Yes.

4 Q. Okay. And that's where you kind of learned some of  
5 these things; is that correct?

6 A. Yes, sir.

7 Q. And you feel like that helped make your PCR case  
8 stronger?

9 A. Yes, sir.

10 MR. KOWALSKI: Objection. That's leading.

11 MR. FOWLER: I can rephrase it, Your Honor.

12 THE COURT: Alright, rephrase it. Try not to lead.

13 Q. How do you feel like that education, so to speak, helped  
14 you in this matter?

15 A. I knew more things that I didn't know before, because  
16 when I first hired my attorney, I basically let him do all the  
17 work, and from me letting him doing all the work I just went by  
18 what he said, what he thinks is right, and this and that, being  
19 that I was paying him and I felt like he was going to do  
20 everything that I needed him to do, but once I got into the law  
21 library I saw things that I think would have been valuable to  
22 me.

23 Q. Such as?

24 A. Basically, such as how warrants are wrote up, how  
25 certain evidence is taken in, how, basically, just different

1 course of things I learned while I was in SCDC.

2 Q. And you said earlier in your testimony that you did not  
3 have that while you were incarcerated in Georgetown; is that  
4 correct?

5 A. No. We had a limited access to the things that they  
6 gave us from the law library.

7 Q. How did that affect your preparation for court or  
8 anything in the underlying General Sessions case?

9 A. It really didn't. It didn't really help me too much at  
10 all because they limit us to what they want us to know. That's  
11 the way I feel like that.

12 Q. Number two, it says: Applicant contends this criminal  
13 proceeding not previously recognized is evidence of material  
14 facts not previously heard. Okay. What do you mean by that?

15 A. Basically, I had, like, with the victim in my case, I  
16 had, like, a video prior, about two years prior, like the  
17 dude's harassing me, but basically, this video, in particular,  
18 he punched me in the face in the back when I was in the club.  
19 I asked my lawyer to basically present the video and bring the  
20 video into court, but he told me it would be a motive of me  
21 killing him, but I don't think that had been a motive because I  
22 didn't go to where he was at, he came to where I was at, so  
23 that wasn't no motive for me to kill him. I wasn't looking for  
24 him, I didn't go in to find him, I was actually doing something  
25 on my own, and he came to where I was at.

1 Q. So you brought -- you're saying that there was a video  
2 before this?

3 A. Yes, sir, about two years prior.

4 Q. And you went over it with your attorney at the time?

5 A. Yes, sir.

6 Q. And he indicated that it did not need to be brought to  
7 the Court's attention, right?

8 A. Yes, sir.

9 Q. But you're saying it did, right?

10 A. Yes, sir.

11 Q. In retrospect, how do you -- why do you say that, that  
12 it needs to be brought to the Court's attention?

13 A. Because I wanted the Court to see that I wasn't the  
14 aggressor in this situation. Like, this guy has provoked me or  
15 has tried to do things to me numerous times, and this is not  
16 the first time it happened, and at the other time he approached  
17 me and punched me in his face, just like this time, he  
18 approached me once again, and that's how the altercation  
19 started.

20 Q. So as to that video that you say you wished your  
21 attorney had worked on, apparently, do you feel like it  
22 affected your attorney's performance, or how did that hurt your  
23 case overall with your attorney not taking into account the  
24 video, as you said on the stand?

25 MR. KOWALSKI: Objection, that's leading.

1 THE COURT: Rephrase it. Try not to lead.

2 Q. The video, you said your attorney did not use it,  
3 correct?

4 A. Yes, sir.

5 Q. Do you feel like he should have?

6 A. Yes, sir.

7 Q. And just to reiterate, why do you feel like he should  
8 have used it?

9 A. I feel like he should have used the video because it  
10 would have showed that I had prior history with the guy when  
11 he's starting the problem, and this is not once, but twice, so  
12 it will all add up.

13 Q. So how did that relate to your attorney's performance  
14 for you, representing you?

15 A. I feel like it related to me because, basically, it's  
16 like, like you held certain stuff out, you told what you wanted  
17 to tell just to get through the case real fast, and I guess  
18 that would have prolonged it, or whatever, but I think that  
19 would have helped me tremendously.

20 Q. Number three: Applicant claims that his trial attorney  
21 provided ineffective assistance by unreasonable failing to  
22 object to affidavit presented, presenting or to file appeal or  
23 direct appeal after sentencing during the course of  
24 proceedings. Is that the correct, this is your handwriting, so  
25 is that the correct interpretation, number three?

1 A. Yes, sir.

2 Q. So how does number three relate to this PCR action?

3 A. Number three, what I was basically trying to say is my  
4 original plea, from what I understand, it was just 25 years.  
5 The day that I came into this courtroom and taken my plea, it  
6 was 25 to 30, right, probably about seconds before I walked in  
7 the courtroom. I did not know that. If I would have knew that  
8 I had a plea that was 25 to 30 years, I would have fought back  
9 on that plea, or I would have asked my lawyer to appeal that  
10 within 10 days. I did not know we could appeal within 10 days  
11 until, once again, I went to SCDC and was in the law library  
12 and learned these things. From my understanding, my plea was  
13 25 years.

14 Q. Okay. So you're saying you thought the plea was 25  
15 years, correct?

16 A. Yes, sir.

17 Q. Where did the discrepancy come in? How did you not know  
18 that?

19 A. When I came in here, right before we seen the judge and  
20 my plea was 25 years, I asked my lawyer, like, hold on, this  
21 plea is 25 years -- so, I mean, 25 to 30, so you mean this  
22 judge could give me 30 years when I come out? He told me  
23 exactly, oh, no, don't worry about it, man, he's not gonna give  
24 you 25 years. I did not know this.

25 Q. Was there anything else that he said about, you know,

1 allegedly saying he -- that you were going to get 25 years and  
2 no more, I believe is what you said?

3 A. Yeah, basically, that's what he told me. Like, I was  
4 going to get over the 25 years, I'm going to get the 25 years,  
5 it won't be no 30, but that's still within the judge's  
6 discretion. Like I said, I did not know these things until the  
7 very last minute.

8 Q. Why didn't you know them?

9 A. I wasn't told. Now, the whole time I was always told  
10 that my plea was 25 years.

11 Q. Did you speak with your attorney about the plea or, you  
12 know, that term?

13 A. Before I actually took the time, yeah, I spoke to him  
14 about it, but it was always 25 years, it wasn't 25 to 30.

15 Q. So just to be clear, you're saying that there was a  
16 discrepancy of how much you were told you were going to get and  
17 what you actually got?

18 A. Yes, sir.

19 Q. And who do you -- whose fault is that, who would you  
20 say?

21 A. My lawyer's.

22 Q. And why is that?

23 A. Because he told me one thing, but the plea was another.

24 Q. Number four on the next page, it says: Prior to guilty  
25 plea, affidavit duly sworn. Can you read this for me, please

1 real quick, by Alan W. Moore, I'll read it.

2 A. It says: Prior to guilty plea, affidavit duty sworn by  
3 Alan W. Moore-0250, on 2520 states that Applicant did with  
4 malice aforethought cause the death of victim.

5 Q. Okay. So how does that relate to your PCR application  
6 and your attorney's performance?

7 A. I'm saying, basically, that goes back to the warrant on  
8 the way that the warrant was wrote up when they said I was  
9 guilty before I was proven guilty.

10 Q. So once again, that relates back to your earlier  
11 statements about the warrant, correct?

12 A. Yes, sir.

13 Q. The next one I have is it says in your application: The  
14 statements made by the Affiant before the arrest places  
15 affidavit witness at the crime that Applicant did with malice  
16 aforethought cause the death of victim. Do you see that?

17 A. Yes, sir.

18 Q. What does that mean in relation to your application?

19 A. I'm saying, basically, the way he wrote the warrant up,  
20 like, he was there to actually see me commit the crime. All he  
21 got was hearsay and he seen the video. The video doesn't  
22 clearly show my face on this video. You can't see exactly who  
23 it is. I do not have any physical evidence at the scene or any  
24 of this stuff to prove that I actually did this, so why do you  
25 write the warrant up saying that I did it?

1 Q. So once again, this goes back to your earlier testimony  
2 about the warrant, correct?

3 A. Yes, sir.

4 Q. Okay. Anything else about that that you wish to bring  
5 to the Court's attention?

6 A. No, sir.

7 Q. Let me continue on here, if you could read this for the  
8 Court, please? Number six, I believe.

9 A. The affidavit made by the Applicant also sufficient  
10 enough to support a criminal conviction on a verdict of guilty  
11 establishing guilty beyond a reasonable doubt is totally up to  
12 a jury to decide.

13 Q. So you mentioned this before, I think, but I want to  
14 make sure that we're clear and there's no discrepancies or  
15 anything overlooked. What does that mean exactly to you?

16 A. I said, that's basically the officer is saying I'm  
17 guilty before I had my day in court so they can prove that I  
18 was guilty already.

19 Q. It says, moving on in the application grounds in support  
20 of issue 11. I believe that's what it says: Affidavits  
21 language refer to guilty of Applicant clearly states that  
22 Applicant did with malice aforethought cause the death of  
23 victim, is contrary to murder defined, and it says see code  
24 annotated statute, and it names the statute there: Murder is  
25 the killing of a person with malice aforethought, either

1 expressed or implied. So, you know, some of this may be  
2 duplicative, and we certainly don't want to waste the Court's  
3 time, but as to that final paragraph, is there anything  
4 additional about this in that paragraph or this issue that you  
5 wish to bring to the Court's attention?

6 A. Basically, saying what I was saying earlier, that it's  
7 convicting me before anybody -- before the Court system is able  
8 to convict me, because if you go back to my issue number one,  
9 it says: The affidavit must provide probable cause for  
10 insurance of a restaurant but need not contain allegations  
11 sufficient or true. In the affidavit, everything that he wrote  
12 was contrary to murder, so you're saying that I did it.

13 Q. Okay. Moving on to the next page. It says: This  
14 statute language 16-30-10 is totally up to a jury to decide a  
15 conviction or verdict of guilty establishing guilty but beyond  
16 reasonable doubt or Applicant pleading guilty to the offense of  
17 murder, and I believe it says here: Is not up to the Affiant,  
18 mentions Applicant did -- okay, let's do this. This is nice  
19 writing, but I want you to read it since it's not typed.

20 A. It says: This statement language 16-30-10 is totally up  
21 to the jury to decide the conviction or verdict of guilty  
22 establishing guilty beyond a reasonable doubt or Applicant  
23 pleading guilty to the offense of murder is not up to the  
24 Affiant mentioning to file Applicant did with -- the Applicant  
25 did with malice aforethought cause the death of victim and

1 criminal proceedings of material facts not previously  
2 recognized or previously heard -- do you want me to continue?

3 Q. Yeah, please do, to the end of that paragraph.

4 A. -- or previously heard were not found within one year of  
5 July 14, 2022 of Applicant discovering this material fact falls  
6 within the discovery rule of Applicant discovery that the trial  
7 attorney's are prior to guilty plea involuntary not knowing  
8 that the material fact existed should entitle the Applicant to  
9 an evidentiary hearing to determine if Applicant's held  
10 unlawfully.

11 Q. Okay. So let's break that down a little bit. This  
12 relates kind of still to that warrant?

13 A. The first matter, yes, sir.

14 Q. The first matter. Okay, but you expand it here in terms  
15 of definition about, especially at the end, should entitle  
16 Applicant to an evidentiary hearing to determine if Applicant  
17 is held accountable -- unlawful, excuse me. So how does that  
18 relate to this PCR action in your attorney's performance?

19 A. So basically I feel like my lawyer should have went over  
20 the warrant to make sure the lawyer was -- I'm sorry, to make  
21 sure the warrant was sufficient enough -- to make sure the  
22 warrant was sufficient enough to be basically, like, like that  
23 it was right, it was written the right way and presented the  
24 way it was supposed to be instead of just saying that I'm  
25 guilty in the warrant.

1 Q. So was that warrant in the discovery that your attorney  
2 provided to you?

3 A. Yes, sir.

4 Q. Alright. Did you go over it with him?

5 A. Yes, sir, but like I said earlier, I did not know these  
6 things until I actually sat in the law library.

7 Q. Okay, so you learned it afterwards, you're saying, but  
8 at the time did it raise any red flags to you or anything about  
9 the wording of the warrant?

10 A. No, sir, I didn't know at the time.

11 Q. Okay. So it's only once you got to SCDC?

12 A. And I learned different things, yes.

13 Q. Very good. Anything else about that? That's a fairly  
14 large paragraph, is there anything else about that paragraph  
15 that you wish to bring to the Court's attention?

16 A. No, because it really says the same thing that the other  
17 one said.

18 Q. Okay. Moving on to, it says, issue two, and then I  
19 believe number seven: Prior to guilty plea counsel did not  
20 object to indictment defect on motion to quash, such indictment  
21 before the jury shall be sworn due to the defect of affidavit.  
22 So does that relate to the original?

23 A. Yes, sir.

24 Q. Okay. Anything else in that paragraph that you wish to  
25 bring to the Court's attention about this PCR?

1 A. No, sir.

2 Q. Okay. The next page, it says, should entitle, and maybe  
3 this is a continuation, but it says: Should entitle Applicant  
4 an evidentiary hearing to determine if indictment should have  
5 been quashed. Okay? So was there any evidentiary hearing  
6 about that warrant?

7 A. No, sir.

8 Q. Okay. Did you at the time ask your attorney to have an  
9 evidentiary hearing?

10 A. No, sir.

11 Q. And why is that?

12 A. I didn't know.

13 Q. Okay. Alright. But in retrospect, you said you've  
14 learned about it, correct?

15 A. Yes, sir.

16 Q. Okay. Anything else about that, about needing an  
17 evidentiary hearing that you wish to bring to the Court's  
18 attention?

19 A. No, sir.

20 Q. Okay. It says: Issue three, indictment for murder  
21 would have been insufficient to charge offense of murder to  
22 apprise the Applicant of the elements of the offense intended  
23 to be charged due to the fact that the Affiant had already been  
24 found guilty. So is that a continuation of this?

25 A. Yes.

1 Q. Okay. Is there anything about that that you wish to  
2 bring to the Court's attention in number eight?

3 A. No, sir.

4 Q. Okay, then issue number four: Prior to the guilty plea  
5 to the offense of manslaughter, with no exception of describing  
6 the offense elements is indictment for manslaughter. Alright,  
7 now, what is this paragraph about? Does this relate to  
8 manslaughter, or what is this saying?

9 A. I'm saying, basically, I was saying I was basically  
10 charged with murder, but I felt like my charges didn't meet the  
11 requirements for murder, it met the elements of manslaughter --

12 Q. Why do you say that?

13 A. -- if I was convicted.

14 Q. Why do you say that?

15 A. Because it wasn't no malice aforethought in my case or  
16 none of that, I feel like I was defending myself.

17 Q. And just to complete that paragraph, it says: Would  
18 make indictment, could you read that, please, to the Court?

19 A. Where we at?

20 Q. Right there, the underline.

21 A. Or would make indictment insufficient because there is  
22 no indictment charging Applicant with the offense element of  
23 manslaughter to apprise the Applicant of the elements of the  
24 offense intended to be charged.

25 Q. Okay. So this paragraph discusses that you're

1 indicating on your testimony that you should -- that that,  
2 perhaps, was more in line with manslaughter than with murder;  
3 is that correct?

4 A. Yeah, I should have really been charged with  
5 manslaughter.

6 Q. Okay. Did you go over that with your attorney?

7 A. No, at the time, because these are things that I did not  
8 know.

9 Q. And you said earlier you relied on his expertise,  
10 correct?

11 A. Yes, I relied on his and just followed what he told me,  
12 and things like that.

13 Q. So did he ever go over the difference between a  
14 manslaughter and murder, or not?

15 A. No, sir.

16 Q. Okay. Do you know why he didn't go over that with you?

17 A. I have no idea.

18 Q. Please speak into the microphone, please. Alright,  
19 moving on, it says, issue 5, and then number 10: Prior to the  
20 guilty plea, Applicant should have a right to due process on  
21 the advice to be advised that Applicant has been subjected to  
22 double jeopardy during the course of criminal proceedings.  
23 Okay?

24 A. Basically, that goes back to my same issue. I don't  
25 know. Number one is being that if the officer already found me

1 guilty, and then the Court finds me guilty, too, it's like I'm  
2 getting charged two times.

3 Q. Okay, so the language in the warrant is a big deal for  
4 you?

5 A. Yes, sir.

6 Q. Okay. And you're saying that your attorney never --  
7 how -- did your attorney ever go over it with you at any point?

8 A. No.

9 Q. Okay. Next page. It says, issue five, number 11: To  
10 be advised by representation of counsel prior to guilty plea  
11 that Applicant's subject to double jeopardy or punished  
12 Applicant when there is no punishment to seek. True failure of  
13 counsel to object to affidavit allowed the government to punish  
14 Applicant when the affidavit had already found Applicant guilty  
15 without due course of substantive proceedings. Let me read the  
16 rest of this. That failure of counsel to object after  
17 sentencing due to the Court not advising Applicant to what he  
18 had a right on appeal of a lower Court's decision to be  
19 reviewed in a higher court by direct appeal. Okay, so let's  
20 stop there. So there's several legal terms in here, double  
21 jeopardy, you know, the advising of the Applicant that he had a  
22 right to appeal. So in terms of this, in terms of advising an  
23 Applicant of appeal, did your attorney at the time, and who's  
24 the subject of this PCR, advise you anything about your  
25 appellate rights?

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

2 Q. Did you appeal the case?

3 A. No, I didn't know that at the time that I could have  
4 appealed the case, though. I felt that my attorney felt that I  
5 was going to take the plea regardless so he didn't waste the  
6 time to tell me about any of this stuff.

7 Q. So how much time did you spend with your attorney before  
8 you pled? Did you speak with him often? What was the status?

9 A. I saw my attorney like every couple of months.

10 Q. Okay, but he never mentioned your appellate rights, did  
11 he?

12 A. No.

13 Q. Okay. And also, you're saying that the warrant issue  
14 was a problem for you, right?

15 A. Yes, sir.

16 Q. And he never brought that up during your discussions,  
17 right?

18 A. Yes, sir.

19 Q. Okay. And it says: According to Rule 201 SC ACR, and  
20 according to Rule 72, Rules of Civil Procedure, in accordance  
21 with Federal Rule of Criminal Procedure, Rule 32 File Titled 7  
22 Post-Conviction Procedure, and then you name another statute  
23 there: After sentencing, regardless of Applicant's plea, the  
24 Court must advise Applicant of any right to appeal. So now  
25 you're saying that the Court -- well, you can tell me, what

1 does that last paragraph mean that's underlined?

2 A. Basically, that's saying that I wasn't able to appeal  
3 after within the 10 days because I didn't know about that.

4 Q. Okay. Now are you saying, whose fault was that that you  
5 didn't know you could've --

6 A. That's my attorney's fault, I didn't know that.

7 Q. Why do you say that's your attorney's fault?

8 A. Because he didn't tell me I could, and these are things  
9 that I learned once I got to the law library in SCDC.

10 Q. Did he ever put anything in writing to you about these,  
11 about his representation of you, or anything like that?

12 A. No, sir.

13 Q. So he never put anything in writing about your right to  
14 appeal, did he?

15 A. No, sir.

16 Q. Okay. Alright, next page issue, I believe six, number  
17 12: Applicant relief sought claims that the conviction or the  
18 sentence was in violation of the Constitution of the United  
19 States and South Carolina's Constitution or laws of the state.  
20 Why do you say that?

21 A. I basically felt like my rights and everything was  
22 violated, being the way the warrant and all that stuff is  
23 written up, if it was written the way it was supposed to be  
24 written up I wouldn't have been originally charged with murder.

25 Q. And how is that your attorney's responsibility?

1 A. Because I feel like my attorney should have saw these  
2 things before the end of the case and brung these things up. I  
3 shouldn't have had to wait years later to actually go to a law  
4 library to figure these things out for myself.

5 Q. So you're saying you had to figure it out yourself,  
6 correct?

7 A. Yes, sir.

8 Q. But you were relying on -- what was your -- when your  
9 attorney was representing you --

10 A. Yes, sir.

11 Q. What did you -- did you rely on his opinion?

12 A. Yes, sir.

13 Q. How so?

14 A. Often, very often.

15 Q. Okay. And why did you do that?

16 A. Because I felt like he was an experienced lawyer and he  
17 got my best interest at the time.

18 Q. And in retrospect, do you still feel that's the case?

19 A. Being that we here now, no.

20 Q. Well, why do you say that, that being here now, no. Why  
21 do you say that?

22 A. Because I'm appealing him, basically, and my sentence  
23 that was given.

24 Q. Alright, let's read this, if you don't mind. It says:  
25 Issue number 612 in support of relief sought, if you could read

1 that what's underlined to the Court, please?

2 A. I put Affiant in record during the course of criminal  
3 proceedings, South Carolina did not follow rules and procedures  
4 of the law which has violated Applicant's due process under  
5 Amendments five due process clause. Due to the due process of  
6 the 14th Amendment of the United States Constitution, no state  
7 shall make or enforce any law which shall abridge -- C, SC -- R  
8 15-3, Applicant's right to due process of the law which  
9 subject, Applicant, to the jurisdiction of South Carolina  
10 wherein Applicant resides and subject him to its laws, not to  
11 be advised of its law, rules or proceedings.

12 Q. Alright. Now, does that continue on the next sheet?

13 A. That's the end of that.

14 Q. Okay. Alright. What do you mean by that, what you just  
15 read?

16 A. Basically, like I said, it goes back to my first clause,  
17 and all of that stuff, that I just felt like things wasn't done  
18 the right way.

19 Q. Why do you say that?

20 A. I feel like it was also up to the State, too, to see how  
21 the warrant was wrote up to correct these mistakes, and not  
22 just on my lawyer, the state should do these things, too,  
23 because that's what's supposed to happen in the courtroom, if  
24 I'm not mistaken.

25 Q. Well, I mean, but you're saying you depended on your

1 lawyer's expertise?

2 A. Yeah, but I'm saying, but the State is still supposed to  
3 do the right thing, though.

4 Q. Alright, let's go to the issue six, relief sought, on  
5 the next page, and that shows at the end of application. Is  
6 that your handwriting, it says, end of application?

7 A. Yes, sir.

8 Q. Okay. Could you read what's underlined to that end of  
9 application statement?

10 A. It says: Applicant request representation of counsel  
11 through all the proceedings provided by Attorney General Office  
12 and accommodates Applicant's post-conviction release  
13 proceedings and accommodates with the US, the CA, provided that  
14 counsel be provided throughout the proceedings, so also, as  
15 support of resource.

16 Q. Okay. And continue on to the end of that, please.  
17 Well, and then you quote several case laws; is that right?

18 A. Yes, sir.

19 Q. White and Jackson and Strickland, I believe? And  
20 Strickland is -- what do you know about Strickland versus  
21 Washington?

22 A. It's the two-prong test.

23 Q. Right. And what is that two-pronged test?

24 A. Basically, a two-prong test is --

25 Q. In your opinion, or knowledge?

1 A. Well, in my opinion, the two-prong test is basically me  
2 coming up with valid points, and two is proving those points.

3 Q. Is the warrant attached to your application that you're  
4 having that you've discussed several times today, is this it?

5 A. Yes, sir.

6 Q. Okay. So where is the language in that warrant that you  
7 feel is as you described today?

8 A. It says: The defendant, Javon Jacob Hair, did with  
9 Malice aforethought cause the death of Herman Jr. McCray by  
10 shooting him with the handgun and drawback.

11 Q. So that's the phrase that you have indicated you have a  
12 problem with; is that correct?

13 A. Yes, sir.

14 Q. Okay. And once again, you're saying that your lawyer  
15 has -- what was your lawyer -- okay, so that was not written by  
16 your lawyer, was it?

17 A. No, sir.

18 Q. So how is your lawyer responsible for this warrant?

19 A. Because, basically, the warrant says that I'm guilty  
20 already and a warrant is not supposed to be wrote up like that.  
21 That's saying that my lawyer should have caught it and  
22 basically had it dismissed.

23 MR. FOWLER: If I could just have a moment, Your  
24 Honor?

25 THE COURT: Certainly.

1 MR. FOWLER: Thank you.

2 Q. At the end of your application, or in your application,  
3 it says: Any ground set forth in ten and not previously  
4 presented to the Court, that one, it says, the application has  
5 not exhausted the remedies available in the courts of the  
6 state. So what do you mean by that?

7 A. Basically, what I mean by that is, like I said earlier,  
8 that I learned new things once I was in SCDC, so I feel like  
9 all my resources and everything wasn't exhausted and I still  
10 had more things to say.

11 Q. Okay. Is there anything else in this application that  
12 you feel needs to be -- or anything else that you feel like  
13 needs to be brought to the Court's attention about this PCR and  
14 your attorney's performance?

15 A. At the moment, no, sir.

16 Q. Okay. And just for clarification, the warrant that you  
17 read earlier was, if I may approach again, was this arrest  
18 warrant, correct? Is that the one that you read from?

19 A. Yes, sir.

20 Q. Okay.

21 MR. FOWLER: Your Honor, I believe this was in the  
22 application, it was in my copy of the application, but I'd like  
23 for the Court to take judicial notice of this arrest warrant.

24 THE COURT: I've got a copy of it. Yes, thank you.

25 MR. FOWLER: And I'd like to present this to the

1 Court as A, perhaps, if that's the numbering system.

2 MR. KOWALSKI: Can I review that?

3 MR. FOWLER: Sure. Thank you.

4 Q. With this application, and I believe we just want to  
5 finalize this, is there anything else -- is there anything else  
6 you'd like to bring to the Court's attention about this PCR  
7 and/or your attorney's performance?

8 A. No, sir.

9 MR. FOWLER: Your Honor, that's all the questions I  
10 have.

11 THE COURT: Mr. Kowalski, cross-examination?

12 MR. KOWALSKI: Yes, Your Honor.

13 **CROSS-EXAMINATION**

14 BY MR. KOWALSKI:

15 Q. Good afternoon, Mr. Hair.

16 A. Good afternoon.

17 Q. On Direct Examination, you brought up the issue of there  
18 being a range for the negotiated sentence at your guilty plea?

19 A. Yes, sir.

20 Q. And what was that range again?

21 A. From my understanding, I was just offered the 25 years,  
22 but like I said, moments before I was brought into the  
23 courtroom I found out that my plea was 25 to 30 years, or 25 to  
24 30 years or take to trial. From probably, like, I knew about  
25 the 25-year plea, probably months prior, it wasn't just right

1 then, right then or anything, I found out it was 25 to 30 right  
2 before I went to court, I never knew that.

3 Q. And what sentence did you receive at the guilty plea?

4 A. I got 25 years.

5 Q. And what charge did you plead guilty to?

6 A. Manslaughter.

7 Q. And at your guilty plea, the Court informed you of your  
8 right to a jury trial; is that right?

9 A. Yes, sir.

10 Q. And later on in the guilty plea, you pled guilty to the  
11 facts as articulated by the state; is that right?

12 A. Yes, sir.

13 MR. KOWALSKI: Beg the Court's indulgence?

14 Q. And the Court informed you of the range at the outset of  
15 the guilty plea; is that right?

16 A. Yes, sir, but this is not something that my lawyer  
17 informed me of, I only knew of a 25-year plea.

18 MR. KOWALSKI: No further questions. Thank you.

19 THE COURT: Any Redirect, Mr. Fowler?

20 MR. FOWLER: Just briefly, Your Honor.

21 **REDIRECT EXAMINATION**

22 BY MR. FOWLER:

23 Q. So you're saying that you pled to 25, correct?

24 A. Yes, sir.

25 Q. But you're saying that -- but you're saying that you

1 were -- how would you articulate when you found out that you  
2 could have got up to 30 years?

3 A. Like I said, when we was basically in the room right  
4 here, the room, same room that me and you talked in, like I  
5 say, the whole time, months prior, I thought that the plea that  
6 they had on the table was 25, because I was trying to get him  
7 to go get them to go down when the plea. He just kept telling  
8 me they not going down, the plea is 25, the plea is 25. He  
9 never once told me it was 25 to 30 years until I actually was  
10 in this room seconds before we were about to come in. It's  
11 either, yeah, you take the plea now or we just going to trial,  
12 that I found out that the plea was 25 to 30 years, and I asked  
13 him before he came, I'm like damn, this judge -- excuse my  
14 language, but this judge could give me 20 -- this judge could  
15 give me 35 years -- no man, don't even worry about it, you're  
16 just going to get the 25 years. I'm like, all right. So we  
17 come out here and the judge sentences me to 25 years, but I  
18 never known that the plea was 25 to 30 years until the last  
19 moment.

20 Q. Go ahead, please.

21 A. I'm done.

22 Q. Okay. So you're saying you were shocked that you could  
23 have got additional years; is that correct?

24 A. Yes, sir.

25 MR. KOWALSKI: Objection. That's leading.

1 THE COURT: I'm going to overrule the objection. Go  
2 ahead. Anything further?

3 MR. FOWLER: Nothing further, Your Honor.

4 THE COURT: Okay. Alright. You can step down.  
5 Thank you. Alright. Anything further?

6 MR. FOWLER: Your Honor, may I consult with my client  
7 just briefly, please?

8 THE COURT: Certainly.

9 MR. FOWLER: Thank you.

10 THE COURT: Mr. Fowler?

11 MR. FOWLER: Your Honor, after consultation with the  
12 Applicant, Mr. Hair, we have no further questions or witnesses  
13 at this time.

14 THE COURT: Alright, does the State wish to present  
15 any evidence?

16 MR. KOWALSKI: The State calls Judge Alex Hyman to  
17 the stand.

18 THE CLERK: Do you solemnly swear or affirm that the  
19 testimony you're about to give is the truth, the whole truth,  
20 and nothing but the truth, so help you God?

21 THE WITNESS: I do.

22 **JUDGE BENJAMIN ALEX HYMAN WAS DULY SWORN AT THIS TIME**  
23 **AND TESTIFIED AS FOLLOWS:**

24 THE CLERK: Please be seated and state and spell your  
25 full name for the record, please.

1 THE WITNESS: Benjamin Alex Hyman, H-y-m-a-n.

2 **DIRECT EXAMINATION**

3 BY MR. KOWALSKI:

4 Q. Good morning, Judge Hyman. How are you?

5 A. Good morning. I'm good.

6 Q. How long have you been practicing criminal law?

7 A. 2006, so I think I practiced 17 years before being on  
8 the bench, yeah.

9 Q. And how did you come to represent the Applicant in this  
10 case?

11 A. He, I guess this would have been in March of 2020, I was  
12 reached out to by another attorney, I think it was Jonny McCoy  
13 that reached out to me. Mr. Hair was a musician, was a rapper,  
14 and I think that either Mr. McCoy knew Mr. Hair or Mr. McCoy  
15 knew Mr. Hair's fiancé or some family member, Mr. McCoy had  
16 kind of quit practicing criminal defense at that point and  
17 called and asked me if I would be interested in talking to the  
18 family, and so, I don't remember if it was Mr. Hair's mother or  
19 his fiancé that I spoke to initially. I think it was the  
20 fiancé, and then I came down to Georgetown and spoke with Mr.  
21 Hair, and then they hired me.

22 Q. So in the time you were retained by Mr. Hair, did you  
23 have enough time to meet and speak with him?

24 A. Yeah. I think he was probably about spot on when he  
25 said every couple months. I represented him for a little over

1 two years, so I'd say somewhere between 12 to 15 times that I  
2 came down to Georgetown. He was housed at Georgetown  
3 Correctional, and usually if I was down here for court I would,  
4 even if it wasn't for him, I would stop by, just because I --  
5 you know, it's 40 minutes from Conway, so if I was here, I'd  
6 usually stop by, and I was able to take my laptop in a couple  
7 of times, they let me do that so that he and I could view the  
8 evidence, and there was some audio/video that I couldn't just  
9 leave with him, so I was able to view that with him.

10 Q. So concerning that evidence, what kind of evidence did  
11 the State have in this case?

12 A. The biggest piece of evidence they had was a video of  
13 the -- well, of the total crime scene, really. That video was  
14 taken, I believe it was actually from the gas station that was  
15 kind of next to it. If my memory serves me correctly, there  
16 were some video cameras at the location, the Tire Mart, but I  
17 think what we ended up discovering is that they were fake video  
18 cameras, they weren't actually tied in with anything. Yeah.  
19 So that was the State's biggest piece of evidence was a video  
20 that depicted what actually occurred.

21 Q. So on his Direct Examination, the Applicant made mention  
22 of an affidavit.

23 A. Uh-huh.

24 Q. Was that an important piece of evidence from this case?

25 A. No. It was the charging document. The charging

1 document, the warrant and the indictment both listed in the  
2 affirmative that he committed these crimes. I don't know if  
3 I've ever seen a warrant that didn't list it in the affirmative  
4 like that. So no, that, while it was the charging document, if  
5 we had gone to trial on it the judge would have instructed the  
6 jury that it was only the charging document and not evidence.

7 Q. Did you notice any issues with the warrants or the  
8 indictments in this case?

9 A. No.

10 Q. So what was your strategy when representing Mr. Hair?

11 A. So when I went to speak with him the first few times, it  
12 took us a little while to get all of the discovery. I think  
13 because the State had obtained these videos from a  
14 non-interested party, it was a secondary location that was next  
15 to it, it took a little while for us to get those videos, and  
16 Javon and I had spoken a good bit about self defense, and I  
17 still have no doubt that he was scared when this occurred. He  
18 did discuss with me the video that I think was at a night club  
19 of he and Herman McCray, or Herm, that was -- they had a long  
20 standing beef and there had been, I guess, diss, I guess that's  
21 what you call them, diss raps, that had been put on Facebook  
22 from, I think that Mr. McCray's street name or rap name was,  
23 like, Captain Planet, and I think that Javon's was, and I may  
24 be wrong, but I want to say it was like Scooby, or something  
25 like that, but there had been a previous altercation, I think

1 there had been multiple altercations, but there had been one  
2 that was on, that was videoed, that I believe it was maybe a  
3 year and a half or two years prior to this incident where Mr.  
4 McCray, I think Javon said that he struck him, but if my memory  
5 serves me correctly, I thought he hit him with a champagne  
6 bottle, and we had discussed that being used, and I said, well,  
7 that could be beneficial or it could backfire. It absolutely  
8 could be used because there's such a long period from when that  
9 occurred till now that we could, you know, we'll just have to  
10 kind of play it by ear and see, and we were mounting a defense  
11 for self defense. He and I discussed stand your ground,  
12 potentially doing that. The State was kind of -- the  
13 prosecutor on this case, Liz, she's Liz Martin now, is a very  
14 aggressive prosecutor. She was not coming down. I think her  
15 initial offer she made to us was maybe 40 on murder. When we  
16 got the videos and I went and took them to Javon, I was very  
17 candid with him, I said the videos are not good, the video's  
18 bad, and the video showed -- Javon's correct, he was there  
19 first. He was talking to whoever was running the Tire Mart,  
20 and you see the victim in this case, Mr. McCray, pull up, it  
21 looks like there's words between Javon and Mr. McCray, and  
22 Javon produces a handgun, chases Mr. McCray around the back of  
23 the building, and you see Javon come back, and you see him go  
24 to Mr. McCray's car where he took a bag out of there. I think  
25 the State was insistent that the bag had a gun and some

1 narcotics and maybe money in it, I don't know, we didn't -- I  
2 don't think the bag, from what I remember, was recovered, but  
3 that was why he was charged with armed robbery, and so you see  
4 Javon get in his car along with his co-defendant. I think his  
5 co-defendant was Mr. Frazier, Mr. Sean Frazier. Anyway, you  
6 see him begin to back up his Audi and Mr. McCray comes around  
7 the corner and threw something at the Audi. I think that Javon  
8 and I believe that he threw a wrench, you really couldn't tell  
9 from the video if it was a wrench or a stick or anything like  
10 that, but when he threw the wrench, the car, Javon's car  
11 stopped, he put it in park, he stepped out of the car and shot  
12 Mr. McCray as he was running away. That was the State's  
13 evidence, and once I showed that to Javon, I explained to him  
14 that, you know, you were leaving, you stopped, I know he threw  
15 something at your car, but he was running, and the video shows  
16 he was running away when you shot him in the back, and I  
17 discussed with him that that evidence was not good. That was  
18 not good evidence at all. At that point I discussed with him a  
19 little bit about a plea and if I could negotiate something that  
20 was, you know, in the manslaughter realm, and I went and did  
21 that. He and I talked, I don't know how many times, about  
22 possibility of manslaughter, that kind of thing, and if memory  
23 serves me correctly, he really wanted me to see if I could get  
24 15 on manslaughter, and I did do that, but there, like I said,  
25 Ms. Martin is a pretty tough cookie, and she was not going

1 below the offer. She finally did make an offer of 25 on  
2 manslaughter. What he was discussing about the day of the  
3 plea, that's accurate, he and I have been talking about 25, 25,  
4 25, 25 for about a month or so prior to the plea, and we had  
5 actually signed a comeback. I want to say it was at his second  
6 bond hearing. I may be wrong on that, but there was an  
7 appearance, and it may have been an arraignment. I don't  
8 remember what it was, but we discussed it, and 25 was the  
9 offer. That absolutely is what Ms. Martin had told us. When  
10 we got here the day of the plea she said that the victims were  
11 not happy with that, and she said I need to put on the record  
12 that it's a sentencing range of 25 to 30, but I'm not going to  
13 ask for 30. She said, I'm just going to put on the record that  
14 it's a sentencing range 25 to 30.

15 MR. FOWLER: Objection, Your Honor. Hearsay, please.

16 THE WITNESS: Okay. I'll rephrase that again.

17 THE COURT: Rephrase that.

18 MR. KOWALSKI: He's just testifying about his  
19 experience on the day of the guilty plea.

20 MR. HALL: Effect on the listener exception, Your  
21 Honor.

22 MR. FOWLER: Your Honor, I believe Mr. Kowalski is  
23 the only one that can address the Court at this point.

24 THE COURT: You're right. You're right. The  
25 objection should come from Mr. Kowalski. So rephrase the

1 question.

2 THE WITNESS: And I'll rephrase my answer as far as  
3 that.

4 A. The plea offer that was made the day of was 25, a range  
5 of 25 to 30. We had a chambers meeting with Judge McCoy where  
6 I told Judge McCoy, Judge, you know, we showed up today  
7 thinking 25, 25. Judge McCoy was okay with that, indicated,  
8 I'll give you the 25. I went back, as Mr. Hair said, and spoke  
9 with him in the cell and told him that it was a sentencing  
10 range of 25 to 30, but not to worry, that we had had a pre-plea  
11 conference with the judge, and the judge had indicated that 25,  
12 that that's what we were told, that that's what she was going  
13 to go with, and she did, and she also -- part of that plea was  
14 dismissing quite a few charges. There were other charges other  
15 than the armed robbery and the possession of a weapon during  
16 the commission of a violent crime. He also was on probation,  
17 had some other charges for, I think there were two weapons  
18 charges and an A and B second and a pointing and presenting  
19 that were all dismissed, that they were different instance than  
20 this, but they were still pending, and then there were some  
21 charges that were ultimately dismissed when he was -- he was  
22 arrested, actually, in Kershaw County, and those charges were  
23 also dismissed. Those were trafficking cocaine, PWID first, I  
24 think it was two or three drug charges, and also a gun charge.

25 Q. So Mr. Hair eventually, ultimately, made the -- did Mr.

1 Hair ultimately decide to plead guilty?

2 A. Yes.

3 Q. And do you believe that pleading was in his best  
4 interest?

5 A. Absolutely.

6 Q. Did you explain to Mr. Hair his constitutional rights?

7 A. I did.

8 Q. And did you explain that he'd be waiving those by  
9 pleading guilty?

10 A. I did, and the judge, Judge McCoy went over that with  
11 him, as well.

12 Q. And did you explain to Mr. Hair the possible sentences  
13 he was facing?

14 A. Yes. And like he said, up until the day of, the idea  
15 was 25, and that's why I went back and talked to him and said  
16 the sentencing range is 25 to 30, but you're going to get 25,  
17 and he made a decision to go forward.

18 Q. And did Mr. Hair appear to understand everything you  
19 explained to him throughout the course of your representation?

20 A. Yeah, Javon's very intelligent. He was very -- you  
21 know, anytime I went and saw Javon he seemingly was prepared.  
22 He always had some questions, and quite frequently, I think it  
23 was his fiancé, I think I called her his wife multiple times,  
24 but it was actually his fiancé at the time, she would call me  
25 and say Javon's got some questions.

1           MR. FOWLER:  Objection, Your Honor.  Hearsay.

2       A.    I was notified he had questions.

3           THE COURT:  Who objected?

4           MR. FOWLER:  I objected, Your Honor, to hearsay about  
5 what someone else was saying that's not in court.

6           THE WITNESS:  And I can rephrase my answer, Judge.

7           THE COURT:  Rephrase the answer.

8       A.    Alright.  I was informed that -- anyway, I'll just say  
9 that when I went to see Javon, he usually would have questions  
10 written down.  He was very involved in his defense.

11       Q.    Did Mr. Hair ever ask you about filing an appeal?

12       A.    No.

13       Q.    Did you see any reason that -- did you see any  
14 appealable grounds in this case?

15       A.    No.  He pled guilty, had numerous charges dismissed, and  
16 was given the lower sentencing range of what he was pleading  
17 to.

18           MR. KOWALSKI:  Beg the Court's indulgence?  No  
19 further questions.

20           THE COURT:  Thank you.  Mr. Fowler?

21           MR. FOWLER:  Yes.

22

23

24

25

1 CROSS-EXAMINATION

2 BY MR. FOWLER:

3 Q. You mentioned earlier the warrant, you were in court  
4 during Mr. Hair's entire testimony, correct?

5 A. Yes.

6 Q. Okay. So in terms of the warrant, you indicated on your  
7 direct examination that they were only charging documents and  
8 not evidence. Did you ever go over that with Mr. Hair?9 A. Are you referring to did I ever go over the warrant with  
10 him?

11 Q. Yes.

12 A. Yes.

13 Q. Okay. How did you go over the warrant with him?

14 A. Well, I provided him all of the evidence that had been  
15 provided to me that was tangible. Obviously, the videos, I  
16 couldn't give to him, but anything that was in paper I did  
17 provide for him. The way that I normally do that, I hand it to  
18 him, I say, I want you to review it, and when you've got  
19 questions, I'll be back here, we'll go over it, make notes, so  
20 that you can remember everything that we want to go over when I  
21 get back, and we did that same thing, and we went through  
22 pretty much each page individually of the discovery. There  
23 really wasn't -- this wasn't a case where there was 400 pages  
24 of paper discovery, this was not one of those cases. There was  
25 some discovery that was a little more -- little longer, but it

1 dealt with the fact that they were found in Kershaw, and so  
2 there were -- in the discovery there was some discovery about  
3 those charges, even though they were in a different  
4 jurisdiction.

5 Q. So in terms of the writing of the warrant where the  
6 person who wrote the warrant basically said that he did an act,  
7 or what have you, you said that -- did you have any issues with  
8 that at all?

9 A. No.

10 Q. And why not?

11 A. Every warrant has an affirmative statement that somebody  
12 did commit a crime, but that's not something that's necessarily  
13 objectionable to. The warrant was used to show probable cause,  
14 or if the Affiant gave probable cause for the warrant, as I  
15 stated, I didn't see anything in the warrant in its verbiage,  
16 in its statement, in the way that it was written, that was  
17 objectionable.

18 Q. Do you feel like you should have gone over that with him  
19 better considering it indicated that it pointed, it  
20 figuratively pointed a finger at him for committing a crime?

21 A. Well, he and I discussed in detail what the elements of  
22 murder were, and as far as the malice, and actually, he and I  
23 discussed if it went to trial the possibility that we could  
24 request a charge of manslaughter, and he and I did talk about  
25 that, but after -- once we kind of viewed everything, we

1 weren't necessarily in a trial posture, it was, let's see the  
2 best deal we could get, and as I stated, Javon really wanted  
3 15, I really wanted 15 for him, but they were not willing to go  
4 anywhere near 15.

5 Q. There was talk about a video earlier, and I believe it  
6 was indicated by you on the stand that there was -- that one  
7 person allegedly, apparently, threw something at Mr. Hair; is  
8 that correct?

9 A. That's the actual -- that was the video of the incident  
10 that occurred. Now, there were -- the video that he was  
11 initially talking about was in a nightclub, and that was the  
12 victim in this case. If memory serves me correctly, I thought  
13 that the victim in the case hit him with a champagne bottle or  
14 some kind of bottle. I think he testified that Herm hit him,  
15 but I thought it was with a champagne bottle. That was -- I  
16 didn't think it was quite two years. I was thinking it was  
17 like 18 months prior to the incident.

18 Q. Do you feel like in retrospect that that could have  
19 shown that the -- that could have helped your client at the  
20 time, Mr. Hair, to prove his innocence, that video of, you  
21 know, the champagne bottle or a possible hitting, do you feel  
22 that could have helped him in any way going forward?

23 A. No. After we, After I viewed the video of the incident  
24 that is the subject of the murder charge and the manslaughter  
25 conviction, once I saw that video, through my experience and

1 really just common sense, it -- that prior video did nothing  
2 but bolster evidence and bolster probably the State's evidence  
3 that there was prior beef, that he stopped, and then he shot  
4 him as he was running away. I think it hurt, very much I think  
5 it hurt his argument for self defense.

6 Q. Now, are you referring to the original video?

7 A. I think the original video from the night club that was  
8 two years prior to this incident, that that video, had I shown  
9 it to the Solicitor, it would have hurt us.

10 Q. Did you go over that with Mr. Hair?

11 A. Yes.

12 Q. In any of this did you put anything in writing and  
13 provide to him, or was it all just kind of an oral discussion  
14 between you and he?

15 A. Now, which part are you talking about?

16 Q. Let's talk about the video.

17 A. No, that was oral.

18 Q. So you didn't make any written statement to him about  
19 how that could possibly --

20 A. No, these were personal meetings between -- and it was  
21 always my practice to not put things like that in writing when  
22 I had a client that was detained. The reason being is I had  
23 previously seen situations where other people that were housed  
24 with my clients would read these correspondence, and the next  
25 thing you know they've contacted the solicitor and they're a

1 jailhouse snitch, and so I wouldn't put things like that in  
2 writing for my clients, I would just come out and tell them.  
3 Now, I will say that when he and I were discussing a lot of  
4 these things, it was difficult, this was during the height of  
5 COVID, we had to wear masks even though there was glass between  
6 us. It was not easy talking to him, and in fact, when I was  
7 showing him the videos, it was through glass. He and I were  
8 not allowed in the same room together, which didn't cause, you  
9 know, not issues between he and I, but it definitely made it  
10 harder.

11 Q. Was there ever a stand your ground hearing discussed  
12 about his representation?

13 A. Yes. We discussed stand your ground, but we did not  
14 have a stand your ground hearing. I told him that if we were  
15 going to have a stand your ground hearing, that was likely  
16 going to be in a situation where we were going to be gearing up  
17 for trial, and that if that was the case that they were going  
18 to pull their offer, and I don't know if this -- if my memory  
19 serves me correctly, the day that he pled guilty, it was going  
20 to be a plea or an arraignment, that's generally how the 15th  
21 Circuit Solicitor's Office works. If you decide not to plea on  
22 that day, they go ahead and arraign you on that offer and then  
23 they pull the offer. So it was kind of one of those situations  
24 where if we had not pled on that day, that offer likely would  
25 have been pulled.

1 Q. You said that there was -- you indicated that there was  
2 an offer of 40 years originally; is that correct?

3 A. I think so, and I believe that that was just Ms. Martin  
4 and I talking. I vaguely remember calling her on the phone. I  
5 went by Merriman Road where this happened, and I believe that  
6 that's when she laughing, I mean, jokingly said, if you think  
7 I'm going below 40, then you're mistaken, that kind of thing.

8 Q. Did you ever indicate to Mr. Hair, the Applicant, that  
9 that offer of 40 was presented to him?

10 A. I'm sure I did, I can't 100 percent, I knew he wasn't  
11 going to accept 40, but I don't remember if I talked with him  
12 about 40 or not. It was -- that was so early in the -- I mean,  
13 I don't even know if we had any discovery at that point.

14 Q. You heard earlier that he was -- he indicated on the  
15 stand that he was, I believe his words was, you know, he  
16 thought that it was going to be only 25, and then it wound up,  
17 the Court considered 25 to 30.

18 A. Uh-huh.

19 Q. So what, how did that happen?

20 A. So the day of the plea, we showed up, if my memory  
21 serves me correctly, we showed up for the plea, the victim's  
22 family was here, they were, apparently, not happy with a  
23 straight 25, and so Ms. Martin discussed with them about  
24 putting on the record the 25 to 30. I expressed my displeasure  
25 with that and said that, you know, we've been talking about 25

1 for a month now. She said, I don't want to do that to you.  
2 She said, we can go back and talk to Ms. McCoy, or Judge McCoy,  
3 and if she's not inclined to do it, then we can stand it down.

4 Q. So you had indicated to Mr. Hair that he was looking at  
5 25 years, right?

6 A. That's correct.

7 Q. But there was no negotiated plea in this, was there?

8 A. No, no, no, it was going to be a negotiated 25.

9 Q. Okay.

10 A. Yeah.

11 Q. Was that ever officially made between you and the  
12 Solicitor's Office?

13 A. What do you mean, officially?

14 Q. I mean, it's my understanding that you indicated to him  
15 for the whole time that it was going to be 25 years?

16 A. That's correct.

17 Q. And then the day of court it opened up to 25 to 30?

18 A. That's correct, yeah.

19 Q. But at no point was there a negotiated plea between Mr.  
20 Hair and the Court to -- or the Solicitor's Office to have a  
21 straight 25-year plea?

22 A. We had agreed. The Solicitor had contacted me and said  
23 if she was going to make the offer of 25 it would have to be  
24 negotiated so that I -- it wouldn't be a recommendation.

25 Q. Okay.

1 A. I don't know if that answers your question or not.

2 Q. Well, I guess my final -- my main thing was, was it a --  
3 was the final plea, was it a negotiated sentence?

4 A. The final plea of the sentencing range of 25 to 30?  
5 Yes.

6 Q. Okay.

7 MR. FOWLER: Your Honor, may I have a moment with my  
8 client?

9 THE COURT: Certainly.

10 MR. FOWLER: Your Honor, after speaking with my  
11 client, no further questions at this time.

12 THE COURT: Alright, you can step down. Thank you.  
13 Anything more?

14 MR. FOWLER: Nothing, Your Honor.

15 THE COURT: Any objection to excusing this witness?

16 MR. KOWALSKI: None from the State, Your Honor.

17 THE COURT: Alright, thank you.

18 MR. FOWLER: After speaking with my client, none,  
19 Your Honor.

20 THE COURT: Alright. Anything further, Mr. Kowalski?

21 MR. KOWALSKI: No further witnesses.

22 THE COURT: No further witnesses. Alright. Anything  
23 further, gentlemen?

24 MR. FOWLER: No, sir.

25 THE COURT: Okay. Alright. I'm going to take the

1 matter under advisement. I've got all of the information that  
2 has been provided, the transcript, the return, the original  
3 application, as well as the documentation with all of the  
4 testimony that's been provided today that I will review and  
5 consider, and I will issue an order once I reach a decision.  
6 Alright?

7 MR. KOWALSKI: Thank you.

8 MR. FOWLER: Thank you, Your Honor.

9 THE COURT: Alright. Good luck to you, Mr. Hair.

10 CERTIFICATE

11 STATE OF SOUTH CAROLINA

12 COUNTY OF GEORGETOWN

13 I, Julie A. Kevish, Official Court Reporter  
14 for the State of South Carolina, do hereby certify that the  
15 foregoing is a true, accurate and complete Transcript of Record  
16 of the proceedings had and evidence introduced in the Court of  
17 Common Pleas for Georgetown County, South Carolina, on the 20th  
18 of March, 2025.

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

21 March 20, 2025

22

23

*Julie Kevish*

24

JULIE A. KEVISH  
OFFICIAL COURT REPORTER

25

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

Javon J. Hair, #388395,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS  
) FIFTEENTH JUDICIAL CIRCUIT

) CASE NO. 2023-CP-22-00077

) **ORDER OF DISMISSAL**  
) **WITH PREJUDICE**

Presiding Judge:	Hon. Dale E. Van Slambrook
Applicant's Attorney:	Steve W. Fowler, Esq.
Respondent's Attorney:	Ryan T. Kowalski, Esq.
Plea Counsel:	B. Alex Hyman, Esq.
Solicitor:	Elizabeth Smith, Esq.
Date of Hearing:	March 20, 2025

FILED  
 GEORGETOWN COUNTY, S.C.  
 2025 JUL -8 AM 8:59  
 CLERK OF COURT

This matter comes before the Court by way of a post-conviction relief application filed by Javon J. Hair ("Applicant") on January 23, 2023. Respondent, the State of South Carolina, made its return and partial motion to dismiss on September 20, 2024, requesting an evidentiary hearing to resolve the claims as set forth in the application.

The evidentiary hearing convened on March 20, 2025, at the Georgetown County Courthouse, before the Honorable Dale E. Van Slambrook. Applicant was present and represented by Steve W. Fowler, Esq. Assistant Attorney General Ryan T. Kowalski represented Respondent. At the hearing, Applicant proceeded forward on the claims as set forth in his application. Applicant testified on his own behalf. Respondent presented testimony from B. Alex Hyman, Esq. (Plea Counsel).

PROCEDURAL HISTORY

Applicant is presently confined to the South Carolina Department of Corrections ("SCDC"), serving a twenty-five (25) year sentence. On October 28, 2020, the Georgetown County Grand Jury indicted Applicant for murder (2020-GS-22-01072), armed robbery (-01074), and possession of a weapon during the commission of a violent crime (-01073). On July 11, 2022, Applicant pled guilty before the Honorable Jennifer B. McCoy. Assistant Solicitor Elizabeth Smith prosecuted the case. Applicant was represented by B. Alex Hyman, Esq. ("Counsel"). In exchange for his guilty plea, Applicant pled to voluntary manslaughter, the lesser included offense. Pursuant to a negotiated sentencing range of twenty-five (25) to thirty (30) years, Judge McCoy sentenced Applicant to twenty-five (25) years for voluntary manslaughter. Applicant did not appeal.

FACTUAL HISTORY

On February 5, 2020, Herman McCray, Jr. ("Victim") was at a tire shop in Georgetown when Applicant and his co-defendant arrived. (Tr. 5). Applicant and Victim, who knew each other, got into a verbal altercation. (Tr. 6). Applicant chased Victim around the building with a gun. (Tr. 6). A bag was stolen. (Tr. 6). Applicant and his co-defendant got back into their car, and Victim threw an object at the car. (Tr. 6). Applicant got out of the car, and Victim began to run away. (Tr. 6). Applicant shot Victim in the back, causing Victim's death. (Tr. 6).

CURRENT APPLICATION

In his current PCR application, Applicant alleges he is being held unlawfully based on the following:

- I. Ineffective Assistance of Counsel
  - a. Failure to object to affidavit presentment.<sup>1</sup>
  - b. Failure to file a direct appeal.

<sup>1</sup> This Court interprets this allegation to mean either the arrest warrant or the indictments. At the evidentiary hearing, Applicant alleged that the arrest warrant and the police affidavit thereon were defective, rendering his indictments invalid.

- c. Failure to file a motion to quash indictment for insufficiency prior to Applicant's guilty plea.
- d. Failure to advise Applicant on double jeopardy.

II. Involuntary Plea

III. Newly Discovered Evidence

- a. Applicant contends affidavit does not contain sufficient facts to establish guilt beyond a reasonable doubt to support a conviction for a jury to decide. Applicant alleges the affidavit is evidence of material facts not previously heard.

Applicant requests relief as follows: evidentiary hearing with counsel appointed.<sup>2</sup>

Before this Court are the records of the Georgetown County Clerk of Court records regarding the subject convictions, Applicant's records from SCDC, and the PCR application.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Before this Court are the records of the Georgetown County Clerk of Court records regarding the subject convictions, Applicant's records from SCDC, and the PCR application. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

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

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<sup>2</sup> If this Court finds a defect in the original proceedings, the appropriate remedy is to grant a new trial on the original indictments. *Gilstrap v. State*, 252 S.C. 625, 628, 168 S.E.2d 88, 89 (1969) (stating the relief to be granted is remand for a new trial); *Smith v. State*, 413 S.C. 194, 195, 775 S.E.2d 696, 696 (2015) ("We now clarify the proper remedy is a new trial").

entitled to relief."); *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

*INEFFECTIVE ASSISTANCE OF COUNSEL*

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984); *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013).

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

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *accord. Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that

“[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable.” (citation and internal quotation marks omitted).

Regarding the deficiency prong of the *Strickland* analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel’s performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption “by proving that his attorney’s representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy.” *Kimmelman v. Morrison*, 477 U.S. 365, 384 (1986); *cf. Cullen v. Pinholster*, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel’s performance in a highly deferential manner, make every effort “to eliminate the distorting effects of hindsight,” and “evaluate the conduct from counsel’s perspective at the time” in light of then-existing circumstances. *Strickland*, 466 U.S. at 689. In order to establish counsel’s performance was deficient, the applicant must demonstrate “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Id.* at 687. Accordingly, counsel’s performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply “deviated from best practices or most common custom.” *Harrington v. Richter*, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the

burden of establishing prejudice in order to be entitled to relief as “[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Strickland*, 466 U.S. at 691. To meet this burden, counsel’s deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel’s unprofessional errors. *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625; *see Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (“To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel’s representation fell below an objective standard of reasonableness and, but for counsel’s errors, there is a reasonable probability the result at trial would have been different.”). Importantly, “[t]he likelihood of a different result must be *substantial*, not just conceivable.” *Richter*, 562 U.S. at 112.

#### *Guilty Pleas Based on Ineffective Assistance of Counsel*

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

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the range of competence demanded of

attorneys in criminal cases.” *Hill*, 474 U.S. at 56. The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” *Id.* at 58-59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59.

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

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

Before this Court are the records of the Georgetown County Clerk of Court records regarding the subject convictions, Applicant’s records from SCDC, and the PCR application. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed this Court to evaluate and scrutinize their credibility.

From the transcript of Applicant’s guilty plea, this Court makes the following findings: 1) Applicant understood the charges and sentences he faced (Plea Tr. p. 3); 2) Applicant was informed

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of his constitutional rights to a trial, to confront witnesses, and to remain silent (Plea Tr. pp. 4-5); 3) Applicant's decision to plead guilty was entered freely, voluntarily, knowingly, and intelligently. (Plea Tr. p. 6). Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief.

**Allegation: Plea Counsel Failed to Advise Applicant of his Right to Appeal**

Applicant alleged Plea Counsel was ineffective for failing to file a direct appeal on Applicant's behalf, denying Applicant his right to appeal. This Court finds that Plea Counsel informed Applicant of his right to appeal, and that Applicant waived that right.

Generally, there is no constitutional deprivation in not being advised of the right to appeal from a guilty plea absent extraordinary circumstances, such as when there is a reason to think a rational defendant would want to appeal—where a non-frivolous ground exists to appeal—or defendant reasonably demonstrated an interest in appealing. *Roe v. Flores-Ortega*, 528 U.S. 470, 120 S.Ct. 1029 (2000); *Turner v. State*, 380 S.C. 223, 225, 670 S.E.2d 373, 374 (2008).

At the evidentiary hearing, on direct examination, Applicant testified that Plea Counsel did not advise him of his appellate rights, and that Plea Counsel did not mention them to Applicant. On direct examination, Plea Counsel testified that Applicant never asked him to file an appeal. Plea Counsel also testified that he did not see any appealable grounds in Applicant's case because he pled guilty, had numerous charges dismissed, and was given the lower sentencing range of the charges he was pleading guilty to.

This Court finds Applicant knowingly and voluntarily waived his right to a direct appeal after being advised of that right. Further, this Court finds that Applicant failed to prove Plea Counsel was deficient by not advising him of his right to appeal. Plea Counsel credibly testified

Applicant did not inform him he wished to appeal his guilty plea and that Plea Counsel did not see any appealable grounds. Therefore, this allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

**Allegation: Plea Counsel Failed to Advise Applicant of Sentencing Range**

At the evidentiary hearing, Applicant alleged that he was under the impression that he was going to be receiving a twenty-five (25) year sentence by pleading guilty, and that Applicant was not advised that the negotiated sentencing range was in fact twenty- five (25) to thirty (30) years. This Court finds that Applicant has failed to prove that he suffered prejudice as a result of this alleged discrepancy.

Plea Counsel credibly testified that the Solicitor made an offer of twenty-five (25) years for manslaughter. Plea Counsel credibly testified that he discussed that offer with Applicant and they had signed an acceptance of that offer. Plea Counsel credibly testified that on the day of the plea, the Solicitor informed Plea Counsel that she needed to put the offer on the record as a range of twenty- five (25) to thirty (30) years. Plea Counsel credibly testified that he and the Solicitor met with Judge McCoy in her chambers about this discrepancy, and Judge McCoy indicated that she was going to sentence Applicant to twenty-five (25) years. Upon review of the record, this Court finds that Applicant was given the twenty- five (25) year sentence he had anticipated and thus suffered no prejudice as a result of the alleged discrepancy in the negotiated offers. Therefore, this allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

**Allegation: Plea Counsel Failed to Object to or Move to Quash Indictment**

**Allegation: Plea Counsel failed to Advise Applicant on Affidavit and Warrant**

Applicant alleges that the arrest warrant and police affidavit thereon in his case were defective, thus his indictments were defective, and that these alleged facts qualify as newly

discovered evidence. This Court finds that this does not constitute newly discovered evidence. As an initial matter, Applicant's allegations are not newly discovered evidence because indictments are not evidence, they are notice documents. *McCoy v. State*, 401 S.C. 363,371, 737 S.E.2d 623, 627 (2013) (Newly discovered evidence is evidence that is material to the accused's guilt or innocence and concerns the substance of the State's case or the accused defense); *See State v. Gentry*, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005) ("An indictment is a notice document").

Applicant's alleged issues with his indictments and the arrest warrant could have been discovered by the exercise of reasonable diligence at the time of Applicant's indictment. The Uniform Post-Conviction Procedure Act (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).

At the evidentiary hearing, Applicant testified that the way his arrest warrant was written accused him of being guilty prior to being proven guilty. Applicant testified that the affidavit on the arrest warrant convicted him before he was convicted by the court system. Applicant testified that Plea Counsel should have reviewed the warrant to ensure it was sufficient. Applicant testified that he went over the warrant with Plea Counsel.

Plea Counsel credibly testified that the indictment was the charging document in this case, and that the police affidavit, the warrant, and the indictment listed in the affirmative that Applicant committed the crimes. Plea Counsel credibly testified that if they had gone to trial, the judge would have instructed the jury that the indictments were merely a charging document, not evidence. Plea Counsel credibly testified that he did not see any issues with Applicant's indictments. Upon reviewing the indictments contained in the record, this Court finds they were not defective. Additionally, Applicant pled guilty, which waived his right to challenge his indictments.

Therefore, this allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

**CONCLUSION**

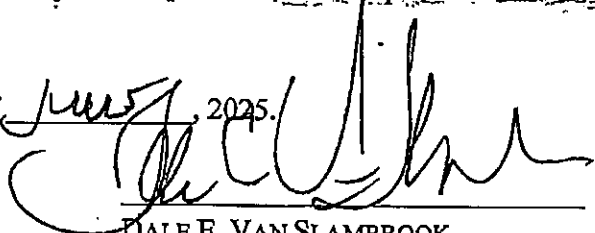
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations which would require this Court to grant his application for post-conviction relief. This Court finds that Plea Counsel was not deficient in any manner, and Applicant was not prejudiced by his representation. Therefore, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief shall 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 19 day of June, 2025.



DALE E. VAN SLAMBROOK  
Presiding Judge  
Fifteenth Judicial Circuit

Moncks Con, South Carolina

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**WITNESSES**

Georgetown Police Department

**ARREST WARRANT NUMBER**

2020A2220200079

CDR: 0116 §18-03-0010, 0020

DOI: 2/5/2020

**ACTION OF GRAND JURY**

**TRUE BILL**

*Roddy J...*

Foreperson of Grand Jury

Date: 10-28-2020

**VERDICT**

Foreperson of Petit Jury

Date:

DOCKET NO. 2020-GS22-01072

**The State of South Carolina**

**County of Georgetown**

Alicia Richardson

20G00281

**COURT OF GENERAL SESSIONS**

**OCTOBER, 2020 TERM**

**THE STATE**

**vs.**

**JAVON JACOB HAIR**

[REDACTED]  
[REDACTED]  
[REDACTED]

**B / M**

**ATTORNEY: Ronald W. Hazzard**

**Indictment for**

**MURDER**

**Jimmy A. Richardson, II, Solicitor**

