

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Laurens County

Thomas A. Russo, Circuit Court Judge

---

**RECEIVED**  
DEC 10 2013  
S.C. Supreme Court

DOMINIQUE BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212940

---

APPENDIX

---

SPENCER D. LANGLEY  
Counsel for Petitioner

Brumback and Langley, LLC  
1 Augusta Street Suite 301-D  
Greenville, SC 29601  
(864) 414-9097

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

J. RUTLEDGE JOHNSON  
Assistant Attorney General  
P. O. Box 11549  
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX .....i

GUILTY PLEA TRANSCRIPT ..... 1

APPLICATION FOR POST-CONVICTION RELIEF ..... 14

RETURN .....21

POST-CONVICTION RELIEF HEARING TRANSCRIPT .....27

ORDER OF DISMISSAL .....71

INDICTMENTS .....79

STATE OF SOUTH CAROLINA )  
 COUNTY OF LAURENS )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 PLAINTIFF, )  
 )  
 vs )  
 )  
 DOMONIQUE O'NEIL BROWN, )  
 )  
 DEFENDANT. )

IN THE COURT OF GENERAL SESSIONS  
 OF THE EIGHTH JUDICIAL CIRCUIT  
 2007-GS-30-220,221,223

GUILTY PLEA

MAY 18, 2009  
 LAURENS , SOUTH CAROLINA

BEFORE: THE HONORABLE D. GARRISON HILL

FOR THE PLAINTIFF:

JERRY W. PEACE, SOLICITOR  
 EIGHTH CIRCUIT SOLICITOR'S OFFICE  
 POST OFFICE BOX 516  
 GREENWOOD, SC 29648

FOR THE DEFENSE:

E. CHARLES GROSE  
 ATTORNEY AT LAW  
 OFFICE OF THE PUBLIC DEFENDER  
 600 MONUMENT STREET, BOX P-133  
 GREENWOOD, SC 29646

JO RICE  
 COURT REPORTER

1           **THE COURT:** YES, SIR, MISTER PEACE.

2           **MR. PEACE:** THANK YOU, YOUR HONOR. IF IT PLEASES THE COURT.  
3 YOUR HONOR, WE HAVE NEGOTIATED ON THE MURDER/ARMED  
4 ROBBERY/POSSESSION OF WEAPON CASE WITH MISTER BROWN. MISTER  
5 BROWN IS PLEADING TO ALL THREE CHARGES. THERE IS A NEGOTIATED  
6 SENTENCE OF THIRTY YEARS ON THE MURDER AND CONCURRENT  
7 SENTENCES ON THE ARMED ROBBERY AND THE POSSESSION OF A WEAPON  
8 AND WE WILL ALSO DISMISS THE ARMED ROBBERY CHARGE ON THE  
9 ROBBERY OF THE PIZZA DELIVERY GUY IN DECEMBER OF 2006.

10          **THE COURT:** ALL RIGHT. AND IS THAT THE ENTIRE AGREEMENT, SIR?

11          **MR. PEACE:** YES, SIR.

12          **MR. GROSE:** THERE IS ALSO THAT HE WAS GOING TO BE HELD IN THE  
13 LAURENS JAIL UNTIL AUGUST. I FORGET WHAT DATE IT WAS IN AUGUST.

14          **MR. BROWN:** 20TH.

15          **MR. GROSE:** AUGUST 20TH.

16          **MR. PEACE:** RIGHT. AND I HAVE CHECKED WITH SHERIFF CHASTAIN.  
17 SHERIFF CHASTAIN WILL HOLD HIM IN THE LAURENS COUNTY DETENTION  
18 CENTER UNTIL THE END OF AUGUST.

19          **MR. GROSE:** WE APPRECIATE THE SOLICITOR FOR DOING THAT AND  
20 THE SHERIFF.

21          **THE COURT:** ALL RIGHT. OKAY, MISTER BROWN?

22          **MR. BROWN:** YES, SIR.

23          **THE COURT:** LET'S GET YOU SWORN IN, SIR.

24          (MISTER BROWN IS ADMINISTERED THE OATH BY THE CLERK OF COURT)

25          **THE COURT:** OKAY, MISTER BROWN, MY PAPERWORK SAYS THAT YOU

1 ARE TWENTY YEARS OLD. IS THAT CORRECT?

2 MR. BROWN: YES, SIR.

3 THE COURT: AND HOW FAR DID YOU GO IN SCHOOL?

4 MR. BROWN: TO THE ELEVENTH.

5 THE COURT: AND WHAT KIND OF WORK HAVE YOU DONE IN THE PAST,  
6 SIR?

7 MR. BROWN: NOTHING. I MEAN, NOTHING SERIOUS.

8 THE COURT: ALL RIGHT. AND CAN YOU READ AND WRITE?

9 MR. BROWN: YES, SIR.

10 THE COURT: ALL RIGHT. AND ARE YOU UNDER THE INFLUENCE OF ANY  
11 ALCOHOL, DRUGS OR MEDICATION?

12 MR. BROWN: NO, SIR.

13 THE COURT: DO YOU HAVE ANY PHYSICAL, MENTAL OR EMOTIONAL  
14 CONDITIONS THAT MIGHT KEEP YOU FROM UNDERSTANDING WHAT'S  
15 HAPPENING HERE?

16 MR. BROWN: NO, SIR.

17 THE COURT: HAVE YOU HAD ENOUGH TIME TO TALK TO YOUR  
18 LAWYERS? ARE YOU FULLY SATISFIED WITH YOUR LAWYERS' SERVICES?

19 MR. BROWN: YES, SIR.

20 THE COURT: AND ARE YOU PLEADING GUILTY BECAUSE YOU ARE  
21 GUILTY, SIR?

22 MR. BROWN: YES, SIR.

23 THE COURT: HAS ANYONE THREATENED YOU OR PUT ANY PRESSURE  
24 ON YOU TO GET YOU TO COME TO COURT TODAY AND ENTER YOUR PLEA?

25 MR. BROWN: NO, SIR.

1 THE COURT: ARE YOU HERE OF YOUR OWN FREE CHOICE AND WILL?

2 MR. BROWN: YES, SIR.

3 THE COURT: HAVE YOU HAD ENOUGH TIME TO THINK ABOUT WHAT YOU  
4 ARE DOING?

5 MR. BROWN: YES, SIR.

6 THE COURT: DO YOU UNDERSTAND THE ELEMENTS OF EACH CRIME  
7 YOU ARE PLEADING GUILTY TO THAT THE STATE WOULD HAVE TO PROVE AT  
8 TRIAL IN ORDER TO CONVICT YOU?

9 MR. BROWN: YES, SIR.

10 THE COURT: DO YOU UNDERSTAND THE MAXIMUM SENTENCE YOU  
11 FACE FOR EACH CHARGE YOU ARE PLEADING GUILTY TO?

12 MR. BROWN: SAY WHAT, NOW?

13 THE COURT: DO YOU UNDERSTAND THE MAXIMUM SENTENCE YOU  
14 FACE FOR EACH CHARGE YOU ARE PLEADING GUILTY TO?

15 MR. BROWN: THIRTY. RIGHT?

16 MR. GROSE: THIRTY IS THE AGREEMENT, BUT THE MAXIMUM IS LIFE  
17 FOR THE MURDER. HE'S JUST —

18 (MISTER GROSE SPEAKS TO HIS CLIENT OFF THE RECORD)

19 MR. BROWN: OH. YEAH, I KNOW NOW.

20 THE COURT: ALL RIGHT. DO YOU UNDERSTAND THE MURDER CHARGE  
21 CARRIES A MAXIMUM SENTENCE TO UP TO LIFE IN PRISON, ARMED ROBBERY  
22 UP TO THIRTY YEARS IN PRISON, AND POSSESSION OF A FIREARM, UP TO  
23 FIVE YEARS IN PRISON. DO YOU UNDERSTAND THAT, SIR?

24 MR. BROWN: YES, SIR.

25 THE COURT: OKAY. AND DO YOU UNDERSTAND THAT YOU HAVE THE

1 RIGHT TO A JURY TRIAL ON EACH ONE OF THESE CHARGES, SIR?

2 **MR. BROWN:** YES, SIR.

3 **THE COURT:** IN FACT, A JURY HAS ALREADY BEEN SELECTED IN THIS  
4 CASE AND WE'RE READY TO BEGIN YOUR CASE AND IT'S JUST BEEN POINTED  
5 OUT THAT A PLEA AGREEMENT HAS BEEN REACHED AND SO I NEED TO MAKE  
6 SURE YOU UNDERSTAND WHAT RIGHTS YOU WOULD HAVE IF WE CONTINUED  
7 THIS JURY TRIAL AND THEY INCLUDE THE RIGHT TO BE PRESUMED  
8 INNOCENT, THE RIGHT TO NOT HAVE TO PROVE YOURSELF GUILTY AND THE  
9 RIGHT TO HAVE A VERDICT BY A UNANIMOUS JURY. THAT IS, YOU WOULDN'T  
10 HAVE TO PROVE YOU WERE NOT GUILTY OR PROVE YOU'RE INNOCENT,  
11 INSTEAD IT WOULD BE THE STATE THAT BEARS THE BURDEN OF PROVING  
12 YOUR GUILT AND YOU COULD ONLY BE CONVICTED IF ALL TWELVE JURORS  
13 AGREED THE STATE HAD PROVEN EACH AND EVERY ELEMENT OF THE CRIME  
14 BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND THAT, SIR?

15 **MR. BROWN:** YES, SIR.

16 **THE COURT:** AND AT YOUR TRIAL, YOU COULD SEE AND HEAR THE  
17 WITNESSES, YOU COULD BRING WITNESSES IN THAT COULD TESTIFY,  
18 CONFRONT THE EVIDENCE, PRESENT DEFENSES YOU MAY HAVE AND HAVE  
19 YOUR LAWYERS ASSIST YOU AT TRIAL. DO YOU UNDERSTAND THAT?

20 **MR. BROWN:** YES, SIR.

21 **THE COURT:** I DON'T KNOW IF YOU HAVE A DEFENSE OR NOT TO THESE  
22 CHARGES, MISTER BROWN, BUT YOU UNDERSTAND THAT BY PLEADING  
23 GUILTY YOU MUST GIVE UP YOUR RIGHT TO PRESENT A DEFENSE AND ALSO  
24 THE RIGHT TO CHALLENGE OR CONTEST ANY OF THE EVIDENCE IN YOUR  
25 CASE, INCLUDING ANY STATEMENTS YOU MAY HAVE GIVEN TO POLICE,

1 SEARCHES THAT WERE MADE OR TESTING THAT WAS DONE OR SHOULD  
2 HAVE BEEN DONE. DO YOU UNDERSTAND THAT, MISTER BROWN?

3 **MR. BROWN:** YES, SIR.

4 **THE COURT:** NOW, AS I SAID, YOU COULD TESTIFY AT YOUR TRIAL,  
5 PRESENT EVIDENCE, BUT NOBODY COULD MAKE YOU. IF YOU CHOSE TO  
6 REMAIN SILENT, THE COURT WOULD TELL THE JURY THAT YOU HAVE THE  
7 CONSTITUTIONAL RIGHT TO DO THAT AND THEY COULD NOT HOLD THAT  
8 AGAINST YOU OR TAKE IT INTO ACCOUNT WHATSOEVER IN MAKING THEIR  
9 DECISION AS TO WHETHER YOU ARE GUILTY OR NOT GUILTY. DO YOU  
10 UNDERSTAND THAT?

11 **MR. BROWN:** YES, SIR.

12 **THE COURT:** DO YOU UNDERSTAND THAT THE CRIMES OF MURDER  
13 AND ARMED ROBBERY ARE CLASSIFIED AS MOST SERIOUS OFFENSES UNDER  
14 SOUTH CAROLINA LAW. EACH ONE OF THOSE CRIMES IS A STRIKE UNDER  
15 THE TWO STRIKES AND THREE STRIKES LAW. DO YOU UNDERSTAND THAT,  
16 SIR?

17 **MR. BROWN:** YES, SIR.

18 **THE COURT:** AND DO YOU UNDERSTAND THE CONSEQUENCES OF  
19 PLEADING TO A SERIOUS OR MOST SERIOUS OFFENSE?

20 **MR. BROWN:** YES, SIR.

21 **THE COURT:** AND DO YOU UNDERSTAND THAT IF YOU WERE RELEASED  
22 FROM PRISON AND YOU WERE CONVICTED OF ANOTHER SERIOUS OR MOST  
23 SERIOUS OFFENSE, YOU WOULD BE SUBJECT TO A MANDATORY LIFE  
24 SENTENCE WITHOUT ANY POSSIBILITY OF PAROLE. DO YOU UNDERSTAND  
25 THAT?

1           **MR. BROWN:** YES, SIR.

2           **THE COURT:** ALL RIGHT. UNDERSTANDING ALL THOSE RIGHTS THAT  
3 YOU WOULD HAVE AT A JURY TRIAL AND UNDERSTANDING FURTHER YOU  
4 MUST GIVE THEM UP IN ORDER TO PLEAD GUILTY, DO YOU STILL WISH TO  
5 PLEAD GUILTY, SIR, OR WOULD YOU LIKE TO HAVE YOUR JURY TRIAL  
6 CONTINUE?

7           **MR. BROWN:** PLEAD GUILTY.

8           **THE COURT:** HAVE YOU UNDERSTOOD ALL MY QUESTIONS, MISTER  
9 BROWN?

10          **MR. BROWN:** YES, SIR.

11          **THE COURT:** ALL RIGHT. YOU HAVE TEN DAYS TO APPEAL ANY  
12 SENTENCE I MAY IMPOSE. YOUR APPEAL MUST BE IN WRITING AND LISTEN  
13 CAREFULLY BECAUSE THE SOLICITOR IS GOING TO SET FORTH THE FACTS IN  
14 THE CASE. YES, SIR, MISTER PEACE.

15          **MR. PEACE:** THANK YOU, YOUR HONOR. THESE OFFENSES OCCURRED  
16 ON THE EVENING OF JANUARY 11TH AND THE MORNING OF JANUARY 12TH OF  
17 2007 AT THE BURGER KING ON SOUTH BROAD STREET IN CLINTON. ALLEN  
18 WIDEMAN WAS THE MANAGER THAT NIGHT. ALLEN WIDEMAN AND MISTER  
19 DONALD HENRY ACTUALLY CLOSED THE STORE. AFTER THE DOOR WAS  
20 LOCKED AND THEY WERE LEAVING, DONALD HENRY GOT IN THE VEHICLE  
21 WITH HIS WIFE, VALERIE HENRY. MISTER BROWN WAS AT THE BACK OF THE  
22 STORE TOWARDS THE TRASH DUMPSTER. ALLEN WIDEMAN WENT BACK AND  
23 STARTED TALKING TO HIM. BECAUSE OF PREVIOUS THINGS THAT HAD  
24 HAPPENED IN BURGER KING, THEY HAD IMPLEMENTED A POLICY THAT  
25 SOMEBODY WAS SUPPOSED TO STAY WITH THE MANAGER UNTIL HE LEFT.

1 DONALD HENRY WAS DOING THAT UNTIL ALLEN WIDEMAN WAIVED HIM OFF  
2 AND TOLD HIM TO GO AHEAD AND LEAVE. THE REST OF WHAT HAPPENED IS  
3 BASED ON THE STATEMENT ACTUALLY MADE BY THE DEFENDANT. HE SAYS  
4 THAT HE TOLD ALLEN WIDEMAN THAT HE WANTED TO GET HIS CHECK.  
5 MISTER BROWN HAD PREVIOUSLY WORKED THERE AND HAD ACTUALLY  
6 GOTTEN FIRED. HE SAID THAT THEY WENT BACK INTO THE BURGER KING TO  
7 GET HIS CHECK. WHILE THEY WERE THERE, MISTER BROWN PULLED A GUN  
8 ON MISTER WIDEMAN AND TOLD HIM THAT HE WANTED THE MONEY BECAUSE  
9 MISTER BROWN HAD FOUND OUT EARLIER THAT HIS GIRLFRIEND WAS  
10 PREGNANT AND HE NEEDED SOME MONEY AND SO MISTER WIDEMAN GAVE  
11 HIM SOME MONEY. THEN MISTER BROWN WANTED THE BANK BAG THAT  
12 MISTER WIDEMAN HAD. MISTER WIDEMAN WOULDN'T GIVE IT TO HIM AND  
13 ACTUALLY STARTED RUNNING UP TOWARDS THE FRONT OF THE STORE AND  
14 THAT'S WHEN MISTER BROWN SHOT HIM FOUR TIMES. MISTER BROWN WENT  
15 UP TO THE FRONT OF THE STORE, HELPED MISTER WIDEMAN TO THE REAR  
16 OF THE STORE AND MISTER WIDEMAN ENDED UP ON THE GROUND. MISTER  
17 BROWN TOOK A KNIFE AND STARTED CUTTING ALLEN WIDEMAN'S THROAT  
18 AND CUT IT ALMOST TO THE NECK BONE. HE LEFT HIM THERE TO DIE AND  
19 WENT OFF AND HE WAS PICKED UP THE NEXT MORNING AND EVENTUALLY,  
20 HE CONFESSED TO THE MURDER OF ALLEN WIDEMAN.

21 YOUR HONOR, AT THE APPROPRIATE TIME, I DO HAVE TWO INDIVIDUALS  
22 WHO WANT TO ADDRESS THE COURT.

23 MISTER BROWN'S RECORD, HE HAS A DISORDERLY CONDUCT FROM  
24 2006. THAT'S THE EXTENT OF HIS RECORD.

25 THE COURT: THANK YOU, SOLICITOR PEACE. MISTER BROWN, IS THAT

1 WHAT HAPPENED, SIR?

2 MR. BROWN: YES, SIR.

3 THE COURT: AND YOU HEARD THE NEGOTIATION AT THE BEGINNING OF  
4 THE CASE. THAT'S THE ENTIRE AGREEMENT THAT YOU HAVE WITH THE  
5 STATE. IS THAT RIGHT?

6 MR. BROWN: YES, SIR.

7 THE COURT: YOU DON'T HAVE ANY OTHER PROMISE OR DEAL OR  
8 AGREEMENT WITH THE STATE OTHER THAN WHAT WAS STATED ON THE  
9 RECORD. DO YOU, SIR?

10 MR. BROWN: NO, SIR.

11 THE COURT: ALL RIGHT. I FIND THAT THERE IS A FACTUAL BASIS FOR  
12 THE PLEAS AND IT'S BEEN NEGOTIATED AFTER CONSIDERABLE TIME AND  
13 EFFORTS ON THE PARTS OF BOTH SIDES AND INVESTIGATION AND  
14 PREPARATION AND I FIND THAT IT SHOULD BE ACCEPTED UNDER THE  
15 CIRCUMSTANCES AND I WILL BE GLAD TO HEAR FROM YOU.

16 MR. PEACE: THANK YOU, YOUR HONOR. FIRST OF ALL, WE HAVE  
17 ELIZABETH GRAY, WHO IS THE SPOKESMAN FOR THE FAMILY AND WOULD  
18 LIKE TO ADDRESS THE COURT.

19 THE COURT: OKAY.

20 MS. GRAY: YOUR HONOR, FIRST, I WOULD LIKE TO SAY THAT BOTH  
21 ALLEN'S MOTHER, DIANE, AND HIS SISTER, DEANNE, VERY MUCH WANTED TO  
22 SPEAK, BUT FELT THAT EMOTIONALLY THEY COULD NOT, ALTHOUGH TO  
23 MANY IN THE COMMUNITY, THE WIDEMAN FAMILY APPEARED NORMAL AFTER  
24 ONLY A FEW WEEKS AFTER ALLEN'S DEATH, BECAUSE THEY WENT BACK TO  
25 WORK AND THEY WENT BACK TO CHURCH. OUR LIVES HAVE BEEN ANYTHING

1 BUT NORMAL. THEY HAVE BEEN VERY DISRUPTED, ESPECIALLY THE LIVES OF  
2 HIS NIECES AND HIS NEPHEWS. HE HAS CHURCH FRIENDS BOTH HERE AND  
3 AS FAR AWAY AS GUATEMALA THAT HAVE STILL HAD DIFFICULTY EVERY TIME  
4 THEY HAVE PERFORMED DRAMA IN THEIR CHURCH BECAUSE ALLEN HAD  
5 BEEN AN INTEGRAL PART OF THAT. JUST THIS PAST EASTER, WE RECEIVED  
6 AN EMAIL FROM OUR FRIENDS IN GUATEMALA, THAT THEY HAD HAD A  
7 DIFFICULT TIME DURING THEIR PROGRAM. WHEN DOMONIQUE O'NEIL BROWN  
8 KILLED ALLEN AND MUTILATED HIS BODY, HE STOLE NOT ONLY ALLEN'S LIFE,  
9 BUT TURNED UPSIDE DOWN THE LIVES OF HIS FAMILY. THEY TOOK, HE TOOK  
10 A SON, A BROTHER, AND A FRIEND. BY SO BADLY MUTILATING THE BODY, HE  
11 STOLE THE OPPORTUNITY FOR THE FAMILY'S CLOSURE DURING THE  
12 FUNERAL BECAUSE THE BODY WAS NOT VIEWABLE. THIRTY YEARS IS NOT  
13 LONG ENOUGH.

14 **MR. PEACE:** YOUR HONOR, WE ALSO HAVE FRANCES WIDEMAN, WHO IS  
15 ALLEN WIDEMAN'S STEPMOTHER.

16 **THE COURT:** ALL RIGHT. THANK YOU, MS. GRAY. YES, MA'AM.

17 **MS. WIDEMAN:** YOUR HONOR, I WOULD LIKE TO SAY THAT WE WOULD  
18 HAVE LIKED TO HAVE SEEN HIM GET THE DEATH PENALTY, BUT THAT'S NOT  
19 POSSIBLE. LIFE WITHOUT PAROLE WOULD HAVE BEEN EASIER THAN THIRTY  
20 YEARS FOR WHAT HE DID TO ALLEN. IT WAS AN OVERKILL. NOBODY SHOULD  
21 HAVE TO DIE LIKE HE DID AND NO FAMILY SHOULD HAVE GO THROUGH THIS  
22 NIGHTMARE THAT WE'VE BEEN GOING THROUGH. HE TOOK A PRECIOUS SON  
23 FROM US THAT WE'LL NEVER GET BACK. ALL OUR MOTHER'S DAYS, ALL OUR  
24 CHRISTMASES, ALL WE'VE GOT IS OUR MEMORIES. I KNOW IF YOU'VE NEVER  
25 BEEN THERE, YOU DON'T KNOW THE PAIN WE ARE GOING THROUGH.

1           **THE COURT:** THANK YOU, MA'AM.

2           **MS. WIDEMAN:** THANK YOU.

3           **MR. PEACE:** YOUR HONOR, THAT'S ALL THE STATE HAS.

4           **THE COURT:** ALL RIGHT. YES, SIR, MISTER GROSE.

5           **MR. GROSE:** MAY I HAVE ONE MOMENT, YOUR HONOR?

6           **THE COURT:** YES, SIR.

7                   (MISTER GROSE CONFERS WITH MISTER BROWN)

8           **MR. GROSE:** YOUR HONOR, SINCE THIS IS NEGOTIATED, UNLESS YOU  
9           NEED TO HEAR FROM US, WE ARE JUST GOING TO ASK THAT YOU ACCEPT  
10          THE AGREEMENT. WE APPRECIATE THE SOLICITOR FOR THE NEGOTIATIONS  
11          AND WE KNOW THIS HAS BEEN DIFFICULT FOR EVERYBODY, INCLUDING  
12          NEAL'S FAMILY, AND ESPECIALLY, ALLEN WIDEMAN'S FAMILY.

13          **THE COURT:** ALL RIGHT. MISTER BROWN, ANYTHING YOU WANT TO  
14          SAY, SIR?

15          **MR. BROWN:** NO. NOT FOR THE COURT.

16          **THE COURT:** I WANT TO THANK BOTH SIDES FOR THEIR  
17          PRESENTATIONS AND I KNOW THAT THIS HAS BEEN A LONG, EXTENDED  
18          NEGOTIATION. HAVING HEARD SEVERAL DAYS OF MOTIONS IN THIS CASE  
19          ALREADY, I DO KNOW A LITTLE BIT ABOUT THE CASE AND I CERTAINLY KNOW  
20          THAT BOTH SIDES WORKED EXTREMELY HARD TO TRY TO RESOLVE THE  
21          CASE AND AS I SAID, I WILL ACCEPT THE NEGOTIATION. THE PARTIES ARE IN  
22          A BETTER POSITION THAN THE COURT TO DETERMINE THE  
23          REASONABLENESS OF IT. I DO KNOW THAT I CAN'T IMAGINE OR PRETEND TO  
24          KNOW THE SUFFERING OF BOTH SIDES. THE FAMILIES INVOLVED IN THIS  
25          HAVE SUFFERED SINCE THIS DAY IN JANUARY OF 2007. IT APPEARS TO HAVE

1 BEEN A SENSELESS AND BRUTAL ACT. IT CERTAINLY HAS RIPPLES THAT  
2 CONTINUE TO REBOUND AND I HOPE THIS DAY WILL GIVE SOME COMFORT TO  
3 THE EXTENT THE JUSTICE SYSTEM CAN AND THE JUSTICE SYSTEM IS NOT  
4 PERFECT, BUT IT'S THE BEST SYSTEM OUT THERE AND I, AGAIN, WANT TO  
5 COMMEND BOTH SIDES FOR THEIR HARD WORK.

6 THE SENTENCE ON MURDER, CASE 220, IS THIRTY YEARS, CREDIT FOR  
7 TIME SERVED AND THE ARMED ROBBERY, IT'S THIRTY YEARS, CONCURRENT,  
8 CREDIT FOR TIME SERVED. ON THE POSSESSION OF A FIREARM, IT'S FIVE  
9 YEARS, CONCURRENT WITH CREDIT FOR TIME SERVED. ALL RIGHT. THANK  
10 YOU.

11 **MR. PEACE:** THANK YOU, YOUR HONOR.

12 **MR. GROSE:** THANK YOU, YOUR HONOR.

**CERTIFICATE**

I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TWELVE PAGED TRANSCRIPT IS A TRUE AND ACCURATE TRANSCRIPT OF RECORD OF THE GUILTY PLEA IN THE CAPTIONED CASE, IN THE COURT OF GENERAL SESSIONS FOR LAURENS COUNTY, SOUTH CAROLINA ON, MAY 18, 2009, AT THE LAURENS COUNTY COURTHOUSE, TO THE BEST OF MY SKILL AND ABILITIES.

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

DECEMBER 28, 2010



---

JO RICE

County of Laurens

IN THE COURT OF COMMON PLEAS

2

JK

Damonique Brown  
Full name and prison number (if any) of Applicant  
#336455

LAURENS COUNTY  
CLERK OF COURT

vs.

2010 JUL -6 A 11: 23

APPLICATION FOR  
LYNN W. LANCASTER  
POST-CONVICTION RELIEF

State of South Carolina  
Name of Respondent

2010 -CP30- 695

Vertical stamp: ORIGINAL  
Lancaster  
Lancaster County 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 Lee Correctional Institution, 990 Wisacky High Bishopville, SC 29010
2. Name and location of Court which imposed sentence Genarel seson, Laurens County
3. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 076530-220, Murder
  - (b) 076530-221, Armed Robbery
  - (c) 076530-222, Possess of A Firearms or Knife During Commission of Violent Crime

- (a) 5/18/09 - 30 years
- (b) 5/18/09 - 30 years
- (c) 5/18/09 - 5 years

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

6. Did you appeal from the judgement of conviction or the imposition of sentence?

Yes, - Counsel erroneously file appeal Incorrect.

7. If you answered "yes" to (6), list:

(a) the name of each Court to which you appealed:

- i. The South Carolina Court of Appeals
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(b) the result in each such Court to which you appealed:

- i. was unable to identify an issue reviewable on appeal
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(c) the date of each such result:

- i. 7/13/09
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. See Court of Appeals Issued Order (ie. d. N/A)
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

8. If you answered "no" to (6), state your reasons for not so appealing: N/A

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

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) ~~Violation of the Constitution of the United States~~
- (b) Ineffective Assistance of Counsel "6<sup>th</sup> Amendment violation"
- (c) Violation of my Constitutional Rights "4<sup>th</sup> Amendment"

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) ~~\_\_\_\_\_~~
- (b) Deprived me of a fair trial with unprofessional judgment
- (c) There was lack of probable cause to make the arrest

11. Prior to this application have you filed with respect to this conviction: N/A

- (a) any petition in a State Court under South Carolina Law? \_\_\_\_\_
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? \_\_\_\_\_
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? \_\_\_\_\_
- (d) any other petitions, motions or applications in this or any other Court? \_\_\_\_\_

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application: N/A

- (a) the specific nature thereof:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

- (b) the name and location of the Court in which each was filed:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

(c) the disposition of each:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14. If you answered "yes" to (13) identify: N/A

(a) which grounds have been presented:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Post Conviction Relief is remedy Appropriate
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

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

17. If you answered "yes" to one or more parts of (16), list:

- (a) the name and address of each attorney who represented you:
  - i. William S. McBure, SCLID Columbia, SC.  
29211-1433
  - ii. Er Charles Grose, 600 Monument Street  
Greenwood, S.C. 29046
  - iii. Claude H. Howe, III Post Office Box 921  
Clinton, SC. 29325
- (b) the proceedings at which each such attorney represented you:
  - i. Pretrial, Sentence
  - ii. Pretrial, Sentencing
  - iii. Pretrial, Sentence

Resturn Conviction Withdrew (I Conilty plea  
and right to trial, with venetial to  
pletrial Motins filed, Charges dismissed.

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

No

STATE OF SOUTH CAROLINA )

County of Lee County )

VERIFICATION

I, Domonique Brown # B36455, 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.

x Domonique Brown

SWORN to and subscribed before me this 30  
day of June 2010  
[Signature] (L.S.)  
Notary Public

My Commission Expires: 5-16-11

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

I, Dominique Brown #336455, 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.

Dominique Brown  
Applicant

SWORN or affirmed to and subscribed before me this  
22 day of June, 2011.

[Signature]  
Notary Public

My Commission Expires: 5-16-12

STATE OF SOUTH CAROLINA  
COUNTY OF LAURENS

LAURENS COUNTY  
CLERK OF COURT

IN THE COURT OF COMMON PLEAS  
THE EIGHTH JUDICIAL CIRCUIT  
Case No.: 2010-CP-30-695

Domonique Brown, #336455

2011 JAN 25 A 10:56

Applicant, LYNN W. LANCASTER

RETURN

v.

State of South Carolina,

Respondent.

Respondent, making its Return to the application for post conviction relief (PCR) filed July 6, 2010, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Laurens County Clerk of Court. Applicant was indicted at the February 2007 term of the Laurens County Grand Jury Murder (2007-GS-30-220), Armed Robbery (2007-GS-30-221), and Possession of a Firearm or Knife During the Commission of a Violent Crime (2007-GS-30-222). E. Charles Grose, Jr., Esquire, and Claude H. Howe, III, represented the Applicant. On May 18, 2009, Applicant pled guilty as indicted to the aforementioned charges. The Honorable D. Garrison Hill sentenced the Applicant to a negotiated sentence of thirty (30) years for Murder, thirty (30) years for Armed Robbery, and five (5) years for the weapon charge, sentences running concurrently.

The Applicant filed a timely Notice of Appeal, along with an explanation pursuant to Rule 203, SCACR. By written Order dated July 13, 2009, the South Carolina Court of Appeals dismissed the Applicant's appeal pursuant to Rule 203, SCACR, for failure to identify an issue which is reviewable on appeal. The Remittitur was issued on August 4, 2009.

Attached herewith and incorporated herein by reference are the records of the Laurens County

Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the appellate court records. The guilty plea transcript will be forwarded upon receipt.

II.

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

1. Ineffective assistance of counsel; and
2. 4<sup>th</sup> Amendment violation.

III.

In his first allegation the Applicant claims he received ineffective assistance of counsel. In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). First, a PCR applicant must show that his counsel's performance was deficient such that it falls below an objective standard of reasonableness. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984); Alexander v. State, 303 S.C. 539, 541, 402 S.E.2d 484, 485 (1991). Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry v. State, 300 S.C. 115 at 117, 386 S.E.2d 624 at 625 (1989), *citing Strickland*.

Second, an applicant must show there is a reasonable probability, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693; Alexander, 303 S.C. at 541-42, 402 S.E.2d at 485. The Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, Id. Applicant must overcome this presumption in order to receive relief. Cherry, Id.

Where there has been a guilty plea, the applicant must prove prejudice by showing that, but for

counsel's errors, there is a reasonable probability he would not have pleaded guilty and instead would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370, 88 L.Ed.2d 203, 210 (1985); Jordan v. State, 297 S.C. 52, 54, 374 S.E.2d 683, 684 (1988). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### IV.

Applicant also alleges that his Fourth Amendment rights were violated. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). Further, claims challenging the sufficiency of the evidence are specifically barred by §17-27-20(6) of the Uniform Post-Conviction Procedure Act.

A defendant 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 defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976).

Furthermore, a guilty plea generally constitutes a waiver of non-jurisdictional defects and claims

of violations of constitutional rights. See Rivers v. Strickland, 264 S.C. 121, 124, 213 S.E.2d 97, 98 (1975) (a plea of guilty constitutes a waiver of non-jurisdictional defects and defenses, including claims of violation of constitutional rights prior to the plea); Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981). Therefore the plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence. "Where a defendant voluntarily, intelligently, and understandingly enters a plea of guilt, this makes it unnecessary for the State to offer evidence to prove the offense charged in the warrant or indictment." State v. Allen, 261 S.C. 448, 200 S.E.2d 684, 686 (1973). This is because the guilty plea "admits all matter of fact averments of the accusation." Id. The defendant admits all circumstances described in the indictment, leaving only sufficiency of the indictment for review and waiving all other defenses. State v. Thomason, 341 S.C. 524, 534 S.E.2d 708, 709 (2000). Additionally, PCR is not a proper avenue to challenge the sufficiency of evidence. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974); S.C. Code Ann. § 17-27-20(a)(6).

Accordingly, the Respondent submits that these allegations must be summarily dismissed, as the record fully supports the knowing and voluntary nature of the Applicant's plea. A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the Applicant's second and third allegations in the current application for post conviction relief for failure to state a cognizable claim under the Uniform Post Conviction Procedure Act.

## VI.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. §17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

## VII.

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

## VIII.

WHEREFORE, having made its Return, the State requests that a hearing be held.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

HARRISON D. BRANT  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

January 21, 2011.

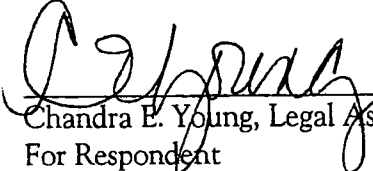
STATE OF SOUTH CAROLINA )  
 COUNTY OF LAURENS ) LAURENS COUNTY CLERK OF COURT ) IN THE COURT OF COMMON PLEAS )  
 2011 JAN 25 A 10: 56 2010-CP-30-0695 )  
 DOMONIQUE BROWN, ) LYNN W. LANCASTER )  
 Applicant, )  
 vs ) AFFIDAVIT OF SERVICE BY MAIL )  
 STATE OF SOUTH CAROLINA, )  
 Respondent. )

---

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

M. Rita Metts  
 3531 River Dr.  
 Columbia, SC 29201

DATED this 21<sup>st</sup> day of January, 2011.

  
 Chandra E. Young, Legal Assistant  
 For Respondent

State of South Carolina )  
County of Laurens )

In the Court of Common Pleas  
Eighth Judicial Circuit  
2010-CP-30-0695

Domonique Brown, )  
Applicant, )  
vs. )  
State of South Carolina, )  
Respondent. )

Transcript of Record

June 4, 2012  
Newberry, South Carolina

B E F O R E:

The Honorable Thomas A. Russo, Judge

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

Spencer Langley, Esquire  
Attorney for the Applicant

J. Rutledge Johnson, Esquire  
Attorney for the Respondent

Maryann S. Nevers, CVR-M-CM  
Circuit Court Reporter

I N D E X

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

William S. McGuire,

    Direct Examination by Mr. Langley . . . . . 9

    Cross-Examination by Mr. Johnson . . . . . 16

    Redirect Examination by Mr. Langley . . . . . 24

Domonique Brown,

    Direct Examination by Mr. Langley . . . . . 27

    Cross-Examination by Mr. Johnson . . . . . 34

    Redirect Examination by Mr. Langley . . . . . 38

    Recross-Examination by Mr. Johnson . . . . . 41

Ruling by the Court . . . . . 43

Certificate Page . . . . . 44

EXHIBITS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

<u>No.</u>	<u>Description</u>	<u>Page No.</u>
------------	--------------------	-----------------

No exhibits introduced.

## TRANSCRIPT OF RECORD

1  
2 (WHEREUPON, the proceeding was commenced at 10:24  
3 a.m.)

4 THE COURT: All right. Yes, sir.

5 MR. JOHNSON: May it please the Court, Your Honor:

6 This is the case of *Domonique Brown v. State of South*  
7 *Carolina*, Case No. 2010-CP-30-0695. Mr. Brown was indicted  
8 at the February 2007th term of the Laurens County Grand  
9 Jury for murder, armed robbery, possession of a firearm or  
10 knife during the commission of a violent crime. There was  
11 an agreement that he would plead to all three charges and  
12 30 years, and then the death penalty was taken off the  
13 table as well and the 2006 armed robbery charge was  
14 dropped.

15 He pled guilty on May 28th, 2009, to the  
16 aforementioned charges before the Honorable D. Garrison  
17 Hill. He -- there was a negotiated sentence, as I said  
18 before: 30 years for murder; 30 years concurrent for armed  
19 robbery; and 5 years concurrent for the weapons charge.  
20 Mr. Brown filed a notice of appeal, but by written order  
21 dated July 13th, 2009, the South Carolina Court of Appeals  
22 dismissed that applicant's appeal for failure to identify  
23 an issue which was reviewable on appeal. The remittitur  
24 was thereafter issued on August 4th, 2009.

25 He filed a timely PCR application on July 6th, 2010.

1 The state filed its return on January 21st, 2011. And he  
2 is represented here today by Mr. Spencer Langley.

3 THE COURT: All right.

4 MR. LANGLEY: May I please the Court, Your Honor? My  
5 name ---

6 THE COURT: Yes, Mr. ---

7 MR. LANGLEY: --- is Spencer ---

8 THE COURT: --- Langley.

9 MR. LANGLEY: --- Langley, representing Mr. Domonique  
10 Brown. It's my understanding that you had a few questions  
11 that you wanted to ask him.

12 THE COURT: Yeah. Before we even start, I always talk  
13 with the applicant so that they completely understand what  
14 it is this Court can do for them, okay?

15 (To the applicant) And sir, you are Domonique Brown?

16 THE APPLICANT: Yes, sir.

17 THE COURT: All right. Mr. Brown, I'm going to ask  
18 the -- the clerk place you under oath and ask that you --  
19 you can -- and you can do it from there and just give her  
20 your attention as she does that.

21 DOMONIQUE BROWN, having been first duly sworn,  
22 testified as follows:

23 THE COURT: Mr. Brown -- and -- and I know you've  
24 talked with Mr. Langley at length. But I just want to make  
25 sure that you understand what it is this Court could do for

1 you if I were to agree with your position on your -- your  
2 postconviction-relief application.

3 If we go forward with this hearing and I grant your  
4 application -- if I agree with the allegations that you  
5 made in your application, the only thing that I can do is  
6 to put you back in the same position you were in before you  
7 entered your plea. I -- I can't do anything about your --  
8 the -- the sentence that you're currently serving; I -- I  
9 can't change that. I -- I can't do anything but -- but put  
10 you back where you were before this all began so that -- in  
11 other words, your -- your plea would -- would be taken off  
12 the -- the record and you would go back.

13 And you would still be facing the murder, the armed  
14 robbery, the possession-of-a-weapon charge. And if there  
15 were any other charges that were dismissed, all those would  
16 come back. And then -- and it would be up to the state;  
17 that I have nothing to do with -- with it.

18 But the state then would be back in the same position  
19 they were in before all of this began. And so they have  
20 their options as well. In other words, any negotiations  
21 that you made with the state back when you entered this  
22 plea, those negotiations are gone. Now, you can attempt to  
23 renegotiate with the state, but they're not bound by their  
24 previous negotiations.

25 So the state -- initially, if they decided to seek the

1 you if I were to agree with your position on your -- your  
2 postconviction-relief application.

3 If we go forward with this hearing and I grant your  
4 application -- if I agree with the allegations that you  
5 made in your application, the only thing that I can do is  
6 to put you back in the same position you were in before you  
7 entered your plea. I -- I can't do anything about your --  
8 the -- the sentence that you're currently serving; I -- I  
9 can't change that. I -- I can't do anything but -- but put  
10 you back where you were before this all began so that -- in  
11 other words, your -- your plea would -- would be taken off  
12 the -- the record and you would go back.

13 And you would still be facing the murder, the armed  
14 robbery, the possession-of-a-weapon charge. And if there  
15 were any other charges that were dismissed, all those would  
16 come back. And then -- and it would be up to the state;  
17 that I have nothing to do with -- with it.

18 But the state then would be back in the same position  
19 they were in before all of this began. And so they have  
20 their options as well. In other words, any negotiations  
21 that you made with the state back when you entered this  
22 plea, those negotiations are gone. Now, you can attempt to  
23 renegotiate with the state, but they're not bound by their  
24 previous negotiations.

25 So the state -- initially, if they decided to seek the

1 death penalty, if I were to agree with your -- your  
2 position on your PCR application, I would put you back.  
3 And then, if the state chose to notice you for the death  
4 penalty, they could do that. They could then seek the  
5 death penalty again. If they -- I -- I know under your  
6 plea, based -- from -- from what I was just told by the  
7 attorney general, there was a negotiation that your  
8 sentence would be for the minimum amount on the murder  
9 charge, which was 30 years, and that any other sentence you  
10 receive would run concurrent, or together.

11 You understand that the state would not be bound by  
12 that negotiation and that they could seek -- as I  
13 indicated, they could either seek life or the death  
14 penalty. In other words, it basically just puts you back  
15 to where you were before you negotiated or tried to  
16 negotiate with the state on anything. Do you understand  
17 that?

18 THE APPLICANT: Yes, sir.

19 THE COURT: Okay. You understand that I can't do  
20 anything about your sentence? I can't change it or alter  
21 it any way; I can't do anything but put you back where you  
22 were before all this began. You understand that?

23 THE APPLICANT: Yes, sir.

24 THE COURT: Okay. And -- and the reason I -- I  
25 mention this to you is I -- and -- and I want you to know:

1 I -- I have this conversation with everybody that comes  
2 before the Court for PCR applications, because I just want  
3 to make sure that -- that applicants understand that it's  
4 very limited on what this Court can do.

5 It -- and the -- the best-case scenario for you is, if  
6 I agree with your application and I grant your application,  
7 is to put you back where you were before the -- all this  
8 began. So any charges that you faced before, you would be  
9 facing again. Any charges that were dismissed would be  
10 brought back, and you would be facing those. And any  
11 negotiations that you made before with the state are no  
12 longer binding on either you or the state. So the, in  
13 other words, it's -- it just starts all over again.

14 But I -- I want to make sure that applicants know  
15 that. Because sometimes they think they can get something  
16 different on the PCR application. And I just want them to  
17 understand that that's really all this Court can do. And  
18 you understand that, correct?

19 THE APPLICANT: Yes, sir.

20 THE COURT: Okay. And understanding those things, do  
21 you still wish to go forward with your application?

22 THE APPLICANT: Yes, sir.

23 THE COURT: All right, sir. Thank you very much. You  
24 may have a seat.

25 THE APPLICANT: (Complied.)

DIRECT EXAMINATION BY MR. LANGLEY - WILLIAM S. MCGUIRE 9

1 THE COURT: All right. Mr. Langley?

2 MR. LANGLEY: Your Honor, we are going to obviously be  
3 attacking a -- the two prongs of the *Strickland* test and  
4 ineffective assistance of counsel. And I'd like to call  
5 Mr. McGuire to the stand.

6 THE COURT: All right. Mr. McGuire, would you please  
7 come be placed under oath and then take the witness stand,  
8 sir.

9 (Whereupon, the witness came forward and entered the  
10 witness stand.)

11 WILLIAM S. MCGUIRE, having been first duly sworn,  
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. LANGLEY:

15 Q Mr. McGuire, you were counsel that represented Mr.  
16 Brown in ---

17 A Yes, sir.

18 Q --- his first trial?

19 A Yes, sir.

20 Q It's my understanding you guys went through some  
21 pretrial motions for about two days?

22 A We had a number of pretrial motions.

23 Q Okay. Can you give me a brief synopsis of what you  
24 were trying to -- to accomplish with these pretrial  
25 motions?

1 A Sure. I think the -- I think the most important  
2 motion that's relevant for this hearing would be a motion  
3 to suppress certain physical evidence and also Mr. Brown's  
4 statement. That was based on the fact that we uncovered  
5 some evidence that indicated that law enforcement had  
6 fabricated the reason for his initial detention in that he  
7 was -- he was a suspect in the murder very quickly. Law  
8 enforcement officers went and picked him up as he was  
9 walking to the bus stop for high school. He was -- he was  
10 -- they claim that he was voluntarily accompanying them to  
11 the police station, where he was free to go; he was not in  
12 custody.

13 But that -- that, I guess, interrogation went on for  
14 some time, the morning hours. Eventually, Mr. Brown was  
15 taken to SLED for a polygraph examination. He was brought  
16 back to Clinton Police Department, where the interrogation  
17 continued.

18 As it was getting late -- or I think approximately  
19 around nine o'clock/9:30 p.m., the police officers  
20 contacted a Domino's Pizza delivery driver who was armed-  
21 robbed a couple months prior. Mr. Brown was a suspect in  
22 that robbery, but, to be quite honest, the police just kind  
23 of dropped the ball on that. They never showed the  
24 deliveryman a -- a six-pack photo lineup with Mr. Brown's  
25 photograph in it.

DIRECT EXAMINATION BY MR. LANGLEY - WILLIAM S. MCGUIRE 11

1           When we started investigating the case, we became  
2 concerned that the reasons for Mr. Brown's detention  
3 regarding the armed robbery -- well, we had some concerns  
4 about that. So we -- we tracked down -- we interviewed the  
5 Domino's Pizza delivery driver. He indicated to us that he  
6 was shown a six-pack photo lineup at the police station the  
7 same night that Mr. Brown was in custody for the murder and  
8 that he picked out, I believe -- I think he picked out  
9 number -- Nos. 2 and 6. And if I'm not mistaken, Mr. Brown  
10 was No. 4.

11       Q     I think you're correct.

12       A     And we made numerous demands to see the original  
13 photo-lineup spread that was given to the Domino's Pizza  
14 deliveryman. And the police officers could never produce  
15 it. They claimed it was lost. Yeah. Ultimately, they  
16 even blamed the solicitor's office for losing it.

17           I think -- there's more detail -- a little bit more  
18 detail than that. But in essence, I think we were able to  
19 show a pretty good prima facie case that the police  
20 officers fabricated the reasons for Mr. Brown's initial  
21 detention. They claim that the pizza deliveryman picked  
22 out No. 4, Mr. Brown. And, of course ---

23       Q     So ---

24       A     --- you know, it's very often to see a six-pack photo  
25 lineup and the witness circles or initials the person that

DIRECT EXAMINATION BY MR. LANGLEY - WILLIAM S. MCGUIRE 12

1 they've identified. There's normally a cover sheet with it  
2 that says: "The suspect may or may not be in this lineup."  
3 And they -- they'll normally have a comment section, where  
4 an officer might say: "Picked out without hesitation No.  
5 4. Said, 'Oh, my gosh, that's the guy,'" something like  
6 that.

7 They could never come up with it. Based on our  
8 conversations with the Domino Pizza delivery driver, we  
9 believe that law enforcement officers were untrue when they  
10 say that they had probable cause to arrest Mr. Brown for  
11 the pizza robbery, which is what they did. They locked him  
12 up that evening. And I think approximately within about 24  
13 hours, they were able to get the confession they were  
14 looking for.

15 Q So -- so the gist of the story, basically, is that by  
16 winning this motion, that would've suppressed his statement  
17 of where the -- the weapon was?

18 A Mr. Brown's statement -- and I haven't seen it in some  
19 time -- was a bit of a road map to some physical evidence.

20 Yes.

21 Q Okay.

22 A And we moved to suppress not only his statement, but  
23 all the physical evidence that would be fruit of the  
24 poisonous tree.

25 Q What do you think the chances of -- I -- and it's hard

DIRECT EXAMINATION BY MR. LANGLEY - WILLIAM S. MCGUIRE 13

1 to -- to tell, but what do you think the chances of  
2 prevailing on that? I mean, obviously, you said you put  
3 together some pretty good arguments. And the judge  
4 obviously praised you for your arguments you put together.  
5 I mean, do you -- do you felt -- do you feel confident in  
6 -- in the -- the chances of having that evidence  
7 suppressed?

8 A You know, I don't know. With regard to the statement,  
9 I -- I think our chances were better on that than the  
10 physical evidence. There were multiple searches of Mr.  
11 Brown's house, including one consent search, where his  
12 mother gave consent. So there was some physical evidence  
13 that we had a problem with that we -- if we won on the  
14 statement issue, we were not necessarily going to win on  
15 all of the physical evidence that was at issue.

16 Q Okay. Well, as far as you having negotiations with  
17 the solicitor in this case, what kind of took place and --  
18 and why, you know -- what took place as an alleyway, I  
19 guess, from the negotiations to -- to lead to Domonique and  
20 -- or Mr. Brown and they basically try to talk him into  
21 taking a plea deal?

22 A Oh, well, we drafted the motion to suppress Mr.  
23 Brown's statement and the physical evidence. I don't  
24 remember how long it was. But it was pretty -- we put a  
25 lot of work into it. And the prosecutor was taking very

1 seriously the problems that he had in the -- in his case.  
2 And I offered to withdraw that motion if the prosecutor  
3 would withdraw the death notice and we could try the case  
4 as a straight-up murder, where Mr. Brown would face 30-to-  
5 life.

6 Q Okay. Did -- at any time, I mean, did you obviously  
7 meet with -- with Mr. Brown and -- and discuss what was  
8 going on with the solicitor?

9 A Sure.

10 Q Talk ---

11 A And -- and -- and Mr. Brown objected very clearly to  
12 me withdrawing that motion. It was after we had the  
13 hearing where we took evidence. As you indicated, it was a  
14 day or two. This was a -- it was not a insignificant  
15 motion. And Mr. Brown had a -- he made his intention very  
16 clear to me. He objected to me withdrawing that motion.  
17 It was still under advisement by the judge. And he wanted  
18 to have the judge decide the motion before making any other  
19 decisions with regard to trial or plea.

20 Q So -- so you're telling me basically that he wanted --  
21 you knew that he objected to you withdrawing the motion and  
22 -- and he told you that he wanted to go through and -- and  
23 have the judge rule on the motion?

24 A Yes.

25 Q And -- and so basically, you went back and took the

DIRECT EXAMINATION BY MR. LANGLEY - WILLIAM S. MCGUIRE 15

1 plea deal against his wishes?

2 A I didn't -- I didn't -- no. I did not take a plea  
3 deal against his wishes. What I did was I used the  
4 bargaining leverage that we had with a pretty good motion  
5 based on a pretty good investigation to have the prosecutor  
6 withdraw the death notice.

7 And that was over Mr. Brown's objection. We were very  
8 clear about that. We disagreed. He wanted the motion to  
9 go forward. He wanted the judge to decide it. And I, over  
10 his objection, withdrew it to have the death notice  
11 withdrawn.

12 Q Okay.

13 A We actually picked a jury in this case.

14 Q Picked a jury, and -- and did he -- at any time during  
15 the negotiation, did he -- did he tell you that he -- he  
16 vehemently did want the judge to rule on those pretrial --  
17 I mean, in your negotiation with him, have -- just tell me  
18 a little bit about your negotiation with him. How about  
19 that?

20 A With Mr. Brown?

21 Q Exactly.

22 A I -- I mean, I can't state it more clearly than you  
23 just did, which ---

24 Q All right.

25 A --- is that Mr. Brown absolutely wanted the judge to

1 decide the motion. I told him I was going to withdraw it;  
2 that I had discussions with the prosecutor; that in  
3 exchange for withdrawing the motion, the prosecutor was  
4 going to rescind the notice of his intent to seek the death  
5 penalty; and that we could proceed to trial as a  
6 noncapital-murder trial.

7 Q Okay. And at any time did you tell Mr. Brown that --  
8 that you had never had a person receive the death penalty  
9 and that you were the attorney and that he should listen to  
10 you and he wasn't going to be the first one under your --  
11 under your watch?

12 A I only have one -- there's only one case that I was --  
13 that I've been involved in that actually ended up in a  
14 death sentence. I don't know if that was before Mr. Brown  
15 or not. It was *State v. Rivera*, which was a death penalty  
16 case in Anderson County. I tried it with John Delgado. I  
17 don't remember if it was before Mr. Brown's trial or not.

18 Q Okay.

19 MR. LANGLEY: That's all the questions I have, Your  
20 Honor.

21 THE COURT: Okay. Mr. Johnson?

22 CROSS-EXAMINATION

23 BY MR. JOHNSON:

24 Q Mr. McGuire, will you do me a favor and tell me a  
25 little bit about your experience as an attorney?

1 A I graduated from University of South Carolina School  
2 of Law in 1995. I clerked for two South Carolina circuit  
3 court judges, the first being the Honorable Rodney Peeples,  
4 now retired. And then I clerked for Judge Danny Pieper,  
5 who is now in the Court of Appeals.

6 I went from there to be a public defender in  
7 Charleston County. I did that for nearly five years. Then  
8 I became an associate with Savage & Savage. I worked with  
9 Andy Savage in Charleston. I was with Andy for about two  
10 years, practicing solely criminal law.

11 I had my own law firm for about two years after that.  
12 And then I went to Atlanta, Georgia, where I was a full-  
13 time capital defender, again for about two or three years.  
14 And then I came back to South Carolina to open up the  
15 capital-trial division at the South Carolina Commission on  
16 Indigent Defense. I've been there for about four years.

17 Q And how many capital cases have you tried?

18 A I've been lead counsel on -- or second chair on two  
19 that went into the penalty phase. One went all the way to  
20 a verdict. And one, there was a mistrial in the penalty  
21 phase; my client received life.

22 Again, that was a law-enforcement-misconduct issue  
23 that we uncovered during the penalty phase. And Judge  
24 Buddy Nicholson declared a mistrial and put on the record  
25 that he didn't think my client would be able to get a fair

1 trial in the future, based on intimidation of witnesses.

2 So he -- he sentenced -- and that was a life verdict.

3 I've tried several cases that started out as capital  
4 cases and we were able to get the death notice rescinded.

5 But I think just two -- I think two as either lead or  
6 second, pretty much all the way to the end.

7 Q And you were, in fact, lead counsel in this case?

8 A I was.

9 Q And you had cocounsel: Mr. Charles Grose and Mr. Chip  
10 Howe?

11 A Yeah. Chip Howe was my second chair. And Charles  
12 Grose was the circuit public defender. And as we got  
13 closer to a potential trial date, Mr. Grose became more and  
14 more involved.

15 Q As a matter of fact, Mr. Grose is -- is, it looks  
16 like, counsel of record on the guilty plea; isn't that  
17 right?

18 A That is -- that's correct.

19 Q Can you explain that just a little bit?

20 A Yeah. Mr. Brown pled the same day that we -- we  
21 picked a jury for the -- for the trial. It was going to go  
22 forward as a noncapital murder trial. And, I mean, to be  
23 quite honest, Mr. Brown and I probably weren't getting  
24 along great at that time because we were going to trial and  
25 I had withdrawn the motion that he felt very strongly

1 about. We had a pretty open disagreement about that.

2 Q But in this case he's waived ineffective-assistance  
3 claims against Mr. Grose and Mr. Howe?

4 A Yes. I was the -- I was lead counsel, and I was the  
5 one that made the decision to withdraw that motion.

6 Q Can you tell a little bit about, without getting into  
7 too much gory detail, the evidence that was present in this  
8 case?

9 A As I said earlier, Mr. Brown was developed as a  
10 suspect very quickly. That's because the -- the murder  
11 victim was the manager of a local fast food restaurant, a  
12 Burger King. The morning shift went in to open up the  
13 Burger King, and the victim in this case was -- was  
14 discovered on the floor with some pretty obvious wounds.

15 Mr. Brown was a former employee at the Burger King.  
16 And as the -- as the -- the victim in this case was locking  
17 up, another employee was with the manager and was -- was  
18 getting a ride home from his wife. The wife had made  
19 statements that she saw Mr. Brown kind of hiding in the  
20 shadows by the -- by the trash area and she didn't feel  
21 comfortable leaving -- or driving away.

22 So the employee, her husband, I think, shouted out to  
23 the manager, you know, "Are you okay? We're going to take  
24 off," something like that. And he waved, so they left. So  
25 I -- so Mr. Brown was obviously the last person seen with

1 the -- the manager alive.

2 Q Let me stop you right there. This employee that you  
3 speak of knew Mr. Brown previously?

4 A Yes. They worked together.

5 Q And ---

6 A But ---

7 Q --- they were ---

8 A --- I think they gave -- I think he -- he mentioned  
9 that he actually gave Mr. Brown a ride a time -- home a  
10 time or two. But he -- he knew him by -- by -- he knew  
11 him. He wasn't just a stranger sighted ---

12 Q And so ---

13 A --- I think ---

14 Q --- Mr. Brown had no disguises on him ---

15 A No.

16 Q --- during this?

17 So the employee would've given an identification of  
18 Mr. Brown?

19 A That's what he did.

20 Q Okay.

21 A And his wife also did.

22 Q And there was other physical evidence that was found  
23 in this case, was there not: a gun under the car?

24 A Yeah. The ---

25 Q The code combination to the ---

CROSS-EXAMINATION BY MR. JOHNSON - WILLIAM S. MCGUIRE 21

1 A Sure. The ---

2 Q --- vault?

3 A There -- the victim had been shot with a small-caliber  
4 gun. The gun partially broke at the scene. All right. In  
5 Mr. Brown's statement that I referenced earlier, he -- I  
6 believe he indicated that the gun was underneath the bumper  
7 of his car. And the gun was recovered; DNA testing was  
8 performed, and the victim's DNA was actually on the gun.

9 There was a -- and as I stated earlier, there were --  
10 there were more than -- there was more than one search of  
11 Mr. Brown's house. And at least one of those was a consent  
12 search, where his mother gave consent. In that search  
13 there was a -- there was a french fry -- a french fry  
14 wrapper or hamburger wrapper -- a wrapper -- fast food  
15 wrapper. And I believe it was from the Burger King. And  
16 on that was the combination of the -- the Burger King safe.  
17 It was -- it was later determined that it was actually the  
18 correct combination of the safe by Burger King management.

19 Q So in your opinion, was there sufficient evidence to  
20 convict Mr. Brown in this case?

21 A Yes.

22 Q And were there aggravating circumstances in this case?

23 A Yeah. The -- the statutory aggravators, I believe,  
24 were larceny by force or armed robbery and torture. I  
25 filed a motion to remove torture as a statutory aggravator.

1 That motion was never ruled on by Judge Hill. But I did  
2 file a motion to -- to have that aggravator removed. And I  
3 believe, if I'm not mistaken, the remaining aggravators  
4 would be either larceny by force or armed robbery.

5 Q Just a few more questions, Mr. McGuire. Ultimately,  
6 whose decision was it to plead guilty in this case?

7 A It was Mr. Brown's. You know, we had -- we had Jerry  
8 Peace, the elected prosecutor, in kind of a hard place.  
9 You know, he had some serious problems with his case, based  
10 on law enforcement -- what I believed to be misconduct.

11 And -- but there was also real exposure. You know, if  
12 Mr. -- I believe there was -- even if we had prevailed to  
13 some extent with that motion, there was likely enough  
14 evidence existing that was not fruit of the poisonous tree  
15 that would -- there would've been enough to convict Mr.  
16 Brown, even if -- if we had prevailed.

17 I don't think we would've prevailed on every claim  
18 that we were making. I mean, I think there's also another  
19 piece of physical evidence that -- I think it was a glove,  
20 and it was found in a trash can -- not in front of Mr.  
21 Brown's house, but down the street a house or two. So I  
22 think we had some abandoned-property issue and standing  
23 issues with regard to that. And again, if I'm not  
24 mistaken, that -- that item also had DNA evidence, where  
25 the victim's DNA was found on that -- that glove.

1           So again, when you look at this as a whole, even had  
2 we prevailed, I think there was -- was sufficient evidence  
3 from which to convict Mr. Brown. And also, the nature --  
4 the nature of the -- the physical act of the murder itself  
5 was -- was the kind that you could definitely get the death  
6 penalty for. I mean, there was -- there was real exposure  
7 there. So withdrawing the motion to get the death penalty  
8 off the table, I think, was a very reasonable strategic  
9 move to make. And it was obviously very successful.

10           As we proceeded to the -- the noncapital murder trial,  
11 we did pick a jury. We -- we empaneled a juror -- a jury.  
12 And the prosecutor, still recognizing that he had some  
13 problems with this case, was willing to offer the minimum,  
14 a negotiated 30-year sentence where Mr. Brown would know,  
15 as soon as he walked up in front of the judge and pled  
16 guilty, that he'd not be receiving more than 30 years.

17           You know, I told him that I -- that was absolutely in  
18 his best interest; he needed to do that; that, you know, I  
19 -- I encouraged him in every way I could to take that deal.  
20 But, you know, I -- I -- my relationship with Mr. Brown was  
21 a bit strained at that point, again, because I was the one  
22 who withdrew the motion. So Mr. Howe, Mr. Grose were --  
23 and our mitigation investigator, Ms. Laura Wood, were --  
24 were talking -- primarily, they were the ones talking with  
25 Mr. Brown at that point.

1           And we had -- we had a -- another lawyer come in. His  
2 -- his names was Hervery Young. And he's -- he's a -- a --  
3 a lawyer who was a federal public defender when I knew him  
4 briefly. I don't know him well, but I know that he was a  
5 federal public defender for some time. And he had the sort  
6 of unique background of having grown up in this same small  
7 town of Clinton that Mr. Brown was from. He's also an  
8 African-American male.

9           And, you know, sometimes there's just some distrust in  
10 -- in the relationship between attorneys and clients. And  
11 we had Mr. Young talk to Mr. Brown to try to resolve any  
12 doubts that he might have that this was, in fact, the --  
13 the very best position he was going to be able to put  
14 himself in with regard to a 30-year sentence.

15 Q       So in him pleading guilty, you didn't coerce him or  
16 threaten him in way ---

17 A       No, sir.

18 Q       --- to plead guilty?

19           And so it's his decision to plead guilty ---

20 A       Yes, sir.

21 Q       --- based on the circumstances of this case?

22 A       Yes, sir.

23 MR. JOHNSON: No further questions at this time, Your

24 Honor.

25 THE COURT: All right. Mr. Langley?

REDIRECT EXAMINATION BY MR. LANGLEY - WILLIAM S. MCGUIRE 25

1 MR. LANGLEY: Your Honor, I have a few questions.

2 THE COURT: Sure.

3 REDIRECT EXAMINATION

4 BY MR. LANGLEY:

5 Q As far as the -- the witnesses go, do you recall the  
6 witnesses coming in with two different statements or two or  
7 three different statements that conflicted with each other?

8 A Which witnesses are you talking about?

9 Q The witnesses that told you that -- that ---

10 (Whereupon, Mr. Langley conferred with the applicant.)

11 Q I mean, there -- apparently, there are only two  
12 witnesses in the case. And there was a guy and a girl that  
13 -- that came in with -- with conflicting statements and  
14 that -- that, you know, would've made the case a -- a whole  
15 lot easier to win if it -- if, you know ---

16 A I mean, I'm ---

17 Q --- do you not -- do you not recall?

18 A I mean, if you're -- if you're talking about the --  
19 the -- the man who was -- I mean, there were -- there were  
20 more than two witnesses, obviously, because you had law  
21 enforcement officers: You had a SLED officer, polygraph  
22 examiners. I mean, there were -- there were a number of  
23 potential witnesses. You had crime-scene people.

24 With regard to eyewitnesses, I think you can limit it  
25 to the employee who was getting off work with the manager

REDIRECT EXAMINATION BY MR. LANGLEY - WILLIAM S. MCGUIRE 26

1 and his wife, who drove into the parking lot to pick him up  
2 from his night shift. Those would be, I think, the more  
3 critical eyewitness-type witnesses. But obviously, there  
4 were more. I mean, there are witnesses that opened up the  
5 shop and -- the Burger King in the morning; you know,  
6 called law enforcement. There were management employees  
7 that testified as well, you know, with regard to, like, the  
8 combination of the safe being accurate.

9 But if you're -- I'm not familiar with their  
10 statements having any kind of glaring inconsistency that  
11 would -- that would prove fatal to their testimony. I  
12 mean, they were -- I found them both to be pretty  
13 forthright and honest. And they didn't really have a dog  
14 in the fight, so to speak.

15 MR. LANGLEY: Okay. I have no further questions, Your  
16 Honor.

17 THE COURT: All right. Anything further, Mr. Johnson?

18 MR. JOHNSON: Nothing from the state at this time,  
19 Your Honor.

20 THE COURT: All right. Thank you very much, Mr.  
21 McGuire. You may step down, sir.

22 (Whereupon, the witness exited the witness stand.)

23 MR. LANGLEY: Your Honor, at this time I call Mr. --  
24 or Mr. Brown ---

25 THE COURT: All right.

DIRECT EXAMINATION BY MR. LANGLEY - DOMONIQUE BROWN 27

1 MR. LANGLEY: --- to the stand.

2 THE COURT: Mr. Brown, please, if you would come  
3 around, take the stand, and be sworn, sir.

4 (Whereupon, the witness came forward.)

5 THE COURT: Any objection to Mr. McGuire being  
6 excused?

7 MR. LANGLEY: None.

8 THE COURT: All right.

9 MR. JOHNSON: None from ---

10 THE COURT: Thank you, Mr. McGuire.

11 DOMONIQUE BROWN, having been first duly sworn,  
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. LANGLEY:

15 Q Okay. Mr. Brown, how do you feel that Mr. McGuire was  
16 ineffective?

17 A Mr. McGuire would argue he had reasonable causes not  
18 to receive a decision on any of the motions we placed in at  
19 pretrial.

20 MR. JOHNSON: I ---

21 A What Mr. ---

22 MR. JOHNSON: --- Your Honor ---

23 A --- McGuire ---

24 MR. JOHNSON: --- I can't hear him.

25 THE COURT: All right. (To the deputy clerk of court)

1 Is that mic on?

2 DEPUTY CLERK OF COURT: It is.

3 THE COURT: (To the witness) If would, sir, just  
4 speak into the microphone there, directly into it and ---

5 MR. JOHNSON: Thank you, Your Honor.

6 THE COURT: Yeah. You can move your chair up.

7 THE WITNESS: (Complied.)

8 THE COURT: And try to speak a little more slowly.

9 Q I'll -- I'll restate the question for you, Mr. Brown.

10 THE COURT: All right.

11 Q How do you feel that Mr. McGuire was ineffective as  
12 your counsel?

13 A Mr. McGuire was ineffective by not discussing the  
14 decisions he and head solicitor, Mr. Peace, made concerning  
15 turning points within my case.

16 Q Okay. And what -- and what do you mean by "turning  
17 points in your case"?

18 A Critical decisions that would have altered the outcome  
19 of my trial, such decisions Mr. McGuire made and discussed  
20 without me.

21 Q Well, would you have gone through with the trial as  
22 planned if -- if Mr. McGuire received a pretrial decision?

23 A I would have insisted -- I would have insist on going  
24 through with trial. Frankly, with the confidence me and  
25 Mr. McGuire shared the same values of the outcome of trial,

1 by Mr. McGuire showing a lack of professional assistance;  
2 he not only took away from my confidence; he also took away  
3 from a strategy which we would have used.

4 Q All right. And what strategy were you guys going to  
5 use?

6 A By -- by providing the prosecution with the burden of  
7 showing the reason I was unlawfully incarcerated by the  
8 Clinton Police Department with the lack of probable cause  
9 to do so.

10 Q So basically, did -- did Mr. McGuire go beyond --  
11 behind your back and take a plea deal that you did not want  
12 to take?

13 A Yes, sir. Mr. McGuire went to the head solicitor, Mr.  
14 Peace, once again and discussed taking life -- taking the  
15 death penalty off the table and Mr. McGuire, in return,  
16 would not receive a decision on the pretrial motions --  
17 none of the pretrial motions which we placed in.

18 Q Okay. Did Mr. McGuire, at any point, inform you of --  
19 of -- of what was going on with the negotiations and the  
20 solicitor -- with the solicitor?

21 A No, sir. After the fact, he came to where I was  
22 housed at Laurens County Detention Center and informed me  
23 that the decisions was already made. And I informed him in  
24 return to go back and redo it, if any way possible. And he  
25 let me know in, like, a heated discussion that there was no

1 way he was going back to do so.

2 Q Well, why -- why did you oppose so vehemently or -- or  
3 so strongly to Mr. McGuire accepting this plea deal? Why  
4 -- in other words, why did you want to go to -- to trial?

5 A With the evidence that was held against me, the  
6 Clinton Police Department did it unlawfully. They, so to  
7 say, just went to 3 and 4 and skipped 1 and 2 by not -- by  
8 not -- by receiving a -- a lineup that was not -- that --  
9 that didn't get -- my face didn't get circled in the lineup  
10 at all by Mr. Joe -- by Mr. Joe Irby. I'm trying to  
11 address him not as the pizza guy, but by his name, Joe  
12 Irby.

13 Q All right. So do you feel like you would've -- you  
14 obviously sat in court and watched him argue motions. Do  
15 you feel like you had a good chance of -- of winning the --  
16 the motion that Mr. McGuire was talking about earlier in  
17 getting most of that evidence suppressed?

18 A Yes, sir. I felt like that -- I honestly felt that we  
19 had a win until, like I say, he came to me. I -- and what  
20 really tricked me was when the judge himself say, "I'm not  
21 going to rule on it right now. But both sides -- both  
22 parties put up a great fight." When he say that, I'm  
23 thinking that we really -- we really do got a dog in this  
24 fight.

25 Q Now, you heard Mr. McGuire a little while ago say that

DIRECT EXAMINATION BY MR. LANGLEY - DOMONIQUE BROWN 31

1 he hired -- or talked with another attorney of African-  
2 American descent that you potentially could relate to a lot  
3 better. Did that attorney come talk to you in -- in a  
4 manner if so -- you know, did ---

5 A I never ---

6 Q --- did ---

7 A --- talked ---

8 Q --- did you let --

9 A I never ---

10 Q --- did you ---

11 A --- talked ---

12 Q --- let him ---

13 A --- to this ---

14 Q --- know that you basically wanted to go to trial?

15 A I never talked to this attorney ---

16 Q You never talked ---

17 A --- met face ---

18 Q --- within him?

19 A --- to face, like, personally. And like I say, I  
20 wanted to go through with trial. But by Mr. McGuire not  
21 receiving no answer on the pretrial motions with -- which  
22 would have changed the outcome of trial, that would have  
23 changed the outcome of trial.

24 Q Okay. Now, you heard Mr. McGuire a little while ago  
25 state some of the facts of the evidence in your case. And

1 you heard me asking a few questions about the witnesses --  
2 two witnesses that had inconsistent statements. Are you  
3 familiar with that at all?

4 A Yes, sir. The two witnesses did have more than --  
5 more than two statements apiece from my -- my remembrance  
6 of it. They had two -- or the -- his wife had two and he  
7 had a -- a -- a -- or the guy had three, if I can remember  
8 well. And what my thing about the statements was: Why  
9 would there be more -- more than one statement and you  
10 write a statement two days after you discuss with the  
11 police department? I didn't know what -- and at the time  
12 me and Mr. McGuire shared the same value on -- on the three  
13 different statement -- two or three different statements.

14 Q And -- and those -- if I'm correct, those witnesses  
15 were talking about where the glove was found or ---

16 A No. No, sir.

17 Q What ---

18 A No, sir.

19 Q --- what were they -- what were they ---

20 A They were -- there were ---

21 Q Describe ---

22 A --- saying that they saw me in -- at Burger King.

23 Q I'm sorry?

24 A Basically, they was just saying that they saw me at  
25 Burger King.

1 Q Okay.

2 A But as the statements went on, it was just going into  
3 more detail about how they saw me at Burger King, which  
4 both statements didn't match up each other. And like I  
5 say, at the time me and Mr. McGuire shared the same values  
6 of the statements.

7 Q Okay. Now, as far -- you heard Mr. McGuire talk about  
8 some of the evidence, saying where the glove was found.  
9 You know, the witnesses -- certain witnesses -- did you --  
10 did a witness -- or did -- did ---

11 A My ---

12 Q --- somebody ---

13 A By me ---

14 Q --- find the ---

15 A --- by me being -- me is being part of the -- part  
16 fruit off the poisonous tree, it was found in my trash can  
17 and not three trash can down. So all that contained --  
18 everything contained in all the physical evidence, besides  
19 Burger King wrapper and but -- besides a Burger King  
20 wrapper, would -- would have been the only thing they would  
21 have had. So that's why I was asking that we get a ruling  
22 on the pretrial -- on pretrial motion. The ---

23 Q And that's -- that's ---

24 A --- of the ---

25 Q --- why you ---

1 A --- glove got ---

2 Q --- you so strongly wanted ---

3 A Yes, sir.

4 Q --- the -- the judge to rule on the pretrial ---

5 A Yes, sir.

6 Q --- motion?

7 A Not -- well, go ahead.

8 Q Okay.

9 MR. LANGLEY: Your Honor, I have no further questions.

10 THE COURT: Mr. Johnson?

11 CROSS-EXAMINATION

12 BY MR. JOHNSON:

13 Q Mr. Brown, are you aware that you waived all your  
14 defenses in this case when you pled guilty?

15 A Yes, sir, I was. I wasn't at the time. I was  
16 ignorant to the law, but that's not -- that's not a factor.

17 Q So -- you waived the right to challenge these  
18 inconsistent statements that you talk about. You  
19 understand that?

20 A You -- you telling me that now, sir.

21 Q And also, you told the judge that you were fully  
22 satisfied with your attorney; isn't that right?

23 A I mean, Mr. McGuire got on the stand and said,  
24 personally, I wasn't satisfied with him. We ---

25 Q You told the judge in your guilty plea you were fully

- 1 satisfied with your attorney; isn't that right?
- 2 A From ---
- 3 Q That's ---
- 4 A --- that ---
- 5 Q --- that's not ---
- 6 A --- at ---
- 7 Q --- your testimony here today?
- 8 A If that was one of the questions, then yes, sir.
- 9 Q So you will -- you'll agree with me, if it's in here,  
10 that you said it?
- 11 A If it's in there, then it's the truth.
- 12 Q Would you like for me to show it to you?
- 13 A Yes, sir.
- 14 MR. JOHNSON: Your Honor, may I approach?
- 15 THE COURT: Yes, sir.
- 16 Q On page 3, line 17, Mr. Brown, it says right here:  
17 "Have you had enough time and are you fully satisfied with  
18 your lawyer's services?" And you answered: "Yes, sir."
- 19 A Yes, sir.
- 20 Q You also told the judge that you were pleading guilty  
21 because you were, in fact, guilty; isn't that right?
- 22 A That's in there too?
- 23 Q Yes, sir, it is.
- 24 A All right.
- 25 Q Page 3, line 22, it says: "Has anyone" -- let's see.

1 Actually, on line 20: "Are you pleading guilty because you  
2 are guilty, sir?" And you answered: "Yes, sir."

3 And also asked you if you had been threatened or  
4 coerced to plead guilty, and you said: "No, sir." Isn't  
5 that correct?

6 A Yes, sir.

7 Q And asked if you were here on your own free will and  
8 choice, and you said: "Yes, sir." Isn't that right?

9 A Yes, sir.

10 Q And you had enough time to talk -- to think about what  
11 you were doing at this point; isn't that right?

12 A Yes, sir. Like I say, I was ignorant to the law at  
13 the time.

14 Q And you said you understood each element you were  
15 pleading guilty to; isn't that right? And the maximum  
16 penalties that attach to those?

17 A If ---

18 Q What was that?

19 A No -- yes, sir.

20 Q Okay.

21 A You're just asking the same questions over and over,  
22 sir.

23 Q You also said you understood your constitutional  
24 rights; isn't that right?

25 A Yes, sir.

1 Q And that you gave up any defenses you could present at  
2 trial; isn't that right?

3 A Yes, sir.

4 Q And that you understood that murder and armed robbery  
5 are most serious and understood, if you get another  
6 conviction, you get life without parole; isn't that right?

7 A Ignorant to the law, sir. I didn't -- I was ---

8 Q But the ---

9 A --- like ---

10 Q --- judge asked you about that, didn't he?

11 A I mean, I'm pretty sure I agreed to everything the  
12 judge said that day, sir. I was -- yeah. I was shaking  
13 out my boots. It's like being in a -- a whole nother  
14 language. I didn't understand nothing the judge was  
15 understanding, from my understanding, from -- for me to  
16 just go up there and say, "Yes, sir."

17 Q But you didn't tell the judge that, did you?

18 A No, sir.

19 Q Judge actually gave you a -- a -- an opportunity to  
20 ---

21 A I mean ---

22 Q --- speak ---

23 A --- who does tell the ---

24 Q --- and you ---

25 A --- judge ---

1 Q --- declined; isn't ---

2 A --- that ---

3 Q --- that right?

4 A --- at the age of 20 in front of -- who does go up  
5 there and argue against his counsel?

6 Q You don't have to plead guilty. You can go to trial.  
7 But that's not what you told the judge that day, is it?

8 A No, sir, that's not what I told the judge that day.

9 Q The judge asked you if you wished to plead guilty, and  
10 you said: "Yes, sir." Isn't that right?

11 A Once again, yeah -- yes, sir.

12 Q And he asked you if you understood all the Court's  
13 questions, and you said: "Yes, sir." Isn't that correct?

14 A Yes, sir.

15 Q You agreed to the facts and you agreed to the  
16 negotiations; isn't that right?

17 A Yes, sir.

18 MR. JOHNSON: No further questions at this time, Your  
19 Honor.

20 REDIRECT EXAMINATION

21 BY MR. LANGLEY:

22 Q Mr. Brown, how old were you when you were doing this  
23 plea transcript?

24 A Twenty.

25 Q And ---

- 1 A Twenty.
- 2 Q --- you had some pretty serious charges, correct?
- 3 A Yes, sir.
- 4 Q You said you were shaking in your boots while you were  
5 going through the -- with the transcript -- the plea deal  
6 ---
- 7 A Yes.
- 8 Q --- in front ---
- 9 A I'm shaking ---
- 10 Q --- of the judge?
- 11 A --- now, sir.
- 12 Q So, I mean, could that potentially have affected, you  
13 know -- you have to be under some pretty good duress. Have  
14 you -- could that potentially have affected, you know, the  
15 way that you answered those questions to the judge?
- 16 A Yes, sir.
- 17 Q Did Mr. McGuire ever talk to you or ever ask any  
18 questions or tell you that if you go in front of the judge  
19 for a plea deal, did he ever tell you how to answer any of  
20 those questions?
- 21 A Yes, sir.
- 22 Q And -- and what did he say about that?
- 23 A Yes. "Just answer, 'Yes, sir,' and get it over with."
- 24 Q He said just answer, "Yes, sir"?
- 25 A I can recall somewhere between my -- me answering the

1 questions -- a question got asked to me and I didn't answer  
2 it, I guess, on time as they wanted me to. I hesitated. I  
3 think ---

4 Q Yes. It's in here?

5 A --- Grose -- he -- he said in my ear, "Just keep  
6 answering the questions, 'Yes, sir.'" And ---

7 Q Yeah. There ---

8 A --- I just ---

9 Q --- is a -- a portion of the transcript in here where  
10 the judge did ask you if you knew what was going on. And  
11 then -- page 4, line 18 -- and where it says: "Mr. Grose  
12 speaks to his client off the record." And then you go,  
13 "Oh, yeah. I know now what's going on." So ---

14 A That's when ---

15 Q --- so basically ---

16 A --- it hit me.

17 Q --- what you're saying is -- is -- is you -- you  
18 didn't fully understand what you were doing in front of the  
19 judge that day?

20 A No, sir. But when I said I -- "Oh, yeah, I know now  
21 that's what's going on," I guess somewhat of my ignorancy  
22 -- it kind of let up or ran from me. It let me know then.  
23 I simply been answering "Yes, sir." But I guess it was too  
24 late -- too far in.

25 MR. LANGLEY: Your Honor, I have no further questions.

RE-CROSS-EXAMINATION BY MR. JOHNSON - DOMONIQUE BROWN 41

1 MR. JOHNSON: Just one follow-up, Your Honor.

2 THE COURT: Yes, sir.

3 RE-CROSS-EXAMINATION

4 BY MR. JOHNSON:

5 Q Mr. Brown, you said you were nervous at the guilty  
6 plea. Yet when you were given an opportunity to -- to  
7 speak, you never brought that to the Court's attention, did  
8 you?

9 A No, sir.

10 MR. JOHNSON: No further questions.

11 THE COURT: All right.

12 MR. LANGLEY: Your Honor, that's all the witnesses I  
13 have.

14 THE COURT: Thank you, Mr. ---

15 MR. LANGLEY: I obviously ---

16 THE COURT: --- Brown.

17 MR. LANGLEY: --- ask the ---

18 THE COURT: You may step down.

19 MR. LANGLEY: --- that you grant ---

20 THE WITNESS: Yes, sir.

21 (Whereupon, the witness exited the witness stand.)

22 MR. LANGLEY: --- my client his postconviction relief  
23 on the simple fact that under the two prongs of the  
24 *Strickland* test, the first is reasonableness under  
25 professional norms. And -- and it -- it's pretty hard to

1 -- for -- for -- to be an attorney and not go by the -- the  
2 wishes of your client. And it -- it seems clear-cut in  
3 this case that -- that my client wished to proceed and --  
4 and see how a ruling went with the -- with the pretrial  
5 motion. And -- and Mr. McGuire failed to -- to do that for  
6 him.

7 And -- and -- and so I would ask that you grant our  
8 postconviction relief.

9 THE COURT: Now, what -- what are the two prongs you  
10 say it violated?

11 MR. LANGLEY: The first is reasonableness under  
12 professional norms.

13 THE COURT: Okay.

14 MR. LANGLEY: And the -- and the second prong is but  
15 for counsel's unprofessional errors, the result of the  
16 proceeding would've been different. And we can clearly  
17 establish that the result of the proceeding would've been  
18 different, because we would've gone through with the  
19 pretrial motion.

20 THE COURT: All right, sir.

21 MR. JOHNSON: If you want to hear anything from the  
22 state, I'll be happy to, Your Honor.

23 THE COURT: Sure.

24 MR. JOHNSON: Your Honor, the state's position is that  
25 Mr. McGuire was fully competent to represent Mr. Brown and,

1 in his professional opinion, negotiated favorably to get  
2 the death penalty off the table. That's the prejudice he's  
3 got to overcome, which the state presents there is no  
4 prejudice. He'd go back and face the death penalty,  
5 whereas he got a pretty favorable deal here. So the  
6 state's position is that there is no prejudice and you  
7 should deny the application of this -- of Mr. Brown.

8 THE COURT: All right. All right. Gentlemen, I'm  
9 going to take this matter under advisement. And I've got a  
10 fairly lengthy transcript here that I need to -- to review.  
11 But I'm -- I'm going to take your arguments under  
12 advisement, and I'm going to review this transcript, and  
13 then I'll have an answer for you. All right?

14 MR. LANGLEY: Thank you, Your Honor.

15 MR. JOHNSON: Thank you, Your Honor.

16 THE COURT: Thank you very much.

17 (WHEREUPON, the proceeding was concluded at 11:11  
18 p.m.)

19 --- END OF TRANSCRIPT OF RECORD ---  
20  
21  
22  
23  
24  
25

**CERTIFICATE**

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED  
VERBATIM REPORTER - MASTER, OFFICIAL COURT REPORTER  
FOR THE EIGHTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH  
CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A  
TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD IN  
THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO  
APPEAL, IN THE CIRCUIT COURT FOR LAURENS COUNTY, SOUTH  
CAROLINA, ON THE 4TH DAY OF JUNE, 2012.

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



---

MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JANUARY 2, 2013

STATE OF SOUTH CAROLINA )  
 COUNTY OF LAURENS )

IN THE COURT OF COMMON PLEAS )  
 LYNN WITHHODDGE CIRCUIT )

Domonique Brown, #336455, )

2012 JUL -5 A 10:56 )  
 2010-CP-30-0695 )

Applicant, )

LAURENS COUNTY )  
 ORDER OF DISMISSAL )  
 CLERK OF COURT )

v. )

State of South Carolina, )

Respondent. )

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 6, 2010. Respondent made its Return on January 21, 2011. An evidentiary hearing into the matter was convened on June 4, 2012, at the Newberry County Courthouse. Spencer Langley, Esquire, represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, Applicant testified on his own behalf. Bill McGuire, Esquire, also testified. This Court also had before it a copy of the records of the Laurens County Clerk of Court, records from the South Carolina Department of Corrections, and the guilty plea transcript.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Laurens County Clerk of Court. Applicant was indicted at the February 2007 term of the Laurens County Grand Jury Murder (2007-GS-30-220), Armed Robbery (2007-GS-30-221), and Possession of a Firearm or Knife during the Commission of a Violent Crime (2007-GS-30-222). Bill McGuire, Esquire, E. Charles Grose, Jr., Esquire, and Claude H. Howe, III, represented

the Applicant.<sup>1</sup> On May 18, 2009, Applicant pled guilty as indicted to the aforementioned charges. The Honorable D. Garrison Hill sentenced Applicant to a negotiated sentence of thirty (30) years for Murder, thirty (30) years for Armed Robbery, and five (5) years for the weapon charge, sentences running concurrently.

Applicant filed a timely Notice of Appeal, along with an explanation pursuant to Rule 203, SCACR. By written Order dated July 13, 2009, the South Carolina Court of Appeals dismissed the Applicant's appeal pursuant to Rule 203, SCACR, for failure to identify an issue which is reviewable on appeal. The Remittitur was issued on August 4, 2009.

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

1. Ineffective assistance of counsel; and
2. 4<sup>th</sup> Amendment violation.

At the hearing, Applicant proceeded on the ineffective assistance of counsel claim.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

#### **Ineffective Assistance of Counsel**

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he

---

<sup>1</sup> Bill McGuire was lead counsel. At the PCR hearing, Applicant waived ineffective assistance of counsel claims against Mr. Grose and Mr. Howe.

burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCF). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Applicant claims Counsel was ineffective because Counsel negotiated with the State over

Applicant's objections to convert this case from capital to non-capital. Applicant testified Counsel did not discuss any decisions with him concerning this case. Applicant further testified Counsel did not wait to hear the outcome of the pre-trial hearings before he negotiated with the State to have the death penalty taken off the table in exchange for Applicant's guilty plea. Applicant also stated he insisted on going to trial.

On cross-examination, Applicant admitted he told the plea judge he was pleading guilty because he was, in fact, guilty. He also stated there were no threats or coercion used to get him to plead guilty and was at the pleading on his own free will. Applicant testified he was fully satisfied with his attorney, had enough time to discuss the case with his attorney, and fully understood the charges and penalties he was facing. He further testified he understood he was giving up his constitutional rights to a trial, including his right to present defenses. Applicant, lastly, admitted he agreed with the State's recitation of the facts and wished to plead guilty. Most importantly, Applicant admitted he agreed with the negotiations in this case.

Counsel testified his negotiations with the State included withdrawing his suppression motions in exchange the State would withdraw the death penalty. Counsel testified he has extensive experience in criminal defense and also capital cases, having been lead counsel in at least two other capital cases and many other criminal cases. Counsel also testified the State's evidence against Applicant was more than sufficient to prove the aggravating circumstances needed for a death penalty conviction. Counsel gave a brief summary of the evidence in the case: Victim was found dead in a Burger King restaurant, where Applicant was a former employee. Another employee, who knew Applicant, was the eye-witness who last saw Applicant and Victim walk back into the Burger King after closing time. There was a small-caliber handgun, which was used to shoot Victim, found

under the bumper of Applicant's car. This gun was found pursuant to a confession Applicant gave to law enforcement. Victim's DNA was also found on this gun. Additionally, there were multiple consent searches of Applicant's residence that produced incriminating evidence, specifically a french-fry wrapper that had the combination to the Burger King safe on it. Counsel testified the State would have presented all of this evidence at trial, along with other evidence, which could show torture was involved.

Counsel also testified Applicant was under investigation for a separate robbery in which there was an identification of Applicant. Counsel stated he believed there was some police misconduct in the armed robbery case, and he used this leverage to turn this case into a non-capital case for Applicant's benefit. He testified he negotiated this case from death penalty to thirty years, the minimum sentence for a murder charge. Counsel, lastly, testified there were no threats or coercion in this case, and it was Applicant's decision to plead guilty.

Our courts are understandably wary of second-guessing defense counsel's tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Also see ABA Ann. Model Rules of Professional Conduct Rule 1.2 (a) "A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation." and Rule 1.2 cmt. 2 ("On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters.")

Counsel articulated valid strategic reasons for negotiating with the State to take the death penalty off of the table in this case. Counsel testified there was sufficient aggravating circumstances in this case to warrant a death penalty conviction. Additionally, Counsel negotiated the minimum possible sentence for murder on Applicant's behalf. It is well within Counsel's discretion and decision-making power to negotiate with the State on behalf on his client. While Applicant claims Counsel did this without his knowledge, Applicant, at the guilty plea, testified under oath he agreed with the negotiations in this case. Applicant has not shown Counsel was deficient in his choice of tactics. Neither has Applicant proved prejudice in this case because Counsel negotiated the minimum possible sentence for murder.

This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible. As discussed, Counsel adequately negotiated with the State on behalf of Applicant for a very favorable plea bargain. This Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

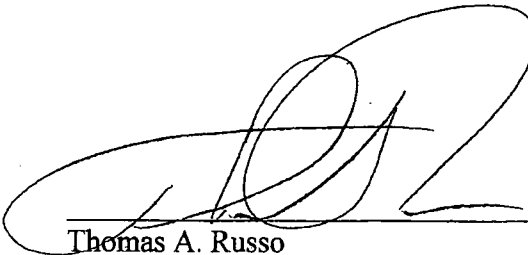
**CONCLUSION**

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

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

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

**AND IT IS SO ORDERED!**

Thomas A. Russo  
Presiding Circuit Court Judge  
Eighth Judicial Circuit

6/28, 2012

Florence, South Carolina



ALAN WILSON  
ATTORNEY GENERAL

July 3, 2012

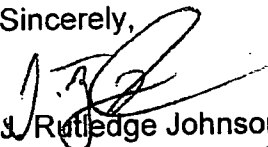
The Honorable Lynn W. Lancaster  
Clerk of Court, Laurens County  
Post Office Box 287  
Laurens SC 29360

Re: **Domonique Brown v. State of South Carolina**  
**2010-CP-30-0695**

Dear Ms. Lancaster:

Enclosed please find an original and a copy of an Order of Dismissal in connection with the above referenced case. Please file the original and return a certified copy to me in the self-addressed envelope provided for your convenience.

Sincerely,



Rutledge Johnson  
Assistant Attorney General

JRJ:cey  
Enclosures

cc: Spencer Langley, Esquire

**THE STATE OF SOUTH CAROLINA**

COUNTY OF LAURENS

**COURT OF GENERAL SESSIONS**

February Term, 2007

Indictment # 07GS30- *220*

**THE STATE**

vs.

DOMONIQUE ONEIL BROWN

*IC*

**INDICTMENT FOR**

MURDER

A TRUE COPY OF ORIGINAL

*Lynn W. Lancaster*

Lynn W. Lancaster

Laurens County CCCP & GS

Foreman

**THE STATE OF SOUTH CAROLINA**  
**COUNTY OF LAURENS**

**INDICTMENT FOR**

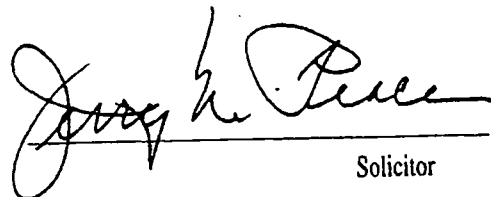
**MURDER**

At a Court of General Sessions, convened on the 9th day of February, 2007, the Grand Jurors of Laurens County present upon their oath:

**COUNT ONE**

That DOMONIQUE ONEIL BROWN, did in Laurens County, state aforesaid, between the 11th day of January, 2007, and the 12th day of January, 2007, wilfully, feloniously, and with malice aforethought kill one Richard Allan Wideman, II by means of shooting, cutting and/or stabbing and that the said Richard Allan Wideman, II did die in Laurens County as a proximate result thereof on between or about the 11th day of January, 2007, and the 12th day of January, 2007, in violation of Section 16-3-10 of the South Carolina Code of Laws, 1976, as amended

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

  
Solicitor

**THE STATE OF SOUTH CAROLINA**  
COUNTY OF LAURENS

**COURT OF GENERAL SESSIONS**

February Term, 2007

Indictment # 07GS30-221

**THE STATE**

vs.

DOMONIQUE ONEIL BROWN



d Jury

**INDICTMENT FOR**

ARMED ROBBERY

A TRUE COPY OF ORIGINAL

*Lynn W. Lancaster*

Lynn W. Lancaster  
Laurens County CCCP & GS

return

**THE STATE OF SOUTH CAROLINA  
COUNTY OF LAURENS**

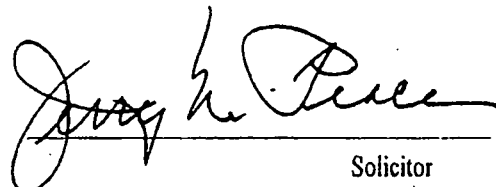
**INDICTMENT FOR  
ARMED ROBBERY**

At a Court of General Sessions, convened on the 9th day of February, 2007, the Grand Jurors of Laurens County present upon their oath:

**COUNT ONE**

That DOMONIQUE O'NEIL BROWN, did in Laurens County, state aforesaid, between the 11th day of January, 2007, and the 12th day of January, 2007, wilfully and unlawfully while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon, or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take from the person or presence of Richard Allan Wideman, II, by means of force or intimidation, goods or monies described as follows: United States currency, with intent to deprive the owner permanently of such property, to wit: Burger King Restaurant, Inc. in violation of Section 16-11-330 of the South Carolina Code of Laws, 1976, as amended

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

  
Solicitor

**THE STATE OF SOUTH CAROLINA**

COUNTY OF LAURENS

**COURT OF GENERAL SESSIONS**

February Term, 2007

Indictment # 07GS30- *222*

**THE STATE**

vs.

DOMONIQUE O'NEIL BROWN

*TR*

**INDICTMENT FOR**

POSSESSION OF A FIREARM OR KNIFE DURING THE  
COMMISSION OF A VIOLENT CRIME

A TRUE COPY OF ORIGINAL  
*Dyan W. Lancaster*

*Dyan W. Lancaster*  
Laurens County, S.C.

id Jury

oreman

**THE STATE OF SOUTH CAROLINA**  
**COUNTY OF LAURENS**

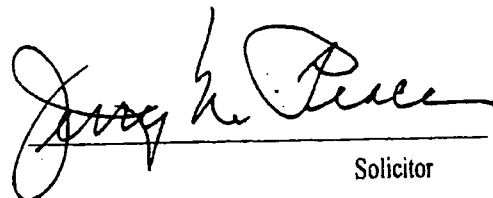
**INDICTMENT FOR**  
**POSSESSION OF A FIREARM OR KNIFE DURING THE**  
**COMMISSION OF A VIOLENT CRIME**

At a Court of General Sessions, convened on the 9th day of February, 2007, the Grand Jurors of Laurens County present upon their oath:

**COUNT ONE**

That DOMONIQUE O'NEIL BROWN, did in Laurens County, state aforesaid, between the 11th day of January, 2007, and the 12th day of January, 2007, possess a firearm or visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent offense, to wit: Murder and/or Armed Robbery, or any lesser included violent offense, in violation of Section 16-23-490 of the South Carolina Code of Laws, 1976, as amended

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

  
Solicitor