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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Clarendon County

Honorable Edward W. Miller, Circuit Court Judge

MICHAEL DAUGHERTY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002435

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

STATE,)

v.)

TRANSCRIPT OF RECORD
20-GS-14-352

MICHAEL LEON DAUGHERTY,)

DEFENDANT.)

January 10, 2022
Manning, South Carolina

BEFORE :

THE HONORABLE D. CRAIG BROWN, JUDGE

APPEARANCES:

DARLA F. PIERCE, ESQ.
Assistant Solicitor

TIMOTHY L. GRIFFITH, ESQ.
Attorney for Defendant

FRANCES B. RAY, RPR
Circuit Court Reporter

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1 THE COURT: Yes, ma'am.

2 MS. PIERCE: Thank you, Your Honor.
3 This is the State of South Carolina v. Michael
4 Leon Daugherty on indictment no. 2020-GS-14-0352.
5 Mr. Daugherty was charged with murder, as well as
6 possession of a weapon during a violent crime. He
7 wishes to plead guilty. He's represented by
8 Timothy Griffith. He is going to plead to
9 voluntary manslaughter. The State is staying
10 silent on sentencing. We ask that the possession
11 of a weapon run consecutive to whatever sentence
12 Your Honor gives. With me I have the mother who
13 wishes to address the Court, and I do believe the
14 father would like to participate via Webex. The
15 father of the deceased tested positive for COVID,
16 Your Honor.

17 THE CLERK: Raise your right hand
18 please, sir. Your right hand.

19 WHEREUPON,

20 **MICHAEL L. DAUGHERTY,**
21 having been duly sworn by the clerk, testified as
22 follows:

23 THE COURT: Sir, you're Michael Leon
24 Daugherty?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Pull your mask down when
2 you're talking to me please, sir.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Have you ever been treated
5 for alcohol abuse, drug abuse, or mental illness?

6 THE DEFENDANT: No, sir.

7 THE COURT: Within the last 24 hours,
8 have you taken any medication, drugs, or alcohol?

9 THE DEFENDANT: No, sir.

10 THE COURT: Are you aware of any
11 physical, emotional, or nervous problem that would
12 prevent you or keep you from understanding what's
13 going on here today?

14 THE DEFENDANT: No, sir.

15 THE COURT: The State indicates you're
16 pleading guilty to two separate charges, the first
17 being voluntary manslaughter; is that correct?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And you understand that
20 particular charge carries up to 30 years?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You understand, also, this
23 plea as it relates to the manslaughter is being
24 entered into without recommendation or
25 negotiation?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Now as it
3 relates to this voluntary manslaughter, you also
4 understand that this is considered under South
5 Carolina law to be a violent offense as well as a
6 most serious offense?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: In other words, you
9 understand whatever sentence this Court imposes on
10 the voluntary manslaughter, you can pretty much
11 count on doing day for day. You understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. You still want
14 to enter your plea here today to this charge?

15 (Attorney confers with defendant.)

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Now you understand that
18 this particular charge, the voluntary manslaughter
19 charge, as I said earlier, is a most serious
20 offense which falls under the two strike rule.
21 You understand that?

22 THE DEFENDANT: No, sir. What is a
23 two strike rule?

24 THE COURT: Sir?

25 THE DEFENDANT: I said what is a two

1 strike rule?

2 THE COURT: If upon being released
3 from the Department of Corrections you're
4 convicted of another most serious offense by plea
5 or trial and the State has properly noticed you of
6 their intent to seek life without parole, the
7 court would have no alternative but to give you
8 life. You understand that?

9 THE DEFENDANT: Yes, sir, I
10 understand.

11 THE COURT: You still want to go
12 forward here today?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Now the other
15 charge the State indicates you're pleading guilty
16 to is possession of a weapon during the commission
17 of a violent crime. Is that correct?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You understand that
20 carries up to five years?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And I think by law that
23 charge has to be -- or that sentence has to be
24 consecutive. You understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: In other words, back to
2 back. You understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You still want to go
5 forward here today with this plea?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. Now, Mr.
8 Daugherty, when you plead guilty you give up
9 certain important constitutional rights. First of
10 all, you have a right to a jury trial. I would
11 tell the jury that you are presumed innocent. The
12 State has to prove your guilt beyond a reasonable
13 doubt. You have the right to question witnesses
14 against you. You have the right to remain silent;
15 and if you did, I will tell the jury that they
16 could not hold that against you. You have the
17 right to present a defense, although you're not
18 required to do so. If you made any incriminating
19 statements, you would have a right to challenge
20 the admissibility of those statements. Do you
21 understand those rights?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand that
24 when you plead guilty, you give up those rights?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. Understanding
2 your rights and understanding when you plead
3 guilty you give them up, how do you plead here
4 today to these charges? Guilty or not guilty?

5 THE DEFENDANT: I plead guilty.

6 THE COURT: All right. You're
7 represented by Mr. Griffith. You're satisfied
8 with his representation?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Have you talked to him
11 enough?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you understood your
14 talks with him?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you need anymore time
17 to talk to him?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You want to talk to him
20 some more?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. We'll stand down
23 just a minute and let him talk to him.

24 MS. PIERCE: Yes, Your Honor.

25 (Pause.)

1 MR. GRIFFITH: We're ready, Your
2 Honor.

3 THE COURT: All right, Mr. Daugherty.
4 We stood down just a second for a few -- or a
5 minute, so that you can speak to Mr. Griffith.
6 Have you had enough time to talk to him?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you need anymore time
9 to talk to him?

10 THE DEFENDANT: No, sir.

11 THE COURT: You have any complaints
12 about him?

13 THE DEFENDANT: No, sir.

14 THE COURT: All right. Has anyone
15 promised you anything or held out any hope of
16 reward to get you to plead to these two charges
17 today?

18 THE DEFENDANT: No, sir.

19 THE COURT: Has anyone used any
20 threats, force, pressure, or intimidation to get
21 you to plead to these two charges?

22 THE DEFENDANT: No, sir.

23 THE COURT: Has anyone mistreated you
24 in any way, whether it be law enforcement or
25 solicitor's office?

1 THE DEFENDANT: No, sir.

2 THE COURT: You had enough time to
3 make up your mind whether or not you want to plead
4 guilty or go to trial on these two charges?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And what do you wish to
7 do?

8 THE DEFENDANT: I wish to plead
9 guilty.

10 THE COURT: Are you pleading guilty as
11 to each of these two charges of your own free
12 will?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have you understood my
15 questions?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Ms. Pierce.

18 MS. PIERCE: Thank you, Your Honor.
19 On April 5th, 2020, Mr. Daugherty and a juvenile
20 contacted the codefendants in this case, Thomas
21 Finch and Mikell Lloyd, about having a gun to
22 sell. The victim's here in Clarendon County,
23 Dashell Parsons. Mr. Parsons spoke with Mikell
24 Lloyd who he knew about arranging this gun deal.
25 Mr. Daugherty, Mr. Finch, Mr. Lloyd, and the

1 juvenile came down from the Eastover area to
2 Clarendon County. Your Honor, that -- I'll give
3 you the address in just a second, but it is right
4 off 95 behind the Mexican restaurant. They went
5 to Mr. Dashell's house. When they got there, from
6 what we -- from the State's point of view, they go
7 in. Mr Dashell asked to see the gun. Mr.
8 Daugherty said, no, show me the money; and it went
9 back and forth for a few seconds like that. At
10 that time Dashell turned to Mikell Lloyd and was
11 kind of asking and gesturing, like, you bringing
12 this into my house, what is this. They say that
13 that is when they hear the gun click, and Mr.
14 Dashell was shot several times with the gun
15 throughout his body. Mikell Lloyd and
16 Mr. Daugherty went back to the vehicle where
17 Thomas Finch was waiting. They went back to the
18 Eastover area. Your Honor, on the ride back so
19 that Mr. Daugherty was bragging that he got -- he
20 got his first kill; he was very proud. The
21 juvenile was laughing. Mikell Lloyd and Thomas
22 Finch were hyperventilating, and they did not know
23 that was gonna happen.

24 I'm passing up to the Court, which was
25 provided in discovery, you will see Mr. Daugherty

1 posing. You will also see the Facebook messages
2 of the gun that was for sell, and I would ask the
3 Court to pay attention to the hash-tag at the top.
4 It is hash-tag left for dead. When officers
5 arrived on scene, they found money. They also
6 found -- well, the -- the agreement was for mon--
7 to sell the gun for marijuana and money. They did
8 find some money. I think Mr. Daugherty took the
9 marijuana with him. They were able to trace this
10 crime back through Mikell Lloyd's Facebook page.
11 They made contact with Mikell Lloyd. Once police
12 interviewed him, he immediately gave a full
13 statement of what happened. His statement has not
14 changed, Your Honor.

15 THE COURT: All right. Mr. Daugherty,
16 you heard the facts stated by the prosecutor as it
17 relates to these two charges. You agree with
18 those facts?

19 THE DEFENDANT: No. No, sir.

20 THE COURT: You agree that you killed
21 the victim in this case?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You agree that you
24 possessed a firearm during the commission of this
25 killing?

1 MR. GRIFFITH: You had the gun; didn't
2 you?

3 THE DEFENDANT: I had the gun with me,
4 yes, sir.

5 THE COURT: And are you, in fact,
6 guilty of these two charges?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And how do you plead to
9 each of these two charges, guilty or not guilty?

10 THE DEFENDANT: I plead guilty.

11 THE COURT: All right. I find there's
12 a substantial factual basis for this defendant's
13 plea to these two charges. His decision to plead
14 guilty has been entered into freely, voluntarily,
15 knowingly and intelligently, and he's had the
16 advice and counsel of an attorney with whom he's
17 indicated he's completely satisfied. I'll accept
18 his plea to each of these two charges.

19 Before I hear from you, Mr. Griffith,
20 I'm going to hear from the victim's family, okay?

21 Ms. Pierce, who wishes to speak, if
22 any?

23 MS. PIERCE: The mother and the father
24 wish to address the Court. Your Honor, for
25 jurisdictional purposes, the address of this

1 location was 2402 Raccoon Road here in Manning.
2 The mother is Ms. Tonia Thames and the father that
3 is on Webex is Mr. Powell, Dale Powell.

4 THE COURT: Mr. Powell, can you hear
5 me? I can't hear you, Mr. Powell. I don't know
6 if -- it's got to be something on their end.

7 Ma'am, if you'd state your full name
8 for the record please.

9 MS. THAMES: My name is Tonia Thames.

10 THE COURT: Ma'am?

11 MS. THAMES: Tonia Thames.

12 THE COURT: Yes, ma'am.

13 MS. THAMES: I'm Dashell Powell's
14 mother, and I want to read something.

15 THE COURT: Okay. Please direct your
16 comments to me, okay?

17 MS. THAMES: Okay. "I come before you
18 today with a broken heart. One of my lifelines
19 has been taken from us, the life of
20 (indiscernible) no other person had. Donnie had
21 so much talent. He -- I'm wearing some of his
22 talent now. He was a wonderful artist, son,
23 grandson, nephew, and friend. My life ended when
24 my -- when my son took his last breath. I now
25 suffer short-term memory. I'm on medication

1 'cause I can't speak. I'm often suicidal. My
2 whole life changed on April 5th. I replay that
3 day every second hoping for a different outcome;
4 but no, my baby's still gone. My brain can't make
5 my heart understand that it was like a punch to
6 the gut, and I haven't been able to catch my
7 breath 'cause I still can't wrap my head around
8 the fact that you had plenty of time to walk away.
9 But you decided to put bullets into my son like he
10 was a animal or something, and that's crazy. I
11 don't get -- I don't get it. I love my son. I
12 love all my children, but they're not saints.
13 They're not perfect. Why? Because they're human,
14 as we all are. And any parent knows, or at least
15 should know, that we are not our children's only
16 influence. We instill in them all the rights and
17 wrong. But once they're, one, out of your
18 eyesight or, two, hit the age where they think
19 they know it all, they start making wrong decision
20 that gets them caught up in stuff and get them
21 where they are; but my son didn't deserve that
22 because of that by you or anyone else. You
23 destroyed me and my family. You took my world, my
24 life. You took that light when you took my son.
25 I'll never be the same again."

1 On April 5th, 2020, I was at home
2 celebrating my birthday. The day before we
3 Facetime each other. I have that last picture
4 with him that I'll never be able to talk, hear his
5 voice, or get a call in the middle of the night
6 because he can't sleep and he wants to talk.

7 Our last conversation I had, I told
8 him I check-- I called to check to make sure they
9 were good and they ate. And I told him I was
10 about to take a nap, and he said, okay, ma, I am
11 too, but I got something to do later so I'll call
12 you later. He said, I love you, ma. I said, I
13 love you too, baby. And those are my last words
14 to my son. A hour later I get a call that someone
15 killed Donnie. After hearing those words, I went
16 numb as I testified just talked to him. Didn't
17 come true till I pull up to their house to find
18 police, yellow tape. After that, I was dead. I
19 never felt that kind of pain ever in my life.
20 I've lost a sister, a father, and a brother in
21 that order, and none of that could compare to
22 hearing the son you carried for nine months who
23 kicked, turned inside me was killed. It took me a
24 year-and-a-half to be able to say my son was
25 killed. A part of me was taken and I'll never see

1 him again. It's the worst feeling I've ever, ever
2 had, and this is something I will never wish on my
3 first enemy. Some days I'm sad, I will cry out of
4 nowhere. Driving past the house makes me relive
5 it again and again. I can no longer watch movie
6 with guns in it 'cause my brain puts my son into
7 that situation, and I'm watching him dying,
8 struggling to breathe while you scurry around his
9 house to rob him. It wasn't enough that you took
10 him, but you had to rob him too.

11 I -- I'm sorry. I'm sorry. He was
12 only 23 years old, and now I'll never know what or
13 how his life will be hand out down the road. He
14 had dreams and goals; now that's gone too. We all
15 have to learn from our mistakes no matter who you
16 are or where you come from. God forgive. The
17 decisions you make affect a lot of people. People
18 are dying out here besides -- behind BS nonsense
19 and stupid stuff. And what it is, what is it
20 worth? Nothing. When you pull that trigger you
21 killed my son. You, you killed my son. You, his
22 family, and your family 'cause we all are part of
23 this now. If Donnie was aggressive, then you
24 should have put that gun down and fought him like
25 a fair man. Since you didn't, now you're gonna

1 (indiscernible) here. People think I'm crazy to
2 feel this way, but I do forgive you for only for
3 me 'cause if I keep holding this hate, I'll never
4 be able to grieve like I'm supposed to. I wonder
5 how they have that kind of control over me. I
6 said I forgive you; I'll never forget. 'Cause my
7 children need me and I will be there for them.
8 And as I said before, on my birthday my baby boy
9 was taken from us. That day no longer belongs to
10 me. I'll never celebrate another birthday because
11 it will forever be the day of mourning for my son
12 Dashell Collins.

13 I want to read a post actually was his
14 last post to me on Facebook that day. I didn't
15 get to see it till late that night as I was going
16 through my phone checking messages. And it says,
17 "Happy birthday to my number 1, fought long and
18 hard to get where you are. My love, Tonia Thames.
19 I love you, ma." I'll never get another chance,
20 another post, phone call, nothing. He'll never go
21 in there for food. It's all over; he's gone. And
22 I'll never get to hug him ever again. You stole
23 that from me and his family, his siblings, so I
24 request that the plea that was given. Thank you.

25 THE COURT: I'm calling Mr. Powell. I

1 had him send me his phone number.

2 MR. POWELL: Hello, sir.

3 THE COURT: Mr. Powell, can you hear
4 me?

5 MR. POWELL: Yes, sir, I can hear you.

6 THE COURT: All right.

7 (Pause.)

8 MR. POWELL: Sir? Hello?

9 THE COURT: Yes.

10 MR. POWELL: Can you hear me now, sir,
11 Your Honor?

12 THE COURT: Yes, sir, I can.

13 (Pause.)

14 MR. POWELL: Is it my turn to speak?

15 THE COURT: Yes, sir.

16 MR. POWELL: Okay. I'll address
17 Michael Daugherty.

18 THE COURT: No. I'm gonna ask that
19 you please address any comments to me.

20 MR. POWELL: I address you at this
21 time. Since my son died 4/5/2020, it has put a
22 bad burden on our family health-wise, mentally
23 wise. It has a lot of people hurting behind the
24 death of Dashell Powell. No sleep, no appetite.
25 And the only thing we got left to remember our son

1 is pictures and words of his. He was a
2 outstanding young man which Michael Daugherty took
3 his life because of society, and he wanted to go
4 to rob him, mean killing, because he's had
5 (indiscernible) of killing him before. He even
6 killed anybody. He bragged about it on his
7 Facebook, on his Facebook, and still today as his
8 Facebook activity still exists without him. It's
9 all gang related. And him to sit this time he
10 get, it's still not enough. I think that the
11 ultimate judge will be God, and I will love him to
12 know that you took somebody away from us that
13 didn't deserve to die. The sun set day was -- the
14 sun set October 27th, 1996, and he made it where
15 we can make it -- take my son on the 20-- 2020, of
16 April 6th. I will never be the same again
17 because, also, that was my child. We were trying
18 to fix our relationship to be a better dad and son
19 and all together. We had accomplishments; we had
20 goals. We had things that we wanted to do. Every
21 time you get up in the morning and smell fresh air
22 or even celebrate your birthday, just know that he
23 won't be able to. You may be strong in the
24 community to help fight against murder victims,
25 people who lose their loved ones to senseless

1 violence, and I will keep your name alive too and
2 now I want you to know that I control when you
3 eat, when you sleep now. I have no wishes of ever
4 hearing an apology from that man knowing he
5 exists. And as humble as I try to be, I wish I
6 could trade places with you to be on the other
7 side of these senseless youth. My son did not
8 deserve that. I'm not gonna sit here and give a
9 long speech, but I just want you to know as every
10 day yo u wake up in the morning, know you took
11 somebody's life. You fulfilled your wrap brain
12 that you wanted to do on Facebook when you were
13 bragging about killing a witness you don't care if
14 you go to prison. Now you got that. Now you made
15 that reality true. Now my son's mother have to
16 have the rest of her birthdays knowing her son
17 died on her birthday. His brothers and sisters
18 are still walking around hurting. His nieces and
19 nephews are walking around hurting. The only
20 thing we can do every time we visit his site is
21 put rocks and stuff together and rubies the name
22 of him. But your parents get to see you, which is
23 a terrible way because he wasn't raised like that.
24 You wanted -- you wanted this life; now you got
25 it. And I hope your whole POC family has sense

1 you stolen -- gang or whatever, I hope somebody
2 wakes up and go walk this path. Not only did you
3 ruin our lives, you ruined some of the lives of
4 your co-- your co-peers because you still came out
5 with nothing. You left this house with nothing.
6 It wasn't a mistake. You don't shoot a person
7 three times and that's a mistake. You lived an
8 illusion so you should live an illusion for the
9 next 30 years in a prison cell. I have no
10 remorse. I have no remorse and I will have no
11 forgiveness to you until God calls me home. And
12 that's all I got to say, that you deserve the
13 fullest extent and just know that you got off
14 today. You got off because you'll be 60 years old
15 when you get out. Well, I just hope that as you
16 enter those walls of wherever you go, they come
17 and get you out the gate. That's all I have to
18 say.

19 THE COURT: Thank you, Mr. Powell.
20 All right. Anything further from the State?

21 MS. PIERCE: No, Your Honor.

22 THE COURT: All right, Mr. Griffith,
23 happy to hear from you, sir.

24 MR. GRIFFITH: Your Honor, Mr.
25 Daugherty was 19 years old at that time. He's 21

1 years old now. And he has gone over a very
2 different narrative of what occurred in that place
3 and, of course, they were all there together and
4 they were there to commit a crime. That is to
5 say, both sides were there to commit a crime with
6 all respect to the family of the victim, Your
7 Honor, of course. But, Your Honor, Mr. Daugherty
8 tells me that he had no intention of killing
9 anyone at that time. They walked in there. They
10 were gonna do a deal; and according to
11 Mr. Daugherty, the victim and he did have some
12 words and even a little bit of physical contact,
13 and he says that he felt like it was going to be
14 him or the victim, Your Honor, that we would be
15 totally on the other side of the coin here at this
16 time.

17 Certainly, it was a tragedy, certainly
18 a tragedy. But when we talk about murder, we
19 think of a plan. We think of maliciousness. We
20 think of heartlessness. But there was no
21 intention for a murder to be committed. It was --
22 it was a crime being committed, of course. And
23 Your Honor, as you know the -- and as you told
24 Mr. Daugherty, the weapons charge is -- is a set
25 amount that must be served consecutive to any

1 sentence for the manslaughter, and we would ask
2 the Court to consider that in -- in the
3 manslaughter sentence. Also, to consider, as I
4 gave a narrative which is what my client has
5 expressed to me and I shared with the solicitor,
6 and so as we come to the sentence, Your Honor, we
7 would ask you to keep those things in mind; and of
8 course, that there will be an additional five
9 years with the weapons charge.

10 THE COURT: All right. Thank you, Mr.
11 Griffith.

12 Mr. Daugherty, anything you want to
13 tell me, sir?

14 THE DEFENDANT: Yes, sir. I would --
15 I would like to tell the family if I could have
16 handle things differently, I would, but I was
17 oppressed and I just panicked so I would like to
18 tell them that I accept -- I accept the
19 responsibility for my actions.

20 THE COURT: All right. How much time
21 has he done in jail, Mr. Griffith?

22 MR. GRIFFITH: I'm sorry, Your Honor?

23 THE COURT: How many days has he been
24 in jail?

25 MR. GRIFFITH: He's been in jail

1 almost a year-and-a-half. I don't have the exact
2 date but.

3 MS. PIERCE: He was arrested
4 April 20th, 2020.

5 THE COURT: April 20th?

6 MS. PIERCE: Yes, Your Honor. He's
7 never made bond.

8 MR. GRIFFITH: So coming on two years
9 here in April, Your Honor.

10 THE COURT: I got 631 days. All
11 right. Anything further from the State?

12 MS. PIERCE: No, Your Honor.

13 THE COURT: Anything further from
14 defense counsel?

15 MR. GRIFFITH: No, Your Honor.

16 THE COURT: All right. On indictment
17 2020-GS-14-0352, which is the weapons charge,
18 defendant is committed to the State Department of
19 Corrections for a period of five years. Under
20 that same indictment number on the voluntary
21 manslaughter charge, defendant is hereby committed
22 to the State Department of Corrections for a
23 period of 25 years. They're to run consecutive,
24 given credit for 631 days. Thank you.

25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 15th day of August, 2022.

Frances B. Ray
FRANCES B. RAY, RPR

WITNESSES

Loy Hayes Sr.
Clarendon County Sheriff

DOCKET NO. 2020-GS-14-0352

The State of South Carolina

County of CLARENDON

COURT OF GENERAL SESSIONS

October TERM 2020

THE STATE

vs.

MIKELL JAMON LLOYD

MICHAEL LEON DAUGHERTY

THOMAS ALEXANDER FINCH

ARREST WARRANT NUMBER

2020A1410100171
2020A1410100172
2020A1410100173
2020A1410100174
2020A1410100175
2020A1410100176

Indictment for

Murder

Possession of a Firearm by a Violent Felon

Possession of a Weapon During a Violent Crime (LWOP)

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury

Date: *10-29-2020*

VERDICT

[Signature]

ERNEST A. FINNEY, III, SOLICITOR

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

INDICTMENT FOR

Murder

Possession of a Firearm by a Violent Felon

Possession of a Weapon During a Violent Crime (LWOP)

At a Court of General Sessions, convened on October 29, 2020 the Grand Jurors of CLARENDON County present upon their oath:

COUNT ONE
MURDER

That Mikell Jamon Lloyd, Michael Leon Daugherty, and Thomas Alexander Finch, did in Clarendon County, on or about April 5, 2020, willfully, feloniously, and intentionally kill the victim, Dashell Powell, with malice aforethought, either express or implied, by means of shot by firearm, and the victim did die as a proximate result thereof on or about April 5, 2020 in Clarendon County, to wit: Defendants did, with malice aforethought, cause the death of the victim by carrying out plans that Defendants made to meet the victim at victim's residence located at 2402 Raccoon Road where Defendants did engage in a gun sale transaction with victim that led to victim being shot multiple times by Defendants; probable cause being supported by messages on victim's social media account that were connected to Defendants; Defendants' acts being in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

COUNT TWO
POSSESSION OF A FIREARM BY A VIOLENT FELON

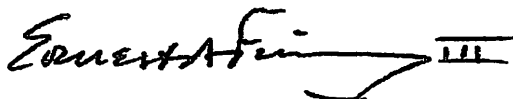
That Mikell Jamon Lloyd did in Clarendon County on or about April 5, 2020 knowingly possess or acquire a pistol after having been convicted of a crime of violence defined in Section 16-23-10, S. C. Code of Laws, 2003, as amended, to wit: Defendant did possess a firearm during a gun sale transaction with the victim while at the victim's residence located at 2402 Raccoon Road, such possession being in violation of Section 16-23-0030(B), S. C. Code of Laws, 1976, as amended.

COUNT THREE
POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That Mikell Jamon Lloyd and Michael Leon Daugherty did in Clarendon County, on or about April 5, 2020, possess a firearm, or visibly display what appeared to be a firearm, during the commission or attempted commission of a violent crime, to wit: Defendants did possess a firearm during the commission of murdering the victim after Defendants met with the victim at the victim's residence located at 2402 Raccoon Road to engage in a gun sale transaction with the victim, such possession by Defendants being in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

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

Solicitor



STATE OF SOUTH CAROLINA)
COUNTY OF Clarendon)
STATE)
VS.)
Michael Leon Daugherty)
AKA:)
Race: Black Sex: M Age: 21)
DOB: [REDACTED] SS#:)
Address: [REDACTED])
City, State, Zip: Hopkins, SC 29061)
DL#: _____ SID#: _____)

INDICTMENT/CASE#: 2020-GS-14-0352
A/W#: 2020A1410100174
Date of Offense: 4/5/2020 - 1/1/1753
S.C. Code § : 16-03-0010
CDR Code #: 0116

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Manslaughter / Voluntary manslaughter Not more than 30 years
in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:
Darla Pierce 77856 SC Bar# Michael Daugherty Defendant Timothy L. Griffith Attorney for Defendant SCB77923 SC Bar#

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

The sentence shall run CONCURRENT or CONSECUTIVE to sentence on: All pleas of 1-10-22.

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
631 days/months
 To include time spent on monitored house arrest prior to trial and sentencing.
 The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

PTUP after _____ months/years

And Other Terms Listed Below:

- Substance Abuse Counseling
- Attend Voc. Rehab. or Job Corp
- Mental Health Counseling
- Sex Offender Registry pursuant to S.C. Code § 23-3-430
- Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
- Other: _____
- Completion of GED
- No Contact with Victim
- May serve W/E beginning : _____
- Public Service Employment 0 _____ days/hours
- Random Drug/Alcohol testing
- Domestic Violence Intervention Program

RESTITUTION: Deferred Def. Waives Hearing Ordered

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

Payment Terms: _____ Set by SCDPPPS

Recipient: _____

| | | |
|--|---------|-----------|
| *Fine: | | \$ |
| Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____ | | \$ |
| §14-1-206 (Assessments 107.5 %) | | \$ |
| §14-1-211(A)(1) (Conv. Surcharge) | \$100 | \$ 100.00 |
| §14-1-211(A)(2) (DUI Surcharge) | \$100 | \$ |
| §56-5-2995 (DUI Assessment) | \$12 | \$ |
| §56-1-286 (DUI Breath Test) | \$25 | \$ |
| §14-1-212 (Law Enforce. Funding) | \$25 | \$ 25.00 |
| §14-1-213 (Drug Court Surcharge) | \$150 | \$ |
| §34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs) | \$41 | \$ |
| §50-21-114(BUI Breath Test Fee) | \$50 | \$ |
| §56-5-2942(J) (Vehicle Assessment) | \$40/ea | \$ |
| 3% to County (if paid in installments) | TBD | \$ 3.75 |
| <input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees. | \$500 | \$ |
| <input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund | TBD | \$ |
| TOTAL | | \$ 128.75 |

Clerk of Court/ Deputy Clerk: B. Roberts Presiding Judge: [Signature]
 Court Reporter: Frances B. Ray Judge Code: 2160
 Sentence Date: 1/10/2022

2 of 2

STATE OF SOUTH CAROLINA)
 COUNTY OF Clarendon)
 STATE)
 VS.)
Michael Leon Daugherty)
 AKA:)
 Race: Black Sex: M Age: 21)
 DOB: [REDACTED] SS#: [REDACTED])
 Address: [REDACTED])
 City, State, Zip: Hopkins, SC 29061)
 DL#: [REDACTED] SID#: [REDACTED])

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2020-GS-14-0352

AW#: 2020A1410100175
 Date of Offense: 4/5/2020 - 1/1/1753
 S.C. Code § : 16-23-0490
 CDR Code #: 0549

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS
 TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death **5 yrs**
 in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
 ATTEST:

[Signature] 77856 [Signature] SCB77923
 Pierce, Darla F SC Bar# Defendant Griffith, Timothy L. SC Bar#
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 5 days/months/years/Time Served Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____ provided that upon the service of _____ days/months/years/Time Served and or payment
 of \$ _____ ; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

The sentence shall run CONCURRENT or CONSECUTIVE to sentence on: All pleas of 1-10-22

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
631 days/months
 To include time spent on monitored house arrest prior to trial and sentencing.
 The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

PTUP after _____ months/years

And Other Terms Listed Below:

- Substance Abuse Counseling
- Completion of GED
- Random Drug/Alcohol testing
- Attend Voc. Rehab. or Job Corp
- No Contact with Victim
- Domestic Violence Intervention Program
- Mental Health Counseling
- May serve W/E beginning : _____

Sex Offender Registry pursuant to S.C. Code § 23-3-430 Public Service Employment 0 _____ days/hours

Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Other: _____

RESTITUTION: Deferred Def. Waives Hearing Ordered

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

Payment Terms: _____ Set by SCDPPPS

Recipient: _____

| | | |
|--|---------|-----------|
| *Fine: | | \$ |
| Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____ | | \$ |
| §14-1-206 (Assessments 107.5 %) | | \$ |
| §14-1-211(A)(1) (Conv. Surcharge) | \$100 | \$ |
| §14-1-211(A)(2) (DUI Surcharge) | \$100 | \$ 100.00 |
| §56-5-2995 (DUI Assessment) | \$12 | \$ |
| §56-1-286 (DUI Breath Test) | \$25 | \$ |
| §14-1-212 (Law Enforce. Funding) | \$25 | \$ 25.00 |
| §14-1-213 (Drug Court Surcharge) | \$150 | \$ |
| §34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs) | \$41 | \$ |
| §50-21-114(BUI Breath Test Fee) | \$50 | \$ |
| §56-5-2942(J) (Vehicle Assessment) | \$40/ea | \$ |
| 3% to County (if paid in installments) | TBD | \$ 3.75 |
| <input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees. | \$500 | \$ |
| <input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund | TBD | \$ |
| TOTAL | | \$ 128.75 |

Clerk of Court/ Deputy Clerk: B. Roberts
 Court Reporter: Frances B. Ray

Presiding Judge: P. [Signature]
 Judge Code: 2160
 Sentence Date: 11/20/2022

FORM 5

STATE OF SOUTH CAROLINA)

CASE # 2020-CP-14-00289

COUNTY OF Clarendon)

IN THE COURT OF COMMON PLEAS

General Sessions Court

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

Michael Daugherty 386928

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Clarendon county detention center
2. Name and location of Court which imposed sentence General Sessions - 3 West Kent Street - Manning SC 29102
3. Name(s) of co-defendant(s) (if any) Mykell Loyd - Thomas Finch
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2020-ES-14-0352
 - (b) 2020-ES-14-0352
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 1-10-22 25/15 Not more than 30 years
 - (b) _____

**CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE**

DATE 6/27/2022

Berish B. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

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

(b) _____

(c) _____

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

- (a) My lawyer told me before I went in court The judge was gone give me 10-12 years but the judge gave me 2 1/2.
- (b) ~~The same as (a)~~ My lawyer only came to see me when it was time to take a plea
- (c) _____

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

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

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

(a) the specific nature thereof:

- i. NO
- ii. NO
- iii. NO
- iv. NO

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

- i. NO
- ii. NO
- iii. NO
- iv. NO

(c) the disposition thereof:

- i. NO
- ii. NO
- iii. NO
- iv. NO

(d) the date of each such disposition:

i. Noii. Noiii. Noiv. No

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

i. Noii. Noiii. Noiv. No

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

No

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

(a) which grounds have been presented:

i. Noii. Noiii. No

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

i. Noii. Noiii. No

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

(a) I've just had got a Form to File My P,CR

(b) I've just had been sentenced

(c) _____

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

(a) your arraignment and plea? _____

(b) your trial, if any? _____

(c) your sentencing? yes

- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Timothy Griffith
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. General Sessions Court
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
time reconsideration
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)
)
County of)

VERIFICATION

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

Michael Daugherty _____

SWORN to and subscribed before me this 21
day of June, 2022.

Dore A. Gruesdal (L.S.)
Notary Public

My Commission Expires: March 3, 2031

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

I, _____, 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.

Michael Daugherty
Applicant

SWORN or affirmed to and subscribed before me this
21st day of June, 2022.

Dore A. Swedal
Notary Public

My Commission Expires: March 3, 2031

| | | |
|----------------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF CLARENDON |) | FOR THE THIRD JUDICIAL CIRCUIT |
| |) | |
| MICHAEL DAUGHERTY, SCDC# 386928, |) | |
| |) | Case No.: 2022-CP-14-00289 |
| Applicant, |) | |
| |) | RETURN AND PARTIAL MOTION |
| v. |) | TO DISMISS THE APPLICATION |
| STATE OF SOUTH CAROLINA, |) | FOR POST-CONVICTION RELIEF |
| |) | (Counsel Already Appointed) |
| Respondent. |) | |
| _____ |) | |

In response to Applicant Michael Daugherty’s post-conviction relief application filed on June 27, 2022 and received by Respondent the State of South Carolina on June 30, 2022, Respondent makes the following return to the application and requests an evidentiary hearing on Applicant’s claims of ineffective assistance of counsel pursuant to the Uniform Post-Conviction Procedures Act (S. C. Code Ann. § 17-27-10 et seq.) and the South Carolina Rules of Civil Procedure. In support of this return, Respondent offers the following:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections (SCDC). On April 5, 2020, Applicant and two co-defendants shot and killed the victim Dashell Powell, during a gun sale transaction that resulted in the defendants firing multiple shots at the victim. Law enforcement sought and obtained an arrest warrant for Applicant, who was taken into custody. Thereafter, during its October 2020 term, the Clarendon County Grand Jury indicted Applicant for murder and possession of a weapon during a crime of violence (2018-GS-14-00352). Applicant was represented by Timothy L. Griffith, Esquire. The case was prosecuted by Assistant Solicitor Darla F. Pierce of the Third Circuit Solicitor’s Office.

On January 10, 2022, Applicant appeared alongside counsel before the Honorable D. Craig Brown, circuit court judge, for a plea proceeding. Pursuant to a plea agreement with the State of

2022 SEP 13 AM 11:29
 CLARENDON COUNTY, SOUTH CAROLINA
 COURT OF COMMON PLEAS

allow Applicant to plead guilty to the lesser-included offense of voluntary manslaughter rather than murder as indicted, Applicant pled guilty to voluntary manslaughter and the weapons charge as indicted. Following a thorough plea colloquy, Judge Brown accepted Applicant's guilty pleas and sentenced Applicant to twenty-five years of years of imprisonment for voluntary manslaughter and a consecutive five years of years of imprisonment for the weapons offense. Applicant did not appeal his plea or sentence.

II. Current Action before the Court

In his application for post-conviction relief, Applicant alleges he is entitled to relief based on the following grounds:

10 (a) "Ineffective Counseling"

11(a): "My lawyer told me before I went in court the judge was gone five me 10-12 years but the judge gave me 25. My lawyer only came to see me when it was time to take a plea."

As requested relief, Applicant states he is seeking "time recon[sideration]."

Attached herewith and incorporated herein are the records of the Clarendon County Clerk of Court regarding the underlying general sessions proceedings, the transcripts from Applicant's plea proceeding, and Applicant's records from the South Carolina Department of Corrections. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. Response to Allegations of Ineffective Assistance of Counsel

In his application, Applicant also raises claims of ineffective assistance of counsel for counsel advising him he would receive a sentence of ten to twelve years of imprisonment and for failing to adequately visit him prior to his plea. However, the record establishes that Applicant entered a knowing, intelligent, and voluntary plea with the advise of competent counsel to which

Applicant affirmed he was satisfied during the plea proceeding.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel’s performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel’s representation fell below an objective standard of “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the

attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” Harrington, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged

conduct, and to evaluate the conduct from counsel's perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed at the time of counsel's conduct." Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." Id. The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." Id.

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," **not** whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth

Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance 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. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 694. Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to deprive the defendant of a fair trial.” Id. at 687 (emphasis added).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel.” Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel’s performance was deficient; and second, evidence that counsel’s deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel’s performance under the first prong of Strickland remains unchanged—the applicant must show counsel’s representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” Hill, 474 U.S. at 56.

The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” *Id.* at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59. This inquiry “focuses on a defendant’s decision making” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting *Strickland*’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” *Lee*, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel ‘will serve the fundamental interest in the finality of guilty pleas.’”). Reviewing “[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies. *Lee*, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should “look to contemporaneous evidence to substantiate a defendant’s expressed preferences. *Id.* In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge

must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” Id. at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” Id. at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

In Applicant’s case, the record fully supports that Applicant entered a knowing, voluntary, and intelligent plea with the advice of competent counsel, who was able to secure an extremely favorable plea agreement that allowed Applicant to plead to the lesser-included offense of voluntary manslaughter rather than murder as indicted. Applicant explicitly told the plea court he understood he could receive a sentence of up to thirty years of imprisonment for voluntary manslaughter and it was being entered without any negotiation or recommendation as to a particular sentence. (GP Tr. p. 4-5). Applicant also informed the plea court that he understood his sentence for the weapons charge must be served consecutively and he still wished to go forward with the plea. (GP Tr. p. 6-7). Applicant also told the court that he was satisfied with counsel’s representation, that they had enough time to discuss the case, that Applicant had understood these conversations, and he wished to proceed forward with counsel. (GP Tr. p. 8). Applicant was then afforded additional time to speak with counsel, and following this break in the proceeding,

Applicant again affirmed he was satisfied with counsel, had enough time to speak with counsel, and had no complaints about counsel. (GP Tr. p. 8-9).

Accordingly, Respondent submits the record conclusively refutes Applicant's allegations. However, allegations regarding counsel's performance may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. See Id. at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

Pursuant to section 17-27-150 of the South Carolina Code, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Further, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to

request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. See Love, 428 S.C. 231, 834 S.E.2d 196.

V. Response to Any and All Other Allegations

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

VI. Request for an Evidentiary Hearing Solely on the Claims Pertaining to Counsel's Performance unrelated to SCDC's Calculation of his Sentence

WHEREFORE, Respondent respectfully requests this Court convene an evidentiary hearing on Applicant's claims of ineffective assistance of counsel for the claims explicitly enumerated in his application. Respondent requests an amendments to the application be made by Applicant's counsel of record well in advance any scheduled hearing.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: s/Megan Harrigan Jameson
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September 6, 2022

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CLARENDON)
)
)
 MICHAEL L. DAUGHERTY, #386928)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent,)
 _____)

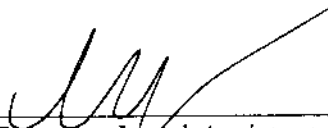
IN THE COURT OF COMMON PLEAS
 2022-CP-14-289

CERTIFICATE OF SERVICE BY MAIL

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

Mr. Michael H. Lifsey, Esquire
Post Office Box 548
Chester, South Carolina 29706

DATED this 6th day of September, 2022.



 Joshua Osborne, Legal Assistant
 For Respondent

Michael H. Lifsey
Attorney at Law
141 Main Street
Post Office Box 548
Chester, South Carolina 29706

Telephone: (803) 899-5040

Email: michael.lifsey@gmail.com

October 17, 2022

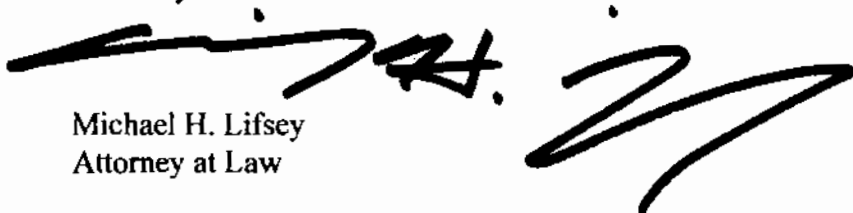
The Honorable Beulah G. Roberts
Clarendon County Clerk of Court
PO Box 136
Manning, SC 29102-0136
ATTN: Common Pleas/PCR

Re: Daugherty v. State
2022-CP-14-00289

Dear Ms. Roberts:

Enclosed for filing please find an Amended Application for Post-Conviction Relief on the above referenced case.

Sincerely,



Michael H. Lifsey
Attorney at Law

cc: Zachary Jones
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Michael Daugherty
Kershaw Correctional Institution

2022 OCT 20 PM 1:48
CLERK OF COURT - CLARENDON COUNTY, SC

| | | |
|--------------------------|---|--------------------------------|
| STATE OF SOUTH CAROLINA |) | COURT OF COMMON PLEAS |
| |) | THIRD JUDICIAL CIRCUIT |
| COUNTY OF CLARENDON |) | Case No.: 2022-14-46-00289 |
| Michael Daugherty, |) | |
| SCDC # 386928, |) | |
| Applicant, |) | AMENDED POST-CONVICTION |
| |) | RELIEF APPLICATION |
| v. |) | |
| |) | |
| State of South Carolina. |) | |
| _____ |) | |

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on June 27, 2022, to add the following allegations:

1. Ineffective assistance of counsel for
 - (a) Applicant’s plea counsel did not meet with Applicant a sufficient number of times prior to his plea, did not fully explain the strengths and weaknesses of the State’s case, and did not explain the elements of the crimes of which he was charged. Had plea counsel given effective representation in this regard, Applicant would not have entered a guilty plea and would have insisted on a jury trial.
 - (b) Applicant’s plea counsel informed Applicant that he would receive a sentence of between 10 and 12 years and not the 25 year sentence for Voluntary Manslaughter and the 5 year consecutive sentence for Possession of a Weapon During the Commission of a Violent Crime that Applicant actually received. Had plea counsel given effective representation in this regard, Applicant would not have entered a guilty plea and would have insisted on a jury trial.
 - (c) Based on plea counsel’s ineffective advice as described in (a) and (b) above, Applicant believed that he had no choice but to answer the Judge’s questions during

the plea colloquy in such a manner as would result in the Judge accepting the plea.

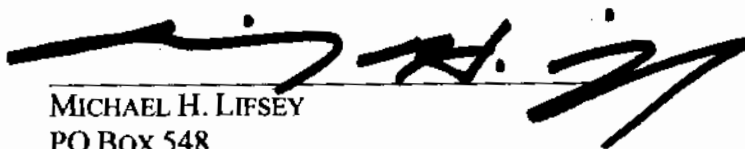
Had plea counsel given effective representation in this regard, Applicant would not have entered a guilty plea and would have insisted on a jury trial.

(d) Plea counsel presented a story to the trial judge in mitigation that was inaccurate and not the account of the incident that Applicant wished trial counsel to present. Had Applicant known plea counsel was going to present this inaccurate account of the incident to the trial judge, he would not have entered a guilty plea and would have insisted on a jury trial.

(e) Plea counsel was ineffective for telling the trial judge that any sentence on the charge of Possession of a Weapon During the Commission of a Violent Crime must be served consecutively despite the fact that S.C. Code Section 16-23-490(B) specifically states that “[t]he court may impose this mandatory five-year sentence to run consecutively or concurrently.”

2. The ineffective assistance of counsel as described above, rendered Applicant’s plea involuntary.
3. Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



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SC BAR No. 015154
ATTORNEY FOR APPLICANT

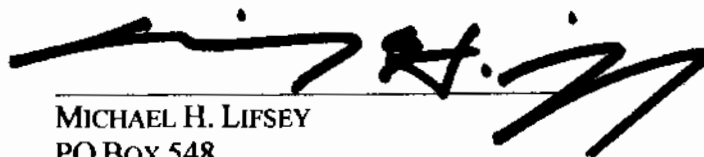
October 17, 2022

CERTIFICATE OF SERVICE

I certify that I have served this document via first class mail on:

Zachary Jones
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

This 17th Day of October, 2022.



MICHAEL H. LIFSEY
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SC BAR NO. 015154
ATTORNEY FOR APPLICANT

October 17, 2022

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

COURT OF COMMON PLEAS

MICHAEL L. DAUGHERTY)
386928)

PETITIONER,)

v.)

TRANSCRIPT OF RECORD
22-CP-14-00289

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

November 3, 2022
Sumter, South Carolina

B E F O R E :

THE HONORABLE EDWARD W. MILLER, JUDGE

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

MICHAEL H. LIFSEY, ESQ.
Attorney for the Petitioner

ZACHARY W. JONES, ESQ.
Attorney for Respondent

FRANCES B. RAY, RPR
Court Reporter

I N D E X

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(There were no exhibits submitted.)

1 MR. JONES: We're here for the case of Michael
2 Daugherty versus The State of South Carolina. My name is
3 Zachary Jones for the State; and Mr. Daugherty is here,
4 along with his counsel, Mike Lifsey. This case number is
5 2022-CP-14-289. The applicant in this case was indicted
6 during the October 2020 term of the Clarendon County grand
7 jury for murder and possession of a weapon during a violent
8 crime, that indictment number being 2018-GS-14-352. On
9 January 2nd, 2022, Mr. Daugherty appeared before the
10 Honorable Craig Brown for a plea proceeding; and pursuant to
11 an agreement with the State's to allow Mr. Daugherty to
12 plead to the lesser included offense of voluntary
13 manslaughter rather than murder as indicted, he pled to
14 voluntary manslaughter and the weapons charge. Following a
15 plea colloquy, Judge Brown accepted his guilty plea and
16 sentenced Mr. Daugherty to 25 years of imprisonment for
17 voluntary manslaughter and a consecutive 5 years of
18 imprisonment for the weapons offense. Mr. Daugherty did not
19 appeal this plea or sentence, and he filed this
20 post-conviction application on June 27th, 2022. Your Honor,
21 how would you like to do this?

22 MR. LIFSEY: Well, I would just -- and let me just
23 say one thing, Judge, and please correct me if I'm in error.

24 THE COURT: All right.

25 MR. LIFSEY: Your Honor, I did file an amended

1 post-conviction relief application in which the State has a
2 copy. There should be a copy in the file. My
3 understanding, Your Honor, is that the State concedes the
4 point I raised in one of my -- of my amended application
5 regarding the issue concerning the possession of a weapon
6 during the commission of a violent crime charge.

7 MR. JONES: I have that application if you're
8 looking for it, Your Honor.

9 THE COURT: I do not have the amended application.

10 MR. JONES: I'll just hand it up. And this is it.

11 THE COURT: Thank you.

12 MR. LIFSEY: I'm not entirely sure we agree on
13 what the remedy should be, but I think the State agrees that
14 there was error in -- basically, Judge, here's the issue.
15 I'll just put this, this part on the record. The judge
16 sentenced my client consecutively. The State argued for a
17 consecutive sentence. The Defense -- the trial -- the plea
18 counsel agreed that the sentence had to be consecutive and
19 it does not have to be consecutive per the statute, so I
20 think what the State concedes is that he is entitled to
21 relief as to that charge and the State thinks he agrees he
22 should be resentenced as to that particular charge. Now I
23 guess our position would be that and combination of other
24 errors we allege, would make him entitled to resentencing on
25 everything; but I do think they at least concede as to the

1 error. That's my understanding.

2 MR. JONES: Your Honor, the transcript of the
3 lower -- of the earlier proceeding reflects at Page 6, the
4 court in discussing the sentence for possession of a weapon
5 during the commission of a violent crime, down at the bottom
6 of the page the Court says, I think by law that charge has
7 to be or that sentence has to be consecutive. On the next
8 page the Court clarifies that he says, in other words, back
9 to back. Then further on at towards the end of the
10 proceeding at Page 23, and I believe this is plea counsel
11 speaking. We have -- yes, this is plea counsel speaking and
12 from at the -- at Line 23 it begins saying, "As you told Mr.
13 Daugherty, the weapons charge is a set amount that must be
14 served consecutive to any sentence for the manslaughter."
15 And later on he says, "And of course, that there will be an
16 additional five years with the weapons charge," and that's
17 at the end of the first paragraph on Page 24.

18 So the statute says that the consecutive -- that
19 the sentence for possession of a weapon during the
20 commission of a violent crime must be additional to the
21 sentence for the underlying violent crime; however, the next
22 section says that it can be either consecutive or
23 concurrent. So the State is not really interested in
24 litigating that that was not an error at that point and --

25 THE COURT: Okay.

1 MR. JONES: -- because he did receive a
2 consecutive sentence on that. Our position is that if Your
3 Honor finds that there was based on that, that was
4 ineffective and the resulting sentence was controlled by an
5 error of law, it would only go as to the possession of a
6 weapon during a violent crime sentence and so the relief, if
7 any, would only be a remand for resentencing on that one
8 charge.

9 THE COURT: I would think that that's entirely
10 reasonable and justified based on what I've seen.

11 MR. LIFSEY: Sure. I don't have any -- I don't
12 have any argument with the error. Obviously you have to
13 hear the testimony and you can make a judgment as to the
14 credibility, but I -- I think -- I don't want to put words
15 ---

16 THE COURT: It's in the record.

17 MR. LIFSEY: It's -- what's in the record is in
18 the record, then the question just becomes is the remedy
19 that or is the remedy an re-sentencing on the entire ---

20 THE COURT: He'd want to go back and risk
21 resentencing on manslaughter?

22 THE DEFENSE: Yes, sir.

23 THE COURT: He'd actually be going back to murder.

24 MR. DAUGHERTY: Yes, sir. My lawyer didn't -- he
25 had me in for this, like, I can -- I could have went to

1 trial for defending myself and he never explain that to me.
2 He just tell me if I --

3 THE COURT: Okay. All right, well, I -- just --

4 MR. LIFSEY: I'll get you on the witness stand.

5 THE COURT: Just so you understand the risk that
6 if you win, you could end up going to prison for -- and they
7 send it back and they prosecute you for murder and they
8 prevail, you can end up serving the rest of your life in
9 prison.

10 MR. DAUGHERTY: Yes, sir.

11 THE COURT: You understand that?

12 MR. DAUGHERTY: Yes, sir.

13 THE COURT: And you want to proceed?

14 MR. DAUGHERTY: Yes, sir.

15 THE COURT: Okay. Careful what you ask for
16 sometimes. Okay.

17 MR. LIFSEY: Thank you, Your Honor.

18 THE COURT: All right.

19 MR. LIFSEY: We're ready to begin whenever the --
20 if the State's ready.

21 MR. JONES: We're ready.

22 MR. LIFSEY: May it please the Court, Your Honor.

23 THE COURT: Yeah.

24 MR. LIFSEY: Your Honor, I call my client to the
25 witness stand.

M. Daugherty - Direct by Mr. Lifsey

1 THE COURT: All right. Come on around and get
2 sworn.

3 THE CLERK: Place your left hand on the Bible,
4 raise your right hand. State your full name.

5 THE WITNESS: Michael Daugherty.

6 WHEREUPON,

7 MICHAEL DAUGHERTY,
8 having been duly sworn by the clerk, testified
9 as follows:

10 THE CLERK: Step around, sir. Be careful going
11 up. State your full name and spell your last name for the
12 record please, sir.

13 THE WITNESS: Michael Daugherty,

14 D-A-U-G-H-E-R-T-Y.

15 MR. LIFSEY: May it please the Court, Your Honor.

16 THE COURT: Yeah.

17 DIRECT EXAMINATION

18 BY MR. LIFSEY:

19 Q All right. Mr. Daugherty, where are you residing
20 right now?

21 A In Kershaw.

22 Q Kershaw Correctional?

23 A Yes, sir.

24 Q Is that a result of the sentence you received when
25 you pled guilty to voluntary manslaughter and possession of

M. Daugherty - Direct by Mr. Lifsey

1 a weapon during a violent crime?

2 A Yes, sir.

3 Q How much time did you get, sir?

4 A Twenty-five plus five years.

5 Q And you say plus five years, you mean that was
6 five years was consecutive as you heard us discuss just a
7 minute ago; is that right?

8 A Yes, sir.

9 Q All right. Who was your lawyer during all that
10 proceeding?

11 A Timothy Griffith.

12 Q All right. Is that Mr. Griffith back there in the
13 courtroom? You see him?

14 A Yes, sir.

15 Q All right. Tell me about your -- his
16 representation. Did y'all talk or was he a paid lawyer or
17 was he appointed? How'd you get him?

18 A It was appointed.

19 Q Okay. How -- how did you -- how many times did
20 you meet with Mr. Griffith?

21 A Probably it was like two times.

22 Q How many times?

23 A Two.

24 Q All right. Between when -- how long was it
25 between when you were arrested and when you ended up

M. Daugherty - Direct by Mr. Lifsey

1 pleading, do you remember that?

2 A Like, he came like around when they issue him to
3 my case. My other lawyer had dropped off my case so he just
4 came and meet up with me, and he, like, he introduced me
5 that he was been appointed to my case. And then that when
6 he left. And then like around the time it was time for me
7 to plead, that when he came and spoke to me again.

8 Q Okay. Did he ever sit down and go over with you
9 in detail your case?

10 A No, there was nothing, no details.

11 Q Okay. Did he -- did he discuss the charge and
12 what all the State had to prove to convict you of those
13 charges?

14 A No, sir.

15 Q Did he explain the difference between voluntary
16 manslaughter and murder?

17 A No, sir.

18 Q How about defenses? Did he explain anything to
19 you about what defenses you might have to the crime?

20 A No, sir.

21 Q What was your version of what -- did you -- did
22 you have a defense?

23 A Yes, sir.

24 Q What was your defense?

25 A My defense was, like, when I flip the gun I was

M. Daugherty - Direct by Mr. Lifsey

1 taking, he took it as like, like a threat, but really it was
2 a warning and he went for his weapon as well and try to run
3 and open fire and that's when I opened fire 'cause I seen it
4 coming.

5 Q So was your contention that you were defending
6 yourself?

7 A Yes, sir, I was defending myself.

8 Q Did your lawyer discuss with you the elements of
9 self-defense?

10 A No, sir.

11 Q Did he discuss what you had to show and the
12 differences between self-defense and manslaughter and
13 murder?

14 A No, sir.

15 Q What did he tell -- well, what did he tell you
16 about what kind of sentence you were going to receive?

17 A When -- when at the plea when I was getting ready
18 to plead at the court he -- he, he put the manslaughter plea
19 in front of me. I signed the manslaughter plea and then
20 came back and drop the gun charge up. I sign the gun
21 charge. And then that's when -- after that when it was time
22 for me to go up he called me to the bathroom. It was like
23 the judge going to give me 10 to 12 years. I said I take
24 that.

25 Q Okay. Stop just a minute. What did you just say

M. Daugherty - Direct by Mr. Lifsey

1 he told you about sentence? Say that real slowly so the
2 court reporter can get it and everything.

3 A He said the judge going to give me 10 or 12 years
4 and I tell him I'd take it.

5 Q So are you saying you pled guilty because you
6 thought you were going to get 10 to 12 years?

7 A Yes, sir.

8 Q Is that what you got?

9 A No, sir.

10 Q Okay. Would you have pled guilty if you knew you
11 weren't going to get -- if you knew you were going to get 30
12 years in prison?

13 A I wasn't going to take it.

14 Q Sorry, what's that?

15 A I wasn't going to take it.

16 Q What would you had done if you had known the judge
17 was going to give you 30 years in prison? Would you have
18 pled or would you have had a jury trial?

19 A I would have insisted on a jury trial.

20 Q Okay. Well, what -- do you remember the judge
21 asking you questions about all that when you were up there
22 pleading guilty?

23 A I remember some of it, but I really wasn't paying
24 attention to it 'cause I thought I was going to get 10 to 12
25 years 'cause that what he tell me so I was just hoping on

M. Daugherty - Direct by Mr. Lifsey

1 that so I answered every question.

2 Q So were you answering those, all those questions
3 honestly or were you relying on what your lawyer told you
4 about what your sentence was going to be?

5 A I was relying on my lawyer.

6 Q All right. When it came time before -- after
7 you'd entered your plea and before you got sentenced, your
8 lawyer told the judge or was supposed to tell the judge your
9 side of the story?

10 A Yeah.

11 Q What -- did what he told -- did -- is what he told
12 the judge an accurate account of your side of the story?

13 A It wasn't accurate.

14 Q Okay. What do you mean? Explain that.

15 A Like, I say I was oppressed and then when as in
16 that, he didn't mention a gun, but it was a gun. If you
17 would look in to my motion the victim said he had a gun, the
18 gun was on.

19 Q So you're telling the Court he didn't tell the
20 judge what you want him to say in mitigation. Is that what
21 you're saying?

22 A Yes, sir.

23 Q If you had known he was going to do that, would
24 you have continued on with your guilty plea or would you
25 have insisted on having a jury trial?

M. Daugherty - Direct by Mr. Lifsey

1 A I would have insisted on going to trial.

2 Q You've already heard us discuss -- I assume you
3 heard us and were listening. We were discussing the weapons
4 charge, okay.

5 A Yes, sir.

6 Q Were you under the impression based on what your
7 lawyer told you the weapons charge had to be consecutive?

8 A I'm thinking like it was true. I only believe in
9 what he tell me. This my first time going like through this
10 court process.

11 Q Okay. If you had known the --

12 MR. LIFSEY: Well, let me -- I withdraw that
13 question, Judge.

14 BY MR. LIFSEY:

15 Q Do you have any other complaints about your lawyer
16 and how he represented you?

17 A Like, like, like if, like, you don't know the laws
18 like you should never harp on my case so I feel like you
19 playing with my life so I just want another fair shot and
20 let the court, a jury, to prove it, like, yeah.

21 Q And do you understand -- because you and I talked
22 about it, that if the judge were to give you a new trial you
23 go back to square one, right?

24 A Yes, sir.

25 Q And you're facing murder which carries up to life

M. Daugherty - Cross by Mr. Jones

1 in prison. You understand that?

2 A Yes, sir.

3 Q And you're still, despite knowing that, you still
4 want a new trial?

5 A Yes, sir.

6 MR. LIFSEY: Okay. I don't have any further
7 questions. Answer any questions the attorney general has
8 for you.

9 MR. JONES: Thank you.

10 C R O S S - E X A M I N A T I O N

11 BY MR. JONES:

12 Q Do you recall the court telling you that the
13 charge of voluntary manslaughter carried up to 30 years?

14 A Yes, sir.

15 Q And do you recall that the judge emphasized that
16 the plea was being made as regards to the sentence of
17 manslaughter being entered into without recommendation or
18 negotiation?

19 A Yes, sir, I remember him saying that.

20 Q All right. You remember him telling you that it's
21 considered a violent and most serious offense?

22 A Yes, sir.

23 Q And then after all that, do you remember stating
24 that you still wish to enter your plea today to that charge?

25 A Yes, sir.

M. Daugherty - Cross by Mr. Jones

1 Q Do you remember your attorney stating in
2 mitigation that it would -- that in his mitigation, his
3 statement of what you told him that he said if -- that you
4 said if -- it was either going to be you or the victim?

5 A Yes, sir.

6 Q And that there was no evidence of a plan or a
7 maliciousness?

8 A No plan or maliciousness.

9 Q And your attorney mentioned that in his argument
10 to the court in mitigation?

11 A Yes, sir, but --

12 Q And that he did -- and that you arrived at the
13 location with no intention of committing the crime of
14 murder?

15 A Yes, sir, he mentioned that.

16 Q I think that's all the questions I have for you.
17 Thank you.

18 MR. LIFSEY: I have nothing on redirect.

19 THE COURT: All right, thank you. You can step
20 down. Thank you.

21 MR. LIFSEY: I don't have any further witnesses,
22 Judge.

23 THE COURT: All right. Anything from the State?

24 MR. JONES: We would call Mr. Griffith.

25 THE COURT: Okay.

T. Griffith - Direct by Mr. Jones

1 THE CLERK: Place your left hand on the Bible,
2 raise your right. State your full name.

3 THE WITNESS: Timothy L. Griffith.

4 WHEREUPON,

5 **TIMOTHY L. GRIFFITH**

6 having been duly sworn by the clerk, testified
7 as follows:

8 THE CLERK: Step around please. Be careful.
9 State your full name and spell your last name for the record
10 please, sir.

11 THE WITNESS: Timothy Lee Griffith,
12 G-R-I-F-F-I-T-H.

13 **D I R E C T E X A M I N A T I O N**

14 BY MR. JONES:

15 Q Thank you, Mr. Griffith. Do you recall how many
16 times you met with Mr. Daugherty?

17 A Well, I have my little piece of paper here. Let's
18 see. Zoom discussion on 3/23, letters, call from the jail
19 at the jail at on 5/17. Then we had a meeting for
20 three-and-a-half hours at the Sheriff's Office on 5/6 where
21 we reviewed the entire case including -- let's see. Then
22 more call, one, two, three, four, five, six, seven -- like
23 seven or eight more calls on the phone.

24 Q And did you go over the charges he was facing?

25 A Oh, yes.

T. Griffith - Direct by Mr. Jones

1 Q Did you go over the elements of those charges?

2 A Yes, I did.

3 Q Did you discuss the difference between voluntary
4 manslaughter and murder?

5 A When we started getting closer to some kind of
6 arrangement for a trial or whether he was going to plea or
7 not and I negotiated with the solicitor and they agreed that
8 he could plead to voluntary manslaughter, I explained to him
9 the difference that it carried up to 30 years; but when I
10 was -- he says that I told him he was only going to get such
11 and such. I said, but a lot of times you may or may not get
12 that, I've seen people get 10 or 12 years, 15 years, but
13 it's always up to the judge. I cannot predict for you what
14 the judge would do, but it carries up to 30 years.

15 Q So you told him that it was up to the judge and
16 that it was not something you could predict?

17 A Absolutely.

18 Q So when you mentioned the 10 or 12, that was an
19 example of one of the low end of the sentencing range that
20 the judge might give him?

21 A Yes, and that I'd seen judges give other people at
22 times, but there was no guarantee.

23 Q You explained that the judge could also give him
24 30 years?

25 A I certainly did.

T. Griffith - Direct by Mr. Jones

1 Q And the -- now his -- could you repeat to your
2 understanding his side of the story of what went on at the
3 -- in terms of the incident?

4 A Well, at first ---

5 Q That you wanted to present to the judge.

6 A Well, at first he told me that, you know, those
7 guys were there just to sell some guns and that this other
8 -- the victim had gotten mad, had pulled out a gun, and he
9 placed himself in a different place than the evidence placed
10 him in the trailer. I believe it was a trailer. And that
11 he ended up falling on the ground or something and shooting
12 the guy, but that story turned out to not be plausible. But
13 I did tell the judge that in -- I believe -- I'd have to
14 look at the transcript again to see but. In the plea I did
15 explain to the judge that he felt like his life was in
16 danger, that he was in danger of being killed.

17 Q So again, why did you not present the original
18 version that he wanted you to present at mitigation?

19 A At the plea?

20 Q At the plea, yes.

21 A Well, the original version by that time had washed
22 off. I mean, it was not the story anymore. He had changed
23 his story.

24 Q All right. I believe that's all I have for you
25 now. If you'd please answer any questions Mr. Lifsey may

T. Griffith - Cross by Mr. Lifsey

1 have.

2 A Sure.

3 C R O S S - E X A M I N A T I O N

4 BY MR. LIFSEY:

5 Q So you described a series of letters and phone
6 calls, but is it true then that you only met with him one
7 time --

8 A No, I met with him --

9 Q -- in person?

10 A Let's see, we did a Zoom call. I mean, I call
11 that meeting with him.

12 Q Got you.

13 A Okay, because we, you know, it was during the
14 midst of Covid, etc., and then I met with him again for
15 three-and-a-half hours at the Sheriff's Office in person.
16 We were there and he and I talked ahead of time and then
17 afterward. But as far as in person, until we started
18 getting closer to the trial when -- that's all I talked to
19 him about. I talked to him on the phone a lot.

20 Q Okay. So you met with him once via Zoom, one time
21 in person, and then the rest were phone calls?

22 A The rest were conversations over the phone, yeah.

23 Q Why didn't you go to the jail more often?

24 A Because it was Covid and they wouldn't let me in.

25 Q The jail wouldn't let you in?

T. Griffith - Cross by Mr. Lifsey

1 A Correct.

2 Q I mean, did you consider any sort of challenge to
3 that jail policy?

4 A No.

5 Q Would you acknowledge that obviously in-person
6 meetings are the best way to communicate with climbs facing
7 serious charges like murder?

8 A Absolutely.

9 Q Are you aware of his educational background, my
10 client?

11 A I think ---

12 Q Our client?

13 A We talked about it, but I don't remember what it
14 was. It was, you know, he wasn't, like, well educated or
15 anything.

16 Q Did -- you mentioned -- the attorney general asked
17 you about explaining the differences between murder and
18 manslaughter, and you answered the attorney general that you
19 explained to him one of them carried 30 to life and one of
20 them carried up to 30. Do you remember answering that
21 question?

22 A To the attorney --

23 Q Yes.

24 A -- general just now? Yes, I did.

25 Q Did you explain in any detail the actual legal

T. Griffith - Cross by Mr. Lifsey

1 differences between murder and voluntary manslaughter to Mr.
2 Daugherty?

3 A I talked to him about that this is right up the --
4 they didn't come up with that until it was --

5 Q "They" being -- I'm sorry, I don't --

6 A The solicitor didn't come up with that offer until
7 way into the process and so I was -- in fact, it was
8 December when she said she would consider manslaughter,
9 December 14th, and then a month later is when he did the
10 plea but so I did talk to him. He -- he had come over for a
11 bond hearing. I talked to him a couple of times as well
12 because I think we had him over there at least once, maybe
13 twice. But -- and I spent that time sitting and talking to
14 him. So we talked about manslaughter carried up to 30
15 years, I mean voluntary manslaughter. I said involuntary
16 manslaughter, I explained to him carried up to five years
17 and if he wanted to go to trial, we may be able to get the
18 judge to allow us to give a instruction for involuntary,
19 voluntary, and then 'cause they wanted him up on murder of
20 course. And I explained to him the difference in the
21 numbers of years each one of those possibly carried, but
22 that you never know what a judge or a jury is going to do.

23 Q Got you. What I'm trying to get at is not just
24 the difference in punishment, the difference in the
25 elements. The fact that murder is killing of another person

T. Griffith - Cross by Mr. Lifsey

1 with malice aforethought versus voluntary manslaughter being
2 upon sufficient legal provocation with -- you know, sudden
3 heat and passion. Did you explain those differences to him?

4 A Okay. What I explained to him based on what I
5 felt was his capacity to understand what I was saying was
6 that murder, if they convict you of murder it's on purpose,
7 you meant to do it, you planned to do it. And manslaughter
8 was -- voluntary manslaughter was, you did it and you meant
9 to do it but it wasn't something that you had a long plan
10 for or something like that. I use those kind of words
11 because his ability to totally understand all the elements
12 wouldn't work out.

13 Q When did you make that explanation to him? At
14 what point in the -- was that -- is that --

15 A I think that was at -- let's see. When I was
16 talking to him, I talked to him on the phone, then was going
17 over it with him when he came over and we sat down and we
18 talked a while before a bond hearing or something. And then
19 she brought him over.

20 Q "She" being the assistant solicitor handling the
21 case?

22 A The assistant solicitor brought him over so I
23 could talk to him while I was there at court and then we
24 talked and then ---

25 Q How long was that meeting?

T. Griffith - Cross by Mr. Lifsey

1 A Pardon?

2 Q How long was that meeting? Do you have notes that
3 indicate how long?

4 A 20 or 30 meeting. 20 or 30 minutes, something
5 like that maybe. Well, basically it just says we discussed
6 the offer that they had gotten.

7 Q How about the elements of self-defense and what
8 was necessary to prove self-defense? When did you discuss
9 that with him?

10 A Way back when he was fist telling me that it was
11 self-defense. When we sat down we went through on the Zoom
12 meeting and -- and when we were at the Sheriff's Office that
13 three-and-a-half hours I had time alone with him quite a
14 while and we talked about what it means as far as
15 self-defense, you have to feel like you're in danger, etc.

16 Q How about -- give me one second. You acknowledge
17 he had a limited capacity is what you said or is that --
18 what did you think about his educational background and his
19 intelligence as far as understanding legal concepts?

20 A I was not impressed with his ability to comprehend
21 although I -- I would not -- he could communicate with me.
22 I didn't think that he was in a place where he didn't
23 understand right and wrong or anything like that but that,
24 you know, the details would probably not be.

25 Q Did you -- did you seek out any kind of records as

T. Griffith - Cross by Mr. Lifsey

1 far as school records or anything like that to determine --

2 A No.

3 Q How about family members of his? Did you reach
4 out to them to discuss his educational situation?

5 A I think I ended up talking to his mother or
6 somebody or -- I don't know if it was his girlfriend or his
7 mother or somebody. Let me see. Oh, we met again at his
8 preliminary hearing. Let's see. He ended up not having a
9 preliminary hearing because he is already indicted. Let's
10 see. Let's see. Well, I didn't -- I don't have it in my
11 notes. I'd always write down when I get a call from
12 somebody's mom. But I remember I talked to one -- somebody
13 that was close to him who they were just telling me that
14 they didn't want him to go to jail, etc., and ---

15 Q Did you discuss with them his background education
16 wise or intelligence wise?

17 A No.

18 Q Did you enlist them to help you explain to him
19 elements of the crime, the differences between murder and
20 voluntary and self-defense?

21 A No, I did not.

22 Q Did he at some point attempt to have you removed
23 from his case?

24 A I don't know. Let me see. I don't think so, but
25 maybe he did. Let's see. I don't see where he did.

T. Griffith - Redirect by Jr. Jones

1 Q You're not aware of him sending letters to the
2 Clerk or the Solicitor or anything like that?

3 A I don't remember if he did. If he did, I don't
4 remember.

5 Q But you never had a hearing on it?

6 A Pardon?

7 Q You never had a hearing on it?

8 A Oh, no, not that I recall. I don't think so.

9 MR. LIFSEY: Beg the Court's indulgence just one
10 moment, Judge.

11 THE WITNESS: I can look through here.

12 MR. LIFSEY: I don't have any further questions,
13 Your Honor.

14 MR. JONES: Just briefly in recross.

15 THE COURT: Okay.

16 **R E D I R E C T E X A M I N A T I O N**

17 BY MR. JONES:

18 Q So you mentioned -- so you did have one in-person
19 meeting with ---

20 A I had multiple in-person meetings but ---

21 Q I'm sorry, one -- a meeting, that three hour
22 meeting --

23 A Yes.

24 Q -- at the Sheriff's Office?

25 A Yes, but I also met with him when they brought him

T. Griffith - Redirect by Jr. Jones

1 over for bond on 10/25. I just noticed I was with him there
2 and another time when we got him on the schedule to be
3 brought over.

4 Q All right. So you did -- you did have -- you did
5 actually have multiple in-person meetings?

6 A Yeah.

7 Q All right. The -- and did you go over him -- with
8 him the possibility if he was to proceed to trial of asking
9 the judge for an instruction on the lesser included offenses
10 of voluntary manslaughter and involuntary manslaughter?

11 A I told him that once that she had mentioned that,
12 I said, well, if you decide to go to trial, we still can ask
13 the judge for instructions on the lesser included.

14 Q And did you instruct him on the elements of the
15 defense of self-defense?

16 A I did. I did talk about that.

17 Q Did you have any concerns about his competency?

18 A I wasn't concerned about his competency as far as
19 whether he could understand right and wrong and whether he
20 could -- he and I could communicate, no.

21 Q All right. I think that's all the questions I
22 have for you. Thank you.

23 MR. LIFSEY: I don't have anymore questions.

24 THE COURT: Okay. Thank you, sir. You may step
25 down.

1 THE WITNESS: Okay.

2 MR. JONES: The State has no further witnesses.

3 THE COURT: Okay. Well, anything that y'all want
4 to say? No? Okay.

5 Well, Mr. Daugherty, I'm going to remand the --
6 grant the relief with respect to the five year consecutive
7 sentence on the weapons charge. I'm going to require that
8 be sent back for -- I grant you the relief you requested on
9 that one. I'm going to deny the relief you request on the
10 other case. I'm going to find that the testimony of your
11 defense counsel is credible in that you have not carried the
12 burden that you have as the moving party to show that you're
13 entitled to the relief. Okay. And your lawyer will explain
14 that to you in a little more detail.

15 All right. With that I'll ask the State -- yes.

16 MR. JONES: Just to clarify -- the remand is, Your
17 Honor, did you agree to remand him for resentencing on the
18 five year weapon charge?

19 THE COURT: I thought that was the first part of
20 what I said?

21 MR. JONES: Yes, Your Honor. I just wanted to
22 clarify that it was for a remand only on that and only for
23 resentencing.

24 THE COURT: I thought I was clear about that but.

25 MR. JONES: Is that ---

1 THE COURT: Just in case I wasn't, you are
2 correct.

3 THE PLAINTIFF: All right. Thank you, Your Honor.

4 THE COURT: Okay. And I'll as you to prepare an
5 order to that effect please.

6 MR. JONES: Yes, Your Honor.

7

8 * * * END OF REQUESTED TRANSCRIPT OF PLEA * * *

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), retired court reporter for the State of South Carolina, Third Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 29th day of August, 2025.

Frances B. Ray

 FRANCES B. RAY, RPR
 Third Judicial Circuit

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON) FOR THE THIRD JUDICIAL CIRCUIT

Michael Daugherty, #386928,) Case No.: 2022-CP-14-00289

Applicant,)

v.)

State of South Carolina,)

Respondent.)

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

**ORDER GRANTING IN PART AND DENYING
IN PART APPLICATION FOR POST-
CONVICTION RELIEF**

DATE 11/25/25

Shanita Brangman
CLERK OF COURT
CLARENDON COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief (“PCR”) filed by Michael Daugherty (“Applicant”) on June 27, 2022, and amended on October 20, 2022. The Court convened an evidentiary hearing into the matter on November 3, 2022, at the Sumter County Courthouse. Applicant was present at the hearing and represented by Michael H. Lifsey, Esquire. Zachary W. Jones, of the South Carolina Attorney General’s Office, represented Respondent.

After reviewing all records and evidence before the Court, this Court finds Applicant has established that he is entitled to limited relief in the form of resentencing on the charge of possession of a weapon during the commission of a violent crime. On all other issues, the Court finds this application must be denied and dismissed with prejudice, as Applicant has not met his requisite burden of proof of establishing he is entitled to post-conviction relief. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is currently confined in the South Carolina Department of Corrections. On April 5, 2020, Applicant and two co-defendants shot and killed the victim, Dashell Powell, during a gun

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Shanita Brangman, CLK - Clarendon SC

sale transaction that resulted in the defendants firing multiple shots at the victim. Law enforcement sought and obtained an arrest warrant for Applicant, who was taken into custody. Thereafter, during its October 2020 term, the Clarendon County Grand Jury indicted Applicant for murder and possession of a weapon during a crime of violence (2018-GS-14-00352). Applicant was represented by Timothy L. Griffith, Esquire (“Counsel”). The case was prosecuted by Assistant Solicitor Darla F. Pierce of the Third Circuit Solicitor’s Office.

On January 10, 2022, Applicant appeared alongside counsel before the Honorable D. Craig Brown, circuit court judge, for a plea proceeding. Pursuant to a plea agreement with the State to allow Applicant to plead guilty to the lesser-included offense of voluntary manslaughter rather than murder as indicted, Applicant pled guilty to voluntary manslaughter and the weapons charge as indicted. Following a thorough plea colloquy, Judge Brown accepted Applicant’s guilty pleas and sentenced Applicant to twenty-five years of imprisonment for voluntary manslaughter and a consecutive five years of imprisonment for the weapons offense. Applicant did not appeal his plea or sentence.

Present Application

In his application for post-conviction relief, Applicant alleges he is entitled to relief based on the following grounds:

10 (a) “Ineffective Counseling”

11(a): “My lawyer told me before I went in court the judge was gone give me 10-12 years but the judge gave me 25. My lawyer only came to see me when it was time to take a plea.”

As requested relief, Applicant states he is seeking “time recon[sideration].”

On October 17, 2022, Applicant amended his application to include the following allegations of ineffective assistance of counsel:

- a. "Applicant's plea counsel did not meet with Applicant a sufficient number of times prior to his plea, did not fully explain the strengths and weaknesses of the State's case, and did not explain the elements of the crimes of which he was charged. Had plea counsel given effective representation in this regard, Applicant would not have entered a guilty plea and would have insisted on a jury trial."
- b. "Applicant's plea counsel informed Applicant that he would receive a sentence of between 10 and 12 years and not the 25 year sentence for Voluntary Manslaughter and the 5 year consecutive sentence for Possession of a Weapon During the Commission of a Violent Crime that Applicant actually received. Had plea counsel given effective representation in this regard, Applicant would not have entered a guilty plea and would have insisted on a jury trial."
- c. "Based on plea counsel's ineffective advice as described in (a) and (b) above, Applicant believed that he had no choice but to answer the Judge's questions during the plea colloquy in such a manner as would result in the Judge accepting the plea. Had plea counsel given effective representation in this regard, Applicant would not have entered a guilty plea and would have insisted on a jury trial."
- d. "Plea counsel presented a story to the trial judge in mitigation that was inaccurate and not the account of the incident that Applicant wished trial counsel to present. Had Applicant known plea counsel was going to present this inaccurate account of the incident to the trial judge, he would not have entered a guilty plea and would have insisted on a jury trial."
- e. "Plea counsel was ineffective for telling the trial judge that any sentence on the charge of Possession of a Weapon During the Commission of a Violent Crime must be served consecutively despite the fact that S.C. Code Section 16-23-490(B) specifically states that "[t]he court may impose this mandatory five-year sentence to run consecutively or concurrently."

At the evidentiary hearing, Applicant proceeded on the allegations raised in his amended application.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant's records from the South Carolina Department of Corrections, the transcript of

Applicant's plea proceeding, the records of the Clarendon County Clerk of Court regarding the subject convictions, and the original and amended applications for post-conviction relief. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

Ineffective Assistance of Counsel

In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of

others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. *See Blackledge v. Allison*, 431

U.S. 63, 73–74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Statements made during a guilty plea should be considered conclusive, unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements. *Dalton v. State*, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

Allegation a: Failure to adequately meet and discuss case

Applicant argues Counsel only met with him twice prior to the entry of Applicant’s guilty plea. Applicant further claims Counsel failed to adequately consult with him about the facts and law involved in his case. But for these failures, Applicant claims, he would not have pled guilty but would have insisted on a jury trial. The Court finds this allegation to be without merit.

At the evidentiary hearing, Applicant testified that Counsel only held two in-person meetings with him and totally failed to discuss the details of his case, the elements of the charges he was facing, the difference between murder and voluntary manslaughter, or any potential defenses.

Counsel testified that he had at least two in-person meetings with Applicant: one at the Sheriff’s Office, which lasted for three and a half hours, during which they went over the entire case together; and then one or two meetings at the courthouse when Applicant was present for a bond hearing. Counsel explained that his ability to schedule in-person meetings with his clients was restricted by the jail’s visitation policy during the COVID pandemic. However, Counsel testified that he also met with Applicant virtually over Zoom, corresponded with Applicant through letters, and spoke with Applicant over the phone on seven or eight occasions. Counsel testified

that he fully discussed the charges Applicant was facing, their elements, the difference between murder and manslaughter, the sentencing range he faced, the possibility of requesting voluntary or involuntary manslaughter as lesser-included offenses at trial, and the elements of self-defense. Counsel further testified that he discussed Applicant's version of events and evaluated whether it could establish a defense of self-defense. Counsel supplied specific dates and referenced his contemporaneous notes throughout his testimony.

The transcript of Applicant's guilty plea proceeding reflects that Applicant, under oath, told the plea court that he was satisfied with Counsel's representation, that he had talked to Counsel enough, and that he understood his talks with Counsel. (Tr. p.8, lines 6–15). Applicant then requested more time to talk with Counsel, and the proceeding was paused while Applicant and Counsel talked to each other. (Tr. p.8, lines 16–25). Afterward, Applicant again told the plea court that he had enough time to speak to Counsel, that he did not need any more time to talk with him, and that he had no complaints about Counsel. (Tr. p.9, lines 1–13).

The Court finds Counsel's testimony credible, and Applicant's contrary testimony not credible, on this point. Applicant's self-serving testimony at the evidentiary hearing is inconsistent with his sworn testimony at the guilty plea proceeding. Counsel's testimony, on the other hand, was detailed and consistent with Applicant's sworn statements to the plea court.

Our appellate courts have repeatedly held that "the brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." *Collins v. State*, 422 S.C. 250, 258, 810 S.E.2d 871, 875 (2018) (holding counsel's performance was not deficient, even though he represented his client for only six weeks and met with him only twice prior to trial); *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012) (holding counsel was not deficient, despite only meeting with applicant twice prior to his trial); *see also Harris v. State*, 377

S.C. 66, 74–75, 659 S.E.2d 140, 144–45 (2008) (holding PCR court’s finding that counsel’s meetings with applicant were “limited in number and duration” did not justify grant of post-conviction relief), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

The Court finds Applicant has failed to prove Counsel was deficient for failing to adequately consult with him prior to the plea. Both the plea transcript and Counsel’s credible testimony at the evidentiary hearing establish that Counsel was able to discuss the case thoroughly with Applicant, through a combination of in-person meetings, virtual conferences, letters and phone calls. Counsel testified that he went over the entire case with Applicant, including the facts and all relevant law. The Court finds Applicant has failed to rebut the strong presumption that Counsel rendered constitutionally adequate assistance. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In addition, to prove prejudice from counsel’s allegedly insufficient consultation, the applicant must show a reasonable probability that additional time spent in preparation would have changed the outcome of his case. *Collins v. State*, 422 S.C. at 259–60, 810 S.E.2d at 876 (citing *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998); *Skeen v. State*, 325 S.C. 210, 214–15, 481 S.E.2d 129, 132 (1997)). The Court finds Applicant has not made such a showing. Therefore, Applicant has not met his burden of proving either deficiency or prejudice as to this allegation. Accordingly, the Court finds this allegation must be denied and dismissed with prejudice.

Allegation b: Improper promise of 10–12 year sentence

Applicant argues Counsel was ineffective for telling him he would receive a 10–12 year sentence, instead of up to thirty years on voluntary manslaughter and five years on the possession of a weapon charge. The Court finds this allegation to be without merit.

During the guilty plea colloquy, the plea court clearly informed Applicant that he was entering a plea to voluntary manslaughter and possession of a weapon during the commission of a violent crime, with no negotiations or recommendations as to sentencing; the plea court told Applicant that he was facing up to thirty years for voluntary manslaughter and five years, consecutive, for the weapon charge. (Tr. p.4, line 15–p.5, line 1; p.6, line 14–p.7, line 3). Applicant consistently, and under oath, responded that he understood the plea court’s statements. In addition, at the evidentiary hearing, Counsel denied ever telling Applicant that he would receive only 10–12 years. Counsel testified he informed Applicant that the sentence would be up to the judge, that Applicant was facing up to thirty years on manslaughter and five years on the weapon charge, and that he could not predict what the judge would do and there were no guarantees. Counsel explained he simply mentioned 10–12 years as an example of lower sentences that he had seen judges impose for voluntary manslaughter in the past, as part of his explanation that the judge could choose to sentence Applicant to less than the maximum.

The Court finds Counsel’s testimony credible, and Applicant’s contrary testimony not credible, as to this issue. Applicant’s statements at the guilty plea colloquy refute his current claim that he believed he was only facing 10–12 years for pleading guilty. The Court finds Applicant has failed to meet his burden of proving Counsel improperly promised him a 10–12 year sentence. Accordingly, this allegation is denied and dismissed with prejudice.

Allegation c: Applicant falsely answered plea court’s questions

Applicant claims that, due to Counsel’s allegedly ineffective assistance as to Allegations (a) and (b), he felt he had no choice but to answer the plea court’s questions in a way that would result in the judge accepting his plea. At the evidentiary hearing, Applicant testified that he “really wasn’t paying attention” during the judge’s plea colloquy and was not answering the judge’s

questions honestly. The Court finds this allegation meritless. As already explained, the Court finds Applicant has failed to prove that Counsel was ineffective as to Allegations (a) and (b); therefore, the premise of this allegation has already been rejected. Furthermore, even if Counsel had misadvised Applicant about the charges he was facing and the sentence he could receive, that alone would not justify Applicant in giving dishonest answers—under oath—in his response to the plea court’s questions. *See Wolfe v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 370–71 (1997) (holding counsel’s alleged misadvice concerning sentencing did not invite applicant to answer the plea judge’s questions untruthfully or to believe they meant nothing). The Court finds Applicant has failed to show “valid reasons why he should be allowed to depart from the truth of his statements” during the plea proceeding. *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874. Accordingly, this allegation is denied and dismissed with prejudice.

Allegation d: Failure to present accurate mitigation account

Applicant alleges Counsel did not accurately express Applicant’s version of the facts during his mitigation presentation. The Court finds this allegation meritless.

At the evidentiary hearing, Applicant did not deny the State’s accusation that he went to the victim’s residence to trade a gun for marijuana and that he shot the victim when the deal fell through. The only additional detail Applicant provided at the evidentiary hearing was that he tried to “flip the gun” as a “warning,” but the victim interpreted the act as a “threat” and responded by reaching for his own weapon, whereupon Applicant shot him. Applicant argues this sequence of events demonstrates that he was forced to fire in self-defense.

The Court finds, on the contrary, that Applicant’s version of events would only serve to *undermine* Applicant’s already flimsy case for self-defense. To establish self-defense, “the defendant must be without fault in bringing on the difficulty.” *State v. Davis*, 282 S.C. 45, 46, 317

S.E.2d 452, 453 (1984). Applicant's willing participation in a black-market exchange of a firearm for marijuana and cash is already enough to defeat this element of self-defense. *See State v. Williams*, 427 S.C. 246, 830 S.E.2d 904 (2019) (holding that a person who brings an illegal weapon to a drug transaction is not without fault in bringing on the difficulty). Applicant's testimony, admitting that he began brandishing the gun as a "warning" to the victim, further tends to prove that his own conduct precipitated the ensuing violence. Applicant's impression that these additional details were in any way "mitigating" reflects only his own warped understanding of self-defense, not any deficiency in Counsel's mitigation presentation.

The guilty plea transcript reflects that Counsel presented a version of Applicant's story that, wisely, omitted any mention of Applicant's brandishing the firearm. Instead, Counsel discussed Applicant's youth, the lack of any evidence that Applicant had a preexisting intent to harm the victim, and Applicant's belief that "it was going to be him or the victim." (Tr. p.22, line 24–p.23, line 21). The Court finds Applicant has failed to prove either deficiency or prejudice as to this allegation. Therefore, this allegation is denied and dismissed with prejudice.

Allegation e: Improper concession of consecutive sentence

Finally, Applicant argues Counsel was ineffective for improperly advising the plea court that Applicant's five-year sentence for the firearm charge must be served consecutively to his sentence for the manslaughter charge.

The guilty plea transcript supports Applicant's ineffective assistance claim on this issue. During the plea colloquy, the plea court appeared to believe Applicant's sentence for the firearm charge was required by law to be run consecutive to his sentence for the manslaughter charge. (Tr. p.6, lines 22–24). Far from correcting this error, Counsel affirmed the plea court's mistaken

belief, telling the plea court that the five-year firearm sentence “is a set amount that must be served consecutive to any sentence for the manslaughter.” (Tr. p.23, line 24–p.24, line 1).

This was an error of law. Applicant correctly points out that the relevant statute, S.C. Code Ann. § 16-23-490(B), expressly provides that the five-year sentence for possession of a firearm during the commission of a violent crime may be served “consecutively *or* concurrently” to the sentence for the principal crime. At the evidentiary hearing, the State conceded that Counsel rendered ineffective assistance on this point. Accordingly, the Court finds Applicant has met his burden of proof on this claim.

However, the parties disagree as to the proper scope of the remedy this Court should impose. Applicant argues Counsel’s error rendered his entire guilty plea involuntary and unintelligent, such that the only appropriate remedy would be to vacate both of Applicant’s convictions and sentences and remand for a new trial. The State, on the other hand, argued the error affected only the plea court’s calculation of Applicant’s sentence on the firearm charge; it would not have affected the plea court’s sentence on the manslaughter charge, nor could it have affected the voluntary and intelligent nature of Applicant’s plea. Therefore, the State argues the proper remedy should be limited to a remand for resentencing on the firearm charge alone.

The Court agrees with the State’s position. There is a “reasonable probability” Counsel’s erroneous concession that the five-year sentence for the firearm charge had to be served consecutively resulted in the plea court sentencing Applicant to consecutive, rather than concurrent, prison terms. *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. Applicant is entitled to have that portion of his sentence reconsidered, this time by a court properly exercising the statutory discretion to elect between concurrent and consecutive sentences.

However, the Court finds Applicant has failed to show a “reasonable probability” that, but for Counsel’s error, Applicant “would not have pleaded guilty and would have insisted on going to trial.” *Hill*, 474 U.S. at 59. Applicant presented no evidence tending to show that his decision to enter the guilty plea, rather than proceed to trial, was in any way induced by Counsel’s mistake on this point. It strains credulity to suggest that Applicant would have *rejected* the plea, had Counsel correctly explained that his resulting sentences *could* run concurrently, but chose to *accept* the plea where Counsel erroneously stated that his sentences *must* run consecutively. Accordingly, while the Court finds Counsel’s error likely contributed to Applicant’s sentence on the firearm charge, it is unlikely to have affected the validity of the plea itself. Therefore, this Court agrees with the State that the proper remedy is merely to remand Applicant’s sentence on the firearm charge for reconsideration pursuant to a correct understanding of the statute.

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant is entitled to a remand for resentencing on the charge of possession of a weapon during the commission of a violent crime. As to all other claims raised or relief sought, the Court finds Applicant has not met his burden of proving he is entitled to post-conviction relief. Therefore, the Court finds all other allegations presented in this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), 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 Applicant wishes to seek appellate

