



Office of the Clerk of Court

Paul B. Wickensimer
Clerk of Court for Greenville County
Greenville, South Carolina

www.greenvillecounty.org

(1)

RECEIVED

AUG 14 2026

S.C. SUPREME COURT

24 JAN 23 PM 1:58
Brice Garrett CDC GUL SC

JANUARY 23, 2024

KEVIN LAMONT LEE 285227
LIVESAY CORRECTIONAL INSTITUTE
P O BOX 580
UNA SC 29378

MR. LEE,

ENCLOSED YOU WILL FIND A COPY OF YOUR POST CONVICTION
RELIEF APPLICATION. YOUR CIVIL CASE NUMBER IS
2024CP2300478.

A COPY OF YOUR PCR HAS BEEN FORWARDED TO THE
ATTORNEY GENERAL'S OFFICE.

ONCE IT IS DETERMINED THAT A HEARING SHALL BE
SCHEDULED, YOUR PROCESS FOR ATTORNEY ASSIGNMENT WILL
BEGIN. THIS MAY TAKE SEVERAL MONTHS.

WE ONLY FILE THE PCR APPLICATIONS. WE DO NOT SET COURT
DATES NOR ARE WE ABLE TO ANSWER QUESTIONS CONCERNING
YOUR CASE.

THANK YOU
CLERK OF COURT'S OFFICE
CIVIL RECORDS

FORM 5

STATE OF SOUTH CAROLINA)

County of Greenville)

Kevin Lamont Lee #285227)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2024-CP-23-00478

APPLICATION FOR

POST-CONVICTION RELIEF

24 JAN 23 PM 12:58
Brice Garrett CDC BUL SC

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 Allendale C.I. F3/Hampton A-9; 1057 Revolutionary
Trail Jail, SC 29527
2. Name and location of Court which imposed sentence Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 1999-CR-6473
 - (b) Murder

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) June 25, 2003; 30 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty YES
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
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. N/A
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I was not told by plea counsel that I could appeal
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Plea Counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) (PLEASE SEE Attachment Sheet)
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? YES
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? YES
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. P.C.B. Application (2003-CP-23-1381)
- ii. Writ of Certiorari
- iii. Writ of Habeas Corpus (2:07-0222-HMH-RSC)
- iv. P.C.B. Application (2015-CP-23-0990)
- (b) the name and location of the Court in which each was filed:
- i. Court of common Pleas Greenville County
- ii. South Carolina Supreme Court
- iii. United States District Court for the District of South Carolina
- iv. Court of common Pleas Greenville County

Attachment 11(A) Ineffective Assistance of Plea Counsel

- (1) Plea Counsel was ineffective for giving Petitioner erroneous sentencing advice and Plea Counsel was ineffective for failing to ensure that the State adhered to the original negotiated plea agreement of 30 years, which Petitioner would be required to serve 85% of the sentence imposed. This violated Petitioner's 6th Amendment right of effective assistance of counsel and 14th Amendment rights of due process and equal protection of the laws of the U.S. Constitution; and violated Petitioner's S.C. Const. Art 1, 3 rights of due process and equal protection of the laws

(c) the disposition thereof:

- i. P.C.R. Application denied and dismissed
- ii. Writ of Certiorari denied
- iii. Writ of Habeas Corpus denied
- iv. P.C.R. Application denied and dismissed

(d) the date of each such disposition:

- i. February 16, 2004
- ii. October 5, 2005
- iii. October 11, 2007
- iv. _____

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

- i. 2003-CP-23-4381
- ii. _____
- iii. 2:07-0224MMH-RSC
- iv. 2015-CP-23-0490

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. N/A
- ii. N/A
- iii. N/A

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

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

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) PETITIONER RAISES THIS CLAIM PURSUANT TO S.C. CODE ANN. 17-27-45(C), DISCOVERY RULE
(b) _____
(c) _____

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

- (a) your arraignment and plea? YES
(b) your trial, if any? N/A
(c) your sentencing? YES
(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
YES, P.C.R.; WAIT OF CERTIORARI; P.C.R. APPLICATION

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. STEVEN J. HENRY & CAROLINA HALLBACK
JOHN I. MAULDIN, SCOTT ROBINSON
ii. RODNEY W. BICHEY, P.C.R.
iii. JOSEPH L. SAWITZ, III

(b) the proceedings at which each such attorney represented you:

- i. (PLEA HEARING & SENTENCING) (PLEA OFFERS)
ii. (P.C.R. HEARING)
iii. (WAIT OF CERTIORARI)

19. State clearly the relief you seek in filing this application:

Petitioner's sentence should be changed to the 85% 30 years negotiated
plea offer he was promised and plead to; to which Petitioner
should only have to serve 25 years and 6 months of his sentence

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

No

*I, Petitioner, would respectfully RESERVE the right to amend application

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Greenville)

I, Kevin Lamont Lee, 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.

Kevin Lee

SWORN to and subscribed before me this 15
day of December, 2023

Andrea Aileen Webster Horton

Andrea Aileen Webster Horton (L.S.)
Notary Public

My Commission Expires: 02/07/2024

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

I, Kevin Lamont Lee, 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.

Kevin Lee

Applicant

SWORN or affirmed to and subscribed before me this

15 day of December, 2023.

Audrey Aileen Webster Horton
Audrey Aileen Webster Horton
Notary Public

My Commission Expires: 02/01/2024

THE STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
POST CONVICTION RELEASE IN GREENVILLE COUNTY
Case No. 99-GS-6473

KEVIN LAMOUNT LEE

PETITIONER

V.

THE STATE

RESPONDENT

KEVIN LAMOUT LEE P.C.R. BRIEF

TABLE OF CONTENT

Table of Authorities	page 3-4
Statement of Issue on P.C.R.	page 5
Statement of the Case	page 6
Standard of Review Law Analysis	page 7-8
Relevant Facts	page 9
Argument	page 10-11
Conclusion	page 12

TABLE OF AUTHORITIES

Cases

<i>Alexander v. State</i> , 402 S.E. 2d 484, 485 (1991)	Page 7
<i>Alston v. State</i> , 38 Md. App. 611, 379 A. 2d 754, 757 (App. 1978)	Page 11
<i>Boykin v. Alabama</i> , 395 U.S. 238 (1969)	Page 7
<i>Brady v. United States</i> , 397 U.S. 742, 755 (1970)	Page 11
<i>Davie v. State</i> , 675 S.E. 2D 416, 419 (2009)	Page 7
<i>Dean v. State</i> , 2015 WL 1481686 a + 2	Page 11
<i>Dingle v. Stevenson</i> , 2014 WL 8382931 a + 4	Page 8
<i>Hilly v. Lockhart</i> , 474 U.S. 52, 57 (1985)	Page 7
<i>Holden v. State</i> , 713 S.E. 2d 611, 615 (2011)	Page 7
<i>Reed v. Becka</i> , 511 S.E. 2d 396 (1999)	Page 8
<i>S'antobello v. New York</i> , 404 U.S. 257 (1971)	Page 8
<i>Simpson v. State</i> , 455 S.E. 2d 175 (1995)	Page 7
<i>Smith v. United States</i> , 143 S. CT. 1594, 1601, (2023)	Page 8
<i>Speaks v. State</i> , 660 S.E. 2d 512, 514 (2008)	Page 7
<i>Sprouse v. State</i> , 585 S.E. 2d 278, 281, (2003)	Page 11
<i>State ex rel. Morris v. Mohn</i> , 267 S.E. 2d 443, 445, (1980)	Page 11
<i>State v. Hazel</i> , 271 S.E. 2d 602 (1980)	Page 7
<i>State v. Rhinehart</i> , 430 S.E. 2d 536 (1993)	Page 11
<i>State v. Thompson</i> , 292 S.E. 2d 581 (1982)	Page 11
<i>Strickland v. Washington</i> , 446 U.S. 668 (1984)	Page 7
<i>Taylor v. State</i> , 745 S.E. 2d 97, 101, (2013)	Page 7
<i>Thrift v. State</i> , 440 S.E. 2d 341 (1994)	Page 11
<i>Wiggins v. Smith</i> , 539 U.S. 510, 521 (2003)	Page 7

TABLE OF AUTHORITIES

Cases

Alexander v. State, 402 S.E.2d 484,485 (1991)	p.7
Alston v. State, 38 Md. App. 611,379 A. 2d 754,757 (App,1978)	p.11
Boykin v. Alabama, 395 U.S. 238 (1969)	p.7
Brady v. United States, 397 742,755 (1970)	p.11
Davie v. State, 675 S.E. 2d 416,419 (2009)	p.7
Dean v. State, 2015 WL 1481686 at 2	p.11
Dingle v. Stevenson, 2014 WL 8382931 at 4	p.8
Hill v. Lockhart, 474 U.S. 52,57 (1985)	p.7
Holden v. State, 713 S.E. 2d 611,615 (2011)	p.7
Reed v. Becka, 511 S.E. 2d 396 (1999)	p.8
S'antobello v. New York, 404 U.S. 257 (1971)	p.8
Simpson v. State, 455 S.E. 2d 175 (1995)	p.7
Smith v. State, 143 S. ct. 1594,1601 (2023)	p.8
Speaks v. State, 660 S.E. 2d 512,514 (2008)	p.7
Sprouse v. State, 585 S.E. 2d 278,281 (2003)	p.11
State ex rel. Morris v. Mohn, 267 S.E. 2d 443,445 (1980)	p.11
State v. Hazel, 271 S.E. 2d 602 (1980)	p.7
State v. Rhinehart, S.E.2d 536 (1993)	p.11
State v. Thompson, 292 S.E. 2d 581 (1982)	p.11
Strickland v. Washington, 466 U.S. 668 (1984)	p.7
Taylor v. State, 745 S.E. 2d 97,101 (2013)	p.7
Thrift v. State, 440 S.E. 2d 341 (1994)	p.11
Wiggins v. Smith, 539 U.S. 510,521 (2023)	p.7

Statues

U.S. Constitution Amendment VI

p.7

S.C. Code Ann.17-27-45 ©

p.10

STATEMENT OF ISSUE ON P.C.R.

Plea Council was ineffective, for given, Petitioner, erroneous sentencing advice. And plea counsel was ineffective for failing to ensure that the state adhered to the original negotiated plea agreement of 30 years. Which Petitioner would be required to serve 85% of the sentence imposed. This violated Petitioner 6th Amendment right of effective assistance of counsel and 14th Amendment right of due process and equal protection of the laws of the United States Constitution and violate Petitioner's South Carolina Constitution, Article 1,3 Rights of due process and equal protection of the laws.

Statement of the case.

The petitioner is confined in the South Carolina Department of Correction pursuant to orders of commitment of the Clerk of Court for Greenville County. The Petitioner was indicted at the October 1999 term of the Greenville County Grand Jury for murder, (1999 GS-23-6473). He was represented by Stephen J. Henry, Esquire. On June 25th, 2003, the petitioner pled guilty to a negotiated plea and was sentenced by the Honorable Judge John W. Kittredge to confinement for a period of 30 years. The Petitioner did not appeal.

STANDARD OF REVIEW

LAW ANALYSIS

A defendant is guaranteed the right to effective assistance of counsel under the 6th Amendment to the United States Constitution. U.S. Constitution, Amendment VI; Strickland v. Washington, 466 U.S. 668. (1984)" [The South Carolina Supreme Court] has held that a defendant has the right to effective assistance of counsel during the plea-bargaining process." Davie v. State, 675 S.E. 2d 416,419 (2009) clearly a defendant entering a guilty plea is entitled to the effective assistance of counsel. Hill v. Lockhart, 474 U.S. 52, 57 (1985).

In order to establish a claim for ineffective assistance of counsel the petitioner must show that: (1) counsel failed to render reasonably effective assistance under prevailing professional norms and (2) counsel's deficient performance prejudiced the Petitioner's case... Speaks v. State 660 S.E. 2d 512, 514 (2008) Wiggins v. Smith, 539 U.S. 510, 521 (2003). The two-part test also "applies to challenges to guilty pleas based on ineffective assistance of counsel. Hill v. Lockhart, 474 U.S. 52 (1985)." In the context of a guilty plea the deficiency prong inquiry turns on whether the plea was voluntarily, knowingly, and intelligently entered. Taylor v. state, 745 S.E. 2d 97, 101 (2013). Simply put, the first inquiry is whether trial counsel's advice was deficient. "Alexander v. State 402 S.E. 2d 484 ,485 (1991). "The second, or 'prejudice' requirement... focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. "Hill v. Lockhart, 474 U.S. 52, 59 (1985).

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. "Holden v. State, 713 S.E. 2d 611, 615 (2011). A guilty plea may not be accepted unless it is voluntarily and understandingly made. Boykin v. Alabama, 395 U.S. 238 (1969). In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of his plea and of the charge against him. Simpson v. State, 455 S.E. 2d 175 (1995). In State v. Hazel, 271 S.E. 2d 602 (1980), [the] court held that defendant's plea was not knowing because it was entered without an understanding of the mandatory punishment for the offense to which he was pleading. If a petitioner successfully proves his or her guilty plea was based on inaccurate sentencing advice from counsel, the deficiency prong has been satisfied. Alexander v. State 402 S.E. 2d 484,485 (1991) (finding counsel's sentencing advice was "obviously defective" because it was contrary to the sentencing

ranges possible under the indictments and the law) When a defendant enters a guilty plea in reliance on a plea bargain that is accepted by the court, due process requires the plea bargain be honored. Santobello v. New York, 404 U.S. 257 (1971). Reed v Becka, 511 S.E. 2d 396 (CT. App 1999). If it is not, either of two remedies is available: the court can (1) require specific performance of the plea agreement or alternatively, (2) allow the defendant to withdraw his guilty plea altogether and start over Dingle v. Stevenson, 2014 WL 8382931 at 4 "remedies for constitutional violations... should be tailored to the injury suffered from the constitutional violation and should not unnecessarily infringe on competing interests." Smith v. United States, 143 S CT. 1594, 1601 (2023).

RELVANT FACTS

Petitioner's first attorneys John I. Mauldin and Carolina Horlback presented Petitioner with a negotiated plea from the Solicitor which was for murder 30 years upon a service of 85%. Petitioner refused the plea and fired these attorneys. Petitioner then retained Scott Robinson as an attorney. Attorney Scott Robinson spoke with solicitor Thomas Quinn about getting a better plea for petitioner or petitioner, was going to trial while waiting for a better plea offer or trial date. The solicitor would only continue to offer the original negotiated plea murder 30 years upon a service of 85% to which petitioner declined to take again.

In 2001, Thomas Quinn spoke with Scott Robinson about the case and informed Scott Robinson that Bob Ariel had took over petitioner's case with the intention of seeking the death penalty; Petitioner was later served a notice to seek the death penalty. Due to Scott Robinson not being qualified to try a death penalty case, Petitioner was given Stephen John Henry and Carolina Horlback of the Public Defender's Office to represent as attorneys for Petitioner. Petitioner's attorney once again got the Solicitor Office to reinstate the originally negotiated plea of murder 30 years upon a service of 85%. On June 25th, 2003, the petitioner pleaded guilty to the negotiated 85% 30 years for murder and was sentenced by the Honorable John W. Kittredge to confinement for a period of 30 years. The petitioner didn't appeal.

Throughout petitioner's incarceration he was informed by classification that he was receiving good time, work and education credits being applied towards his sentence, thus making his sentence an 85% sentence. In July of 2023, the petitioner was informed that his sentence was not an 85% sentence and that he was serving a day for day 100% sentence.

Thus, petitioner's 6th Amendment right of effective assistance of counsel and 14th Amendment rights of due process and equal protection of the laws of the U.S. Constitution were violated; and petitioner's S.C. Constitution Art. 1,3 rights of due process and equal protection of the laws rights were violated because plea counsel gave petitioner erroneous sentencing advice, and plea counsel was ineffective for failing to ensure that the state adhered to the original plea agreement of a service of 85% for 30 years; as told by prior counsel and by plea counsel, that petitioner would only have to serve 25 years and six months.

ARGUMENT

ISSUE: 1

Plea counsel was ineffective for given Petitioner, erroneous sentencing advice and plea counsel was ineffective for failing to ensure that the state adhered to the original negotiated plea agreement of 30 years, which petitioner would be required to serve 85% of the sentence imposed. This violated petitioner's 6th Amended Amendment Right of effective assistance of counsel and 14th Amendment rights of due Process and Equal Protection of the laws of the U.S. Constitution and violated petitioner's S.C. Constitutional article 1,3 rights of due process and equal protection of the laws right.

The South Carolina Uniform Post- Conviction Procedure Act (pcr act) allows an applicant to file an application for relief "if the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence" S.C. code. Ann.; 17-27-45 (c) (allowing application to be filed within one year of the date of actual discovery of the facts are from the date when the facts have "could have been ascertained by the exercise of reasonable diligence"). The petitioner raises this claim pursuant to S.C. code Ann. 17-27-45 (c) Discovery Rule.

Throughout petitioner's incarceration, he was informed by the SCDC classification that he was receiving good time, work, and education credits being applied towards a reduction of his sentence, thus making his sentence an 85% sentence. Petitioner's plea sheet and sentencing sheet only states 30 years thus proven petitioner's 30 years negotiated plea was 30 years at 85%. (Please see petitioners, plea sheet and sentencing sheet). In July of 2023 Petitioner was informed that his sentence was not an 85% sentence and that he was serving a day for day 100% 30 years sentence. Thus, the petitioner submits this PCR application because plea council gave petitioner erroneous sentencing and advice, and plea counsel was ineffective for failing to ensure that the state adhered to the original negotiated plea agreement of 30 years to which petitioner would be required to serve 85% of the sentence imposed.

Petitioner's Prior attorney Scott Robinson. Caroline Harbeck, John I Mauldin, and Stephen John Henry, all received from the solicitor office a plea offer of murder 30 years, with a requirement of the petitioner to only serve 85% of the sentence imposed. All prior attorneys presented this negotiated plea offer to the petitioner to which petitioner eventually accepted. On June 25th, 2003, the Petitioner pled guilty to the negotiated 85% 30 years for murder. During the plea hearing the plea court informed the petitioner that his plea was a negotiated plea for 30 years murder. (See Petitioner's plea hearing transcript, (p.3, Ins. 10-12); (p.4 Ins. 8-

11); (p.5, Ins. 3-8); (p.6 Ins. 17-19); (p.8 Ins. 23- p.9 Ins. 4); (p.13 Ins. 4-24); (p.14 Ins 12-13); (p. 18, Ins. 8-p.19, Ins. 2). The petitioner was sentenced by the Honorable John W Kittridge to the negotiated 30 years, plea that was offered, and to which the petitioner was under the impression that he was going to have to serve 85% of his sentence.

The petitioner is entitled to have his sentence of 30 years changed to the negotiated plea bargain of 30 years to which petitioner was required to only serve 85% of his sentence. Petitioner's plea counsel was ineffective for giving petitioner erroneous sentencing advice and plea counsel was ineffective for failing to ensure that the State adheres to the original negotiated plea agreement. "A plea agreement rests on contractual principles and each party should receive the benefit of their bargain," Thrift v. State, 440 S.E. 2d 341 (1994) when an accused pleads guilty upon a promise of the prosecutor, the agreement must be fulfilled." State v. Thompson, 292 S.E. 2d 581 (1982)" When the State's Attorney has given his word in the form of a plea bargain and that bargain is accepted by the trial court, it behooves the States Attorney to make every reasonable effort to correct any deviation from the bargain when the deviation is called to his attention. Alston v. State, 38 MD. App. 6113,379 A. 2d 754, 757 (App. 1978)." Once a court accepts a plea agreement, it is bound to honor its promise to fulfil the agreement, insofar as the terms of the agreement are within the power of the court to order. State v. Reinhart, 430 S.E. 2d 536 (ct. App. 1993)". A recognized corollary to the principle that a guilty plea must be shown to have been intelligently and voluntarily entered it is the rule that if the plea is based on a plea bargain which is not fulfilled or is unfulfillable, then the guilty plea cannot stand." State, ex. rel. Morris v. Mohn, 267 S.E. 2d 443,445 (1980)." A plea of guilty entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own council, must stand unless induced by threats (or promises to discontinue, improper harassment), misrepresentation, (including unfulfilled or unfulfillable promise), or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business. "Brady v. United States 397 U.S. 742,755 (1970)."

Plea counsel erred by not making sure that the petitioner received the negotiated plea that he was promised. Plea counsel error prejudice the petitioner because petitioner wouldn't be able to serve only the sentence of 25 years and six months, which is the original 85% 30 years plea he agreed to plead to. By petitioner not getting the benefit of the 85% 30 years, (25 years and six months) negotiated that the petitioner was promised and plead to. This violates petitioner's 6th Amendment right of effective assistance of counsel and 14th Amendment rights of due process and equal protection of the laws of U.S. constitution; and violated petitioner's S.C. Constitution article 1,3 rights of due process and equal protection of the law's rights. The relief that petitioner seeks is that his 30 years negotiated plea be changed to the 85% 30 years negotiated plea he was promised and plead to, to which petitioner should only have to serve 25 years and six months of his sentence.

CONCLUSION

For the reasons stated the remedy for the petitioner's claim is that petitioner's sentence should be changed to 85% 30 years negotiated plea offer he was promised and plead to, to which petitioner should only have to serve 25 years and 6 months of his sentence. This is pursuant to Dean v. State, 2015 WL 1481686 at 2 (we find plea counsel's testimony that 85% was discussed along with [petitioner's] Understanding that [petitioner] would have to serve only 85% of his sentence, reveals that plea counsel's performance was deficient because he offered erroneous sentencing advice...); Sprouse v. State 585 S.E. 2d 278, 281 (2003) (holding counsel was ineffective in failing to ensure that the state adhered to the original plea agreement and remanding for pacific performance of the plea agreement given it would grant the parties nothing more and nothing less than the benefit for which they originally bargained); Sprouse v. State 585 S.E. 2d 278,281 (2003) (finding defendant was entitled to post-conviction relief where the State failed to honor the plea agreement, it made with defendant and trial counsel failed to ensure that the State adhered to the original agreement). Smith v. United States, 143 S. ct. 1594,1601 (2023). (Remedies for constitutional violation should be tailored to the injury suffered from the constitutional violation and should not unnecessarily infringe on competing interests).

State of South Carolina
Solicitor, Thirteenth Judicial Circuit



Telephone: 864-467-8282
Telefax: 864-467-8582

Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, South Carolina 29601-2185

Solicitor
Robert M. Ariail

June 18, 2001

Mr. Stephen J. Henry
406 Pettigru Street
Greenville, SC 29601

VIA FAX 232-9555
And HAND DELIVERY

RE: State v. Kevin Lee

Dear Steve:

Pursuant to our phone conversation, enclosed please find an agreement confirming terms of the guilty plea in the above referenced case. As we discussed, the defendant will plead guilty to murder for a negotiated sentence of 30 years.

I have also enclosed the sentencing sheet which needs to be signed by you and your client. Once he has signed the necessary paperwork, please return them to me. It is my understanding that Judge Kittredge has scheduled this plea for June 25th at 9:00 a.m.

I apologize for the delay in getting this to you. If you need any assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Betty C. Strom", is written over a horizontal line.

Betty C. Strom
Deputy Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Greenville

STATE

VS.

LEE, KEVIN I AMONT

AKA:

Race: B Sex: M Age: 25DOB: 03-26-1977 SS#: 408-39-0213Address: 5 CASEY STANDERSON, SC 00000DL#: 999999999

SID#: _____

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

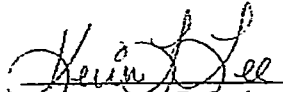
38256

99GS2306473A/W#: G155815Date of Offense: 07-18-1999S.C. Code §: 16-03-0010 0020CDR Code #: 0116☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was
TO: MURDER (GS)in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:


Solicitor:
Defendant
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ Country Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ The Defendant is to be given credit for Since 7-18-99 days/months/jail time.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____
 § 14-1-206 - Assessments 100 % _____ \$ _____
 § 14-1-211(A)(1) (Surcharge) _____ \$ 100.00
 § 14-1-211(A)(2) (Surcharge) _____ \$ _____
 § 56-5-2995 (DUI Assessment) _____ \$ _____
 3% to County (if paid in installments) _____ \$ _____
 TOTAL _____ \$ _____


Clerk of Court/Deputy ClerkCourt Reporter: Dawn Kuffs Key

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab or Job Corps _____

May serve W/E beginning _____

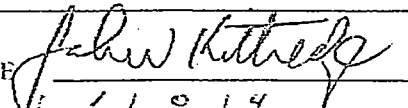
Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

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

\$ _____ paid to Public Defender Fund.

Other: _____

PRESIDING JUDGE Judge Code: 11014Sentence Date: 6/25/02

SCCA/217 (1/2001)

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF
GENERAL SESSIONS

THE STATE OF)
SOUTH CAROLINA,)

-vs-)

KEVIN L. LEE,)

DEFENDANT.)

TRANSCRIPT OF RECORD
99-GS-23-6473

JUNE 25, 2003
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN W. KITTREDGE

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

BETTY STROM, Esquire
Assistant Solicitor

STEVEN HENRY, Esquire
CAROLINE HORIBECK, Esquire
Attorneys for the Defendant

DAWN V. KOFFSKEY
Court Reporter

INDEX

PAGE NO.

GUILTY PLEA OF KEVIN L. LEE

3

INDEX TO EXHIBITS

(NO EXHIBITS WERE ENTERED DURING THIS HEARING)

INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT	1
APPLICATION FOR POST-CONVICTION RELIEF	21
RETURN	32
POST-CONVICTION RELIEF HEARING TRANSCRIPT	36
ORDER DENYING POST-CONVICTION RELIEF	57
INDICTMENT	63

GUILTY PLEA OF KEVIN L. LEE

1 **MADAME CLERK:** YOUR HONOR, THIS IS CASE NUMBER 99-GS-
2 6473, THE STATE VERSUS KEVIN LAMONT LEE. HE IS PLEADING
3 GUILTY TO MURDER, CONSENTS TO SENTENCING ON THIS DATE.

4 (DDEFENDANT PLACED UNDER OATH)

5 **THE COURT:** GOOD MORNING. THIS IS PRESENTED TO ME AS A
6 NEGOTIATED SENTENCE. IF ONE OF THE ATTORNEYS WOULD BE KIND
7 ENOUGH TO SHARE THAT NEGOTIATION WITH ME.

8 **MS. STROM:** YOUR HONOR, AS THE COURT MAY BE AWARE, WE
9 SERVED NOTICE OF INTENT TO SEEK THE DEATH PENALTY BACK IN MAY
10 OF 2001. WE HAVE WITHDRAWN OUR NOTICE OF INTENT TO SEEK THE
11 DEATH PENALTY AND ARE ENTERING INTO THE NEGOTIATION OF THIRTY
12 YEARS ON THE COUNT OF MURDER.

13 **THE COURT:** AND, MR. HENRY AND MS. HORLBECK, IS THAT
14 YOUR UNDERSTANDING OF THE NEGOTIATION?

15 **MR. HENRY:** IT IS, YOUR HONOR.

16 **MS. HORLBECK:** YES, SIR.

17 **THE COURT:** ALL RIGHT. AND I WILL ADDRESS THIS -- I
18 WILL START WITH YOU, MR. HENRY, AND FIRST ASK YOU A FEW
19 QUESTIONS. MS. HORLBECK, I'LL JUST THEN FOLLOW UP WITH YOU
20 AND IF YOU AGREE WITH THOSE RESPONSES.

21 **MR. HENRY,** HAVE YOU AND MS. HORLBECK MET WITH YOUR
22 CLIENT, MR. LEE, AND DISCUSSED THIS CHARGE WITH HIM?

23 **MR. HENRY:** YES, YOUR HONOR.

24 **THE COURT:** HAVE YOU ADVISED HIM OF HIS RIGHTS,
25 INCLUDING ALL OF HIS TRIAL RIGHTS AND THE RIGHT TO A JURY

GUILTY PLEA OF KEVIN L. LEE

1 TRIAL?

2 MR. HENRY: YES, SIR.

3 THE COURT: IN YOUR DISCUSSIONS WITH MR. LEE DO YOU
4 BELIEVE THAT HE IS COMPETENT IN THAT HE UNDERSTANDS THE
5 NATURE OF THE CHARGES AND IS ABLE TO COMMUNICATE WITH YOU AND
6 MS. HORLBECK IN AN EFFECTIVE AND REASONABLE WAY?

7 MR. HENRY: I DO, YOUR HONOR.

8 THE COURT: HAS MR. LEE INFORMED YOU AND CO-COUNSEL OF
9 HIS DECISION TO WAIVE HIS RIGHTS AND PLEAD GUILTY PURSUANT TO
10 THIS NEGOTIATED SENTENCE OF THIRTY YEARS?

11 MR. HENRY: HE HAS, YOUR HONOR.

12 THE COURT: AND IN YOUR OPINION HAS HE DONE SO FREELY
13 AND VOLUNTARILY?

14 MR. HENRY: YES, SIR, HE HAS.

15 THE COURT: MS. HORLBECK, DO YOU CONCUR WITH THE
16 STATEMENTS AND RESPONSES MADE BY MR. HENRY.

17 MS. HORLBECK: YES, SIR, I DO.

18 KEVIN L. LEE, HAVING BEEN
19 PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

20 EXAMINATION BY THE COURT:

21 Q YOU ARE KEVIN LAMONT LEE; IS THAT CORRECT, SIR?

22 A YES, SIR, THAT'S CORRECT.

23 Q AND I'M GOING TO ASK YOU SOME QUESTIONS, MR. LEE. IF
24 YOU DON'T UNDERSTAND A PARTICULAR QUESTION, I'LL BE GLAD TO
25 REPEAT IT AS OFTEN AS NECESSARY TO INSURE THAT YOU DO

GUILTY PLEA OF KEVIN L. LEE

1 UNDERSTAND.

2 A YES, SIR.

3 Q I AM INFORMED THAT THROUGH NEGOTIATIONS IT IS YOUR
4 DECISION TO PLEAD GUILTY TO THE CHARGE OF MURDER---

5 A YES, SIR, YOUR HONOR.

6 Q ---FOR A NEGOTIATED SENTENCE OF THIRTY YEARS. IS THAT
7 YOUR UNDERSTANDING?

8 A YES, SIR, YOUR HONOR.

9 Q LET ME START AND GET SOME BACKGROUND WITH YOU, SIR. HOW
10 OLD ARE YOU?

11 A I'M TWENTY-FIVE YEARS, YOUR HONOR.

12 Q AND HOW FAR DID YOU GO IN SCHOOL?

13 A TENTH GRADE EDUCATION, YOUR HONOR.

14 Q CAN YOU READ AND WRITE?

15 A YES, SIR, YOUR HONOR.

16 Q ALL RIGHT. HAVE YOU EVER BEEN TREATED FOR ANY MENTAL OR
17 EMOTIONAL HEALTH PROBLEMS?

18 A NO, SIR, YOUR HONOR.

19 Q ARE YOU UNDER THE INFLUENCE OF ANY DRUGS, ALCOHOL OR
20 MEDICINE AT THIS TIME?

21 A NO, SIR, YOUR HONOR.

22 Q DURING ANY NEGOTIATIONS YOU HAVE HAD WITH YOUR ATTORNEYS
23 HAVE YOU BEEN UNDER THE INFLUENCE OF ANY DRUGS, ALCOHOL OR
24 MEDICATION?

25 A NO, SIR, YOUR HONOR.

GUILTY PLEA OF KEVIN L. LEE

1 A YES, SIR, YOUR HONOR.

2 Q NOW, MR. LEE, IF YOU PLEAD GUILTY, YOU GIVE UP ALL OF
3 YOUR TRIAL RIGHTS, AND I WANT TO REVIEW THAT WITH YOU. HAVE
4 YOU DISCUSSED IN SOME DETAIL YOUR RIGHTS YOU WOULD HAVE AT
5 TRIAL WITH YOUR ATTORNEYS?

6 A YES, SIR, YOUR HONOR.

7 Q I WOULD LIKE TO DO LIKEWISE AT THIS TIME AND JUST REVIEW
8 SOME OF THE MORE FUNDAMENTAL RIGHTS THAT WOULD APPLY AT A
9 TRIAL. MR. LEE, YOU ARE PRESUMED INNOCENT. THERE IS NO
10 BURDEN ON YOU TO PROVE OR DISPROVE ANYTHING. THE BURDEN OF
11 PROOF IS ALWAYS ON THE STATE TO PROVE GUILT BEYOND A
12 REASONABLE DOUBT. SHOULD THE STATE FAIL TO PROVE EACH
13 ELEMENT OF THE OFFENSE OF MURDER BEYOND A REASONABLE DOUBT,
14 IT WOULD BE THE DUTY OF THE JURY OR THE COURT TO FIND YOU NOT
15 GUILTY. DO YOU UNDERSTAND THAT?

16 A YES, SIR, YOUR HONOR.

17 Q IN CONNECTION WITH THE BURDEN OF PROOF IS A VERY
18 IMPORTANT RIGHT KNOWN AS THE PRESUMPTION OF INNOCENCE. YOU
19 ARE PRESUMED TO BE INNOCENT, AND IN THAT REGARD YOU HAVE THE
20 RIGHT TO REMAIN SILENT. AT TRIAL YOU WOULDN'T HAVE TO
21 TESTIFY. YOU WOULDN'T HAVE TO PRESENT ANY EVIDENCE. YOU
22 DON'T HAVE TO PROVE OR DISPROVE ANYTHING. NOW, YOU COULD
23 TESTIFY AT TRIAL IF YOU WANTED TO, BUT ONLY IF YOU WANTED TO.
24 DO YOU UNDERSTAND THAT?

25 A YES, SIR, YOUR HONOR.

GUILTY PLEA OF KEVIN L. LEE

1 Q HAVE YOU BEEN PRESCRIBED ANY MEDICATION THAT YOU DO NOT
2 TAKE?

3 A NO, SIR.

4 Q HAVE YOU BEEN PRESCRIBED ANY MEDICATION THAT THE
5 DETENTION CENTER HAS NOT GIVEN YOU?

6 A NO, SIR, YOUR HONOR.

7 Q DO YOU BELIEVE THAT YOU UNDERSTAND THE CHARGE OF MURDER?

8 A YES, SIR, YOUR HONOR.

9 Q AND IN THAT REGARD HAVE YOU DISCUSSED THE CHARGE AND
10 YOUR RIGHTS WITH YOUR ATTORNEYS, MR. HENRY AND MS. HORLBECK?

11 A YES, SIR, YOUR HONOR.

12 Q ARE YOU SATISFIED WITH THEIR SERVICES?

13 A YES, SIR, YOUR HONOR.

14 Q DO YOU HAVE ANY COMPLAINTS YOU WANT TO MAKE AGAINST THEM
15 AT THIS TIME?

16 A NO, SIR, YOUR HONOR.

17 Q NOW, MR. LEE, THIS CHARGE OF MURDER AND THE NEGOTIATED
18 SENTENCE, IS IT YOUR DESIRE TO PLEAD GUILTY AT THIS TIME?

19 A YES, SIR, YOUR HONOR.

20 Q HAS ANYONE FORCED YOU INTO THIS DECISION?

21 A NO, SIR, YOUR HONOR.

22 Q HAS ANYBODY MADE ANY PROMISES OR THREATS TO GET YOU TO
23 PLEAD GUILTY AGAINST YOUR WILL?

24 A NO, SIR, YOUR HONOR.

25 Q ARE YOU PLEADING GUILTY BECAUSE YOU ARE GUILTY?

GUILTY PLEA OF KEVIN L. LEE

1 Q AT TRIAL YOU WOULD HAVE THE RIGHT THROUGH YOUR FINE
2 ATTORNEYS TO QUESTION OR CONFRONT THE WITNESSES AGAINST YOU.
3 YOU WOULD HAVE THE RIGHT, SIR, TO OBJECT TO THE INTRODUCTION
4 OF ANY EVIDENCE AGAINST YOU. YOU WOULD HAVE THE RIGHT TO
5 CHALLENGE THE SEARCH AND SEIZURE OF ANY EVIDENCE THAT THE
6 STATE WOULD SEEK TO USE AGAINST YOU IN ANY FASHION. YOU
7 WOULD HAVE THE RIGHT TO ASSERT ANY DEFENSE WHICH MAY APPLY TO
8 THIS CHARGE, WHICH PERHAPS COULD REDUCE IT BELOW THE OFFENSE
9 OF MURDER OR ELIMINATE THE CHARGE ALTOGETHER.

10 THESE ARE SOME OF THE RIGHTS YOU WOULD HAVE AT TRIAL.
11 BUT IF YOU PLEAD GUILTY, YOU SEE, THERE WON'T BE A TRIAL AND
12 YOU WILL BE GIVING UP THESE RIGHTS. DO YOU FULLY UNDERSTAND
13 THAT?

14 A YES, SIR, YOUR HONOR.

15 Q AND IN YOUR CASE YOU COULD TESTIFY, BUT ONLY IF YOU
16 WANTED TO, AS WE HAVE DISCUSSED. DO YOU UNDERSTAND THAT?

17 A YES, SIR.

18 Q AND VERY IMPORTANTLY, YOU HAVE THE RIGHT TO A JURY
19 TRIAL. BUT AGAIN, IF YOU PLEAD GUILTY, THERE WON'T BE A
20 TRIAL; SO YOU WILL BE GIVING UP ALL OF THESE RIGHTS. DO YOU
21 FULLY UNDERSTAND THAT?

22 A YES, SIR, YOUR HONOR.

23 Q KNOWING THAT, DO YOU STILL WISH TO PLEAD GUILTY FREELY
24 AND VOLUNTARILY PURSUANT TO THIS NEGOTIATION, OR WOULD YOU
25 RATHER HAVE A TRIAL, OR WOULD YOU LIKE MORE TIME TO DISCUSS

GUILTY PLEA OF KEVIN L. LEE

1 IT WITH YOUR FINE ATTORNEYS OR WITH SOME FAMILY MEMBERS?

2 A RIGHT NOW I'M PLEADING GUILTY, YOUR HONOR.

3 Q IS THAT A DECISION YOU HAVE MADE ON YOUR OWN, SIR?

4 A YES, SIR, YOUR HONOR.

5 THE COURT: MR. LEE, WHAT I'D LIKE FOR YOU TO DO IS PAY
6 VERY CLOSE ATTENTION. THE STATE IS GOING TO SUMMARIZE THE
7 FACTS OF THE CASE. THIS IS A PRESENTATION OF WHAT THE STATE
8 WOULD INTEND AND SEEK TO PROVE AT TRIAL IF THE CASE WENT TO
9 TRIAL. THEN I WILL ASK IF YOU AGREE OR DISAGREE WITH THOSE
10 FACTS AS STATED AND IF THAT SERVES AS THE BASIS FOR YOUR
11 DECISION TO PLEAD GUILTY.

12 SOLICITOR?

13 SOLICITOR ARIAIL: THANK YOU, YOUR HONOR.

14 THIS EVENT OCCURRED ON JULY THE 18TH OF 1999 WHEN THE
15 VICTIM, TIMOTHY MCKELDER, WAS AT THE WAFFLE HOUSE ON WADE
16 HAMPTON BOULEVARD, LOCATED IN GREENVILLE COUNTY, AND HE WAS
17 ACCOMPANIED BY TWO OF HIS FRIENDS. PRIOR TO ARRIVING AT THE
18 WAFFLE HOUSE THEY HAD ENCOUNTERED A GROUP OF PEOPLE IN
19 ANOTHER VEHICLE, WHICH INCLUDED THE DEFENDANT, AND THERE WAS
20 A VERBAL ALTERCATION BETWEEN THE TWO GROUPS. THE VICTIM AND
21 HIS FRIENDS THEN WENT ON TO THE WAFFLE HOUSE AND -- WHILE THE
22 OTHER VEHICLE WENT A SHORT DISTANCE ON WADE HAMPTON
23 BOULEVARD, UNBEKNOWNST TO THE VICTIM, THEN TURNED AROUND AND
24 CAME BACK TO THE WAFFLE HOUSE.

25 THE DEFENDANT, KEVIN LEE, WAS A PASSENGER IN THE VEHICLE

GUILTY PLEA OF KEVIN L. LEE

1 THAT RETURNED TO THE WAFFLE HOUSE. AND WHEN THE DEFENDANT
2 AND HIS FRIENDS RETURNED, THE VICTIM AND HIS FRIENDS HAD
3 ALREADY GONE INTO THE WAFFLE HOUSE AND DECIDED IT WAS TOO
4 CROWDED AND WERE COMING OUT TO LEAVE THE BUILDING. IN FACT,
5 THE BUILDING ITSELF WAS FULLY OCCUPIED. THERE WAS NO ROOM
6 FOR ANYBODY TO SIT DOWN.

7 AT THAT POINT THERE WAS ANOTHER EXCHANGE OF WORDS, AND
8 THE DEFENDANT AT THAT TIME PULLED A GUN AND FIRED AT THE
9 VICTIM. ACCORDING TO ONE WITNESS, IT WAS ONLY MOMENTS AFTER
10 THE DEFENDANT HAD GOTTEN OUT OF THE CAR THAT HE BEGAN TO
11 FIRE. THE DEFENDANT GOT BACK INTO HIS CAR AND LEFT THE AREA.
12 BUT BEFORE LEAVING THE WAFFLE HOUSE, HE DROPPED THE GUN IN
13 THE BACK PARKING LOT, AND IT WAS RECOVERED BY INVESTIGATORS.

14 AN AUTOPSY OF THE VICTIM REVEALED THAT HE HAD BEEN SHOT
15 TWICE IN THE BACK. BOTH PROJECTILES FROM THE AUTOPSY WERE
16 RECOVERED AND SUBSEQUENTLY MATCHED TO THE WEAPON THAT HAD
17 BEEN FOUND IN THE BACK PARKING LOT.

18 THE DEFENDANT WAS ARRESTED ON JULY 18 OF 1999 AND GAVE A
19 WRITTEN STATEMENT ADMITTING THAT HE HAD IN FACT SHOT THE
20 VICTIM AFTER A VERBAL ALTERCATION. OFFICERS WITH THE
21 GREENVILLE COUNTY SHERIFF'S OFFICE ALSO OBTAINED STATEMENTS
22 FROM THE OCCUPANTS OF THE VEHICLE IN WHICH THE DEFENDANT WAS
23 A PASSENGER WHO STATED THAT HE HAD IN FACT -- THE DEFENDANT
24 HAD SHOT THE VICTIM.

25 FORENSIC PROCESSING OF THE SCENE SHOWED THAT THE

GUILTY PLEA OF KEVIN L. LEE

1 DEFENDANT HAD IN FACT FIRED FIVE TIMES, TWO OF THE SHOTS HIT
2 THE VICTIM IN THE BACK, AND AT LEAST ONE OF THE SHOTS HIT THE
3 GLASS WINDOW OF THE WAFFLE HOUSE, SHATTERING THE GLASS.
4 THERE WERE CUSTOMERS AND EMPLOYEES INSIDE THE WAFFLE HOUSE AT
5 THAT TIME.

6 THE DEFENDANT HAS NO PRIOR CONVICTIONS.

7 EXAMINATION CONTINUES BY THE COURT:

8 Q MR. LEE, DID YOU HEAR WHAT THE SOLICITOR SAID ABOUT THE
9 FACTS OF THIS PARTICULAR CASE?

10 A YES, SIR, YOUR HONOR.

11 Q IS WHAT THE SOLICITOR SAID SUBSTANTIALLY TRUE AND
12 CORRECT?

13 A I BASICALLY AGREE, YOUR HONOR.

14 Q EXCUSE ME?

15 A I BASICALLY AGREE.

16 Q OKAY. ARE THERE ANY CHANGES THAT YOU WOULD LIKE TO MAKE
17 TO THAT FACTUAL PRESENTATION?

18 A NO, SIR.

19 Q IS IT STILL YOUR DESIRE TO PLEAD GUILTY?

20 A YES, SIR, YOUR HONOR.

21 Q MR. LEE, I WANT YOU TO UNDERSTAND THAT THE OFFENSE OF
22 MURDER IS DESIGNATED UNDER SOUTH CAROLINA LAW AS A MOST
23 SERIOUS OFFENSE. IN OTHER WORDS, IT IS A STRIKE AGAINST YOU
24 IF THE PLEA IS ACCEPTED. THE REASON I BRING THAT TO YOUR
25 ATTENTION IS BECAUSE OF THE EFFECT THAT THIS PLEA COULD HAVE

GUILTY PLEA OF KEVIN L. LEE

1 AGAINST YOU IN YOUR FUTURE. UPON YOUR RELEASE, IF YOU ARE
2 CONVICTED OF ANOTHER CRIME THAT HAS A DESIGNATION OF MOST
3 SERIOUS, YOU WOULD BE SENTENCED TO LIFE WITHOUT PAROLE. AND
4 THERE ARE MANY CRIMES IN SOUTH CAROLINA THAT ARE DESIGNATED
5 AS MOST SERIOUS.

6 THERE IS ANOTHER DESIGNATION OF SERIOUS OFFENSES, AND
7 THERE ARE MANY OF THOSE AS WELL. TWO ADDITIONAL CONVICTIONS
8 OF SERIOUS OFFENSES WOULD MANDATE A SENTENCE OF LIFE WITHOUT
9 PAROLE.

10 THE REASON I BRING THIS TO YOUR ATTENTION AND EMPHASIZE
11 IT TO YOU, SIR, IS THAT THIS OFFENSE TODAY AND THIS
12 CONVICTION WOULD BE USED FOR THOSE PURPOSES IN THE FUTURE,
13 SHOULD YOU BE CONVICTED OF ADDITIONAL OFFENSES DESIGNATED AS
14 MOST SERIOUS OR SERIOUS. DO YOU UNDERSTAND THAT?

15 A YES, SIR, YOUR HONOR.

16 Q AND YOU UNDERSTAND THAT THIS CONVICTION TODAY WOULD BE
17 USED AGAINST YOU IN THE EVENT OF FUTURE CONVICTIONS FOR THOSE
18 TYPES OF OFFENSES FOR YOU TO RECEIVE A LIFE WITHOUT PAROLE
19 SENTENCE. DO YOU UNDERSTAND THAT?

20 A YES, SIR, YOUR HONOR.

21 Q KNOWING THAT, DO YOU STILL WISH TO PLEAD GUILTY TO THE
22 OFFENSE OF MURDER TODAY?

23 A YES, SIR, YOUR HONOR.

24 Q MR. LEE, HAVE YOU UNDERSTOOD THE QUESTIONS I HAVE ASKED
25 YOU?

GUILTY PLEA OF KEVIN L. LEE

1 A YES, SIR, YOUR HONOR.

2 Q HAVE YOU ANSWERED THEM TRUTHFULLY?

3 A YES, SIR, YOUR HONOR.

4 Q AND IS IT YOUR DESIRE STILL TO PLEAD GUILTY TO THE
5 OFFENSE OF MURDER FOR THE NEGOTIATED SENTENCE OF THIRTY
6 YEARS?

7 A YES, SIR, YOUR HONOR.

8 THE COURT: I'D LIKE TO ASK, MR. HENRY AND MS.
9 HORLBECK, DO YOU HAVE ANY ADDITIONAL QUESTIONS YOU WOULD LIKE
10 ME TO POSE TO MR. LEE BEFORE I FORMALLY ACCEPT HIS TENDER OF
11 A GUILTY PLEA?

12 MR. HENRY: NO, SIR, YOUR HONOR.

13 MS. HORLBECK: NO, SIR.

14 THE COURT: ALL RIGHT. IT HAS BEEN PROPERLY INDICTED
15 AND I DO FIND THAT MR. LEE HAS PLEAD GUILTY FREELY AND
16 VOLUNTARILY. HE HAS BEEN ADVISED BY EXCELLENT COUNSEL WITH
17 WHOM HE SAYS HE IS WELL SATISFIED. HAVING BEEN FULLY ADVISED
18 OF HIS RIGHTS, HE HAS WAIVED THOSE RIGHTS, AGAIN, FREELY AND
19 VOLUNTARILY, INCLUDING HIS RIGHT TO A JURY TRIAL. AND I FIND
20 THERE IS A SUBSTANTIAL FACTUAL BASIS TO SUPPORT THE PLEA TO
21 THE OFFENSE OF MURDER. I DO ACCEPT THE PLEA AT THIS TIME. I
22 WILL, OF COURSE, HONOR THE NEGOTIATION THAT HAS BEEN WORKED
23 OUT BY BOTH THE STATE AND THE DEFENDANT THROUGH EXCELLENT
24 COUNSEL.

25 I WILL CERTAINLY BE GLAD TO HEAR FURTHER ON BEHALF OF

GUILTY PLEA OF KEVIN L. LEE

1 MR. LEE, IF HE HAS ANYONE FROM HIS FAMILY WHO WOULD LIKE TO
2 SPEAK AS WELL IN ADDITION TO HIM. I WOULD ALSO, OF COURSE,
3 GIVE THE OPPORTUNITY FOR ANY MEMBERS OF THE VICTIM'S FAMILY
4 WHO WOULD LIKE TO SPEAK AND SHARE THEIR CONCERNS, AND I WOULD
5 BE PLEASED TO HEAR FROM THEM.

6 SOLICITOR ARIAIL: THE VICTIM'S FAMILY IS HERE, AS YOU
7 CAN SEE, REPRESENTED. THE VICTIM'S MOTHER, MS. GLAZE, WOULD
8 LIKE TO ADDRESS THE COURT AT THE APPROPRIATE TIME.

9 THE COURT: VERY GOOD. LET ME HEAR FIRST FROM YOU, MR.
10 HENRY AND MS. HORLBECK, AND THEN I'LL JUST TAKE IT FROM
11 THERE.

12 MR. HENRY: THANK YOU, JUDGE. YOU ARE ACCEPTING THE
13 NEGOTIATED PLEA. I DON'T WANT TO SAY MUCH. BUT HIS FATHER,
14 CURTIS LEE, IS HERE, ALONG WITH HIS STEPMOTHER, CINDY LEE.
15 THEY ARE HERE FROM SENECA. HIS MOTHER IS IN THE SERVICE.
16 SHE IS IN FORT BENNING, GEORGIA, COULD NOT BE HERE, WOULD
17 LIKE TO BE HERE BUT WITH THE ARMY BEING -- DICTATING HER
18 SCHEDULE, SHE COULD NOT BE. I'M NOT SURE IF CURTIS WOULD
19 LIKE TO MAKE A STATEMENT TO THE COURT OR NOT.

20 MR. CURTIS LEE: I JUST WANT TO EXPRESS MY SYMPATHY. I
21 TALKED WITH KEVIN AND ME AND HIM PRAYED TOGETHER, AND HE
22 UNDERSTANDS HIS SITUATION. I JUST WANTED TO SAY THAT IT IS
23 ALL IN GOD'S HANDS. THAT'S ALL I WANTED TO SAY.

24 THE COURT: VERY GOOD.

25 MR. HENRY: JUDGE, THE ONLY THING I WOULD ADD IS THAT

GUILTY PLEA OF KEVIN L. LEE

1 I'M GOING TO HAND UP SOME RECORDS FROM THE DETENTION CENTER
2 THAT INDICATE THE DAY THAT MY CLIENT WAS INCARCERATED, AND I
3 WOULD ASK YOU TO START HIS SENTENCE FROM THE DATE OF HIS
4 INCARCERATION, ALSO TO SHOW YOU THAT HIS RECORD IN THE JAIL
5 HAS BEEN EXCELLENT. HE HAD ONE DISCIPLINARY OFFENSE WHICH
6 WAS FOR HAVING AN ARM BAND DETERIORATE WHEN HE WAS PLAYING
7 BASKETBALL. I'VE TALKED TO TWO CAPTAINS AT THE DETENTION
8 CENTER, BOTH OF WHOM WOULD HAVE BEEN GLAD TO COME IN TO
9 TESTIFY IF WE NEEDED THEM TO. THEY SAID HE HAS BEEN A MODEL
10 INMATE. THAT SPEAKS WELL OF WHAT HE HAS DONE SINCE THIS
11 INCIDENT. THAT'S ALL I HAVE.

12 THE COURT: ANYTHING FURTHER, MS. HORLBECK?

13 MS. HORLBECK: NO, SIR.

14 THE COURT: AT THIS TIME I WOULD BE GLAD TO HEAR
15 ANYTHING FURTHER FROM THE STATE AND CERTAINLY ANY
16 REPRESENTATIVE OF THE VICTIM'S FAMILY.

17 MR. HENRY: JUDGE, I DIDN'T WANT TO INTERRUPT. MR. LEE
18 MAY WANT TO MAKE A STATEMENT. I WANT TO MAKE THE---

19 THE COURT: SURE. I'M GOING TO GIVE HIM THE LAST WORD.

20 MR. HENRY: THANKS.

21 THE COURT: IT'S HIS CASE.

22 THANK Y'ALL SO MUCH FOR BEING HERE. I KNOW HOW
23 DIFFICULT THIS IS, AND I APPRECIATE YOUR EFFORT TO BE HERE.

24 MS. GLAZE: THANK YOU, YOUR HONOR. I'M JANET GLAZE.
25 I'M TIM'S MOTHER. I'M SORRY. I'VE GOT A LITTLE BIT OF A

GUILTY PLEA OF KEVIN L. LEE

1 COLD.

2 THE COURT: THAT'S ALL RIGHT.

3 MS. GLAZE: BUT I WANTED TO TALK HERE TODAY ABOUT MY
4 SON, TIMOTHY, WHO WAS MY BABY. I'VE LEARNED THAT A CRIME
5 LIKE THIS DOESN'T AFFECT JUST THE PERSON THAT IT WAS
6 COMMITTED UPON. TIM, OF COURSE, WILL NOT HAVE HIS LIFE ANY
7 MORE. BUT IT AFFECTS SO MANY OTHER PEOPLE. I DIDN'T REALIZE
8 HOW MANY PEOPLE HIS SHORT LIFE AFFECTED UNTIL THE FUNERAL.
9 I'M GLAD I GOT TO KNOW THAT.

10 BUT FOR ME PERSONALLY, IT'S AFFECTED ALL ASPECTS OF MY
11 LIFE. MY WORK, I'M AFRAID MY EMPLOYER DOESN'T NECESSARILY
12 THINK THE LAST THREE YEARS WERE UP TO THE STANDARD OF MY WORK
13 LIFE, AND I'M HOPING THAT I CAN GET THAT TURNED AROUND
14 PERHAPS WITH THIS. BUT BEFORE THAT I WAS A MODEL EMPLOYEE.
15 I HOPE I CAN GET BACK TO THAT.

16 FOR MY HOME LIFE, IT'S -- WE LIVE ON A FEW ACRES, AND
17 TIM WAS THE ONE THAT WANTED TO STAY THERE AND HELP US WITH
18 THE RANCH AND DO THE FENCING AND THE SEEDING AND ALL OF THE
19 THINGS, AND ECONOMICALLY IT LOOKS LIKE WE'RE GOING TO HAVE TO
20 SELL. WE CAN'T KEEP IT UP.

21 AND THEN MY EMOTIONAL LIFE HAS REALLY BEEN IN SHAMBLES.
22 I THINK THAT IT WILL -- I'LL BE ABLE TO TURN THAT AROUND
23 ALSO. ALTHOUGH, I KNOW I'LL NEVER BE -- I'M FOREVER CHANGED.
24 I'LL NEVER BE THE WAY I WAS BEFORE. I DON'T THINK ABOUT
25 THINGS THE SAME WAY I THOUGHT ABOUT THEM BEFORE.

GUILTY PLEA OF KEVIN L. LEE

1 I'M JUST NOW LEARNING WHAT FOREVER REALLY MEANS. I WISH
2 MY SON COULD COME BACK TO ME IN THIRTY YEARS. I WOULD LOVE
3 IT. I WISH I COULD GET LETTERS FROM HIM AND I COULD WRITE
4 HIM. I WISH THAT I COULD HEAR HIS VOICE EVERY ONCE IN A
5 WHILE TELLING ME HOW MUCH HE LOVED ME. BUT THAT'S NOT WHAT
6 FOREVER MEANS. SO -- I GUESS THAT'S ALL I HAVE TO SAY.

7 THE COURT: MS. GLAZE, THANK YOU SO MUCH FOR BEING
8 HERE. I APPRECIATE YOUR COMMENTS, AND I WISH YOU THE VERY
9 BEST.

10 ANYTHING FURTHER FROM THE STATE?

11 SOLICITOR ARIAIL: NO.

12 THE COURT: MR. LEE, I'LL BE GLAD TO HEAR FROM YOU,
13 SIR.

14 DEFENDANT: YOUR HONOR, FIRST OF ALL, I'D LIKE TO THANK
15 GOD FOR GIVING ME A CHANCE TO HAVE TO SPEAK THIS DATE. I
16 WANT TO APOLOGIZE TO THE FAMILY, IF THEY WILL ACCEPT MY
17 APOLOGY, FOR WHAT HAPPENED. FROM DAY ONE, I REGRETTED
18 EVERYTHING THAT HAPPENED, AND IT HURTS ME, YOU KNOW. I CAN'T
19 TURN THE HANDS OF TIME, BUT I JUST WANTED TO APOLOGIZE AND
20 TELL THEM, PLEASE, I AM SORRY. I NEVER MEANT FOR THIS TO
21 HAPPEN. IT HURTS ME. EVERY DAY OF MY LIFE I THINK ABOUT
22 THIS. I THINK ABOUT WHAT HAPPENED. I THINK ABOUT THAT I
23 COULD CHANGE THE SITUATION. BUT I -- YOU KNOW, I'M SORRY.
24 I'M VERY, VERY SORRY, AND I ASK THEM, PLEASE, PLEASE, FORGIVE
25 ME. I MEAN, I'M JUST VERY, VERY SORRY, YOUR HONOR, AND I ASK

GUILTY PLEA OF KEVIN L. LEE

1 THEM PLEASE FORGIVE ME FOR WHAT HAPPENED.

2 THE COURT: THANK YOU, SIR.

3 ANYTHING FURTHER?

4 MR. HENRY: NO, SIR.

5 THE COURT: MS. GLAZE, I APPRECIATE YOUR COMMENTS AND
6 THE SUFFERING AND THE TRAGEDY THAT YOU HAVE HAD TO GO THROUGH
7 AS A RESULT OF THIS TRAGIC LOSS.

8 I'M GOING TO HONOR THE NEGOTIATION. IN DOING SO, I WANT
9 TO THANK, MS. GLAZE, YOU AND THE FAMILY, BECAUSE I KNOW THIS
10 WAS A HARD DECISION FOR YOU TO MAKE, GIVEN THAT MR. LEE WAS
11 FACING A CAPITAL CHARGE. I THINK IT'S A VERY FAIR RESOLUTION
12 UNDER THE CIRCUMSTANCES. IT ALLOWS YOU TO ACHIEVE CLOSURE
13 WITHOUT HAVING TO RELIVE THIS TRAGEDY IN SUCH DETAIL THAT A
14 TRIAL WILL NECESSARILY INCUR, AND I COMMEND YOU FOR THAT.

15 AND I WANT TO COMMEND THE STATE FOR ITS VERY RESPONSIBLE
16 HANDLING OF A VERY DIFFICULT CASE AND THE PROFESSIONAL MANNER
17 IN WHICH THE SOLICITOR HAS DISCHARGED HIS DUTIES AND HER
18 DUTIES IN CONNECTION WITH THIS IMPORTANT CASE.

19 I ESPECIALLY ALSO WANT TO THANK DEFENSE COUNSEL FOR ITS
20 PROFESSIONAL HANDLING OF A VERY DIFFICULT CASE.

21 AND, MR. LEE, I APPRECIATE THE ATTITUDE THAT YOU HAVE
22 DISPLAYED TODAY, AND I WISH YOU AND YOUR FAMILY THE BEST FOR
23 THE FUTURE AS WELL.

24 THE SENTENCE OF THE COURT, CONSISTENT WITH THE
25 NEGOTIATION, IS THAT MR. LEE IS HEREBY COMMITTED TO THE STATE

GUILTY PLEA OF KEVIN L. LEE

1 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF THIRTY YEARS.

2 CREDIT FOR TIME SERVED WILL BE GIVEN.

3 THANK YOU AND GOOD LUCK TO ALL CONCERNED.

4 MR. HENRY: THANK YOU VERY MUCH, YOUR HONOR.

5 MS. HORLBECK: THANK YOU.

6 MS. STROM: THANK YOU.

7 SOLICITOR ARIAIL: THANK YOU, YOUR HONOR.

8 MS. GLAZE: THANK YOU.

9 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

CERTIFICATE

I, THE UNDERSIGNED, DAWN V. KOFFSKEY, OFFICIAL COURT REPORTER FOR THE 13TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 25TH DAY OF JUNE 2002.

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

OCTOBER 29, 2003



DAWN V. KOFFSKEY
COURT REPORTER

To: Whom it may CONCERN, Could you please
send copy once filed.

Thank you

KEVIN LAMONT LEE
Allendale C.I. - F3/Hampton A.O.
1057 Revolutionary Trail
Fairfax, S.C. 29827

BRUCE CARRETT
Greenville County Clerk of Court
305 East North Street
Greenville, SC 29601

RE: Filing PCR Application.

Honorable Clerk,

Hello please find enclosed my application
for Post-Conviction Relief to file in your office
I request that you please send back to me a
clock-stamped copy of my P.C.R. Application. I
have enclosed a self addressed envelope to be used
for this purpose. I thank you for all of your help
and concern.

Sincerely,
Kevin Lee