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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Aiken County

Honorable Deadra L. Jefferson, Circuit Court Judge

THOMAS BURKHART,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-000841

APPENDIX

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1 State of South Carolina) In the Court Of General Sessions
2 County of Aiken) Indictment Nos.: 2019-GS-02-02048
3 State of South Carolina,) 02051
4 Plaintiff,) 02055
5 vs.) Transcript of Proceedings
6 Thomas J. Burkhardt,) Via Webex
7 Defendant.)
8 _____)

9
10 October 16, 2020
11 Aiken, South Carolina

12 BEFORE:
13 The Honorable William P. Keesley, Judge.

14
15 APPEARANCES:
16
17 Jack Hammack, Assistant State Solicitor
18 Attorney for the State/Plaintiff
19 William Thomas McKellar, Assistant Public
20 Defender
21 Attorney for the Defendant

22 ALSO PRESENT:
23 Thomas J. Burkhardt
24
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PAGE

PLEA HEARING

3

Certificate of Reporter

33

EXHIBITS

NO. DESCRIPTION

ID EVDS.

1 Mental Health Evaluation Report

9

9

1 Thereupon, the following proceedings were had,

2 MR. HAMMACK: Your Honor, we have jail cases next.
3 I'm told Mr. McCarley and Ms. Hammack are asking to be
4 promoted.

5 THE COURT: Who is the defendant?

6 MR. HAMMACK: Judge, this should be Thomas Burkhart
7 in front of you. And, Your Honor, we've sent over the
8 mental health evaluations on Mr. Burkhart by email
9 yesterday and you should have those as a preliminary
10 matter. He was evaluated.

11 THE COURT: I got them, but because I wasn't
12 supposed to do anything legally yesterday --

13 MR. HAMMACK: Yes, sir.

14 THE COURT: -- I didn't have a chance to read
15 them.

16 MR. HAMMACK: Yes, sir.

17 THE COURT: I started reading it this morning, but I
18 haven't finished it so we'll just have to be at ease
19 while I read this.

20 MR. HAMMACK: Yes, sir.

21 THE COURT: We're at ease.

22 (Short break.)

23 THE COURT: All right. I've read the mental health
24 evaluation. Are you Thomas James Burkhart, sir?

25 THOMAS BURKHART: Yes, sir.

1 THE COURT: Raise your right hand, please.

2 Thereupon,

3 THOMAS JAMES BURKHART

4 after having been first duly sworn, testified as follows,

5 THE COURT: Mr. Burkhart, we've scheduled the
6 hearings today by video conference and your hearing is
7 one of the ones that's scheduled. They tell me that you
8 agree to conduct a guilty plea by video conference rather
9 than be physically present in the courtroom; is that
10 correct?

11 THOMAS BURKHART: Yes, Your Honor.

12 THE COURT: Your attorney is not there at the jail
13 with you. If you want to speak to your attorney at any
14 time, let me know. If you need to talk to him privately,
15 we will set up a telephone connection so that you can
16 discuss anything you need to discuss with him privately,
17 okay?

18 THOMAS BURKHART: Yes, Your Honor.

19 THE COURT: Say that again.

20 THOMAS BURKHART: Yes, sir.

21 THE COURT: If at any time we lose your connection
22 or there's some technical issue that prevents you from
23 seeing or hearing us, we'll try to remedy that. Give us
24 a signal. Let us know if you have a problem seeing or
25 hearing anyone. Would you do that for me, please?

1 THOMAS BURKHART: Yes, sir.

2 THE COURT: Say that again.

3 THOMAS BURKHART: Yes, sir.

4 THE COURT: Mr. Burkhart, the first thing I have to
5 cover with you deals with the hearing that's called a
6 Blair Hearing. That's just a hearing that the Court has
7 to conduct any time a Judge has ordered somebody to be
8 evaluated for their competency to stand trial, so I've
9 read the report that's been issued for you by the
10 Department of Mental Health and it determined that you
11 are competent and capable of making rational choices
12 concerning the charges against you and to assist your
13 attorney in your defense, but I need to go over some
14 things with you, just some basics that the examiner
15 probably also covered with you. And there's a lot of
16 echo at the jail. I guess mute your microphone from time
17 to time and when you're speaking, I'll cut it back on; is
18 that okay with you?

19 THOMAS BURKHART: Yes, sir.

20 THE COURT: Do you know why we're going through this
21 hearing today, the guilty plea?

22 THOMAS BURKHART: Yes, sir.

23 THE COURT: And do you know what you're charged
24 with?

25 THOMAS BURKHART: Yes, sir.

1 THE COURT: Can you tell me what you're charged
2 with?

3 THOMAS BURKHART: It's murder, kidnapping, and armed
4 robbery.

5 THE COURT: Murder, kidnapping, and armed robbery?

6 THOMAS BURKHART: Yes, sir.

7 THE COURT: And do you know what a jury is?

8 THOMAS BURKHART: Yes, sir.

9 THE COURT: Can you tell me in your own words what a
10 jury is?

11 THOMAS BURKHART: It's 12 people that's picked and
12 the prosecutor and my lawyer who help decide if I'm
13 innocent or guilty.

14 THE COURT: Okay. Do you understand the concept
15 that you're presumed to be innocent?

16 THOMAS BURKHART: Yes, sir.

17 THE COURT: You understand the jury would have to
18 honor that you're presumed innocent if you started a
19 trial?

20 THOMAS BURKHART: Yes, sir.

21 THE COURT: And who would have the burden to prove
22 that you're guilty?

23 THOMAS BURKHART: The prosecutor.

24 THE COURT: Do you know what a witness does?

25 THOMAS BURKHART: Yes, sir.

1 THE COURT: Can you tell me what a witness would do
2 in a courtroom proceeding?

3 THOMAS BURKHART: He gives his testimony of what
4 happened on his part of the case.

5 THE COURT: How old are you?

6 THOMAS BURKHART: 44.

7 THE COURT: And you went how far in school?

8 THOMAS BURKHART: I graduated high school in '94.

9 THE COURT: Did you ever have to attend any special
10 classes or anything like that?

11 THOMAS BURKHART: No, sir.

12 THE COURT: Where did you go to high school?

13 THOMAS BURKHART: South Aiken.

14 THE COURT: Do you know what your lawyer's job is?

15 THOMAS BURKHART: Yes, sir.

16 THE COURT: Can you tell me just briefly what your
17 lawyer, what his job would be in representing you?

18 THOMAS BURKHART: Yes, sir. He's to represent me on
19 my behalf and really that's all I can explain really,
20 just to represent me on my behalf.

21 THE COURT: Do you know what my job is?

22 THOMAS BURKHART: Yes, sir.

23 THE COURT: What?

24 THOMAS BURKHART: To make sure all the laws and
25 everything are followed in the case and everything's done

1 right and that the prosecutor and my lawyer do their
2 job.

3 THE COURT: And what is the prosecutor's job?

4 THOMAS BURKHART: Uhm, he's there for the victim and
5 the State.

6 THE COURT: Okay. Today are you taking any kind of
7 medications, anything at all?

8 THOMAS BURKHART: Just my blood pressure medicine.

9 THE COURT: And have you consumed anything that
10 would adversely affect your ability to think clearly?

11 THOMAS BURKHART: No, sir, I have not.

12 THE COURT: Do you feel like you're clear headed?
13 You know what you're doing?

14 THOMAS BURKHART: Yes, sir, I do.

15 THE COURT: Do you know how many people on the jury
16 would have to vote that you're guilty in order for you to
17 be found guilty of anything?

18 THOMAS BURKHART: It has to be unanimous.

19 THE COURT: That's right. How long have you been in
20 jail?

21 THOMAS BURKHART: Just over two years.

22 THE COURT: Does the State have anything further on
23 the issue of competency?

24 MR. HAMMACK: No, sir, Your Honor.

25 THE COURT: Does the defense have anything further

1 on the issue of competency?

2 MR. McKELLAR: Nothing from the defense.

3 THE COURT: All right, then, based on my review of
4 the report and the findings that are contained in the
5 report I find beyond a reasonable doubt that after my
6 consultation or discussion with the defendant that he is
7 competent, he is capable of making rational choices
8 concerning the charges against him, he's capable of
9 assisting counsel in his defense and he should be allowed
10 to go forward if he desires to go forward with this
11 guilty plea. Now, this is a regular guilty plea, it's
12 not guilty with mentally ill or anything like that, is
13 it?

14 MR. HAMMACK: No, sir, Your Honor. Just a guilty
15 plea.

16 THE COURT: Mr. Court Reporter, how do I make this
17 part of the record? Do I just send it to the Clerk's
18 office, this report?

19 COURT REPORTER: You can email it to me pdf, I'll
20 print it up and mark it as an exhibit and I'll send it to
21 the court or take it to the court.

22 THE COURT: All right. So we'll make the report of
23 the mental health as an exhibit, the competency report.
24 Since his capacity to conform with criminal
25 responsibility is not an issue, I don't see any need to

1 make it an exhibit, but I will if the defense wants me
2 to. Mr. McKellar, do you want this as an exhibit?

3 MR. McKELLAR: I do not, Your Honor.

4 THE COURT: Okay. Mr. Burkhardt, I did not have to
5 mute your mic during any of that, I don't believe, so I
6 have some other questions that I will have to go over
7 with you in order for us to proceed with the guilty plea.

8 I have some indictments. One charges you with
9 murder. It alleges that in Aiken County on or about
10 October the 12th, 2018, you feloniously, willfully and
11 with malice aforethought murdered Joseph Bell by stabbing
12 him and cutting his throat and that he died as a
13 proximate result thereof on October the 12th, 2018. Upon
14 your arraignment on this charge it appears that you wish
15 to plead guilty to the offense of murder; is that
16 correct, sir?

17 THOMAS BURKHART: Yes, sir, I do.

18 THE COURT: I have another indictment that charges
19 you with armed robbery. That indictment reads that in
20 Aiken County on or about October the 12th, 2018, while
21 armed with a deadly weapon or alleging either by action
22 or words that you were armed with a deadly weapon by
23 using a representation of one, an object that a person
24 present during the commission of the robbery reasonably
25 believed to be a deadly weapon, specifically it's alleged

1 that you had a knife, and that you took from the person
2 or presence of Patty Bell by means of force or
3 intimidation goods or monies of Joseph William Bell
4 and/or Patricia Bell described as United States currency.

5 Hold on a second. Hold on just a minute. I got too
6 much noise outside my office. Hold on. I'm sorry.

7 Upon your arraignment on this charge it appears that
8 you wish to enter a plea of guilty to armed robbery; is
9 that correct, sir?

10 THOMAS BURKHART: Yes, sir.

11 THE COURT: And I have an indictment that charges
12 that in Aiken County on or about October the 12th, 2018,
13 you unlawfully seized, confined, inveigled, decoyed,
14 kidnapped, abducted or carried away Patty Bell without
15 authority of law. Upon your arraignment on that charge
16 of kidnapping it appears that you wish to enter a plea of
17 guilty; is that correct, sir?

18 THOMAS BURKHART: Yes, Your Honor, I do.

19 THE COURT: Okay. Bear with me a minute. All
20 right. Mr. McKellar, have you fully explained to your
21 client the nature and elements of each offense, possible
22 punishment, mandatory aspects of punishment and his
23 constitutional rights including trial by jury?

24 MR. McKELLAR: I have, Your Honor.

25 THE COURT: Are you satisfied there's a factual

1 basis for each plea? He froze up. Are you satisfied
2 there's a factual basis for each plea?

3 MR. McKELLAR: I am.

4 THE COURT: Do you agree with his decision?

5 MR. McKELLAR: I do.

6 THE COURT: Mr. Burkhardt, today are you under the
7 influence of any medicine, alcohol, drug, anything
8 affecting your thinking? I know I already asked you
9 that, but are you under the influence of anything now
10 that affects your thinking?

11 THOMAS BURKHART: No, sir, I'm not.

12 THE COURT: And when you plead guilty, you give up
13 important constitutional rights including your right to
14 remain silent and your right to a jury trial; do you know
15 that?

16 THOMAS BURKHART: Yes, sir, Your Honor.

17 THE COURT: If you want a jury trial, you will be
18 presumed to be innocent, you don't have to prove anything
19 at all. You would get to go before a jury and the State
20 would have to convict you -- I'm sorry -- convince all 12
21 jurors that you're guilty beyond a reasonable doubt in
22 order for you to be convicted of anything; do you
23 understand that?

24 THOMAS BURKHART: Yes, Your Honor, I do.

25 THE COURT: All right. So when you plead guilty,

1 you give up important rights including your right to
2 remain silent and your right to a jury trial; do you
3 understand?

4 THOMAS BURKHART: Yes, Your Honor.

5 THE COURT: If you wanted a jury trial, you're
6 presumed innocent, the State has to prove you guilty
7 beyond a reasonable doubt, you get to see, hear, and have
8 your lawyer cross examine every witness against you; do
9 you know that?

10 THOMAS BURKHART: Yes, Your Honor.

11 THE COURT: If you chose not to testify, the trial
12 Judge would tell the jury that they could not hold your
13 silence against you in any way at all; do you understand
14 that?

15 THOMAS BURKHART: Yes, Your Honor.

16 THE COURT: If you plead guilty, you give up all
17 those rights. You give up your right to remain silent
18 because you're admitting that you're guilty, you give up
19 your right to a jury trial, you give up the presumption
20 of innocence, you give up the right to confront the
21 witnesses against you, you admit the charge is true; do
22 you understand that?

23 THOMAS BURKHART: Yes, Your Honor, I do.

24 THE COURT: If you have any defenses in your case,
25 anything that would lessen or excuse your conduct like

1 self defense or you have any challenges to the evidence,
2 you give those things up if you plead guilty; do you
3 understand that?

4 THOMAS BURKHART: Yes, Your Honor, I understand.

5 THE COURT: Understanding all those things, do you
6 want a jury trial?

7 THOMAS BURKHART: No, sir. I do not.

8 THE COURT: I need you to listen to the Solicitor
9 now, please, Mr. Burkhardt, and then I'll come back and
10 ask you some more questions.

11 MR. HAMMACK: Yes, sir, Your Honor. Before that, I
12 don't see Mr. McKellar on the screen right now. Do y'all
13 have him? Is it just me that's lost him?

14 THE COURT: I see him. Yeah, I see him.

15 MR. HAMMACK: Okay. He's just not on my screen. I
16 wanted to make sure that he's on here.

17 THE COURT: Mr. McKellar, say something so we'll
18 make sure Mr. Hammack can hear you.

19 MR. MCKELLAR: Can you hear me, Mr. Hammack?

20 MR. HAMMACK: I can. I just can't see you. Okay.
21 I just wanted to make sure before I got started, Your
22 Honor.

23 THE COURT: Hold on a second. Mr. McKellar, anybody
24 on -- I've got so many people on here that I don't know
25 who they are.

1 MR. HAMMACK: Yes, sir.

2 THE COURT: I just admitted everybody, but some just
3 signed in recently.

4 MR. HAMMACK: Your Honor, Victoria Lager is under
5 attendee. She's the lead investigator on the case, if
6 she could be promoted. And then Miss Patty Bell is on
7 here for this case, and Ms. Stephanie Drawdy is on here
8 for this case, and there is a Mr. Dayne Burkhart on here
9 for this case, and a Rebecca Moore. My understanding is
10 the only one that wished to speak is Stephanie Drawdy,
11 and Investigator Lager is here if you need to hear from
12 her.

13 THE COURT: Okay. All right. I'm sorry for
14 interrupting you. Go ahead, please.

15 MR. HAMMACK: Yes, sir. Your Honor, this plead to
16 murder, the indictment is 2019-GS-02-02048; the
17 kidnapping indictment is 2019-GS-02-02051; and the armed
18 robbery is 2019-GS-02-02055, the negotiated sentence is
19 30 years concurrent on all charges, Your Honor. As Your
20 Honor noted in reading the indictment, this incident
21 occurred back on or about October the 12th of 2018 at [REDACTED]
22 Good Hope Farms Road here in Aiken County.

23 Officers with the Aiken County Sheriff's Office were
24 dispatched to that location in a reference to an assault.
25 They were notified that there was an unresponsive person

1 there at the location. When they approached, they found
2 the victim, Mr. Bell, to be bleeding heavily and was
3 pronounced dead at the scene.

4 They spoke with Ms. Patty Bell who is present on
5 here today. She is the mother of Mr. Burkhart. She
6 advised that they had gone, she and Mr. William Bell, the
7 victim, had gone to pick up Tommy Burkhart or Thomas
8 Burkhart, the defendant, from the jail that day. He had
9 been arrested earlier for domestic violence in the second
10 degree with his wife Patience. He had been on meth for
11 about a month at that point she told us and told law
12 enforcement, but that day when they spoke with him, he
13 seemed to be clear headed and seemed to be doing fine so
14 they agreed to go bond him out of jail.

15 They went at about 4:15 to A1 Bonding Company and
16 waited at the jail for Mr. Burkhart to be released,
17 stated that Billy, the victim, met her there and they
18 waited together in the parking lot until he was released
19 around 6:00 in the evening. She stated that she and Mr.
20 Thomas Burkhart had ridden in one vehicle and Billy had
21 ridden in a separate vehicle, Your Honor.

22 They arrived at the home where she and Mr. Burkhart,
23 the defendant, went into the home. She started working
24 on some stuff in the kitchen, getting dinner heated up.
25 She noticed that Thomas Burkhart, the defendant, was kind

1 of moving around and he was in the doorway of the office
2 and by the front door like he was waiting.

3 She stated that she went to let the dog out and
4 Thomas Burkhart, the defendant, said he was gonna go
5 outside. When she did, went to the door to let the dog
6 out, she saw Billy, that she called him, the victim,
7 going into the back of the house. She went back into the
8 kitchen, heard some noise and had to go to the front door
9 to let her dog in because her dog was scared, wanted to
10 come back in so she thought maybe there was an argument
11 or something between the defendant and the victim in this
12 case she said, so she went outside to see what was going
13 on and that's when she observed the defendant bent over
14 the victim swinging something that appeared to be a
15 hammer or a garden tool at him. She stated she saw him
16 hit him several times, three or four times with this
17 garden tool and so she yelled at him, what have you done?
18 And he started walking toward her and told her that he
19 has killed him.

20 She tried to get away from him when he physically
21 stopped her from going to Billy and forcibly pushed her
22 back up against the basement door. He then grabbed a
23 blue rope that had been hanging there and tied it around
24 her body with her arms by her side and was basically
25 dragging her around by the rope. He told her he wasn't

1 going to hurt her. He wanted to drag her up the stairs
2 to the screen porch by holding onto the end of the rope.

3 He got up to the house and it was locked. She told
4 him it was locked and he wouldn't listen. Stated he
5 needed to get in anyway. He tried pushing the door open
6 with his shoulder and then grabbed a metal plant stand
7 and started swinging at the door to force his way in. At
8 that point a neighbor apparently had heard what was going
9 on so she yelled for help. She stated at the time he did
10 put his hand over her mouth and stated that she was
11 afraid that he was going to harm her because she had
12 alerted the neighbor.

13 She stated he then went into the home where he got
14 his truck keys off of her nightstand because they had his
15 vehicle there. She stated that he also grabbed a drawer
16 that contained a number of things including cash that
17 they had at the house. If I recall right from what she
18 told me it was \$400.00 or so, maybe a little bit more
19 than that in the drawer, and he ran around toward the
20 front of the house. She was able to get the cell phone
21 and call 911. She stated that she then walked out to
22 check on the victim and when she did so, she saw a knife
23 laying there next to her husband so she picked it up.

24 Your Honor, when officers arrived and started the
25 investigation, it was determined that the victim had his

1 throat cut pretty substantially. It was a very, very
2 deep cut. It was cut almost to the vertebrae, Your
3 Honor. He also had defensive wounds on his hands where
4 it looked like he was trying to block the knife attack.

5 Your Honor, they also found a metal garden tool like
6 a garden rake with the prongs on the end. I think there
7 was three or four prongs on it, the hard metal. They
8 recovered that. Looks like it was bent and had blood on
9 it.

10 During the autopsy, the pathologist was able to
11 determine that there were several spots on the victim's
12 head where he had been struck with this garden rake with
13 such force that it had gone, cracked his skull and gone
14 an inch deep or so into the victim's brain.

15 The defendant was charged with murder, armed
16 robbery, kidnapping. He also has possession of a weapon
17 during the commission of a violent crime and the domestic
18 violence that I mentioned earlier. Those are being
19 dismissed as a result of the plea. The negotiated
20 sentence is 30 years concurrent for everything.

21 I have spoken with Ms. Bell. I have spoken with the
22 investigating officer. They both understand the
23 negotiated plea, they both understand that it is 30 years
24 and that murder is day for day. They are in agreement
25 with that because, frankly, like I explained to the

1 victim, trials are always questionable and there's always
2 appeals and stuff that come up later and she understands
3 that there's always those issues and that it's a whole
4 lot easier to deal with when it's done as a plea, so
5 everyone's in agreement.

6 I understand that Ms. Drawdy does wish to speak,
7 Your Honor, when appropriate, Stephanie Drawdy. Your
8 Honor, when you have a second, I forgot to give you his
9 prior record.

10 THE COURT: Go ahead.

11 MR. HAMMACK: He has a purse snatching and
12 possession of crack or meth in 2002; a burglary second
13 degree in 2004; an assault and battery high and
14 aggravated nature 2004. I believe that's it, Your Honor.

15 THE COURT: Mr. Burkhardt, do you admit you're guilty
16 of these three charges, sir?

17 THOMAS BURKHART: Yes, Your Honor, I do.

18 THE COURT: Has anyone forced you, threatened you,
19 coerced you in any way to get you to enter the pleas
20 against your will?

21 THOMAS BURKHART: No, Your Honor, nobody has.

22 THE COURT: Any plea bargain the State might have
23 made with you, they have to tell me what it is, so if
24 they promised you anything like dropping a charge,
25 reducing a charge, recommending a sentence, anything like

1 that, I don't know about it unless they say it during
2 this proceeding so unless they tell me on the record, I
3 don't know about it and the law says you lose what
4 promise they may have made if they haven't told me. Do
5 you understand the concept?

6 THOMAS BURKHART: Yes, sir, I do.

7 THE COURT: Mr. McKellar, are all of the plea
8 agreements on the record?

9 MR. McKELLAR: They are, Your Honor.

10 THE COURT: You said they are?

11 MR. McKELLAR: They are.

12 THE COURT: Okay. So, Mr. Burkhart, other than
13 what's on the record, has anybody promised you anything
14 to get you to plead guilty or offered you any other hope
15 of reward?

16 THOMAS BURKHART: Nothing that hasn't been said on
17 the computer.

18 THE COURT: Okay. Are you fully satisfied with your
19 attorney?

20 THOMAS BURKHART: Yes, sir, Your Honor, I am.

21 THE COURT: Is there anything you want him to do on
22 the case, talk to any witnesses, do any research, explain
23 anything to you, anything at all that he has not done on
24 your case that you want him to do other than speak for
25 you?

1 THOMAS BURKHART: No, sir. Just for him to make
2 sure and explain about the kidnapping charge that we
3 talked about.

4 THE COURT: You know what he's talking about, Mr.
5 McKellar?

6 MR. McKELLAR: I do, Your Honor. At the appropriate
7 time I will ask that Your Honor make a finding that this
8 kidnapping did not result in the commission of a sexual
9 offense which will prevent Mr. Burkhardt from having to
10 register as a sex offender upon his release.

11 THE COURT: I've already written that down on the
12 sentence sheet.

13 MR. McKELLAR: Thank you.

14 THE COURT: Okay. Mr. Burkhardt, other than what's
15 on the record now, has anybody promised you anything to
16 get you to plead?

17 THOMAS BURKHART: No, sir, they have not.

18 THE COURT: And have you had enough time to meet
19 with Mr. McKellar and talk with him so that he can
20 represent you properly?

21 THOMAS BURKHART: Yes, sir, I have. He's been a
22 good lawyer, sir.

23 THE COURT: Have you had enough time to make up your
24 own mind about all this?

25 THOMAS BURKHART: Yes, sir.

1 THE COURT: And you agree to do this, once again,
2 you agree to do this by video; is that right?

3 THOMAS BURKHART: Yes, sir, I do.

4 THE COURT: You need to talk to him privately about
5 anything now?

6 THOMAS BURKHART: No, sir. I'm fine.

7 THE COURT: All right. I need to cover some things
8 about the penalties with you. Do you understand that
9 murder is a felony, it's a crime which carries not less
10 than 30 years in prison and up to life imprisonment?

11 THOMAS BURKHART: Yes, Your Honor, I understand.

12 THE COURT: So do you understand that the least time
13 I can give you on murder is 30 years?

14 THOMAS BURKHART: Yes, sir, Your Honor.

15 THE COURT: Mr. Hammack mentioned this a moment ago,
16 but I want to make sure that it registered with you. Do
17 you understand that in South Carolina a murder charge, a
18 sentence for murder means you have to serve the sentence
19 day for day? You have to serve every day of 30 years; do
20 you understand that?

21 THOMAS BURKHART: Yes, Your Honor, I do.

22 THE COURT: Now, our legislature classifies certain
23 crimes as violent offenses. Do you understand this is a
24 violent offense?

25 THOMAS BURKHART: Yes, sir.

1 THE COURT: And do you understand that violent
2 offenders are treated differently in the Department of
3 Corrections than non violent offenders? You will not be
4 eligible for certain programs and placements that a non
5 violent offender might be eligible for.

6 THOMAS BURKHART: Yes, Your Honor, I understand.

7 THE COURT: And on a second violent crime in South
8 Carolina a person is required to do all the time without
9 parole which doesn't really make much difference on a
10 murder case, but it might on some of these others; do you
11 understand that?

12 THOMAS BURKHART: Yes, sir, I understand.

13 THE COURT: The legislature has also classified
14 certain crimes under what's commonly called two strikes
15 you're out and three strikes you're out. Those things
16 are really called most serious offenses and serious
17 offenses. Murder is a most serious offense, that means
18 it's a two strike strike. If you do get the right
19 combination of strikes, you have to do life in prison
20 without parole; do you understand?

21 THOMAS BURKHART: Yes, sir.

22 THE COURT: Some of these consequences, I'm not
23 gonna try to cover all of them, some of them are rather
24 insignificant in the grand scheme of things, but you
25 understand when you get out of prison, they're gonna put

1 a code on your driver's license that would indicate that
2 you've been convicted of a crime like this, so if you're
3 ever stopped and give your driver's license to an
4 officer, they're gonna know that you have a murder
5 conviction or a violent offense; do you understand
6 that?

7 THOMAS BURKHART: Yes, sir, I understand.

8 THE COURT: You will be placed in the DNA data base;
9 do you understand that?

10 THOMAS BURKHART: Yes, sir.

11 THE COURT: Kidnapping is a felony and also it
12 carries up to 30 years in prison; do you understand
13 that?

14 THOMAS BURKHART: Yes, sir.

15 THE COURT: It's also a violent crime and it's also
16 a most serious offense; do you understand that?

17 THOMAS BURKHART: Yes, sir.

18 THE COURT: And then armed robbery is a felony that
19 carries not less than 10 years in prison and up to 30
20 years in prison; do you understand?

21 THOMAS BURKHART: Yes, sir.

22 THE COURT: It's also a violent crime and a most
23 serious offense; do you understand that?

24 THOMAS BURKHART: Yes, sir, I do.

25 THE COURT: And the 10 years on that is a mandatory

1 minimum so the least I can give you would be 10 years; do
2 you understand that?

3 THOMAS BURKHART: Yes, sir.

4 THE COURT: Have you understood everything I've been
5 over with you now, Mr. Burkhart?

6 THOMAS BURKHART: Yes, Your Honor. I do understand
7 it all.

8 THE COURT: Are you sure you want to give up your
9 rights and plead guilty?

10 THOMAS BURKHART: Yes, sir, I do.

11 THE COURT: Are you pleading guilty to these three
12 crimes because you are, in fact, guilty of them?

13 THOMAS BURKHART: Yes, sir, I am guilty.

14 THE COURT: Thank you, sir. All right. The Court
15 finds that Mr. Burkhart has made a free, knowing,
16 voluntary, and intelligent decision to waive his rights
17 and plead guilty. He's done so upon the advice of
18 counsel with whom he's fully satisfied. There is a
19 factual basis for each plea. He indicated as far as his
20 satisfaction with his attorney that his attorney has done
21 a very good job and he also indicated he had sufficient
22 time to talk to his attorney, and that he had sufficient
23 time to make up his own mind about his guilty pleas. He
24 indicated that he is, in fact, guilty of these offenses.
25 He understands that he's giving up any defenses or

1 challenges to evidence, and the Court accepts the plea on
2 each case.

3 Ms. Drawdy, are you on the connection? Ms. Drawdy,
4 are you with us?

5 STEPHANIE DRAWDY: Yes, sir. Yes, sir. I'm here.

6 THE COURT: Do you have video?

7 STEPHANIE DRAWDY: Yes, sir.

8 THE COURT: Can you cut your camera on?

9 STEPHANIE DRAWDY: Just a minute. I'm here, Your
10 Honor.

11 THE COURT: All right. What would you like to say,
12 ma'am?

13 STEPHANIE DRAWDY: Thank you, Your Honor. October
14 12th was the second anniversary of Billy's vicious murder
15 at the hands of Tommy Burkhart. Billy was my stepfather
16 for 51 years and he still is. When I first met Billy, I
17 was eight years old. I loved Billy from the moment I met
18 him and he loved me. Whenever I saw his '57 Chevy pull
19 into the yard, I was looking forward to him just so we
20 could talk.

21 The pain I've been feeling since his murder is
22 indescribable. The question: Why would Tommy murder
23 such a loving and giving man? I always told Billy that
24 Tommy was gonna kill him. I felt it deep in my soul. I
25 admit I always wanted to kill Tommy for all of the things

1 that Billy endured because of him and Billy would just
2 say, Stevie, let me handle it.

3 Tommy stole Billy's trucks, money. He even
4 physically hurt him yet Billy still helped Tommy at
5 anything he could. I stayed with Billy when I moved back
6 from Georgia. One day Billy and his workers came home to
7 get materials to work. Billy told me if Tommy came over,
8 not to let him in the house. You can bet I locked the
9 door.

10 On Friday, October 12th, Billy got Tommy out of jail
11 for malicious against Patty on his CDV charge. Within a
12 half hour Billy was murdered. Billy paid the ultimate
13 price for Patty's decision. Billy would still be here
14 unless Billy was ready to bring him home. Billy was a
15 good and thoughtful man. He never met a stranger. I
16 love and miss Billy so much everyday. His memory will
17 live on in my heart forever until we're reunited in
18 Heaven. Billy, you were the best. Thank you.

19 THE COURT: Thank you. Is there anyone else that
20 wishes to speak for the State, Mr. Hammack?

21 MR. HAMMACK: Your Honor, I've been advised that
22 none of the other victims or family members do.
23 Investigator Lagger, I know you're on now. Are you
24 interested in saying anything?

25 INVESTIGATOR LAGGER: Can you hear me?

1 MR. HAMMACK: Yes, ma'am, we can now.

2 INVESTIGATOR LAGGER: Good morning. Uhm, I would
3 just say that this was probably one of the most horrific
4 scenes that I've ever had to investigate and that knowing
5 that once Mr. Bell was knocked to the ground, that he was
6 literally killed from behind and he never had a chance.
7 You know, he was a 78 year old man who had suffered a
8 stroke recently with right side weakness. You know, he
9 was limited in his ability to defend himself, period, and
10 he was already down and then he was attacked from behind.
11 I think that's all I need to say.

12 THE COURT: Thank you. Mr. McKellar.

13 MR. McKELLAR: Yes, sir.

14 THE COURT: Tell me about your client, please.

15 MR. McKELLAR: Mr. Burkhardt is 44 years old. He is
16 currently married but separated. His wife is in the
17 process of divorcing him. He has no biological children,
18 but he did raise three of his wife's children as his own.
19 He tells me they called him papa. He graduated high
20 school from South Aiken in 1994. He did one year at USC
21 Aiken. His trade was that of a roofer. He has worked
22 throughout the CSRA and has at one point worked with the
23 carpenters union and also at SRS. He was working at SRS
24 at the time of this incident.

25 He never knew his biological father. He tells me

1 that the victim Billy raised him; that Billy, the victim,
2 was my client's father for all purposes. I know
3 Mr. Burkhart would say if he could rewind the clock two
4 years, he wouldn't have had his mom bond him out, he
5 would have stayed in jail. He regrets what he has done,
6 and it has moved him, I believe, significantly. The
7 weight that he now carries is a burden. It's a burden on
8 everybody, Your Honor, least of which a burden on my
9 client Mr. Burkhart. I think he knows that, but he does
10 regret what he has done, Your Honor.

11 We spoke about this yesterday, last night, and
12 Mr. Burkhart started to get a little emotional and hard
13 to talk about it, Your Honor. Your Honor, he has 723
14 days time served. That is all I have to offer, Your
15 Honor, I believe. We do ask that Your Honor accept the
16 negotiated sentence. I believe Mr. Burkhart would like
17 to address the Court.

18 THE COURT: Thank you. Would you like to say
19 anything, Mr. Burkhart?

20 THOMAS BURKHART: Yes, Your Honor, I would. I would
21 like to apologize to all of my family and everyone I hurt
22 by my decisions and I hope y'all get some closure today
23 to move on with your lives and I'm sorry. And that's it,
24 Your Honor.

25 THE COURT: Thank you. All right. If there's

1 nothing further, Mr. Burkhart, if you should desire to
2 file any type of appeal from this proceeding, it has to
3 be done in writing, very short time window in which to
4 file the appeal, so if there's any desire on your part to
5 file an appeal, you must let your attorney know that
6 immediately; do you understand?

7 THOMAS BURKHART: Yes, sir, I understand.

8 THE COURT: I'm making a specific finding on the
9 record that these three offenses are violent crimes and
10 they're classified as felonies, and that prohibits you
11 from transporting, shipping, receiving, or possessing any
12 firearm or ammunition. Under South Carolina law it would
13 be a separate criminal offense if you were to transport,
14 ship, receive, or possess any firearm or ammunition in
15 the future; do you understand?

16 THOMAS BURKHART: Yes, sir.

17 THE COURT: The sentence on murder on indictment
18 2019-GS-02-02048 is that you be committed to the South
19 Carolina Department of Corrections for 30 years plus
20 costs and assessments. On indictment 02051, kidnapping,
21 the sentence is 30 years plus costs and assessments.
22 Restitution is deferred on each of those. As well as the
23 armed robbery, the sentence is that you be committed to
24 the South Carolina Department of Corrections on
25 indictment 2055 for 30 years plus costs and assessments.

1 The sentences run concurrently on each of them. You are
2 given credit for jail time served under section 24-13-40
3 of the South Carolina Code. I have written on your
4 sentence sheet to credit you with 723 days time served.
5 On the murder charge, the armed robbery charge, and the
6 kidnapping charge, you have to pay your court costs
7 within one year of being released from prison. On the
8 criminal sexual conduct case -- I'm sorry. I apologize.
9 On the kidnapping case I've made a finding that this was
10 not related to criminal sexual conduct, sexual misconduct
11 as requested by your attorney. Do you understand those
12 sentences, sir?

13 THOMAS BURKHART: Yes, sir, I do.

14 THE COURT: Thank you. That concludes this
15 hearing.

16 MR. MCKELLAR: Thank you, Your Honor.

17 MR. HAMMACK: Thank you, Your Honor.

18 WHEREUPON THE HEARING WAS CONCLUDED.

19

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21

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25

1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Retired Official Circuit Court Reporter for the Eleventh
7 Judicial Circuit in and for the State of South Carolina, do
8 hereby certify that I reported the proceedings in the before
9 captioned case in the Court of General Sessions in and for the
10 State of South Carolina on the 20th day of October, 2020.

11 I FURTHER CERTIFY that the forgoing 32 pages
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 9th day of September, 2024.

17

18

By:s/Steven E. LeBlanc

19

Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

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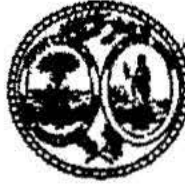
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State of South Carolina
Department of Mental Health



MENTAL HEALTH COMMISSION:

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INTERIM STATE DIRECTOR
Mark Binkley

Division of Inpatient Services
Forensic Evaluation and Outpatient Services
7801 Farrow Road, Building A6
Columbia, SC 29203
Information: (803) 935-5800

July 17, 2019

Jack Hammack
Assistant Solicitor
109 Park Avenue
Aiken, SC 29801

Re: The State of South Carolina vs. Burkhardt, Thomas J.
DMH #: 1034-7560
Aiken County, Court of General Sessions

Dear Assistant Solicitor Hammack:

In accordance with the court order issued by the Honorable Lawton McIntosh, a competency to stand trial evaluation was conducted by the South Carolina Department of Mental Health, pursuant to S.C. Code Ann. § 44-23-410 (1976).

Please see the attached report for the results of this evaluation.

This 11 page document is certified to be the original court-ordered evaluation report issued pursuant to S.C. Code Ann. § 44-23-410 (1976).

July 17, 2019
Date

Brenda Burkhardt
for Kelly Gothard, Ph.D.
Clinical Director
Forensic Outpatient Services
Department of Mental Health

cc: Charles Rudnick, Attorney at Law, 211 York St. NE, Aiken, SC 29801

KG/rb

MISSION STATEMENT
To support the recovery of people with mental illnesses.

DMH South Carolina
Department of Mental Health

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE

**COMPETENCY TO STAND TRIAL EVALUATION
PURSUANT TO S.C. CODE ANN. § 44-23-410**

Name: Burkhardt, Thomas James
SCDMH Number: #1034 - 7560
Interview Date: 06/26/2019
Date of Report: 07/17/2019
County: Aiken
Evaluators: Jeffrey M. Washelesky, Psy.D.
Michelle A. Jones, J.D., Ph.D.

Opinion: *Has the capacity to understand the
proceedings against him and to
assist in his own defense*

IDENTIFYING INFORMATION

Mr. Thomas James Burkhardt (DOB: [REDACTED]/1976) is a 44-year-old man who is currently charged with Domestic Violence in the Second Degree, in connection to events that are alleged to have occurred on or about 10/09/2018. He is also charged with Armed Robbery, Possession of a Weapon During a Violent Crime, Kidnapping, and Murder, in connection to events that are alleged to have occurred on or about 10/12/2018.

On 05/09/2019, the Honorable Lawton McIntosh of Aiken County Court of General Sessions ordered Mr. Burkhardt to undergo an evaluation of his competency to stand trial pursuant to *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 and S.C. Code Ann. § 44-23-410. These determinations were made in consideration of: "The defendant struggles with mental health issues."

The current competency to stand trial evaluation focused on obtaining relevant information about Mr. Burkhardt's current clinical and psychological condition, his functional abilities associated with his participation in trial, his ability to assist and participate in his defense, and, if these capacities were limited, the likelihood that they could be restored.

NOTIFICATION

The undersigned informed Mr. Burkhardt they were supervised by a licensed psychologist. He was presented with the evaluation information form and the undersigned observed him as he read some of the information aloud. The undersigned read the remaining information aloud to him. In addition, the undersigned reviewed each piece of information in simplified language. He was notified of the evaluation procedures, how the information would be utilized, and the limits to confidentiality. He demonstrated an understanding of this information, as he was able to put them into his own words and answer several questions about the limits of confidentiality and purpose of this evaluation. Following this procedure, Mr. Burkhardt signed the document and provided verbal assent to participate in the interview and evaluation.

SOURCES OF INFORMATION

1. Direct Evaluation and Interview with Mr. Burkhardt by the undersigned on 06/26/2019 for approximately three hours
2. Social Work Assessment Interview (by telephone) with Mr. Burkhardt's wife, Ms. Patience Burkhardt, completed by Elizabeth Whetstone, LISW-CP on 06/14/2019

3. Aiken County Court of General Sessions Order For Competency To Stand Trial Evaluation Pursuant to *State v. Blair*, dated 05/09/2019
4. Aiken County Sheriff's Department records
 - a. Incident Reports, dated 10/09/2018, 10/12/2018, 10/13/2018, 10/19/2018, 10/23/2018, and 01/03/2019
 - b. Affidavits/Arrest Warrants, dated 10/09/2018 and 10/13/2018
 - c. Forensic Investigations Section Crime Scene Report, dated 10/12/2018
 - d. Aiken Bloodhound Tracking Team Call-Out Report, dated 10/13/2018
 - e. Coroner Summary Report, undated
 - f. Newberry Pathology Associates, P.A. Necropsy Report, dated 10/18/2018
 - g. Voluntary Statement of Patience Burkhart, dated 10/09/2018
 - h. Voluntary Statement of Joseph Baker, dated 10/12/2018
 - i. Voluntary Statement of Patty Bell, undated
 - j. Voluntary Statement of Monroe Hall, dated 10/12/2018
 - k. Voluntary Statement of Deputy A. Meyer, dated 10/15/2018
 - l. Voluntary Statement of Deputy J. Tuper, dated 10/16/2018
 - m. Voluntary Statement of Deputy M. Matthew, dated 10/17/2018
 - n. Voluntary Statement of Deputy Christianson, dated 10/17/2018
 - o. Voluntary Statement of Deputy Poindexter, dated 10/18/2018
5. Medical and Mental Health Treatment records
 - a. Aurora Pavilion Behavioral Health Services records, dated 01/08/2013 through 01/14/2013
 - b. Aiken Regional Medical Center records, dated 09/05/2013 through 10/11/2018
 - c. Aiken County Detention Center records, dated 10/30/2018 through 05/20/2019
 - d. Aiken-Barnwell Mental Health Center records, dated 12/21/2018
6. Criminal History records
 - a. National Crime Information Center (NCIC), dated 10/18/2018

It should be noted that records from Faith Home, Inc. were requested but not received by the time this report was written. Records from SCDC were requested but were not available, as they are over 10 years old. Records from Aiken-Barnwell Mental Health Center were requested but what was received was limited to one day during his current period of detainment (12/21/2018), and the information only indicates he was referred from the detention center. If additional information is received at a later time that would alter the opinion(s) contained in this report, an addendum to the report will be submitted.

RELEVANT BACKGROUND INFORMATION

The below information was obtained from available records, observations of Mr. Burkhart, his self-report, and a collateral interview with his next of kin.

Developmental and Social History

Mr. Burkhart reported he was primarily raised by his biological grandmother, his mother, and his step-father who was "in the picture since T-Ball." Mr. Burkhart said he never met his biological father who is now deceased. Mr. Burkhart indicated his mother and step-father dated for 16 or 17 years before they married. He said he lived with his mother and grandmother throughout his childhood, and he said his step-father "stayed there" at times, but he had his own home. It was not until his mother and step-father married that they moved in together. He did not report serious rule violations as a child (e.g., running away from home, destroying property, etc.), aside from substance use, which is described below. According to Mr. Burkhart, his mother and step-father were supportive of him and he had a good relationship with them until he started abusing drugs, which created conflict between him and his parents.

Mr. Burkhart indicated he first met his wife when he was 18 or 19 years old, but he said they did not begin a romantic relationship until much later. He said they dated for approximately six months before they married when he was 30 years old. Mr. Burkhart acknowledged his wife was aware of his persistent substance use when they married, and according to his wife, he was "aggressive" at that time. Mr. Burkhart indicated he has step-daughters and step-grandchildren through his marriage. He discussed mutual infidelities within the marriage. He said his wife cheated on him approximately six months after they married, but he did not discover the infidelity until five years later (approximately 2013). Mr. Burkhart discussed in detail a seemingly chaotic relationship with his wife. He suggested she was "always on her phone" and did not pay attention to him. He shared that after she confirmed she cheated on him (in 2013), he believed she was having sexual intercourse with multiple men (e.g., drug users, police officers, jail staff, co-workers, and "anyone"), and he stated he was certain she was making pornographic videos with other men, though he "could never find [the videos]." Available police records indicate a history of domestic violence within the marriage.

Educational & Occupational History

Mr. Burkhart stated he graduated high school, attended college for one year, and went to a technical school for one semester. He said he did not finish school because he preferred to "do drugs and party." He denied behavioral problems in school (e.g., fighting or destroying property). He said his grades were "not bad," but he was suspended "a couple times" in high school for skipping school. He denied being expelled. He did not report a history of special education.

Mr. Burkhart said he consistently maintained employment. He reported careers in roofing, construction, grocery stores, and most recently at a nuclear factory. He said he would use drugs (i.e., cannabis and crack cocaine) while on the job, and he reported being fired from a former job as a result of a DUI. According to his wife, he "use[d] drugs and [did] not go to work," and he was fired as a result. He denied applying for or receiving social security or unemployment benefits.

Medical History

Mr. Burkhart reported medical complaints to include sleep apnea, which requires the use of a CPAP machine, and high blood pressure. According to his wife, his high blood pressure is "bad," and he was prescribed medication for it. She also reported he had surgery on tendons in his foot, as well as for kidney stones, and he broke bones while working as a roofer. He did not report a history of head injury or loss of consciousness.

Substance Use and Treatment History

Mr. Burkhart indicated a substance use history consisting of alcohol, cannabis, cocaine, crack cocaine, LSD, and methamphetamine. Although he did not report it in the current interview, records from Aiken Regional Medical Center indicate he previously reported a history of heroin use as well. He referred to himself as a "drug addict" multiple times throughout the interview. According to Mr. Burkhart, he "changed" when he started using drugs. He reported he began consuming alcohol around 12 or 13 years old, and he first smoked cannabis at 13 years old. He said his cocaine use began at 14 years old and his crack cocaine use began at 15 years old. Mr. Burkhart reported using LSD "a lot in high school," and he said he used cannabis, cocaine, and crack cocaine "daily, for years." He stated, during high school, he sold drugs in order to finance his substance use, and as an adult he stole from others for the same reason. He said he "switched" from crack cocaine to methamphetamine after he married his wife. He reported being sentenced to prison (according to his wife, twice) for substance-related charges (his NCIC reflects a number of substance-related charges/convictions), and he continued to use substances (i.e., cannabis and crack cocaine) while he was incarcerated.

With regard to recent use, Mr. Burkhart said his substance of choice was methamphetamine, and he said he went on a "binge" at a "drug house" the weekend prior to his Domestic Violence charge. He said he injected methamphetamine from Friday morning through Sunday night. According to his wife, she "heard" the methamphetamine he used was "laced with things." When asked how a three-day binge affected him, he said if he injected methamphetamine from Friday morning through Sunday night the drug would be "completely out" of his system by Monday afternoon, but he then said he would not be able to sleep Monday night, which he did not attribute to substance intoxication. Mr. Burkhart said he participated in approximately five inpatient substance use treatment programs across the country. He completed three of the programs and terminated two early, one of which was due to his grandmother's declining health. He relapsed after every treatment program and he said his longest period of sobriety, since age 14, was for four months prior to his current charges.

Psychiatric History

Mr. Burkhart reported he was previously diagnosed with Anxiety and Depression, and he said "drugs probably made things [mental health concerns] worse." He said he was prescribed Paxil and Zoloft (antidepressants) around the age of 19 or 20 years old. He said he was more recently prescribed Xanax (a benzodiazepine to treat anxiety), but could not recall when that began. He said he was prescribed the Xanax by a general physician (Dr. Ray Vaughters) in Aiken. Mr. Burkhart reported a history of suicide attempt after he discovered his wife's infidelity (2013). According to Mr. Burkhart, he overdosed on a bottle of Xanax, which required medical attention. He denied a history of psychiatric treatment such as talk therapy or inpatient or outpatient services.

Additionally, Mr. Burkhart reported experiencing symptoms suggestive of mental health concerns largely within the confines of his use/intoxication of methamphetamine. Specifically, he mentioned his thoughts of his wife's infidelities began "three or four years ago," which was when he began using methamphetamine. Although he said his belief about his wife's sexual proclivities (outlined above) were not the result of his methamphetamine use, he stated these beliefs worsened when he was intoxicated on methamphetamine. According to his wife, Mr. Burkhart "sees people [who are] not there," stays awake for extended periods of time, and "hears voices," but only when he uses methamphetamine. She said on the day of the alleged Domestic Violence offense, when he returned from the "drug house," he was "very paranoid" and he "saw and heard helicopters" that were not there. He was convinced his wife was hiding money from him, and he believed "someone was in the house" with them.

HISTORICAL COLLATERAL INFORMATION

Aurora Pavilion Behavioral Health Services records

Records were provided from 01/08/2013 through 01/14/2013. He was admitted after "an overdose of 50 Xanax," which was due to "significant stressors with his wife related to concerns about her infidelity." He reported he was "depressed and anxious." During his intake assessment, he was "somewhat cooperative, but agitated about a desire to be discharged as soon as possible." His thoughts were logical and linear and there were no signs of severe mental illness (e.g., mania, psychosis, delusional ideation). Over his seven-day admission, he was detoxed from Xanax and he attended group therapy sessions. He informed staff he visited with his wife and that things were "good" and they were "working on their marriage." He was diagnosed with *Rule out Major Depressive Disorder versus Adjustment Disorder* and *Rule out Cluster B Traits* (referring to personality characteristics related to Antisocial, Borderline, Narcissistic, and Histrionic traits).

Aiken Regional Medical Center records

Records were provided from 09/05/2015 through 10/11/2018. In September and December 2015, Mr. Burkhart was seen for medical reasons (i.e., foot pain and high blood pressure, respectively). In December 2015 he informed staff he used cocaine the weekend prior. It does not appear as if a drug screen was performed. He was diagnosed with "anxiety," along with other medical diagnoses, and his psychiatric

medications included Alprazolam (i.e., Xanax, a benzodiazepine to treat anxiety), Ambien, and Zoloft (an antidepressant). In January 2016, he was admitted for four days due to "suicidal ideation and substance abuse." It was noted he smoked an "unknown amount of crack [cocaine]" the night prior, and he called his father "to get him help." His urine drug screen tested positive for cocaine and he was diagnosed with *Crack Cocaine Dependence and Adjustment Disorder with Mixed Anxiety and Depressed Mood*. He was prescribed Lorazepam (i.e., Ativan, a benzodiazepine to treat anxiety) and Paxil (an antidepressant). In August 2016, he was seen due to "difficulty breathing." His urine drug screen tested positive for cannabis, and he said he used cannabis because it helped with his "nerves." He was offered Vistaril (a non-benzodiazepine to treat anxiety), but he "asked multiple times for a prescription for Xanax." The physician would not prescribe it to him since he was "currently abusing drugs" and had not been prescribed Xanax "for months."

In February 2017, Mr. Burkhardt presented with "psychiatric problems" and suicidal ideation. He was described as "depressed, anxious, and paranoid agitated [*sic*]." His history of substance use was noted, as well as "a psychiatric history that may be related to drug use." This is the first documented history of his suspicions towards his wife. He said the night prior he and his wife were in a verbal altercation, he accused her of cheating on him, and she threatened to leave him. Mr. Burkhardt "held a knife to his throat" as a result, his wife called police, and EMS brought him to the emergency department. During his initial assessment, he reported he used drugs the night before, and his urine drug screen tested positive for cannabis, cocaine, and amphetamine. However, he told staff he was safe for discharge, and he said he held the knife to his throat for "attention." He was not admitted and he was cleared for discharge, but prior to leaving the emergency department he requested "something for anxiety, like Xanax," which the physician would not prescribe to him.

Records indicate Mr. Burkhardt was admitted from 10/09/2018 to 10/11/2018 (after the alleged offense against his wife). He informed staff he used methamphetamine "the past couple of days." A medical workup "was concerning" for sinus tachycardia (elevated heart rate) and acute kidney injury with severe dehydration, both of which medical staff attributed to his substance use. It does not appear as if a urine drug screen was performed. His medical concerns were treated and stabilized, and he was diagnosed with *Methamphetamine Abuse*. He was prescribed Xanax upon discharge, and he was released to jail.

RECENT JAIL COURSE AND PSYCHOLOGICAL FUNCTIONING

According to Mr. Burkhardt, he entered Aiken County Detention Center (ACDC) in the middle of October 2018, presumably shortly after the second alleged offense of which he is accused (offense date 10/12/2018). He reported jail staff and inmates "talk about him" when they are on the phone, though he acknowledged he has never heard them speak on the phone. He indicated he "can't do anything" in jail, and all he wants to do is "cry and talk to my wife and grandkids." He said, "All I do is listen to the bullshit walk past. I know they're talking to me, about me, to my wife." He discussed seeing jail staff viewing his wife's Facebook page, but he said they "minimize the [computer] screen" when he tried to get a better look. He said he does not confront the officers about looking at his wife's Facebook page because he "doesn't want to get in trouble."

With regard to behaviors, ACDC disciplinary records reveal on 12/06/2018 Mr. Burkhardt received a "misconduct" after he and a number of other inmates on his pod "show[ed] complete disregard for [officer] directives and refused to lock in." On 04/08/2019, Mr. Burkhardt was infraacted for stealing "by using another inmate's pin number to place a call, which then deducted funds from the inmates phone account." Mr. Burkhardt pleaded guilty to this infraction and received 15 days disciplinary detention.

Regarding mental health concerns, a review of Mr. Burkhardt's ACDC inmate requests reveals he complained of difficulty sleeping and "bad" anxiety beginning on 11/12/2018. He requested specific medications (e.g., Xanax, Ambien, and Cymbalta) to help ease his concerns. Instead, he was prescribed antidepressants (e.g., Lexapro, Trazodone, and Cymbalta) from December 2018 until May 2019. On

04/04/2019, he began to submit inmate requests stating other inmates "talk about" him on the phone, and that he "know[s]" he saw officers on his wife's Facebook page. He was encouraged by mental health staff to "focus on concrete proof" and not act on impulse. On 04/10/2019, he filed another request that said, "I [know] the officers and my wife were [planning] something [this] is the first step in [their] plan I know I saw them on Facebook with [her]...." On 04/11/2019 he was scheduled to meet with a mental health therapist. On 04/24/2019, he wrote, "...someone was coming over [the] intercom calling me a murderer and [drug] addict...they kept me awake that night and I [looked] at the [officer's] desk and sometimes [Officer] was at the desk and sometimes he [wasn't] the officers must know that [I'm] talking to you about what they are [planning] to do to me." On 05/17/2019 he wrote, "During the day I can see the camera move...and always is [sic] following me." He wrote on 05/20/2019, "[I'm] trying to believe my wife and think about the things you say but then I see the camera [following] me and the voice in my head seems angry now it calls me names too like my wife does [the voice doesn't] help me like it use [sic] to." On 05/22/2019, Seroquel (an antipsychotic) 50 milligrams once a day, was added to his antidepressant regimen, and his mental health diagnoses included *Unspecified Anxiety* and *Unspecified Delusional Disorder*.

MENTAL STATUS EXAMINATION AND BEHAVIORAL OBSERVATIONS

The undersigned met with Mr. Burkhardt in an interview room at the Forensic Evaluation Service. The interview lasted approximately three hours.

Mr. Burkhardt is a 44-year-old man who appeared his chronological age. He is of average height and large build. He was cooperative, polite, attentive, engaged, and motivated throughout the interview. He presented to the interview in moderately clean and neat attire (i.e., an orange jail jumpsuit with an off-white t-shirt underneath), and his grooming and hygiene were adequate. No behavioral abnormalities (i.e., involuntary movements) were observed. He was fully alert and oriented (i.e., aware of time, place, and situation). His eye contact was good and appropriately shifted between the evaluators. His speech rate, volume, and rhythm were within normal limits, but he spoke faster and louder when discussing topics that irritated him (i.e., his wife's purported indiscretions). Although his speech and thoughts were mostly linear, goal-directed, and organized, when he discussed his beliefs about his wife his expressed thoughts became slightly circumstantial. Mr. Burkhardt readily answered all questions posed to him and appeared to be a fair historian. However, he had a tendency to offer more information than was necessary to a number of questions related to his alleged offenses, and he said on one occasion, "This might not be important to you [to hear] but it's important to me [to say]." He was amenable to interruption and when instructed to simply answer the question (e.g., yes or no) he was able to do so appropriately. His attention and concentration were slightly impaired due to notable emotional distress when discussing difficult topics (i.e., the alleged offenses), and whenever he believed he saw the transporting officer from jail outside the room. Specifically, he repeatedly looked toward the door (which has a small window), and he sometimes stood up from the table in an attempt to get a better vantage point of the door. He expressed he did not want officers listening to what he said. When asked to describe his mood, he was unable to do so, but his affective range (i.e. observable presentation of mood) shifted appropriately with the topics of conversation. To illustrate, when discussing aspects of his current legal situation, he became noticeably upset, and at times he began to sob, which required a couple minutes break for him to collect himself. He was also overly concerned about the undersigned's personal opinions of him. He would occasionally laugh or use humor, but at appropriate times.

Mr. Burkhardt did not endorse current overt mental health symptoms or concerns (e.g., depression or anxiety). He did not endorse experiencing overt psychotic-like symptoms (e.g., others can control his body, having magical powers, devices implanted in him, the television or radio sending him special messages, etc.); however, he reported hearing a "voice," which he described as the voice of his biological father who he has not met. He denied the voice told him to do things and the manner in which he described the content of the voice (e.g., "don't trust her [his wife]," "why is she [his wife] doing this," or "why is she [his wife] at work so late") suggests he was describing his own inner thoughts/conscience. With the exception

of seeing odd things on his wife's phone (e.g., "wiping the screen and applications or folders disappearing"), or seeing purported "red marks" on his wife's neck shortly before the alleged offense against her, he did not endorse seeing things others do not. He did not appear to be responding to internal stimuli (e.g., seeing or hearing things) during the interview. He reported a number of beliefs regarding telephones. Specifically, he stated he believes others (e.g., his wife and co-workers) "might be able" to read his mind because they "probably have an app on the phone that can do that." He also expressed the belief his wife put a tracking application on his phone to know when he "was coming home," so she could "stop having sex" with other men. Additionally, he asked the undersigned on a couple of occasions if they had a cell phone on them, and he wanted to see the phone to ensure the conversation was not being recorded. Mr. Burkhart also expressed a strong belief his wife was creating pornography and was having sex with multiple men (e.g., drug users, police officers, jail staff, co-workers, and "anyone") throughout much of the interview. Although he said he had this belief for "years," he said the belief worsens when he does drugs (i.e., methamphetamine). He stated these beliefs were not the result of his substance use, but he acknowledged they "might be," as he has been a persistent substance user with minimal periods of sobriety. He indicated his appetite, sleep patterns, and energy levels were adequate given his current detainment. He did not endorse current homicidal or suicidal ideation. His judgment was good. Mr. Burkhart exhibited poor insight into his psychological concerns as well as how his substance use affects his functioning (e.g., believing injecting methamphetamine for three days would be out of his system within a couple of hours, despite also noting he would still not be able to sleep).

DIAGNOSTIC IMPRESSION (DSM-5)

Substance-Induced Psychotic Disorder

Methamphetamine Use Disorder, Severity Deferred, In Partial Remission, In a Controlled Environment

Crack Cocaine Use Disorder, Severity Deferred, In Partial Remission, In a Controlled Environment

Mr. Burkhart has a long-standing history of significant substance use and more recently firmly held beliefs regarding his wife's purported infidelities. Multiple records, his self-report, and the report of his family members (i.e., his wife, mother, and medical professionals) suggest much of his psychological concerns are likely the result of his persistent substance use. To illustrate, records outlined above suggest his reported anxiety is likely due to his substance use. Additionally, his wife indicated he "sees and hears things" only when he is under the influence of methamphetamine, and his mother said his beliefs regarding his wife's infidelities are only present when he is intoxicated on methamphetamine. Specifically, according to his mother's interview with police officers subsequent to the alleged offenses, Mr. Burkhart previously held these same beliefs solely while he was intoxicated on methamphetamine. However, after he attended a substance abuse treatment facility for "a few weeks," he did not express the belief his wife was having an affair "until he started using meth again." Likewise, during this evaluation Mr. Burkhart noted that his more extreme beliefs about his wife began around the time he stopped using cocaine and began using methamphetamine. Furthermore, his first reported mental health contact in which psychotic-like symptoms are documented did not occur until 2017, when he was in his early forties. This is an atypical age of onset for an organic (e.g., not substance-induced) psychotic disorder. At this time, Mr. Burkhart's last known substance use was a three-day binge of injecting methamphetamine the weekend prior to his alleged offenses, and he has been detained for approximately nine months, presumably without access to illicit/psychoactive substances.

Based on his self-report, it appears as if Mr. Burkhart's beliefs regarding his wife's infidelities began as reality-based in that around 2013 she reportedly admitted she had an extramarital affair shortly after they married (i.e., five years prior to then). According to Mr. Burkhart, discovering this information led to one of his many relapses on methamphetamine. He discussed using large amounts of methamphetamine, which intensified his belief she continued her sexual indiscretions (i.e., "drugs made [his beliefs] worse"). As psychotic-like symptoms (e.g., delusions) that are caused by the direct use of substances typically resolve when the substance leaves the body's system, or shortly thereafter, the historical information

outlined above suggests his presentation was best characterized as 'substance-induced.' Currently, Mr. Burkhardt continues to harbor firmly fixed beliefs (i.e., his wife is creating pornography and having sex with multiple men, which now includes jail staff) that are seemingly not amenable to change in light of conflicting evidence (e.g., multiple family members telling him his belief is false and are a result of his substance use). As Mr. Burkhardt has presumably been abstinent from substances for the past nine months, his clinical presentation is complicated. As such, both a substance-induced and a non-substance-induced psychotic disorder (i.e., Delusional Disorder) were considered.

Delusional Disorder is characterized by the presence of one or more delusions (i.e., his wife's infidelities with multiple men and creation of pornography), which is not accounted for by the physiological effects of a substance or better accounted for by another mental disorder (e.g., Obsessive Compulsive Disorder). These beliefs are unwavering, despite evidence to the contrary. Conversely, a Substance-Induced Psychotic Disorder is characterized by the presence of delusions and/or hallucinations, with evidence from history, physical examination, or laboratory findings that the delusions or hallucinations developed during or soon after substance intoxication or withdrawal. According to the *Diagnostic and Statistical Manual of Mental Disorders - Fifth Edition (DSM-5)*, evidence of an independent psychotic disorder (e.g., Delusional Disorder), could include the persistence of symptoms (e.g., delusions) for a substantial period of time (e.g., about one month) after the cessation of acute withdrawal or severe intoxication. However, research indicates severe and persistent use of methamphetamine can have long-standing psychological effects even when a person is abstinent from the substance. Specifically, there is evidence to suggest a persistent methamphetamine abuser may continue to experience psychotic symptoms (e.g., delusions) in the absence of active use. Research states that persistent use of methamphetamine can increase vulnerability to relapse of symptoms (i.e., spontaneous reemergence of symptoms) or symptoms may persist for a very long duration (i.e., up to two years) despite discontinued use of the substance. At this time, there is an absence of documentation to suggest a remote history of severe mental illness (e.g., delusions) when Mr. Burkhardt was not under the influence of substances and there are multiple data points that suggest these beliefs are specifically related to his substance use. Furthermore, and most notable, is the fact that Mr. Burkhardt demonstrated cognitive flexibility with regard to his beliefs during the current evaluation. Specifically, he acknowledged his current beliefs "might" be the result of his persistent substance use, which would be uncommonly seen in an independent psychotic disorder (e.g., Delusional Disorder). Although the *DSM-5* indicates persistence of symptoms for about one month after the cessation of acute withdrawal or severe intoxication is evidence of an independent psychotic disorder, Mr. Burkhardt has not demonstrated other evidence of an independent/non-substance-induced psychotic disorder when not intoxicated of methamphetamine. Nor, per his own account, has he maintained a period of sobriety in which psychotic symptoms would be able to be delineated independent of persistent substance use. In totality, the available data suggest Mr. Burkhardt's firmly held beliefs are the result of continued and persistent substance use. As such, it is the opinion of the undersigned that Mr. Burkhardt's current clinical presentation is best characterized by *Substance-Induced Psychotic Disorder*. As stated above, the *DSM-5* states "the disturbance (e.g., delusions) is not attributable to the physiological effects of a substance (e.g., methamphetamine)." As his presentation is best understood as substance-induced, it is the opinion of the undersigned that Mr. Burkhardt does not meet criteria for Delusional Disorder.

Per his self-report, as well as collateral records, Mr. Burkhardt has a significant and persistent history of crack cocaine and methamphetamine use, which significantly impaired his level of functioning. Specifically, he discussed spending most if not all of his income on purchasing substances; stealing belongings from others, which he sold in order to obtain money to continue his substance use; using substances in large amounts; continuing to use substances despite multiple attempts to quit; and continuing to use despite awareness of negative consequences of continued use. Further, he reported going on a number of substance "binges," as recently as the weekend prior to his first alleged offense (10/09/2018). This binge was specifically the use (i.e., injection) of methamphetamine. As such, diagnoses of *Methamphetamine Use Disorder* and *Crack Cocaine Use Disorder* are offered at this time. Given he has been

detained for approximately nine months, presumably without access to illicit/psychoactive substances, the specifiers *In Early Remission* and *In a Controlled Environment* were added.

COMPETENCY ASSESSMENT

S.C. Code Ann. § 44-23-410(A) states a defendant is not fit to stand trial when he "lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity."

Mr. Burkhart demonstrated strong knowledge of court-related information. In the few areas in which he required education to be provided to him, he was able to learn new information without significant difficulty. Further, he demonstrated a rational ability to discuss legal concepts and integrate information logically and coherently. The following is a summary of his court-related knowledge and abilities.

Mr. Burkhart was aware of his charges, some of which he factually disagreed with, and he was able to identify the alleged misconduct. He demonstrated awareness he was facing both misdemeanor and felony charges, and he knew a felony charge was more serious than a misdemeanor. He understood he could be facing significant time (i.e., life in prison) if he was convicted. He was aware he would receive no punishment if he was found to be not guilty in his case. Mr. Burkhart was aware of basic information regarding his plea options of guilty (i.e., "you did it") and not guilty (i.e., "you didn't do it"). He required multiple instances of education regarding the plea of no contest. Though slightly difficult for him, he was able to adequately retain a defendant does not admit guilt and accepts punishment with such a plea. He was able to discuss possible verdicts and penalties related to his case, and he shared his preferred outcome, which was rational, albeit unlikely. He was able to discuss the plea bargaining process and his previous experience with such. He understood it was his choice to accept a plea bargain, and he knew which rights he would lose should he choose to take one (e.g., trial, silence, appeal). He was aware of basic information regarding contempt of court (i.e., "acting out"), perjury (i.e., "lying"), probation (i.e., "going every week or month to report and following rules"), evidence (i.e., "shows facts of case"), and various courtroom personnel. He understood he could not be forced to testify, identified advantages and disadvantages of doing such, and he demonstrated good knowledge of how one should comport themselves in court (i.e., "yes sir, no sir").

Mr. Burkhart knew the judge could determine if he was guilty or not guilty in his case. He knew the judge would believe he was innocent until proven guilty, was neither on his side nor against him, and would have to be "very sure" in order to convict him (i.e., "beyond a reasonable doubt"). He demonstrated adequate knowledge about juries (e.g., there are 12 people on a jury who determine if someone is guilty or not guilty, and jury decisions were required to be unanimous). Mr. Burkhart knew the solicitor was his legal adversary, which he described as "make me look like a piece of shit," and his attorney was his legal advocate (i.e., "defend me, get a not guilty [verdict]"). He was aware the things he discussed with his attorney were private, all defendants had the right to an attorney, and it was his choice how he would proceed in his case. When discussing his current attorney ("McKellar"), he said he "tried to fire him" because the public defender's office "switched" his attorney three times since he obtained his current charges. He said his attorneys have switched likely because "[the public defender's office] might be busy." He also expressed feeling lied to by his previous attorney ("Rudnick"). Specifically, he said the previous attorney, who he liked, told him he gave his new attorney "notes of the case." However, when Mr. Burkhart met with his new attorney he "didn't know nothing" about his case. He said, for this reason, he holds a "grudge" and is "not happy" with the entire public defender's office. Although he said he would prefer to hire a private attorney, he has not attempted to do so. He said he would work with his current attorney if it was his "only option." He was able to discuss ways in which he could mitigate any concerns (e.g., witness lying about him, not understanding something that happened in court) with his attorney.

The undersigned engaged Mr. Burkhart in a conversation to gauge his rational understanding and appreciation of court. He was able to appropriately engage in a discussion of a hypothetical legal situation,

discuss evidence, explain his thoughts on possible sentences, and articulate why he would or would not accept a plea bargain in these hypothetical cases. He was able to do this with regard to his own case as well. Specifically, he discussed preferred legal strategies and rationally explained why he believes those are the best options for him. He appeared to be invested in his case and did not express concerns about his ability to be treated fairly in court. Importantly, he did not connect his beliefs about his wife and other men to his current legal circumstances.

OPINION

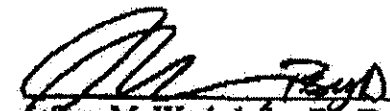
S.C. Code Ann. § 44-23-420(A) states: "...the designated examiners shall make a written report to the court which shall include: (1) a diagnosis of the person's mental condition; and (2) clinical findings bearing on the issues of whether or not the person is capable of understanding the proceedings against him and assisting in his own defense, and if there is a substantial probability that he will attain that capacity in the foreseeable future."

As stated previously, available records and his self-report suggest Mr. Burkhart meets criteria for *Substance-Induced Psychotic Disorder*. Despite the etiology (i.e., cause) of his firmly held beliefs, he did not tie any of these beliefs to his current legal situation, nor did he suggest the beliefs would impact his ability to be treated fairly in court or influence the disposition of his charges. During the current interview, Mr. Burkhart did not report current mental health symptoms, nor were acute/impairing symptoms observed. His functional abilities were intact as were his competency-related capacities. He remained behaviorally appropriate, and he expressed his thoughts and feelings related to his current legal circumstances coherently and rationally. At the time of this interview, he presented as largely psychiatrically stable.

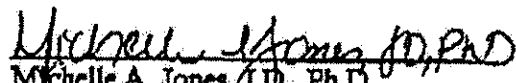
At this time, it is the opinion of the undersigned that Mr. Burkhart currently has the capacity to understand the proceedings against him and to assist in his own defense.

Specifically, he knew basic information about his charges, the roles of courtroom personnel, his rights as a defendant, and his plea options. He demonstrated an ability to learn and retain information, then apply the information accordingly. There are no significant psychiatric symptoms which inhibit his rational understanding of his case. In particular, he demonstrated organized and linear thoughts and was able to engage in a meaningful, bi-directional conversation. There was no evidence of hallucinations or delusional ideation that impaired his ability to rationally think about and/or discuss his case and legal options. Lastly, although he expressed holding a "grudge" against the public defender's officer for reasons that were rational, he demonstrated the capacity to work with counsel and participate in his defense.

Respectfully submitted,


Jeffrey M. Washelesky, Psy.D.
Postdoctoral Fellow

7/17/19
Date


Michelle A. Jones, J.D., Ph.D.
Licensed Psychologist
Supervisor

7/17/2019
Date

WITNESSES

Aiken County Sheriff

Viktoria K Lager

Law Enforcement Case #: 18-054160

DOCKET NO. 2019GS0202048

The State of South Carolina

County of Aiken

JWH

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

FILED November 7 2019

NOVEMBER TERM 2019

2018A0210201520

Robert L. White
C.C.P. & G.S.

Ann Sanders
Deputy Clerk

THE STATE
vs.

THOMAS JAMES BURKHART

ACTION OF GRAND JURY

True B. 11

[Signature]
Foreperson of Grand Jury
Date: November 07, 2019

CDR #: 0116

Indictment for

VERDICT

MURDER

§ 16-03-0010; 16-03-0020

J. STROM THURMOND, SOLICITOR

Foreperson of Petit Jury
Date:

46,
STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT FOR
MURDER

§ 16-03-0010; 16-03-0020

At a Court of General Sessions, convened on November 11, 2019, the Grand Jurors of Aiken County present upon their oath:

That **THOMAS JAMES BURKHART** did in Aiken County on or about October 12, 2018, feloniously, wilfully and with malice aforethought, murder Joseph Bell by means of stabbing, and cutting his throat, and that the victim did die in Aiken County at ■ Good Hope Farms Road as a proximate result thereof on October 12, 2018. All in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

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

Elizabeth B. Young
J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATS

Aiken
VS.
Thomas James Burdett

AKA:

Race: White Sex: M Age: 44

DOB: 1976 SSN: 249-67-7484

Address: 399 Good Hope Farms Rd

City/State/Zip: Aiken, SC 29801-6933

DL#: 004417962 SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazzard Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019CS0202048

A/W#: 2018A0210201520

Date of Offense: 10/12/2018

S.C. Code §: 16-03-0010; 16-03-0020

CDR Code #: 0116

SENTENCE SHEET

30yrs - Life

☐ CONVICTED OF or ☒ PLEADS

In violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC whether 1st or CSC whether 3rd)

The charge is: ☒ As Indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Presentation to Grand Jury (defendant's initials)

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

ATTORNEY:

John H. Smith 6962 *Thomas J. Burdett* *W. H. Smith* 79902
Solicitor SC Bar Defendant Attorney for Defendant SC Bar

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 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 _____ day/months/years and/or payment

of \$ _____; plus costs and assessments as applicable; the sentence is suspended with probation for _____

month/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of

probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the SCDOC.

CREDIT 723 DAYS. *WHS*

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

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-68 (Domestic

Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain OED ☐

☐ Set by SCDPPE Attend Voc. Rehab. or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

*Fee: \$ _____ Substance Abuse Counseling ☐

§ 14-1-206 (Assessments 107.5) \$ _____ Random Drug/Alcohol testing ☐

§ 14-1-211(A)(1) (Conv. Surcharge) 3100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) 3100 \$ _____

§ 56-5-2993 (DUI Assessment) 312 \$ _____

§ 56-1-286 (DUI Breath Test) 335 \$ _____

Proviso (Public Def/Probation) 3500 \$ _____

§ 14-1-212 (Law Enforce. Funding) 325 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) 3150 \$ _____

§ 50-21 114 (DUI Breath Test Fee) 550 \$ _____

§ 56-5-2942.1 (Vehicle Assessment) 3400 \$ _____

1% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk *Latoya Truong-Hyde*

Court Reporter: *Steve LeBlanc*

BCCA/217 04/2018

FINDING OF FACT THAT THIS IS A VIOLENT CRIME AND FELONY

THAT PROHIBITS DEF FROM TRANSPORTING, SHIPPING, RECEIVING, OR

POSSESSING ANY FIREARM OR AMMUNITION UNDER S.C. LAW. *WHS*

☐ Appointed PD or appointed other counsel.

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees.

Presiding Judge *William P. Haskins*

Judge Code: 2050

Sentence Date: OCT. 16, 2020

WITNESSES

Aiken County Sheriff

Viktoria K Lager

Law Enforcement Case #: 18-054160

DOCKET NO. 2019GS0202051**The State of South Carolina**

County of Aiken

JWH

ARREST WARRANT NUMBER

2018A0210201521

FILED November 7 2019Robert J. White
C.C.D.P. & G.S.Anna Sanders
Deputy Clerk**COURT OF GENERAL SESSIONS**

NOVEMBER TERM 2019

THE STATE

VS.

THOMAS JAMES BURKHART

ACTION OF GRAND JURYTrue Bill[Signature]
Foreperson of Grand Jury
Date: November 07, 2019**VERDICT****CDR #: 0095**

Indictment for

KIDNAPPING

§ 16-03-0910

[Signature]
Foreperson of Petit Jury
Date:**J. STROM THURMOND, SOLICITOR**

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

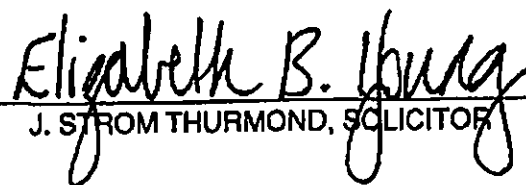
INDICTMENT FOR
KIDNAPPING

§ 16-03-0910

At a Court of General Sessions, convened on November 11, 2019, the Grand Jurors of Aiken County present upon their oath:

That **THOMAS JAMES BURKHART** did in Aiken County on or about October 12, 2018, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away Patty Bell without authority of law, all in violation of §16-3-910 of the Code of Laws of South Carolina (1976), as amended.

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


J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATEAiken
VS.

Thomas James Burkhardt

AKA:

Race: White Sex: M Age: 44

DOB: 1976 SS#: 249-67-7484

Address: 399 Good Hope Farms Rd

City/State/Zip: Aiken, SC 29803-6933

DL#: 004417962 SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019CS0202051

A/W#: 2018A0210201521

Date of Offense: 10/12/2018

S.C. Code §: 16-03-0910

CDR Code #: 0095

SENTENCE SHEET

0.30 yr.

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory CPS ☐ §17-25-43

(CSC window 1st or CSC window 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentation to Grand Jury, (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

John Hammon
Solicitor6/9/21
SC Bar*Thomas Burkhardt*
Defendant*William P. Elshberg*
Attorney for Defendant77902
SC BarWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ~~1~~ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$ ~~2~~; provided that upon the service of days/months/years and/or paymentof \$ ~~2~~; plus costs and assessments as applicable; the balance is suspended with probation formonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference:☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDOP.

CR2019 723.0045. WPA

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

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-30 or 16-25-45 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipients:

*Fine:

§ 14-1-306 (Assessments 107.3 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(3) (DUI Surcharge) \$100 \$

§ 36-5-2995 (DUI Assessment) \$12 \$

§ 36-1-236 (DUI Breath Test) \$25 \$

Proviso (Public Def/Probation) \$300 \$

§ 14-1-212 (Law Enforce. Pending) \$25 \$ 25.00

§ 16-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BLI Breath Test Fee) \$30 \$

§ 36-5-2942(I) (Vehicle Assessment) \$40/mo \$

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 126.75

Clerk of Court/ Deputy Clerk *Latoya Trappi-Hyes*Court Reporter *Steve LeBlanc*SCCA217(04/2018): THIS IS A VIOLENT CRIME AND FELONY THAT BROUGHTS DEF. FROM TRANSPORTATION.
SHIPPING, RECEIVING OR POSSESSING ANY FIREARM OR AMMUNITION UNDER S.C. LAW. WPAObtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmis. of \$ beginning

\$ paid to Public Defender Fund

Other: *PAY COURT COSTS WITH 14 R. OF**RELEASE FROM PRISON**NOT RELATED TO CSC OR SEXUAL**MISCONDUCT*☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees.

Presiding Judge *William P. Elshberg*

Judge Code: 2050

Sentence Date: *DEC. 16, 2020*

WITNESSES

Aiken County Sheriff

Viktor K Lager

Law Enforcement Case #: 18-054160

DOCKET NO. 2019GS0202055

The State of South Carolina

County of Aiken

JWH

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

FILED November 7 2019

NOVEMBER TERM 2019

2018A0210201523

Robert J. White
C.C.P. & G.S.

Ann Sanders
Deputy Clerk

THE STATE
vs.

THOMAS JAMES BURKHART

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury
Date: November 07, 2019

CDR #: 0139

Indictment for

VERDICT

ARMED ROBBERY

§ 16-11-0330(A)

[Signature]
Foreperson of Petit Jury
Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
ARMED ROBBERY

§ 16-11-0330(A)

At a Court of General Sessions, convened on November 11, 2019, the Grand Jurors of Aiken County present upon their oath:

That **THOMAS JAMES BURKHART** did in Aiken County on or about October 12, 2018, while armed with a deadly weapon, or while alleging either by action or words that he was armed while using a representation of a deadly weapon or an object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: knife, take from the person or presence of Patty Bell by means of force or intimidation goods or monies of Joseph William Bell and/or Patricia Bell, such goods or monies being described as follows: U.S. Currency, all in violation of §16-11-330, Code of Laws of South Carolina (1976), as amended.

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


J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATEAiken
VS.

Thomas James Burkhar

AKA:

Race: White Sex: M Age: 44

DOB: 1976 SSN: 249-67-7484

Address: 399 Good Hope Farms Rd

City/State/Zip: Aiken, SC 29803-6933

DL#: 004417962 SID#:

CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Armed Robbery, while armed with a deadly weapon

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS0202055

A/W#: 2018A0210201523

Date of Offense: 10/12/2018

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

10-30-17

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC within 1m or CSC within 3m)

The charge is: ☒ As Indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Presentation to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence. Recognition by the State.

ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center.

for a determinate term of 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

off ; plus costs and assessments as applicable; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the SCDOC.

CREDIT 723 DAYS. 10/14

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-115

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-45 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fees:

	\$	\$
§ 14-1-206 (Assessments (07.5 %))		
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 34-3-2993 (DUI Assessment)	\$12	\$
§ 36-1-284 (DUI Breath Test)	\$25	\$
Proviso (Public Def. Probation)	\$500	\$
§ 14-1-212 (Law Beforehand Pleading)	\$25	\$ 25.00
§ 14-1-233 (Drug Court Surcharge)	\$150	\$
§ 30-21-114 (DUI Breath Test Fee)	\$30	\$
§ 34-3-2942(U) (Vehicle Assessment)	\$400	\$

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk: Rafea Trappin-Hynes

Court Reporter: Steve LeBlanc

SCCA217 (04/2018)

FINDING OF RECORD THAT THE OFFENSE IS A VIOLENT FELONY THAT PROHIBITS

DEF. FROM TRANSPORTING, SHIPPING, RECEIVING, OR POSSESSING ANY FIREARM OR AMMUNITION

UNDER S.C. LAW. (10/14)

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other: PAY COURT COSTS WITHIN 14 DAYS OF

RELEASE FROM PRISON

☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: William P. Hensley

Judge Code: 2050

Sentence Date: Oct. 16, 2020

FORM 5

STATE OF SOUTH CAROLINA

County of

Aiken

Thomas J Burkhardt 288275

Full name and prison number (if any) of Applicant

v.

State of South Carolina

2024CP0201684

IN THE COURT OF COMMON PLEAS

2018A020201520 - 2019GS0202048

2018A021020523 - 2019GS0202055

2018A021020521 - 2019GS0202051

APPLICATION FOR

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 Turbeville Corr. Inst.
WYB00224, 1578 Clarence Coker Hwy Turbeville, S.C. 29162
2. Name and location of Court which imposed sentence Aiken Co. General Sessions
109 Park Ave. Aiken, S.C. 29801
3. Name(s) of co-defendant(s) (if any) NA
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2018A0210201520 Murder
 - (b) 2018A0210201523 Armed Robbery

FILED

July 8

20 24

Robert J. White

C.C.P. & G.S.

Charles Reuther amp

Thomson Clerk

- (c) 2018A0210201521 Kid Napping
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 10/24/20 30 years Mandatory (Murder)
- (b) 10/24/20 30 years Violent 85% (Armed Robbery) concurrent
- (c) 10/24/20 30 years Violent 85% (Kid Napping) concurrent
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty yes all counts
- (b) after a plea of not guilty NA
- (c) after a plea of nolo contendere NA
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. NA
- ii. NA
- iii. NA
- (b) the result in each such Court to which you appealed:
- i. NA
- ii. NA
- iii. NA
- (c) the date of each such result:
- i. NA
- ii. NA
- iii. NA
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NA
- ii. NA
- iii. NA
9. If you answered "no" to (7), state your reasons for not so appealing: ^{*} See Attached
- (a) Did not understand my Const. Right / Due Process
- (b) Counsel was Ineffective (Should have Appealed)

- (c) Was threatened/coerced. Did not understand Proceeding
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: * See ATTACHED pg #1 (Hand written) Ground's
- (a) _____
- (b) See Grounds A, B, C, D Attached pg's.
- (c) E F
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See # 11 (a, b, c) Facts Attached starting
- (b) on pg #2 (Hand written)
- (c) (a, b, c, d, e)
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. NA
- ii. NA
- iii. NA
- iv. NA
- (b) the name and location of the Court in which each was filed:
- i. NA
- ii. NA
- iii. NA
- iv. NA

(c) the disposition thereof:

- i. NA
- ii. NA
- iii. NA
- iv. NA

(d) the date of each such disposition:

- i. NA
- ii. NA
- iii. NA
- iv. NA

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

- i. NA
- ii. NA
- iii. NA
- iv. NA

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?

NA
NA

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

(a) which grounds have been presented:

- i. NA
- ii. NA
- iii. NA

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

- i. NA
- ii. NA
- iii. NA

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) Counsel Ineffective, Failure to File Direct Appeal
 - (b) Petitioner Did not know the Due Process of the Law.
 - (c) Petitioner Did not know of any State Remedy (PCR)
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? No, But Requested one Plea Due to Coercion
 - (c) your sentencing? yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No, Atty. Did not file or Request Appeal As requested by petitioner.
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No. Counsel absolutely Incompetent/Ineffective.
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. William McKellar
Public Defender Office of Aiken County
 - ii. _____
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. During the sentencing phase where Guilty Plea was given by Coercion & Threatening that
Petitioner (Defendant) would get Life or
Death if petitioner went to Trial.
 - Complaint Filed on Counsel with Supreme Ct. of
S.C. for Violation of Rule 407, Professional Conduct
of a Lawyer - Pending Investigation.

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

- Vacate Sentence and Remand to Circuit court for New Trial, Jury Trial.
- Counsel fail to follow my Advice for Jury trial regarding

- Counsel fail to follow my Advice for jury trial regarding

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

No

STATE OF SOUTH CAROLINA

County of _____

Aiken

· VERIFICATION

I, Thomas J. Burkhart, 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.

* Thomas J. Bullock

·SWORN to and subscribed before me this

3

day of

July

2024

Bradley J. Allen - D.S.
Notary Public

Notary Public

My Commission Expires:

March 15, 2031

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

I, Thomas J. Burkhardt SCDC# 28275, 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.

Thomas J. Burkhardt
Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____,

Notary Public

My Commission Expires: _____

No. 10 Grounds (a, b, c, d) & e)

10(a) Violation Fifth, Sixth, & Fourteenth Amendments of United States Const. that Guarantee the right to Effective Assistance Counsel, And Entitled to the Due Process Clause, Privileges and equal Protection of the Law.

10(b) Violation Sixth and Fourteenth Amendment(s) of United States Const. that Guarantee the right to Effective Assistance Counsel rather than Coercion by Counsel and Right to Jury trial to confront my accusers.

10(c). Violation of Sixth and Fourteenth Amendment(s) of United States Const. that Guarantee the right to Effective Assistance Counsel to investigate all Evidence, testimony of witness, material and DNA and facts regarding Self Defense, requested by Petitioner.

10(d). Violation of Sixth and Fourteenth Amendment(s) of United States Const. that Guarantee the right to Effective Assistance Counsel and the Due Process of the Law governing full Disclosure to Rule 5.

No. 11 Fact to support Ground

- 11(a). Petitioner aver's that Counsel disregarded his advice to file an appeal after his sentencing phase. Also Counsel failed to advise Petitioner of his right to seek remedy of conviction in regards to Post Conviction Relief (PCR).
- Petitioner aver's per Statue 17-27-20 (Appeal remedy) Subsection (A)(4) That there exist evidence to material Fact, not presented or heard by Petitioner's Counsel that requires vacation of conviction or sentencing in the interest of Justice. That Petitioner acted in self defense. See Davis v. US.

Furthermore the Petitioner aver's that Counsel never advised the Petitioner his right to challenge his conviction under Statue 17-27-45 PCR Proceeding. As the result the Petitioner's Lack of Knowledge of this proceeding Due to Counsel's substandard performance. Petitioner has failed to meet the One yr. Statue of Limitation. However, given the unique conditions of incarceration the PCR should be tolled. See Mose v. State 2017 Circumstances beyond Petitioner control entitled tolling. Also during this time President Trump declared a Natl. Emergency concerning Covid-19 pandemic on March 20, 2020 forward. This effected the Petitioner ability to research the Right to file PCR and timely file.

No. 11 Fact to Support Ground

11(b). Petitioner aver's that his Guilty Plea was the Product of Fear, Coercion and Threatening by Counsel which makes his Guilty Plea Involuntary; Violation of his right Sixth & Fourteenth Amend of Const. guarantee Effective Counsel and Due Process fair Sentencing.

A Defendant who enters such a plea simultaneously waives several Const. rights, including privilege against compulsory self incrimination, right to Jury trial and right to confront witnesses and accusers. For Petitioner's waiver to be valid under Due Process Clause, it must be an intentional relinquishment or abandonment of a known right or privilege. See Johnson v. Zerbst 1938. Consequently, if the Petitioner guilty Plea was not equally voluntary and knowing, it was obtained in violation of the Petitioner's Due Process right and is therefore Void.

A Court should not accept a guilty Plea unless he has determined that the Petitioner plea was voluntary. *See Boykin v. Alabama; Admissibility of Confession must be based on reliable determination on Petitioner Voluntariness which satisfies Const. rights of Def or Petitioner. Petitioner was so gripped by fear of life/death sentence or hope of Leniency, that he did not or could not, with the help of Counsel, rationally weigh the advantages of going to trial against the advantages of Guilty Plea.

No. 11 Fact to Support Ground

11(c). Petitioner aver that Counsel was Ineffective for failure to investigate evidence in the matter of self Defense as requested by Petitioner. Counsel was in Violation of Rule 407, Professional Conduct of a Lawyer. Counsel rejected Petitioner advice to have a Jury to prove the charge in question was the result of self defense. Counsel has an obligation by Law to abide by the request of his client and communicate accordingly. Petitioner has filed complaint on Counsel with the Supreme Ct. Office of Disciplinary Counsel. Investigation pending. Petitioner aver's that he acted in self defense at his Family home. Self Defense statute 16-11-44(c) Petitioner must prove he was w/o fault in this moment of Self-Defense, that he was in imminent Danger and was in fear of losing his life or serious Injury. In this case the Defendant (Petitioner) was Face with (Alleged Victim) holding a Knife. Any reasonably prudent person of ordinary firmness and courage would have believed and acted the same in self defense. * See State v. Cesantes 2013. Once the right to self defense arises, the Petitioner is not required to wait until his adversary is back on equal terms in order to defend himself. Petitioner had knocked Knife away from adversary in this case and was known to be in possession of a collection of Knives.

No. 11 Fact to Support Ground

11(d). Violation Sixth & Fourteenth Amendment's of the Const. Counsel was Ineffective Assistance for failure to comply with Criminal Procedure of the Law in regards to Rule 5 Disclosure. See Hymar v State 201.

Petitioner requested DNA on the Knife in this case to prove the (Alleged Victim) Victim had possession of the Knife prior to the Petitioner struggle to free the Weapon (Knife) to protect himself before Petitioner was killed or seriously injured.

Petitioner's Counsel was more concerned in Coercing his client to plead guilty as opposed to following the request of his client (Petitioner) to present full disclosure of Rule 5 regarding Evidence (DNA) to prove Petitioner claim of Self Defense or innocence.

Per Criminal Procedure Violation of Rule 5 the ruling in the Case should be vacated and/or reversed.

Elements of Brady Violation, one must be favorable to the accused that it was suppressed by the State either willfully or inadvertently and this prejudice the Petitioner. Had this Full Disclosure, Rule 5 been obtained, there is reasonable probability the outcome of the proceeding would had been different in favor of the accused. Violation of Brady. Also see, Kyles v. Whitley 514 US.

No 10 Ground & Fact for (e)

10 (e). Ground

Violation of Sixth & Fourteenth Amendment of United States Constitution that Guarantee the right to Effective Assistance Counsel in regards to Due Process Clause, Privileges and Equal Protection of the Law.

11 (e) Fact to support Ground

Petitioner seeks relief on the basis of Newly discovered evidence following guilty Plea and/or sentencing. While Petitioner being placed in the confines and custody of South Carolina Dept. Corr.'s, he has had recorded phone calls regarding his wife (at the time) infidelity with the Deceased (Victim) William Bell as well as Co-worker's where Petitioner worked. At the time this was only rumors, why, at the time of Murder in question, Petitioner wanted to discuss William Bell's affair with his wife. At this point is where William Bell armed himself with a Knife and Petitioner had no choice but defend himself.

Counsel for Petitioner Failed to abide his clients wishes to investigate why William Bell had Motive to harm his son-in-law (Petitioner) due to his on going affair with Mr. Burkhardt's wife. As well as other Allegation's that were discussed on SCDC

- phone between Petitioner (Burkhart) and Foy
- McDanille daughter, where she stated the Petitioner
- wife, Patience Burkhart, "She couldn't get that bitch
- (Petitioner wife Patience Burkhart) to leave her
- Daddy's house and getting his money", Suggesting
- multiple affairs with William Bell, co-worker,
- as well as this particular phone call with Foy
- McDanille Daughter.
- Also new evidence to support the basis for relief
- is a phone call made by Sharon Lewis (neighbor),
- she called 911 (a few days prior to Murder) regarding
- a CDV between Thomas Burkhart and Patience Burkhart
- (wife). This particular day of CDV, after making the 911
- call, she, Sharon Lewis, advised me that she was
- sick of what Petitioner's wife was doing (Infidelity)
- behind the Petitioner's back and when he would leave for
- work. Sharon Lewis also stated that her family member,
- Dave Crawford (Neighbor) was frequently going to my
- house after Petitioner Left for work.

This new evidence in the exercise of reasonable diligence, could have been discovered prior to Guilty Plea. The weight and quality that under the facts and circumstances of this particular case, the interest of Justice requires the Applicant's guilty plea to be vacated and disavow his plea. See Jamison v. State Oct 22, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
	)	
Thomas J. Burkhardt, #288275,	)	Case No.: 2024-CP-02-01684
Applicant,	)	
v.	)	APPLICANT'S AMENDED APPLICATION
State of South Carolina,	)	
Respondent.	)	
	)	

NOW COMES Applicant, Thomas J. Burkhardt, amending his application filed July 8, 2024. In addition to the allegations raised in his initial application, Mr. Burkhardt, through PCR Counsel, submits the following:

1. Applicant asserts that he was late in filing his PCR application out of fear of retaliation against him and his family by law enforcement if he filed one.
2. Ineffective assistance of counsel for:
 - a. Failure to file an appeal.
 - b. Failure to investigate self-defense evidence.
 - c. Failure to challenge the indictments.
 - d. Failure to test DNA evidence on the knife.
3. Newly discovered evidence of infidelity between Applicant's ex-wife and the victim while they were married and infidelity between Applicant's ex-wife and the responding officer.
4. Applicant contends that he was coerced into pleading guilty.

FILED December 12 20 25
Robert J. White 1250
 C. C. P. & G. S.
Charles Peoubert *chr*
 Deputy Clerk

Conclusion

Based upon the above, Mr. Burkhart requests that this Court grant relief, vacate the convictions, and remand the case to the court of general sessions for a new trial.



Chelsey F. Marto
Attorney at Law
S.C. Bar No. #104191

The Law Office of Chelsey F. Marto, LLC
P.O. Box 8795
Columbia, SC, 29201

(864)-404-5583
info@chelseymarto.com

For Applicant Thomas J. Burkhart

Dec 9, 2025

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

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

Thomas J. Burkhart, #288275,

Applicant,

) Case No.: 2024-CP-02-01684
)

v.

State of South Carolina,

Respondent.

) Affidavit of Service by Mail
)
)
)

1. I am the attorney for Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the Amended Application on the above-captioned matter on the following person by depositing the same in the United States mail with the proper postage affixed thereto:

Office of the Attorney General
Attn: Zachary Jones, Esquire
PCR Division
P.O. Box 11549
Columbia, SC, 29211



Attorney for Applicant

Dec 9, 2025

FILED December 12 20 25
Robert J. White 1250
C.C.P. & G.S.
Charles Peoubert cnp
Deputy Clerk

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Thomas J. Burkhart SCDC #288275,

Case No. 2024-CP-02-01684

Applicant,

v.

RETURN AND PARTIAL MOTION TO DISMISS
(Counsel Appointed)

State of South Carolina,

Respondent.

In response to the post-conviction relief (PCR) action commenced by Thomas J. Burkhart (Applicant) on July 8, 2024, the State makes this return and partial motion to dismiss based on statute of limitations.:

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Aiken County Clerk of Court. During its November 2019 term, the Aiken County Grand Jury indicted Applicant for murder (2019-GS-02-02048), armed robbery (2019-GS-02-02055), and kidnapping (2019-GS-02-02051). The case was prosecuted by Assistant Solicitor Jack Hammack of the 2nd Circuit Solicitor's Office. Applicant was represented by William T. McKellar, esquire.

On October 16, 2020, Applicant pleaded guilty as indicted before the Honorable William P. Keesley. Pursuant to negotiations between the State and Applicant, Judge Keesley sentenced Applicant to thirty (30) years' imprisonment for voluntary manslaughter. Applicant did not file a direct appeal.

FILED November 10 20 25
Robert J. White 1230
C.C.P. & G.S.
Charla Peoubte one
Deputy Clerk

FACTS PRESENTED AT THE GUILTY PLEA HEARING¹

This incident occurred back on or about October the 12th of 2018, here in Aiken County. Officers with the Aiken County Sheriff's Office were dispatched to that location in a reference to an assault. They were notified that there was an unresponsive person there at the location. When they approached, they found the victim, Mr. Bell, to be bleeding heavily and was pronounced dead at the scene.

They spoke with Ms. Patty Bell who is present here today. She is the mother of Mr. Burkhart. She advised that they had gone, she and Mr. William Bell, the victim, had gone to pick up Tommy Burkhart or Thomas Burkhart, the defendant, from the jail that day. He had been arrested earlier for domestic violence in the second degree with his wife. He had been on meth for about a month at that point she told us and told law enforcement, but that day when they spoke with him, he seemed to be clear headed and seemed to be doing fine so they agreed to go bond him out of jail.

They went at about 4:15 to A1 Bonding Company and waited at the jail for Mr. Burkhart to be released, stated that Billy, the victim, met her there and they waited together in the parking lot until he was released around 6:00 in the evening. She stated that she and Mr. Thomas Burkhart had ridden in one vehicle and Billy had ridden in a separate vehicle.

They arrived at the home where she and Mr. Burkhart, the defendant, went into the home. She started working on some stuff in the kitchen, getting dinner heated up. She noticed that Thomas Burkhart, the defendant, was kind of moving around and he was in the doorway of the office and by the front door like he was waiting.

¹ The following is the Solicitor's recitation of the facts at Applicant's guilty plea hearing. GP Tr. pp. 15-20.

She stated that she went to let the dog out and Thomas Burkhardt, the defendant, said he was gonna go outside. When she did, went to the door to let the dog out, she saw Billy, that she called him, the victim, going into the back of the house. She went back into the kitchen, heard some noise and had to go to the front door to let her dog in because her dog was scared, wanted to come back in so she thought maybe there was an argument or something between the defendant and the victim in this case she said, so she went outside to see what was going on and that's when she observed the defendant bent over the victim swinging something that appeared to be a hammer or a garden tool at him. She stated she saw him hit him several times, three or four times with this garden tool and so she yelled at him, what have you done? And he started walking toward her and told her that he has killed him.

She tried to get away from him when he physically stopped her from going to Billy and forcibly pushed her back up against the basement door. He then grabbed a blue rope that had been hanging there and tied it around her body with her arms by her side and was basically dragging her around by the rope. He told her he wasn't going to hurt her. He wanted to drag her up the stairs to the screen porch by holding onto the end of the rope.

He got up to the house and it was locked. She told him it was locked and he wouldn't listen. Stated he needed to get in anyway. He tried pushing the door open with his shoulder and then grabbed a metal plant stand and started swinging at the door to force his way in. At that point a neighbor apparently had heard what was going on so she yelled for help. She stated at the time he did put his hand over her mouth and stated that she was afraid that he was going to harm her because she had alerted the neighbor.

She stated he then went into the home where he got his truck keys off of her nightstand because they had his vehicle there. She stated that he also grabbed a drawer that contained a

number of things including cash that they had at the house. If I recall right from what she told me it was \$400.00 or so, maybe a little bit more than that in the drawer, and he ran around toward the front of the house. She was able to get the cell phone and call 911. She stated that she then walked out to check on the victim and when she did so, she saw a knife laying there next to her husband so she picked it up.

When officers arrived and started the investigation, it was determined that the victim had his throat cut pretty substantially. It was a very, very deep cut. It was cut almost to the vertebrae. He also had defensive wounds on his hands where it looked like he was trying to block the knife attack. They also found a metal garden tool like a garden rake with the prongs on the end. I think there was three or four prongs on it, the hard metal. They recovered that. Looks like it was bent and had blood on it. During the autopsy, the pathologist was able to determine that there were several spots on the victim's head where he had been struck with this garden rake with such force that it had gone, cracked his skull and gone an inch deep or so into the victim's brain.

CURRENT APPLICATION

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

1. Ineffective Assistance of Counsel

- a. "Petitioner avers that Counsel disregarded his advice to file an appeal after his sentencing phase. Also Counsel failed to advise Petitioner of his right to seek remedy of conviction in regards to Post Conviction Relief (PCR)...Furthermore the Petitioner avers that Counsel never advised the Petitioner his right to challenge his conviction under Statute 17-27-45 PCR proceeding. As the result of Petitioner's lack of knowledge of this proceeding due to Counsel's substandard performance Petitioner has failed to mee the one yr. statute of limitations. However, given the unique conditions of incarceration the PCR should be tolled. See Mose v. State 2017 Circumstances beyond Petitioner control entitled tolling. Also during this time President Trump declared a Natl. Emergency concerning Covid-19 pandemic on March 20, 2020 forward. This effected the Petitioner ability to research the right to file PCR and timely file."

- b. "Petitioner avers that his guilty plea was the product of fear, coercion and threatening by Counsel which makes his guilty plea involuntary; violation of his right Sixth and Fourteenth Amend of Const. guarantee effective counsel and due process for sentencing..."
 - c. "Petitioner aver that Counsel was ineffective for failure to investigate evidence in the matter of self defense as requested by Petitioner. Counsel was in violation of Rule 407, Professional Conduct of a Lawyer. Counsel rejected Petitioner advice to have a Jury to prove the charge in question was the result of self defense. Counsel has an obligation by law to abide by the request of his client and communicate accordingly...Petitioner avers that he acted in self defense at his family home. Self Defense Statute 16-11-44(c) Petitioner must prove he was w/o fault in this moment of self-defense, that he was in imminent danger and was in fear of losing his life or serious injury. In this case the Defendant (Petitioner) was face with (Alleged Victim) holding a knife. Any reasonably prudent person of ordinary firmness and courage would have believed and acted the same in self defense. See State v. Cerantes 2013. Once the right to self defense arises, the Petitioner is not required to wait until his adversary is back on equal terms in order to defend himself. Petitioner had knocked knife away from adversary in this case and was known to be in possession of a collection of knives."
 - d. "Violation Sixth and Fourteenth Amendment's of the Const. Counsel was ineffective assistance for failure to comply with Criminal Procedure of the Law in regards to Rule 5 Disclosure. See Hyman v. State 2011. Petitioner requested DNA on the knife in this case to prove the (alleged victim) Victim had possession of the knife prior to the Petitioner struggle to free the weapon (knife) to protect himself before Petitioner was killed or seriously injured. Petitioner's Counsel was more concerned in coercing his client to plead guilty as opposed to following the request of his client (Petitioner) to present full disclosure of Rule 5 regarding evidence (DNA) to prove Petitioner claim of self defense or innocence. Per Criminal Procedure violation of Rule 5 the ruling in the case should be vacate and/or reversed..."
2. Newly Discovered Evidence
- a. "Petitioner seeks relief on the basis of newly discovered evidence following guilty plea and/or sentencing. While Petitioner being placed in the confines and custody of South Carolina Dept. Corr.'s he has had recorded phone calls regarding his wife (at the time) infidelity with the deceased (Victim) William Bell as well as coworker's where Petitioner worked. At the time this was only rumor's, why, at the time of the murder in question, Petitioner wanted to discuss William Bell's affair with his wife. At this point is when William Bell armed himself with a knife and Petitioner had no choice but defend himself. Counsel for Petitioner failed to abide his clients wishes to investigate why William Bell had motive to harm his son in law (Petitioner) due to his on going affair with Mr. Burkhardt's wife. As well as other allegations that were discussed on SCDC phone between Petitioner (Burkhardt) and Foy McDanille Daughter, where she stated the Petitioner wife, Patience Burkhardt, "she couldn't get that bitch (Petitioner wife Patience Burkhardt) to leave her Daddy's house and getting his money." Suggesting multiple affairs with William Bell, co-worker's as well as this particular phone call with Foy

McDaniel daughter. Also new evidence to support the basis for relief is a phone call made by Sharon Lewis (neighbor), she called 911 (a few days prior to murder) regarding a CDV between Thomas Burkhart and Patience Burkhart (wife). This particular day of CDV, after making the 911 call, she, Sharon Lewis, advised me that she was sick of what Petitioner's wife was doing (Infidelity) behind the Petitioner's back and when he would leave for work. Sharon Lewis also stated that her family member, Dave Crawford (Neighbor) was frequently going to my house after Petitioner left for work. This new evidence in the exercise of due diligence, could have been discovered prior to guilty plea. The weight and quality that under the facts and circumstances of this particular case, the interest of justice requires the Applicant's guilty plea to be vacated and disavow his plea. See *Jamison v. State* Oct 22, 214.

Applicant requests relief as follows:

"Vacate sentence and remand to Circuit court for new trial, jury trial. Counsel fail [sic] to follow my advice for jury trial regarding this conviction."

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

SUMMARY DISMISSAL BASED ON STATUTE OF LIMITATIONS

The application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 ("the Act"). Specifically, the Act requires as follows:

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

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was convicted and sentenced on October 16, 2020. Applicant did not file a direct appeal.

Accordingly, Applicant was required to file this Application on or before October 18, 2021.² Applicant did not file the current applications until July 8, 2024, which was well beyond the statutory filing period.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

Applicant alleges the statute of limitations should be tolled due to Counsel’s failure to advise him of his right to post-conviction relief and that the circumstances of his confinement stemming from the Covid-19 national emergency prevented him from filing timely. “[T]he unique conditions of incarceration require a holding that the statute of limitations should be tolled if the circumstances warrant.” Mose v. State, 420 S.C. 500, 510, 803 S.E.2d 718, 722 (2017). Equitable tolling should be used sparingly and “only when the interests of justice compel its use.” Id. at 511, 803 S.E.2d at 723 (quoting Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr., 386 S.C. 108, 117, 687 S.E.2d 29, 33 (2009)). Pursuant to Mose, the statute of limitations may be equitably tolled when document processing by prison authorities delays a PCR applicant’s application. Id. at 508, 803 S.E.2d at 722; see also Ferguson v. State, 382 S.C. 615, 619, 677 S.E.2d 600, 602 (2009) (holding statute of limitations should be tolled failed to file timely PCR application due to mental incompetency); see also Pelzer, 378 S.C. at 522, 662 S.E.2d at 621 (statute of limitations was not equitably tolled due to the PCR applicant’s failure to file his application with the correct court).

² October 16, 2021, fell on a Saturday; thus, the statutory filing period did not end until the following Monday, October 18, 2021.

However, Mose does not “absolve[] inmates from complying with the one-year statute of limitations.” Id. at 510, 803 S.E.2d at 722.

Respondent submits Applicant has not demonstrated circumstances which, in the interest of justice, require the tolling of the statute of limitations. Applicant cites to the Covid-19 national emergency in 2020 to explain why he was unable to file timely. However, this application was not filed until 2024, four years after the Covid-19 emergency began. Applicant has failed to explain how the Covid-19 emergency prevented him from filing the application prior to 2024. Thus, the allegations of ineffective assistance of counsel and involuntary guilty plea should be barred by the one-year statute of limitations.

Accordingly, Respondent requests an evidentiary hearing be held to determine whether Applicant has met his burden demonstrating the statute of limitations should be tolled.

RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. 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), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland 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."). 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).

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." Strickland 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." Strickland 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.”

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).

Allegation 1(c) and (d): Counsel’s Allegations Regarding Counsel’s Failure to Investigate Self-Defense

Applicant alleges Counsel was ineffective for failing to properly investigate self-defense. At Applicant’s guilty plea, Applicant waived his right to a jury trial and specifically his right to present a claim of self-defense. (GP. Tr. pp. 13–14). “A defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended the quality of the State’s case or the likely penalties attached to alternative courses of action.” Jamison v. State, 410 S.C. 456, 471, 765 S.E.2d 123, 130 (2014) (quoting Brady v. United States, 397 U.S. 742, 757, 90 S.Ct. 1463, (1970)). “We find no requirement in the Constitution that a defendant must be permitted to disown his solemn admissions in open court that he committed the act with which he is charged simply because it later develops that the State would have had a weaker case than the defendant had thought.” Brady v. United States, 397 U.S. 742, 757 (1970).

Applicant himself made such “solemn admissions” in his plea colloquy. His responses to the plea court’s questions establish that he possessed a general understanding of the nature of the

charges against him, the sentences he was facing, the nature of the negotiated sentence, and the rights he would be giving up by pleading guilty. He clearly indicated his decision to plead guilty was voluntary. The plea court found that his guilty plea was free, knowing and intelligent. (GP Tr. p. 26).

White v. State³ Claim

Applicant alleges that he was denied the right to a direct appeal of his plea and sentence. Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a *trial*, a different standard applies to a guilty plea:

Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (citations omitted); see also Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000) (imposing the duty to consult when there is reason to think either that a rational defendant would want to appeal or that the particular defendant reasonably demonstrated interest in doing so); contra Frazer v. South Carolina, 430 F.3d 696 (4th Cir. 2005) (reading Flores-Ortega to mean counsel generally has a duty to consult with his client regarding whether to pursue an appeal). Therefore, in a collateral action attacking a guilty plea, the “bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief.” Jones v. State, 382 S.C. 589, 598, 677 S.E.2d 20, 23-24 (2009) (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)).

Where an Applicant reasonably demonstrates an interest in appealing, or where there is a reason to think a rational defendant would want to appeal, and where Counsel fails to either initiate

³ White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

that appeal or comply with Anders procedure, “White permits consideration of the full trial record on [an] issue in conjunction with appellate review of the PCR proceeding under an exception to the prohibition against appellate courts considering appeals in the absence of notice of direct appeal given and timely served.” Smith v. State, 309 S.C. 413, 415, 424 S.E.2d 480, 481 (1992) (citing Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)).

Respondent lacks sufficient information to admit or deny this allegation at this time. Respondent requests an evidentiary hearing on this ground for relief. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

RESPONSE TO CLAIM OF NEWLY DISCOVERED EVIDENCE

The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief action if “there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.” S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material facts not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). A defendant requesting a new trial based on after-discovered evidence after a guilty plea must show:

- (1) The newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the ‘interest of justice’ requires the applicant’s guilty plea to be vacated.

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

Here, Applicant claims newly discovered evidence in the form of recorded jail calls and statements made by Applicant’s neighbor which allegedly support Applicant’s claim his wife was

having an affair with the victim. Applicant has failed to allege facts sufficient to support his claim of newly discovered evidence. Each of Applicant's allegations involve "facts" that were, or could have been, discovered before the entry of his guilty plea. Applicant even concedes that he was aware of the alleged affair between his wife and the victim prior to his guilty plea, stating that it was "rumor" at the time of the murder. Additionally, the statements by Applicant's neighbor were *made to Applicant* prior to the murder. Obviously, Applicant was aware of these statements prior to the entry of the guilty plea. Furthermore, alleged evidence corroborating an affair between his wife and the victim is clearly not of such weight and quality that the interest of justice requires his guilty plea be vacated. Not only is evidence of this alleged affair not material to issue of Applicant's innocence, but it could potentially support a motive for the murder. This is especially true where Applicant admitted he was guilty of murder at his guilty plea hearing. (GP Tr. p. 26). Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Based on the foregoing, Applicant has failed to make such a *prima facie* showing that he is entitled to relief based on the information set forth.

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 been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. *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. Id.

at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCPP; see also Rules 15(a)-(b), SCRCPP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. See Rule 15(a), SCRCPP.

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

GENERAL DENIAL

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

CONCLUSION

WHEREFORE, Respondent respectfully requests an evidentiary hearing be held on the Mose v. State and White v. State claims. Respondent further reserves the right to move for dismissal of this application based on statute of limitations in the event the White and Mose claims are denied.

Respectfully submitted,

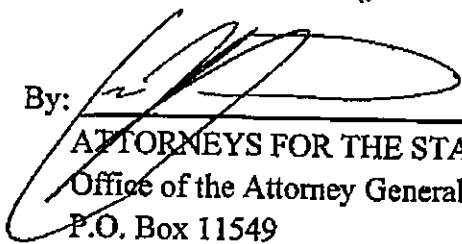
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By: 

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November 7, 2025

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

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

Thomas J. Burkhardt, #288275

)
)
) Applicant,
)

Case No.: 2024-CP-02-01648

v.

)
) Certificate of Service by Mail
)

State of South Carolina

)
)
) Respondent,
)
)

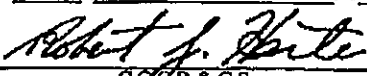
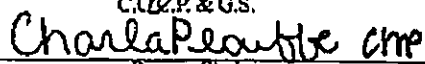
1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Partial Motion to Dismiss to the Application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

Chelsey F. Marto, Esquire
The Law Office of Chelsey F. Marto
PO Box 8795
Columbia, SC 29201

DATED this 7th day of November, 2025.



Blake Means, Legal Assistant
For Respondent

FILED November 10 20 25
 1230
C.C.P. & G.S.
 cmc
Deputy Clerk

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	2024-CP-02-01684
	)	
	)	
	)	
THOMAS BURKHART,	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
THE STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	
_____	)	

December 15, 2025
Aiken, South Carolina

B E F O R E:

THE HONORABLE DEADRA JEFFERSON, JUDGE.

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

CHELSEY MARTO, ESQ.
Attorney for the Plaintiff

ZACHARY JONES, ESQ.
Attorney for the Respondent

Penny M. Johnson
Court Reporter III

I N D E X

(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

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E X H I B I T S

(There were no exhibits submitted.)

All Exhibits were retained by the Clerk of Court for
Aiken County.

P R O C E E D I N G S

1
2 THE COURT: This is Thomas J. Burkhardt vs. The State of
3 South Carolina in 2024-CP-02-1684, before the Court on
4 application for Post-Conviction Relief.

5 What date was the amended application filed, Ms. Marto?

6 MS. MARTO: It was submitted, Your Honor, December 9th,
7 2025.

8 THE COURT: Do you have a file copy?

9 MS. MARCO: I do not. I'll have to look it up.

10 (Pause.)

11 MS. MARTO: Looks like it was filed December 12th, Your
12 Honor.

13 THE COURT: Has the State received a copy?

14 MR. JONES: Yes, Your Honor.

15 THE COURT: Has it had adequate time to file an amended
16 return if it desires?

17 MR. JONES: The State has no intention of filing an
18 amended return.

19 Thank you, Your Honor.

20 THE COURT: Mr. Burkhardt was charged with murder, armed
21 robbery and kidnapping on indictments 2019-GS-02-2048, 2055
22 and 2051. He pled guilty to a negotiated plea on voluntary
23 manslaughter where he received 30 years by Judge Keesley on
24 10/16 of 2020.

25 Ms. Marto, are you ready to proceed?

1 MS. MARTO: Yes, Your Honor.

2 THE COURT: Is counsel ready to proceed for the State?

3 MR. JONES: Yes, Your Honor. And just once again, if I
4 may make sure the record is clear. I realize in our return,
5 it says the charge was reduced to voluntary manslaughter. I
6 believe that's an error.

7 THE COURT: That's not accurate?

8 MR. JONES: Yes, Your Honor. I believe it was straight
9 up -- or not straight up to murder, but to murder and he
10 received the negotiated sentence of 30 years.

11 THE COURT: 30 years, which was the mandatory minimum.

12 MR. JONES: Yes, Your Honor. Thank you. I apologize
13 for that.

14 THE COURT: No worries.

15 Ms. Marto, you may proceed.

16 MS. MARTO: Thank you, Judge.

17 THE COURT: You're welcome.

18 MS. MARTO: We'd call Mr. Thomas Burkhardt.

19 THE COURT: Sir, if you would come to the stand to be
20 sworn.

21 THOMAS BURKHART,

22 after being duly sworn, testified as follows:

23 THE CLERK: Please take a seat in the witness stand.

24 THE COURT: State your full name for the record.

25 THE WITNESS: Thomas James Burkhardt.

1 THE COURT: Spell your last name for the court
2 reporter.

3 THE WITNESS: B-U-R-K-H-A-R-T.

4 THE COURT: You may proceed.

5 MS. MARTO: Thank you, Judge.

6 THE COURT: You're welcome.

7 DIRECT EXAMINATION

8 BY MS. MARTO:

9 Q Good afternoon, sir. So what were you charged with
10 again?

11 A Murder, kidnapping and armed robbery.

12 Q And who represented you?

13 A Mr. McKellar, but I had three different lawyers that
14 were assigned to me at the public defender's office. And I
15 don't know why they were changed or dropped off my case, but
16 I had three of them that were assigned to me during my time
17 in the county.

18 Q You elected to plead in this case; is that correct?

19 A Yes, I did.

20 Q And why did you decide to plead?

21 A Because my lawyer told me I was going to lose and told
22 me the best thing to do was go work on it behind prison.
23 And I knew everything that was being said between me and my
24 lawyer and was kind of communicated back towards my family
25 that a lot of things was wrong. A lot of people were saying

1 and doing a lot of things and there was a lot of police
2 misconduct on my case.

3 And it's obvious -- when you see dash camera that I
4 asked you or questioned you about to look at that and it's
5 obvious what happened. There's no body camera on there and
6 I believe that's required for them to wear at any call like
7 that. There was two of them on the scene and neither one of
8 them had it on.

9 And you see they antagonized me when they put me in
10 front of the dash cam after 43 minutes in my house on a
11 domestic. They were threatening me about planting drugs in
12 the yard for 43 minutes, not said a word to my wife. And
13 the whole time, she was smiling and cutting up with them
14 when they pulled up.

15 But then nothing was said to her in the house at all
16 besides the officer, Deputy Morin, said he would take her
17 anywhere she wanted, but told me he wasn't a taxi cab when I
18 told him to call my mother to come pick me up then because
19 they said we had to split for the day because there was a
20 domestic argument. And he refused to do that and called my
21 dad instead -- my stepfather, which is the victim. And I
22 told them that he was at work and my mother was retired and
23 right up the road. And they refused, refused, refused to
24 call her.

25 And then on reports I've got from discovery, which I've

1 called Mr. McKellar and asked him about it, it says that the
2 police -- it said they called my stepfather to drive me
3 around so my wife could take a WM home from in my house, a
4 white male, I assume. I never went in the house the first
5 time because they were called two times before that.

6 And this is all three days before the murder happened,
7 but I went to jail for a CDV that night with my wife and I
8 did do that. That's the first time I ever had a CDV, first
9 time anything, ever hit a woman. And I did hit her.

10 And this is going to show all police misconduct. I
11 went to the hospital, they said for my blood pressure. I
12 was in the hospital for three days. I don't remember
13 anything. My wife was put in the room next door, which the
14 officer said that it wasn't them, but I heard them come in.
15 I seen two of my coworkers, I heard them when they got off
16 the elevator because it was right there by the room. And
17 mid-conversation, like when the door popped open, they were
18 talking inside and you could hear them.

19 Why would they be there? Somebody had to have told
20 them something bad happened to me. My coworkers wouldn't
21 have come up there to the hospital on my floor to ask about
22 -- to be there at the same time about anything besides me.
23 So what did they tell them? I had been arrested for a CDV.
24 They were there at the hospital for what?

25 And I've called one of them since then and I didn't get

1 much to say to him because he was just trying not to say
2 anything. But that's on SCDC recorded phone call and my
3 wife admitting to all the prostitution with a couple of the
4 neighbors and stuff that was going on. And that's all the
5 same things I told my lawyers to check into that they
6 obviously never did.

7 And she went up there on my last video visit with her
8 in the county jail, it showed her and she was all dressed
9 up. And I asked her where she was going and she I'm going
10 to see your lawyer to give a statement. I've got to look
11 good for him, don't I, when I see him. Like it was expected
12 of her to look like that. And then I don't have any
13 statement from her in my case from Mr. McKellar.

14 And then when the investigator for Mr. McKellar come to
15 see me, before he even stepped foot in the office, he was
16 standing there, he said, look, I ain't got much to show you
17 because what you asked about about the body camera footage
18 -- I told them at the very start that there's no way they
19 don't have body cam footage of what they did. And, of
20 course, there's none from Rushton or Morin in there. And
21 they were at my house two hours on a domestic.

22 And like I said, you can see them antagonizing me.
23 When they do take me outside after 43 minutes in the house
24 of threatening me, then they were still antagonizing me.
25 That's when he, Officer Morin went in the house by himself

1 with my wife. And I told him you don't need to go back in
2 my house. They didn't have permission to go back in my
3 house again.

4 And he took her in the house for 12 minutes. She come
5 out -- and she wasn't crying or upset none at all during any
6 of the calls. And when she comes out, she was shaking so
7 bad that you could see her shaking from 60 feet away in the
8 car dash camera and crying. And he told her absolutely,
9 when I said, What did he just do to you? What did he just
10 do to you? Morin told her, Don't say anything to him or I'm
11 going to put you in the back of the car, too.

12 And I told him all that. And nothing was looked into.
13 Not even the statement when she supposedly went. And my
14 investigator told me, There is no body cam that you want to
15 see up there. I got a little bit of stuff we'll go over.
16 He said, Before I come in, he said, I'm going to let you
17 know I will never be alone in a room with your wife. And I
18 looked at him, kind of made a face, I guess. And he said
19 again, I will never be alone in a room with your wife. I
20 don't understand why he would say that. I don't understand
21 what the police were doing on my case and all the misconduct
22 and criminal activity, not just misconduct, criminal
23 activity.

24 And my investigator, even Morin is all over my wife's
25 social media. My investigator from my case, the woman --

1 Ms. Victoria Logger (ph), which her middle initial is K.
2 I've got her user name and it's a K. I don't want to say it
3 so it don't get missing offline, but it's on there. She's
4 friends with my stepdaughter. And I don't know if she's
5 gay, but I believe she is. My stepdaughter is married to a
6 woman. And she's all over her social media with her user
7 name. So that just kind of admits all the wrongdoing that's
8 going on.

9 And yeah, I was messed up in the head. I didn't know
10 what was going on in my case. I was scared to death and
11 worried about my family and dealing with everything I was
12 finding out. So yeah, I was taking their word for it.
13 Yeah, he told me don't 30 sound better than having a life
14 sentence? You're still going to have to go back behind the
15 fence and work on your case and do a plea. So yeah, 30
16 sounded better than a life sentence he's telling me I'm
17 going to get, especially when I knew he wasn't doing any
18 work on my case. He did absolutely nothing. Nothing I
19 asked about he checked into.

20 And even somebody on my case said, family members said
21 that she said at my plea bargain -- told my stepfather that
22 I was going to kill you. Why in the world would she think
23 that? Why in the world would she think that? What was he
24 doing for her to think that? Because I told him the year
25 before, I had a discussion with my mom and my stepfather

1 that he was involved with my wife. Of course, he said no.
2 I let him know. But it's so much in this conduct that's
3 crazy.

4 And he represented in my roommate in the county. And
5 the only reason I'm bringing it up is because this has a lot
6 to do with my case period. He represented Mr. John Hiott
7 and he had six counts of child molestation on a six-year-old
8 little girl. He beat all his charges and come to jail with
9 a charge he didn't even have when we were in the county.
10 Not reduced anything down, he didn't even have that charge.
11 Somebody beat up a car with a bat or something or some kind
12 of charge. I don't know what, but something like that.

13 But he come to jail for that and he comes to the same
14 prison I'm at. And he becomes my roommate in prison. He
15 knows my stepfather. His stepfather knows my stepfather
16 real good. He used to be a mechanic. But his family is
17 Judge Max Meeks that's been in there forever. And he let me
18 know that. And there's been a lot of things been said about
19 my stepfather by Judge Max Meeks and I don't know how in the
20 world -- I guess just being around town and knowing a lot of
21 people, he knew more about it than what I thought he would
22 have.

23 But anyway, that John Hiott guy drove an ambulance the
24 year before, right about the time I told my stepfather and
25 he and my wife had something going on. Matter of fact, it

1 was the same day, I think. Yeah, it was the same day.
2 Because when I got out there -- they admitted me to the
3 crazy house. I was there for two hours. And they released
4 me and said I don't know why they brought you up here. And
5 the police took me up there. They said I didn't have a
6 choice, disorderly conduct and go to jail or go up there to
7 the crazy house and get checked out.

8 But he drove me in that ambulance, Mr. Hiott. He drove
9 me in that ambulance and I didn't even know him yet. And
10 that comes to be my roommate in the county jail. Then he's
11 at Ridgeland, at the other prison with me and becomes my
12 roommate there. And he beat six counts of child
13 molestation. I would say he was up there doing a lot more
14 than he was supposed to be. And he told me he sat Mr.
15 McKellar down at a plea bargain and made him sit down like a
16 little girl. I ain't going to use the word. He said the B
17 word. Made him sit down like a little B and beat his own
18 charges.

19 And this guy's a phone hacker, that's what he says he
20 went to school for. I seen him do stuff because I had a
21 phone at Ridgeland. I'm not going to lie about that. I put
22 my own self out there. I had a phone --

23 MR. JONES: Your Honor, the question was what made him
24 decide to plead guilty and I think we're very afar afield
25 from that.

1 THE WITNESS: That's why I pled guilty, a lot of it.
2 Not the stuff I found out at prison, but all the other stuff
3 I was finding about her getting involved with a lot of
4 people. You know how many people talked to me in the county
5 jail and said my wife was doing this and doing that. They
6 were scared of me. They weren't coming over there and
7 telling me that because they wanted to. So yeah, that's why
8 I took a plea, when I knew he wasn't doing anything.

9 BY MS. MARTO:

10 Q So are you saying that you decided to plea because your
11 counsel didn't do anything about the misconduct you just
12 laid out?

13 A Yeah, he wasn't doing anything on my case and I knew I
14 was about to get a life sentence if I went to trial. That's
15 what I said the whole time, I wanted a trial. I wanted to
16 show what them people was doing. And that was the plan all
17 the way till he comes down there and says we're on the
18 docket for two weeks. I told him, Look, it's time to decide
19 something here. What's going on? And he said we're on the
20 docket for two weeks and he said, but you're going to get a
21 life sentence. And I said, Why? He said -- I don't
22 remember exactly what he said, but that was what was said.

23 And, of course, it made a little bit more sense for me
24 to take 30 than life sentence. And I know how Aiken County
25 does. They do five minutes and you got a murder case, a

1 murder trial and 98 percent chance whether he guilty or not
2 guilty, you going to be found guilty when you go to trial in
3 Aiken County.

4 So who's going to take them risks? Who's going to go
5 with them numbers right there when you know your lawyer
6 ain't doing nothing for you? And you have had three
7 different public defenders the whole time you've had one,
8 three different ones, three different ones. That's against
9 ethics right there, too. You're not supposed to have
10 another lawyer in the same office like that that can take
11 their case for the other lawyer because they don't like you
12 or whatever reason. They're dropped off your case. That's
13 the same thing, too.

14 Q If you went to trial, what would your defense have
15 been? Would it have been that there was misconduct? Does
16 it all kind of wrap around?

17 A No, it was self-defense. I didn't have a knife. None
18 of this got out. I just wrote -- and Mr. McKellar said, too
19 -- the only thing he really said anything that was worth
20 anything was your dad has a lot of animosity towards you,
21 your stepfather had. And I said, Why do you say that? And
22 he said, Because in the parking lot when you went to go
23 leave, he said you went to hug him and told him thank you
24 for getting you out, he said exactly what he said. And I
25 don't know how he heard that or knew that. I'm curious

1 about that myself. I know this isn't the time for him to
2 get questioned, but how did he know that.

3 Q What would your self-defense consist of? What did the
4 victim do that made you act in self-defense?

5 A He pulled a knife out. And I can't remember exactly
6 what was said. After thinking about it, I can't exactly
7 remember what was said. But that's for trial. I mean, this
8 would overturn a guilty plea right there. I don't really
9 know because I'm not going to get hooked up on words in a
10 transcript. I already see all the misconduct that's going
11 on.

12 It's ridiculous what I've got on Aiken County,
13 absolutely ridiculous. And the City, too. And SLED. I
14 called them to do a well-being check on my family because I
15 thought they were sex trafficked or sex trafficking people.
16 You know what they told me? They didn't care about none of
17 that. They just wanted to know about something in prison
18 and left two minutes later.

19 Q Now, did you want counsel to file a direct appeal for
20 you?

21 A I don't even think that was even said. Like I said,
22 when all this was going on, I was in a bad space in my head.
23 I was about to get all that time and worried to death about
24 my family and wasn't speaking to any of them. Because I was
25 talking to my wife for, like, two months after this happened

1 and then I didn't talk to her no more. My mother wouldn't
2 answer the phone because she was upset and nervous. And I
3 understand that, she was grieving.

4 But there is so much that is unbelievable on this.
5 It's really going to shock people. It should scare people,
6 really. They should thank me for it, too, when they find
7 out because this is ridiculous. And they ain't just doing
8 it to me, they're doing it to other families, too. And it's
9 the cops. It is Aiken County.

10 If he took my wife in there and did what he did on that
11 video, anybody see it, it's self-explanatory what he did.
12 Her crying and shook up like that and they don't have any
13 body cam to prove it. And they're supposed to have them on.
14 Why in the world would they not have it on? And I
15 questioned and questioned that. But I'm going to get a life
16 sentence because they don't have to prove that. They can
17 say it got lost or whatever happened --

18 MR. JONES: Your Honor, the question was what was his
19 self-defense going to be.

20 THE COURT: It's non-jury.

21 Please make sure you ask pointed questions so he can
22 answer, not a colloquy.

23 Thank you.

24 MS. MARTO: Yes.

25 BY MS. MARTO:

1 Q And you wanted counsel to challenge the indictments; is
2 that correct?

3 A Yeah, I wanted -- yes.

4 Q And what do you think would have happened had counsel
5 challenged the indictments?

6 A Well, when you say challenged the indictments, I'm not
7 sure really what you're saying. That I shouldn't have been
8 indicted because it wasn't new charges?

9 Q What are your issues with the indictments?

10 A Well, first of all, Mr. McKellar come to me and said
11 that the solicitor had come to him, Mr. Hammack, I assume,
12 had come to him and said he was trying to drop the charges.
13 He wanted to drop the charges from murder to manslaughter to
14 start with, but he said my family didn't want that to
15 happen.

16 First of all, it's not up to my family what the
17 solicitor charges me with. That's his job to decide what
18 the charge was. Might be going to the family, telling them
19 look, this is what's going on, just letting y'all know
20 because of being a witness or whatever. But that's not up
21 to my family what the charges are.

22 And then on one warrant, it has manslaughter and
23 murder. They don't do that. Warrants do not have,
24 indictments do not have two of them on the same charge,
25 especially for murder and manslaughter. That's way separate

1 charges. And why in the world is that? That could be where
2 he was mistaken earlier and saying the manslaughter charge.
3 Or could be mistaken where the solicitor was going to go and
4 drop my charges down to manslaughter to start with. But
5 that still ain't good enough for me.

6 Q And you pled to murder, correct?

7 A Yes.

8 Q And you pled to murder because you were afraid of
9 getting a life sentence?

10 A Yeah, of course. I was afraid because my lawyer wasn't
11 doing anything I thought of or checking on anything I asked,
12 especially about the body camera and stuff. That would have
13 told everything.

14 Q You're, also, making an allegation that counsel should
15 have tested the DNA evidence on the knife?

16 A Well, they checked the DNA off. I didn't see the
17 results, but I don't think that matters either way. I know
18 whose DNA is on it, mine and his. So, you know what I mean,
19 that's regardless of the point. But they did send it off.
20 I've got records saying -- oh, it says that my stepfather
21 was shot and stabbed. And that was after the autopsy was
22 completed that day and time stamped and sealed. And they
23 said it was gunshot and stabbed.

24 Okay, when I gave my interview to start with, when I
25 first come in and gave the police an interview on video --

1 and I asked about getting that, too. I told her to start
2 with, I said, Look, I'm going to tell you what I did and
3 then I'll answer any questions y'all got if I feel like I
4 should. And I told them what I did. I told them I thought
5 I killed him. I got the knife from him. And she started
6 screaming at me, literally, getting irate and loud because
7 she said I shot him. And I said, No, who shot him? Shot
8 him with what? And she said, A gun. You shot him. I said,
9 Who in the world -- no, we can stop this interview now. Why
10 would she say that?

11 I see the police can lie to get you twisted up on your
12 words, but why in the world would a lawyer -- would the
13 investigator want me to claim something. I said, all right,
14 I thought I killed him. I got the knife from him. So why
15 in the world would that be said?

16 And there was nobody that said anything about a
17 gunshot, but it sure says gunshot on there. And then I'm
18 sorry, but the body got cremated after that. And I already
19 know they had a burial plot. I don't know why that decision
20 was, it's not my business really, but it sounds kind of
21 familiar, don't you think? Especially when I believe my
22 mama was being threatened. And I know she was. And I think
23 she still is. And that's sad that she's right here in the
24 courtroom and I still feel that way and ain't nothing going
25 to be done about it and it's going to keep on going. And

1 with the rest of my family, also.

2 Q You, also, raised an allegation of newly discovered
3 evidence of infidelity on your wife's part; is that correct?

4 A Well, I had it in my mind. And upon information and
5 belief, I knew she was sleeping with my stepfather a year
6 before that or so. And then everything else, once I got
7 there. I thought the whole time, she was seeing somebody
8 online. She wouldn't never put her phone up. But yeah,
9 since I've been in prison, I've found thousands, seriously,
10 thousands of porn videos of my wife and my stepdaughter and
11 some other people in my family.

12 Q And how would that change your decision to plead versus
13 go to trial?

14 A Well, that was -- some of that was after, but -- I
15 don't know if that would have changed my decision. That's a
16 confusing question for me right there. Now, say that one
17 more time.

18 Q How would that have changed your decision pleading
19 versus going to trial?

20 A If my lawyer would have did their job and found out any
21 of that, that would have made the decision right there. He
22 could have found out the same info I did just by doing his
23 job. He's got an investigator. He's got it a little easier
24 than a prison inmate with a contraband cellphone trying to
25 find some information.

1 Q How would that help you at trial, that information?

2 A That would overturn everything. What do you mean?

3 That would show motive of all the misconduct and all the
4 criminal activity that was going on by officers and other
5 people. That would have -- I was [indiscernible], just like
6 I should have, just like I should now.

7 Q And just to kind of cover our bases, it looks like you
8 filed your PCR application about three years late; is that
9 correct?

10 A Yeah.

11 Q And what is the reason why you were so late filing your
12 application?

13 A Because I was worried about my family.

14 Q Could you expand on that a little bit?

15 A Seeing all that, I was scared what was going to be done
16 to them. And I still am. They going to smile in your face
17 and say it's not going on. They know I can't help them.
18 And my stepdaughter told somebody on the phone when I called
19 them and I don't have any record of this, she told them she
20 wasn't mad at me about what happened to my stepfather. She
21 was mad I wasn't there to protect her grandkids -- protect
22 her kids, my step grandkids. And that was the only reason
23 she was mad at her, too.

24 They scared to death I'm going to face retaliation
25 because I've dealt with so much crap. I got stabbed 25

1 times less than a year ago and brought back on the same damn
2 yard -- excuse me, sorry. But got put back on the same
3 yard, which I'm all right with. I've got to be in prison
4 somewhere. I'm not running from anybody because I don't
5 have no reason to run. But I got stabbed 25 times.

6 And all the other things I've dealt with because of
7 this and deal with every day because of this same stuff.
8 Because officers are letting certain things go on that's on
9 the outside and it's affecting me on the inside, also. And
10 I could go into more detail about that, but I'll leave that
11 alone for now.

12 Q Are there any other issues that you wish to raise today
13 that you haven't already brought to this Court's attention?

14 A Well, my video, the Zoom video court I went to, I don't
15 believe it was real because McKellar told me the afternoon
16 before that he was coming to see me, that we were going to
17 court the next day for the plea bargain. And he told me it
18 was going to be a travel judge. That travel judge come in
19 especially just to see a few people because -- to get some
20 people to Columbia because Covid and stuff was going on.

21 And if you look, they're definitely wasn't a travel
22 judge that was signing on my stuff. That's the judge I seen
23 on my first prison sentence. And I really think that that
24 was copied from then. Because I asked -- it took me -- I
25 didn't get a sentencing sheet the couple of weeks I was

1 there after I got sentenced. And I asked everyday almost
2 for a sentencing sheet, what's going on, what's going on
3 with it. Why can't I get a copy? They kept putting me off,
4 putting me off.

5 I wrote the county clerk of court two or three times
6 when I was in Ridgeland, okay, for my sentencing sheet.
7 Never got one. I finally seen Ms. Allen at the mental
8 health at Ridgeland. And I was telling her about some
9 things that was going on and I need some help. And wouldn't
10 nothing done besides us going to see her every now and then,
11 every three months or whatever it was.

12 But I told her finally, I said -- she called me up
13 there on a Friday. And there was something going on and I
14 knew it was because my roommate was getting -- moving out
15 the room and they told me to go to mental health. But
16 anyway, I went up there and I told her what was going on
17 with the contraband and some things he said about a racist
18 phone call he made and was hollering about it in August.
19 And I feel like it was just so he could -- people could hear
20 that "N" word he said while we were in there and blaming --
21 acting like that was me saying that to him on the phone.

22 Wasn't nobody -- I knocked on the door and I went to go
23 in and somebody called at the same time. As soon as I
24 clicked the handle, his phone ring on his desk. He could
25 have called from his cellphone or got one of the ladies in

1 the office to call when I come around there and was doing
2 that call playing. The man that said I called, I don't even
3 know him. So I guess it wasn't bothering him on anything,
4 online, or with a phone or with the SCDC tablet or any of
5 that. I definitely wasn't doing that and didn't know him.

6 But anyway -- I don't even remember what I was saying
7 now. I don't even remember what I was saying.

8 THE COURT: You need to ask your client a question, Ms.
9 Marto.

10 MS. MARTO: Yes, Your Honor.

11 I have no further questions.

12 THE COURT: Any questions for the witness?

13 MR. JONES: None for this witness, Your Honor.

14 Thank you.

15 THE COURT: Sir, you may step down.

16 Anything further from the Applicant?

17 MS. MARTO: We call William McKellar.

18 THE COURT: Come forward and be sworn.

19 WILLIAM MCKELLAR,

20 after being duly sworn, testified as follows:

21 THE CLERK: Please take a seat in the witness stand.

22 THE WITNESS: Good morning. My name is William
23 McKellar, M-C-K-E-L-L-A-R.

24 THE COURT: You may proceed.

25 MS. MARCO: Thank you, Judge.

1 THE COURT: You're welcome.

2 DIRECT EXAMINATION

3 BY MS. MARCO:

4 Q Good afternoon, sir.

5 A Good afternoon.

6 Q So you represented Mr. Burkhardt?

7 A I did.

8 Q And how long did you have the case, roughly?

9 A Approximately a year.

10 Q Do you recall how many times you met with him?

11 A If my jail log is correct, I met with him 15 times.

12 And this was during Covid, so it would have been a
13 combination of Zoom or video visits and in person.

14 Q Did you get a chance to discuss with him the discovery
15 in this case and his options going to trial versus pleading?

16 A Yes.

17 Q And what was the discussion concerning going to trial
18 versus pleading?

19 A If he went to trial, the only defense that presented
20 itself was self-defense.

21 Q And what did you have to substantiate that defense
22 with?

23 A There wasn't much to substantiate a defense. He was
24 accused of killing his stepfather, who he believed was
25 having an affair with his wife. A few days leading up to

1 the stepfather's death, Mr. Burkhart was arrested for
2 domestic violence. He was bonded out, I believe, by his
3 mother and his stepfather.

4 And when they returned from jail, his mother went
5 inside. There's some discrepancy whether Mr. Burkhart went
6 inside as well, but, ultimately, both his stepfather and Mr.
7 Burkhart ended up in the back of the house. And it's a
8 house built on a decline, so, essentially, the second story
9 was a basement. So he went around the back, went down the
10 hill to the basement area. They weren't inside the
11 basement, but they were outside the basement and that's
12 where the fight ensued.

13 Mr. Burkhart would have alleged -- his defense would
14 have been he took out the knife first and I did what I did
15 in self-defense. I can explain why I didn't think that
16 would work. And my advice at the time would have been this,
17 that his stepfather had a stroke leading up to this. He had
18 weakness in one side. I think the weakness was to his
19 dominant hand. The nature of the injuries were pretty
20 severe. I think his -- he suffered a laceration across the
21 throat that was substantial, ear-to-ear.

22 Not only that, he was bludgeoned with something to his
23 skull. And I'm not sure exactly what tool was used for the
24 strike to the skull, but he had a cracked -- not only did he
25 have a severed neck, but he had a cracked skull as well.

1 And I believe his mother came downstairs as the last
2 portion of this attack carried on and saw Mr. Burkhart
3 standing near his stepfather swinging at his head. And
4 that's when Ms. Bell was kidnapped, was tied up and then
5 dragged upstairs to the first floor, the upstairs floor in
6 an effort to get inside. The door was locked and couldn't
7 get inside. I'm not sure how he, ultimately, got inside,
8 but he went inside, grabbed some belongings and fled. He
9 was captured, I don't know if it was the same day, but days
10 later.

11 Q And what was your advice to Mr. Burkhart concerning the
12 plea?

13 A My advice would have been -- I know we discussed
14 self-defense, but I don't recall exactly what I said. My
15 advice then was -- because my advice now would be you need
16 to take a plea on this. Your chances of winning are slim to
17 none.

18 The victim had what was characterized as defensive
19 wounds on his hands as well. Obviously, we did try -- if we
20 went to trial, we would have to argue that those weren't
21 defensive wounds, but that's what they appeared to be.

22 Q Now, did you consider testing the DNA evidence on that
23 knife?

24 A No, I didn't see any purpose in testing DNA on the
25 knife.

1 Q Did you see anything on the indictments that you felt
2 like needed to be challenged?

3 A Generally speaking, I don't pay close attention to
4 indictments if it's a plea. If it's a trial, I'll look at
5 the indictment. If there's a defect, I'll file a motion to
6 quash. But if it's a plea and there's a defect on the
7 indictment, I could file a motion to quash, but that's just
8 going to get us right back to where we were before the
9 motion to quash. We're looking at a plea.

10 I don't know that there are defects in the indictment
11 and I don't know if I looked at them before the plea. I
12 generally don't look at indictments. We're not presented
13 with indictments. We're not given them. If I get them,
14 it's because I sought them out from the clerk of court. The
15 solicitor's office doesn't give them to us before a plea.

16 I discuss with my clients the elements of the crime so
17 they understand what the State has to prove in order for
18 them to be found guilty. But I generally don't retrieve
19 indictments to review or to review with clients before a
20 plea. Maybe that's a mistake, I don't know, but that's my
21 practice.

22 Q After the plea went through, did Mr. Burkhardt ever
23 request a direct appeal?

24 A Not to my knowledge. I read the transcript this
25 morning and Judge Keesley mentioned he has the right to file

1 an appeal. I don't see anything in my notes that Mr.
2 Burkhart ever sought an appeal. And it's my practice to
3 file it, to initiate the process if a client wishes.

4 Sometimes I proactively discuss it with clients,
5 appeals, if -- but I don't know if I would have in this case
6 because my client got exactly what we negotiated. I don't
7 have any indication that he reached out to me asking for an
8 appeal.

9 Q Do you recall whether or not Mr. Burkhart's stepdad or
10 mom had weapons on them?

11 A Whether who had weapons on them?

12 Q The victim.

13 A He was -- it, apparently, was his practice to carry a
14 pocketknife, that's what I learned during this case.

15 Q Was there any reason to believe he was conceal carrying
16 at the time?

17 A A firearm?

18 Q Yeah.

19 A That would be -- I don't have a recollection of a
20 firearm. I don't have any knowledge that he carried a
21 firearm and I don't have any recollection of a firearm being
22 involved in this case.

23 Q Did Mr. Burkhart ever bring up to you his concerns
24 about misconduct, whether that be by police or his wife?

25 A Possibly. I don't remember -- I don't specifically

1 remember, but I know he believed a lot of people were
2 sleeping with his wife. Again, some of those people may
3 have been law enforcement, I don't know. I didn't put too
4 much time into that because, frankly, what relevance -- I
5 didn't see how that would aid his self-defense argument.
6 But I do know he believed a lot of people were having an
7 affair with his wife.

8 Q Did you review the body cam videos prior?

9 A I reviewed all the audio and video.

10 Q Did you see any indication that Mr. Burkhart indicated
11 that there was something improper going on between the
12 investigator and his wife?

13 A Nothing to my recollection.

14 Q Do you know why there was no body cam footage in this
15 case?

16 A Well, there was. There was body-worn camera from the
17 night of the killing. And I reviewed that. And there was
18 body-worn camera of one of his arrests. I'm not sure which
19 arrest it was. And there was, at least, dash cam footage of
20 -- he had a number of encounters with law enforcement
21 leading up to the night where he took the life of his
22 stepfather. A lot of it is -- I don't know what's body-worn
23 camera and what isn't. My main focus was the murder and not
24 his encounters with law enforcement days before. I didn't
25 see how that tied into a self-defense argument.

1 Q Do you think any of the misconduct he indicated today
2 would have changed the results or your projection of the
3 results at trial?

4 A No. Now, I say that, it was difficult to follow what
5 he was saying. But I don't know how any -- I don't know how
6 it would have changed the results. The investigator on this
7 case was Victoria Logger and she had nothing to do, to my
8 knowledge, with his arrest or his law enforcement encounters
9 leading up to the night of the killing.

10 Q Now, did they search the house that night?

11 A They went inside the house. Law enforcement went
12 inside the house. I don't know exactly how thorough the
13 search was.

14 Q Do you know if they specifically looked for guns or
15 firearms or anything like that?

16 A I don't know.

17 Q Do you recall, roughly, how long the investigation went
18 on?

19 A I was involved with this case for about a year.

20 Q The crime scene investigation?

21 A I don't know. There were -- I don't know. There were
22 a lot of -- I don't know.

23 Q Was there anything you felt like should have been
24 investigated on the scene that wasn't?

25 A I don't think so. There was no video footage from the

1 back of the house. All there was was the decedent and signs
2 of a struggle surrounding the decedent and that's it. The
3 only investigation that I could do into a self-defense claim
4 was speaking with Mr. Burkhart because it would have been
5 his word versus the State's evidence.

6 Q Do you know if there were photographs of the crime
7 scene?

8 A There were.

9 Q There were?

10 A Uh-huh. Mr. Burkhart, due to the graphic nature of the
11 photographs, some stuff he wanted to see and some stuff he
12 didn't want to see. I think he saw -- according to my
13 notes, he saw the crime scene photographs. I don't think he
14 wanted to see the autopsy photographs. But everything was
15 made available to him.

16 Q Do you recall whether your investigator ever said that
17 he would not be alone with Burkhart's wife?

18 A It wouldn't surprise me that he would say that. I
19 don't have any knowledge of him saying that. But Mr.
20 Burkhart thought everybody was sleeping with his wife. But
21 my guess is if that was said, it was likely because my
22 private investigator didn't want Mr. Burkhart to think that
23 he was sleeping with his wife.

24 Q Did you speak with Mr. Burkhart's wife about what
25 happened?

1 A I did on the phone. I didn't remember that, but I was
2 going through my notes before the hearing and I did speak
3 with her on the phone before his plea.

4 Q And what did she say?

5 THE WITNESS: Can I refer to my notes?

6 THE COURT: You may.

7 THE WITNESS: Beg the Court's indulgence.

8 THE COURT: Take your time.

9 (Pause.)

10 THE WITNESS: So this entry was from July 10th of 2020.
11 It indicates I spoke with Patience, who is his ex-wife, and
12 she indicated that Billy would talk down to Mr. Burkhart.
13 She said there was an incident where Tommy overreacted and
14 got angry about -- my sentence ends there. I don't know
15 what that thought was. She said Billy always carried a
16 knife. She said it was always a different knife. She told
17 me that Ms. Bell, Mr. Burkhart's mother, told her that Mr.
18 Burkhart did not get past the living room when he came
19 inside.

20 She, also, said that Ms. Bell told her that -- my note
21 doesn't make sense. I'll read it verbatim, but it doesn't
22 make sense to me. I, actually, don't know what it means.
23 It says, Patty first them argue, didn't do anything about
24 it, dog chained to, quote, unquote, the door. She went
25 outside. I think that's referencing what Patience is --

1 Patience is telling me what Patty told her about what was
2 happening right before the killing. Patience wouldn't put
3 it past Billy to pull the knife if Billy was scared enough.

4 MS. MARTO: Nothing further, Your Honor.

5 THE COURT: Any questions of the witness?

6 MR. JONES: Mr. McKellar, I don't think I have any
7 questions for you.

8 Thank you.

9 THE COURT: You may step down.

10 MR. MCKELLAR: Thank you, Your Honor.

11 THE COURT: You're welcome.

12 Anything further from the Applicant?

13 MS. MARTO: No further witnesses.

14 THE COURT: Any witnesses from the State?

15 MR. JONES: None from the State, Your Honor.

16 THE COURT: Any argument?

17 MS. MARTO: Judge, we would just request that you find
18 Mr. Burkhardt credible, to review the transcript as well as
19 the amended application and decide direct a verdict in this
20 case.

21 Thank you.

22 THE COURT: You're welcome.

23 Anything from the State?

24 MR. JONES: Yes, Your Honor, I'd just like to -- I
25 don't know if this has been made clear on the record yet,

1 but the State did file a motion to dismiss this application
2 as being untimely. It is my understanding from the amended
3 allegations that, basically, there was some factual overlap
4 between the merits of Mr. Burkhardt's claims and the reasons
5 he was giving for not filing within the one year statute of
6 limitation, namely, that he felt his --

7 THE COURT: Yeah, since she didn't mention it, I
8 thought y'all weren't pursuing that, but I guess we --
9 because he really didn't -- I don't know that there's any
10 clarity in his testimony regarding that. I know there's
11 some indication in his actual application about why it was
12 not timely, but I'm not aware that that provides a basis or
13 an exception to the statute. The statute is -- it's a
14 strict liability statute pretty much.

15 MR. JONES: Yes, Your Honor.

16 MS. MARCO: I understand. He did touch on it, but I
17 understand, Your Honor.

18 THE COURT: Yeah, but not enough really to persuade the
19 Court.

20 THE APPLICANT: Can I?

21 THE COURT: No, sir.

22 MR. JONES: So, Your Honor, that would be the first
23 reason we would say this should be dismissed per the
24 procedural bars regardless of the actual merits. But should
25 the Court choose to reach the merits, then the State would

1 just submit that there's nothing here, basically.

2 The standard for newly discovered evidence that would
3 constitute a reason to set aside a guilty plea on PCR is set
4 forth in Jamison V. State. It's very clear that the
5 evidence has to be something that rises to the level that it
6 was a violation of the interest of justice not to be
7 considered. So it's stricter than the standard for newly
8 discovered evidence in a trial context.

9 And here, I mean, from what I was able to follow Mr.
10 Burkhart's claims is, essentially, multiple duplicative
11 claims regarding his allegations against his wife and her,
12 basically, misconduct committed with every conceivable
13 person in this case, all of which was supported by no basis
14 except his own testimony. And so, I would say this is
15 simply not a cognizable claim for newly discovered evidence
16 in the first place.

17 As far as Mr. McKellar's performance, he was able to
18 articulate his reasons for not challenging the indictment
19 because there's really no point in moving to quash an
20 indictment if you're going to plead guilty. And he believed
21 that a guilty plea was in his client's best interest based
22 on the hopelessness of pursuing a self-defense claim at
23 trial. And I think the record totally substantiates the
24 wisdom of that advice and the voluntariness of Mr.
25 Burkhart's ultimate entry of a guilty plea.

1 So for all those reasons, Your Honor, the State would
2 submit that this matter should be dismissed with prejudice.

3 Thank you.

4 THE COURT: Thank you.

5 Anything further?

6 MS. MARTO: Nothing, Your Honor.

7 THE COURT: I guess I got lost somewhere in the train
8 of thought your client indulged in as to why he had not
9 timely filed his application.

10 MS. MARTO: As I understand it, Your Honor, my client
11 stated that he did not file the application timely because
12 he was afraid of police. He was under the impression that
13 the police engaged in misconduct and, specifically,
14 targeting him and his family. And he was worried about his
15 own safety and his family's safety by challenging the guilty
16 plea.

17 THE COURT: What family would he be referring to?

18 MS. MARTO: Just his mother --

19 THE COURT: Certainly, not his mother.

20 MS. MARTO: Pretty much everybody --

21 THE COURT: She was married to the victim; was she not?

22 MS. MARTO: Yeah.

23 THE COURT: And she was prepared to speak at the --

24 MS. MARTO: Yes, Your Honor.

25 THE COURT: Yeah.

1 All right. I think it bears noting that a competency
2 evaluation was conducted on Mr. Burkhart prior to him
3 entering into the colloquy with the Court. And the Court
4 took time, that being Judge Keesley, to go through that
5 report. And not only did he take time to do that, he went
6 over the factors to make sure that Mr. Burkhart was
7 competent. The Court did not have the benefit of that
8 evaluation to know the fact that he had some diagnosed
9 condition, but, certainly -- or whether he was on any
10 medication for any diagnosed condition at the time that he
11 was sent to be evaluated.

12 Clearly, Judge Keesley methodically went through all of
13 the requirements to make sure that he was, in fact,
14 competent, understood where he was, what he was doing and
15 the scope of the proceedings. And that is clearly
16 articulated in the transcript.

17 But getting to the heart of Mr. Burkhart's motion or
18 asking for Post-Conviction Relief -- and I would find that
19 the application was not timely. But since we've already
20 indulged testimony on the other issues, I think it bears the
21 Court ruling on it just in the interest of judicial economy.
22 And, again, so that the record is clear, I find no merit to
23 his argument or his blanket assertion that somehow he was in
24 fear of his safety or his family and that's why he failed to
25 file his application in a timely manner.

1 It's my understanding that this plea took place on
2 10/16 of 2020 and the application was filed July 8th of
3 2024. So that would be four years later? Am I misreading
4 the filing date on this PCR?

5 MR. JONES: No, Your Honor, I believe that's correct.

6 THE COURT: So, you know, a year and five days, a year
7 and two days, maybe there could be some conceivable
8 argument, but we're talking about a year from his guilty
9 plea would have been October 17th of 2021. I don't know
10 what day of the week that fell on, but if it fell on the
11 weekend, it would extend it to that Monday.

12 But, certainly, July 8th of 2024, that's three years
13 later, it clearly just -- I can find no support, credible
14 support in the record that that assertion that somehow we
15 would extend -- it just flies in the face of all precedent
16 that somehow you would allow someone a three-year delay in
17 filing an application for Post-Conviction Relief.

18 But, again, since we've already entertained testimony
19 regarding the viability of his application, I might as well
20 address it just alternatively out of an abundance of
21 caution.

22 I find the testimony of Mr. McKellar, his plea counsel,
23 credible in all regards. I find credible his testimony that
24 his client did not ask him to file an appeal, therefore,
25 there is no merit to that argument. Failure to investigate

1 self-defense. I think based on Mr. McKellar's testimony, he
2 fully investigated self-defense, but there just really was
3 no good faith argument for it that would be persuasive to a
4 jury. His mother witnessed the end of this assault.

5 There is -- I find Mr. McKellar's testimony credible
6 that the victim in this case had suffered from a stroke,
7 which had left a portion of his body incapacitated. And I
8 think his testimony was that the only defense that would
9 have been viable to Mr. Burkhart was self-defense, but there
10 really was not much to substantiate a defense. It just
11 really wasn't viable. My words, not his. That the victim
12 had suffered a stroke, who was his stepfather. That he had
13 weakness to his dominant hand. So all of that would have
14 militated against any kind of good faith argument of
15 self-defense in this case.

16 And it sort of segues into his other argument, which is
17 that he failed this whole newly discovered evidence sort of
18 train of thought that he's gone into about infidelity with
19 his ex-wife and the victim. That clearly would not have
20 helped him, if anything, would have added fire to the whole
21 argument that he had a motive to kill him. So that would --
22 I fail to see, it's lost on me how that even remotely could
23 have helped him.

24 But in spite of that, it is clear that Mr. McKellar did
25 look into it. It's really nothing new. And it's clear from

1 Mr. Burkhardt's testimony and I'm just sort of dovetailing on
2 what Mr. McKellar said, which is he thought everybody was
3 sleeping with his wife. None of that helps him. If
4 anything, it creates a more viable argument as to motivation
5 and really the --

6 THE APPLICANT: [Indiscernible].

7 THE COURT: Sir, don't speak when the Court's talking.
8 I've let you speak till you felt like you didn't want to
9 speak anymore. I've been courteous to you, I expect you to
10 extend the same level of courtesy to the Court. And once
11 I've heard everybody, and I have, then it's the Court's turn
12 to make it's ruling and I don't expect to have a chorus when
13 I'm doing that.

14 I've listened very intently to what has been presented.
15 Sometimes I think people think I make quick decisions. I do
16 not. I ask for these packets a month and a half in advance.
17 And you know why, because I read them before I come to
18 court. Because I think that the least I can do is be
19 informed when y'all are talking to me. I don't think I
20 should be reading it at the last minute when I get here. I
21 take my weekends and I read these trial transcripts and I
22 read the plea transcripts. And I have a point of reference
23 when you all start talking to me. Because I think that's
24 the least I can do. You all take time to prepare and I
25 think the Court should be just as prepared. So it's not

1 that somehow I'm having a knee jerk reaction, I'm not. I've
2 already read this ahead of time. And I've had a chance to
3 listen to it in combination with the fact that I've already
4 read a transcript.

5 I heard a colleague of mine -- and it really resonated
6 with me -- from New Jersey. She said the courtroom is a
7 place for decisions, not discussion. And that's what people
8 come to court for, they come for a decision so they can know
9 what they need to do from this point forward. They
10 shouldn't have to be waiting months and months for the Court
11 to make a decision so they can know what they want to do. I
12 think you're entitled to know so that you can move on with
13 whatever steps you want to take after a hearing. I don't
14 think people should be waiting copious amounts of time for a
15 decision.

16 Now, having said that, sometimes things warrant more
17 thought. You hear things that you did not anticipate
18 hearing or that warrant more reflection or more research.
19 This is not one of those circumstances.

20 So back to the matter at hand, Mr. McKellar did clearly
21 look at self-defense and determine in his strategic
22 assessment that it was not viable in light of the facts of
23 this case.

24 He, also, said that he failed to challenge the
25 indictment. There really was no good faith basis for him to

1 challenge the indictment. Whether he read it or not, as we
2 know, indictments are notice documents. And it would not
3 have resulted -- even if it had resulted in a dismissal, the
4 State simply would have either represented it or directly
5 indicted him.

6 The failure to test the DNA evidence on the knife, I
7 find Mr. McKellar's testimony credible on that issue as
8 well.

9 And in regards to him being coerced into pleading, the
10 record just simply does not support that assertion. And as
11 I've indicated to y'all, I read the record in advance of the
12 hearing and I would make the following findings regarding
13 the transcript. He acknowledged the charges at Page 5,
14 Lines 23 through 25, and Page 6, Lines 1 through 6. He
15 fully acknowledged his right to a jury trial at Page 6,
16 Lines 7 through 13 as well as the presumption of innocence
17 at Page 6, Lines 14 through 20, and the burden of proof
18 required of the State at Page 6, Lines 21 through 23, Page
19 6, Lines 24 and 25, Page 7, Lines 1 through 4 and Page 8,
20 Lines 15 through 18.

21 His age of 44 is documented at Page 7, Lines 5 through
22 6, as well as his educational level at Page 7, Line 7
23 through 13. He fully acknowledged the responsibility of his
24 attorney, the Court and the prosecutor at Page 7, Lines 14
25 through 20, Lines 21 through 25, Lines 1 through 5 -- and

1 Page 8, Line 1 through 2.

2 He was on no medications and that is corroborated at
3 Page 8, Lines 6 through 14. That he was clear-headed at
4 Page 8, Lines 12 through 14 and knew what he was doing.

5 That his plea was voluntary, Page 10, Lines 14 through
6 17, Lines 18 through 25, Page 11, 1 through 10, and Page 11,
7 Lines 11 through 18.

8 That he was fully -- his attorney was questioned
9 regarding advising him at Page 11, Lines 19 through 25, and
10 Page 12, Lines 1 through 5.

11 That he was not under the influence of any intoxicants,
12 that he fully understood the proceedings at Page 12, Lines 6
13 through 11, Page 26, Lines 3 through 7.

14 That he fully understood his Constitutional rights,
15 including his right to a jury trial at Page 12, Lines 12
16 through 24, Page 13, Lines 1 through 4, and Page 26, Lines 8
17 through 10, where he acknowledged that he was giving up all
18 of those rights as well as his right to a jury trial at Page
19 13, Lines 5 through 23.

20 That all defenses had been fully explored on his behalf
21 at Page 13, Lines 24 through 25 and Page 14, Line 1 through
22 4.

23 That he fully understood and articulated to the Court
24 that he did not want a jury trial at Page 14, Lines 4
25 through 7. He allocuted to the facts as articulated by the

1 solicitor prosecuting the case. And those start at Page 14
2 and go all the way through Page 19, Lines 1 through 20.

3 He acknowledged it was a negotiated plea at Page 20,
4 Lines 22 through 25 and Page 21, Lines 1 through 6.

5 His record was articulated at Page 20, Lines 11 through
6 14. He admitted his guilt and allocution of the facts at
7 Page 20, Lines 15 through 17.

8 He acknowledged that he was not under any force or
9 threats of promise and that it was a negotiated plea at Page
10 20, Lines 18 through 21, Page 21, Lines 12 through 17, Page
11 22, Lines 14 through 17. That he was satisfied with his
12 attorney, that he had had enough time to speak with his
13 attorney and did not wish to have any additional time to
14 speak with him at the time of the plea. And that is at Page
15 21, Lines 18 through 25, Page 22, Lines 18 through 22, Page
16 23, Lines 4 through 6, and Page 22, Lines 23 through 25.

17 He then reenforced his guilt at Page 26, Lines 11
18 through 13, and fully understood the range of penalty as it
19 was articulated by Judge Keesley at Page 23, Lines 7 through
20 25, Page 24, Page 25 and Page 26, Lines 1 through 3.

21 The record simply does not support that this plea was
22 anything but voluntary. And under the circumstances, what
23 was negotiated was quite a feat based on Mr. McKellar's work
24 on his client's behalf. It was clear, as I agree as Mr.
25 McKellar articulated in the record his agreement, that his

1 client entered into the negotiated plea and that was in his
2 best interest. At best, this was an abhorrent, violent act,
3 really, that could have fit under the category of torture.
4 The solicitor certainly could have pursued it and still
5 could if it's reversed on a PCR and goes back to trial.

6 Clearly, the record does not support any intentions in
7 his application for Post-Conviction Relief. He was not
8 forced. I think I've already covered that.

9 And he goes into some discussion about body-worn
10 cameras, which is a blanket assertion. And Mr. McKellar
11 testified there were videos as well as pictures and that he
12 fully went over those with his client. So I find there's no
13 merit to that argument as well.

14 If the State could provide the Court with a proposed
15 order within ten days of today. I give you lead to make any
16 findings of fact and conclusions of the law consistent with
17 the record. The application is denied.

18 Thank you very much. Have a good day.

19 MR. JONES: Thank you, Your Honor.

20 THE COURT: You're welcome.
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, PENNY M. JOHNSON, Official Court Reporter for the
Second Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate, and
complete Transcript of Record of the proceedings had and the
evidence introduced in the hearing of the captioned case,
relative to appeal, in the Court of Common Pleas for Aiken
County, South Carolina, on the 15th day of December, 2025.

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

June 4, 2026

Penny M. Johnson
Penny M. Johnson
Official Court Reporter

Applicant / Petitioner

vs.

ORDER

State of South Carolina,

Respondent.

This post-conviction relief case came before the court for a hearing. Having now heard this matter, the court orders as indicated herein.

- ✓ 1. The application for post-conviction relief is hereby: ✓ denied granted under advisement; a formal order will be filed (see below - No.6)
2. Motion(s) was/were heard in this case and the court orders:
 The motion to dismiss and/or for summary judgment is hereby granted denied under advisement based upon the statute of limitations and/or the successive nature of the application or other reason as follows:
3. A conditional order of dismissal was previously filed in this case. Upon review of the matter, the court finds:
 Good cause as to why the case should not be dismissed has been shown in response to the order of dismissal; therefore, a hearing on the merits of the application shall be scheduled.
 The court has considered the response to the conditional order of dismissal and finds that good cause has not been shown or no response has been filed to the conditional order of dismissal; therefore, the application is hereby dismissed.
4. The application was freely, voluntarily, and intelligently withdrawn as indicated on the record; therefore, this case is dismissed with prejudice without prejudice.
5. Other:
- ✓ 6. The court further orders:
✓ The ✓ Attorney General Applicant's counsel is directed to submit to the court a proposed order and to serve the order on opposing counsel within 10 days.
 Both sides are directed to submit proposed orders to the court and to serve the orders on each other within days.
 The court does not request proposed orders.

IT IS SO ORDERED.

Date: December 15, 2015

Aiken, S.C.

Court Reporter: Penny M. Johnson

Debra L. Jefferson 2128
 Debra L. Jefferson
 Presiding Judge

FILED December 16 20 25

Robert J. White 205
 C.C.P. & G.S.

Charles Beattie amp
 Deputy Clerk

Rev

08/08/01

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Thomas J. Burkhart, #288275,

Case No. 2024-CP-02-01684

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

Presiding Judge:

Deadra L. Jefferson

Applicant's Attorney:

Chelsey F. Marto, Esq.

Respondent's Attorney:

Zachary W. Jones, Esq.

Date of Hearing:

December 15, 2025

Court Reporter

Penny Johnson

INTRODUCTION

The matter came before the Court on December 15, 2025, on an application for post-conviction relief ("PCR") commenced by Thomas J. Burkhart ("Applicant") on July 8, 2024, and amended on December 12, 2025. Respondent filed a Return and Partial Motion to Dismiss on November 10, 2025. On December 15, 2025, a hearing in the matter was convened before this Court at the Aiken County Courthouse. Applicant was present and represented by Chelsey F. Marto, Esq. Assistant Attorney General Zachary W. Jones, Esq. represented the State. After hearing the testimony at the PCR hearing, and upon full review of the record, this Court finds Applicant did not meet his burden of proof. For the reasons discussed below, Applicant's application for PCR is Denied and Dismissed with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Aiken County Clerk of Court. On November 11, 2019, the Aiken County Grand Jury indicted Applicant for Murder¹ (Indictment No. 2019-GS-02-02048), Armed Robbery² (Indictment No. 2019-GS-02-02055), and Kidnapping³ (Indictment No. 2019-GS-02-02051). The case was prosecuted by Assistant Solicitor Jack Hammack, Esq. of the Second Circuit Solicitor's Office. Applicant was represented by William T. McKellar, Esq.

On October 16, 2020, Applicant plead guilty as indicted before the Honorable William P. Keesley. Pursuant to negotiations⁴ between the State and Applicant, Judge Keesley sentenced Applicant to thirty (30) years' imprisonment on the Murder, Armed Robbery, and Kidnapping charges, all to run concurrently. Applicant did not file a direct appeal.

FACTUAL SUMMARY

At Applicant's guilty plea hearing, the solicitor summarized the facts as follows:

This incident occurred back on or about October the 12th of 2018, here in Aiken County. Officers with the Aiken County Sheriff's Office were dispatched to that location in a reference to an assault. They were notified that there was an unresponsive person there at the location. When they approached, they found the victim, Mr. Bell, to be bleeding heavily and was pronounced dead at the scene.

They spoke with Ms. Patty Bell who is present here today. She is the mother of Mr. Burkhart. She advised that they had gone, she and

¹ The offense of murder is a violent, most serious offense, punishable by death, or mandatory minimum term of imprisonment for thirty years to life. S.C. Code Ann. §16-03-20.

² The offense of armed robbery is a violent, most serious offense, punishable by imprisonment for a mandatory minimum term of not less than ten years or more than thirty years, no part of which may be suspended or probation granted.

³ The offense of kidnapping is a violent, most serious offense, punishable by imprisonment for a period not to exceed thirty years.

⁴ The parties entered a negotiated plea of thirty (30) years for the offenses of Murder, Armed Robbery and Kidnapping. Tr. 15:18-19 ("[T]he negotiated sentence is 30 years concurrent on all charges...").

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Mr. William Bell, the victim, had gone to pick up Tommy Burkhart or Thomas Burkhart, the defendant, from the jail that day. He had been arrested earlier for domestic violence in the second degree with his wife. He had been on meth for about a month at that point she told us and told law enforcement, but that day when they spoke with him, he seemed to be clear headed and seemed to be doing fine so they agreed to go bond him out of jail.

They went at about 4:15 to A1 Bonding Company and waited at the jail for Mr. Burkhart to be released, stated that Billy, the victim, met her there and they waited together in the parking lot until he was released around 6:00 in the evening. She stated that she and Mr. Thomas Burkhart had ridden in one vehicle and Billy had ridden in a separate vehicle.

They arrived at the home where she and Mr. Burkhart, the defendant, went into the home. She started working on some stuff in the kitchen, getting dinner heated up. She noticed that Thomas Burkhart, the defendant, was kind of moving around and he was in the doorway of the office and by the front door like he was waiting. She stated that she went to let the dog out and Thomas Burkhart, the defendant, said he was gonna go outside. When she did, went to the door to let the dog out, she saw Billy, that she called him, the victim, going into the back of the house. She went back into the kitchen, heard some noise and had to go to the front door to let her dog in because her dog was scared, wanted to come back in so she thought maybe there was an argument or something between the defendant and the victim in this case she said, so she went outside to see what was going on and that's when she observed the defendant bent over the victim swinging something that appeared to be a hammer or a garden tool at him. She stated she saw him hit him several times, three or four times with this garden tool and so she yelled at him, what have you done? And he started walking toward her and told her that he has killed him.

She tried to get away from him when he physically stopped her from going to Billy and forcibly pushed her back up against the basement door. He then grabbed a blue rope that had been hanging there and tied it around her body with her arms by her side and was basically dragging her around by the rope. He told her he wasn't going to hurt her. He wanted to drag her up the stairs to the screen porch by holding onto the end of the rope.

He got up to the house and it was locked. She told him it was locked and he wouldn't listen. Stated he needed to get in anyway. He tried pushing the door open with his shoulder and then grabbed a metal

plant stand and started swinging at the door to force his way in. At that point a neighbor apparently had heard what was going on so she yelled for help. She stated at the time he did put his hand over her mouth and stated that she was afraid that he was going to harm her because she had alerted the neighbor.

She stated he then went into the home where he got his truck keys off of her nightstand because they had his vehicle there. She stated that he also grabbed a drawer that contained a number of things including cash that they had at the house. If I recall right from what she told me it was \$400.00 or so, maybe a little bit more than that in the drawer, and he ran around toward the front of the house. She was able to get the cell phone and call 911. She stated that she then walked out to check on the victim and when she did so, she saw a knife laying there next to her husband so she picked it up.

When officers arrived and started the investigation, it was determined that the victim had his throat cut pretty substantially. It was a very, very deep cut. It was cut almost to the vertebrae. He also had defensive wounds on his hands where it looked like he was trying to block the knife attack. They also found a metal garden tool like a garden rake with the prongs on the end. I think there was three or four prongs on it, the hard metal. They recovered that. Looks like it was bent and had blood on it. During the autopsy, the pathologist was able to determine that there were several spots on the victim's head where he had been struck with this garden rake with such force that it had gone, cracked his skull and gone an inch deep or so into the victim's brain.

(Tr.pp.15-20).

CURRENT APPLICATION

In his initial application for post-conviction relief, Applicant alleged he is being held in custody unlawfully based on the following:

1. Ineffective Assistance of Counsel

- a. "Petitioner avers that Counsel disregarded his advice to file an appeal after his sentencing phase. Also Counsel failed to advise Petitioner of his right to seek remedy of conviction in regards to Post Conviction Relief (PCR)...Furthermore the Petitioner avers that Counsel never advised the Petitioner his right to challenge his conviction under Statute 17-27-45 PCR proceeding. As the result of Petitioner's lack of knowledge of this proceeding due to Counsel's substandard performance Petitioner has failed to meet the one yr. statute of limitations. However, given the unique conditions of incarceration the PCR should be tolled. See Mose v. State

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2017 Circumstances beyond Petitioner control entitled tolling. Also during this time President Trump declared a Natl. Emergency concerning Covid-19 pandemic on March 20, 2020 forward. This effected the Petitioner ability to research the right to file PCR and timely file."

- b. "Petitioner avers that his guilty plea was the product of fear, coercion and threatening by Counsel which makes his guilty plea involuntary; violation of his right Sixth and Fourteenth Amend of Const. guarantee effective counsel and due process for sentencing..."
 - c. "Petitioner aver that Counsel was ineffective for failure to investigate evidence in the matter of self defense as requested by Petitioner. Counsel was in violation of Rule 407, Professional Conduct of a Lawyer. Counsel rejected Petitioner advice to have a Jury to prove the charge in question was the result of self defense. Counsel has an obligation by law to abide by the request of his client and communicate accordingly...Petitioner avers that he acted in self defense at his family home. Self Defense Statute 16-11-44(c) Petitioner must prove he was w/o fault in this moment of self-defense, that he was in imminent danger and was in fear of losing his life or serious injury. In this case the Defendant (Petitioner) was face with (Alleged Victim) holding a knife. Any reasonably prudent person of ordinary firmness and courage would have believed and acted the same in self defense. See State v. Cerantes 2013. Once the right to self defense arises, the Petitioner is not required to wait until his adversary is back on equal terms in order to defend himself. Petitioner had knocked knife away from adversary in this case and was known to be in possession of a collection of knives."
 - d. "Violation Sixth and Fourteenth Amendment's of the Const. Counsel was ineffective assistance for failure to comply with Criminal Procedure of the Law in regards to Rule 5 Disclosure. See Hyman v. State 2011. Petitioner requested DNA on the knife in this case to prove the (alleged victim) Victim had possession of the knife prior to the Petitioner struggle to free the weapon (knife) to protect himself before Petitioner was killed or seriously injured. Petitioner's Counsel was more concerned in coercing his client to plead guilty as opposed to following the request of his client (Petitioner) to present full disclosure of Rule 5 regarding evidence (DNA) to prove Petitioner claim of self defense or innocence. Per Criminal Procedure violation of Rule 5 the ruling in the case should be vacate and/or reversed..."
2. Newly Discovered Evidence
- a. "Petitioner seeks relief on the basis of newly discovered evidence following guilty plea and/or sentencing. While Petitioner being placed in the confines and custody of South Carolina Dept. Corr.'s he has had recorded phone calls regarding his wife (at the time) infidelity with the deceased (Victim) William Bell as well as coworker's where Petitioner worked. At the time this was only rumor's, why, at the time of the murder in question, Petitioner wanted to discuss William Bell's affair with his wife. At this point is when William Bell armed himself with a knife and Petitioner had no choice but defend himself. Counsel for Petitioner failed to abide his clients wishes to investigate why William Bell had motive to harm his son in law (Petitioner) due to his on going affair with Mr. Burkhart's wife. As well as other allegations that were discussed on SCDC phone between Petitioner

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(Burkhart) and Foy McDanille Daughter, where she stated the Petitioner wife, Patience Burkhart, "she couldn't get that bitch (Petitioner wife Patience Burkhart) to leave her Daddy's house and getting his money." Suggesting multiple affairs with William Bell, co-worker's as well as this particular phone call with Foy McDanille daughter. Also new evidence to support the basis for relief is a phone call made by Sharon Lewis (neighbor), she called 911 (a few days prior to murder) regarding a CDV between Thomas Burkhart and Patience Burkhart (wife). This particular day of CDV, after making the 911 call, she, Sharon Lewis, advised me that she was sick of what Petitioner's wife was doing (Infidelity) behind the Petitioner's back and when he would leave for work. Sharon Lewis also stated that her family member, Dave Crawford (Neighbor) was frequently going to my house after Petitioner left for work. This new evidence in the exercise of due diligence, could have been discovered prior to guilty plea. The weight and quality that under the facts and circumstances of this particular case, the interest of justice requires the Applicant's guilty plea to be vacated and disavow his plea. See Jamison v. State Oct 22, 214.

Applicant requested relief as follows:

"Vacate sentence and remand to Circuit court for new trial, jury trial. Counsel fail [sic] to follow my advice for jury trial regarding this conviction."

Respondent filed a Return and Partial Motion to Dismiss on November 10, 2025. Subsequently,

Applicant filed an amended application on December 12, 2025, raising the following allegations:

1. "Applicant asserts that he was late in filing his PCR application out of fear of retaliation against him and his family by law enforcement if he filed one."
2. "Ineffective assistance of counsel for:
 - a. Failure to file an appeal.
 - b. Failure to investigate self-defense evidence.
 - c. Failure to challenge the indictments.
 - d. Failure to test DNA evidence on the knife."
3. "Newly discovered evidence of infidelity between Applicant's ex-wife and the victim while they were married and infidelity between Applicant's ex-wife and the responding officer."
4. "Applicant contends that he was coerced into pleading guilty."

FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has had the opportunity to review the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. Before the Court are the initial and amended applications for PCR, the records of the Aiken County

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Clerk of Court concerning the subject convictions, and the records of Applicant's plea proceeding. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State's return, this Court finds that applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80.

Statute of Limitations

In its Return, and at the evidentiary hearing, Respondent moved that Applicant's PCR action be dismissed because it was improperly filed outside the one-year statute of limitations. The Court agrees and finds this application must be dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to 160 ("the Act"). Specifically, the Act requires as follows:

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

S.C. Code Ann. § 17-27-45(A).

Applicant was convicted and sentenced on October 16, 2020. Applicant did not file a direct appeal. Accordingly, Applicant was required to file this Application on or before October 18, 2021.⁵ Applicant did not file the current applications until July 8, 2024, which was well beyond the statutory filing period. Therefore, the Court finds Applicant's PCR application was untimely.

⁵ October 16, 2021, fell on a Saturday; thus, the statutory filing period did not end until the following Monday, October 18, 2021. See Rule 263(a), SCACR.

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Our courts have held that “statutes of limitations are not simply technicalities, but are fundamental to a well-ordered judicial system.” Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). Moates explained:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. One purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights. Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation.

Id.

However, in rare circumstances, the statute of limitations may be equitably tolled to allow a petitioner the opportunity to exercise his or her rights when they were denied the chance to do so. Equitable tolling has been deemed available where (1) extraordinary circumstances prevented the plaintiff from filing despite his or her due diligence; (2) the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass; or (3) the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim. Pelzer v. State, 378 S.C. 516, 521, 662 S.E.2d 618, 619–20 (Ct. App. 2008). Pelzer explains that the court typically applies the extraordinary circumstances doctrine when the plaintiff has been actively misled by another party. “It has been held that equitable tolling applies principally if the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his or her rights.” Id. However, the equitable tolling doctrine does not require wrongful conduct on the part of the State, such as fraud or misrepresentation. Id.

Pelzer explained the doctrine should be limited to very exclusive circumstances. “[E]quitable tolling, which allows a plaintiff to initiate an action beyond the statute of limitations

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deadline, is typically available only if the claimant was prevented in some extraordinary way from exercising his or her rights, or, in other words, if the relevant facts present sufficiently rare and exceptional circumstances that would warrant application of the doctrine.” Pelzer, 378 S.C. at 521, 662 S.E.2d at 620. Pelzer cited to an opinion from the Fourth Circuit Court of Appeals in denying equitable tolling to a party as “particularly illuminating”:

[A]ny invocation of equity to relieve the strict application of a statute of limitations must be guarded and infrequent, lest circumstances of individualized hardship supplant the rules of clearly drafted statutes. To apply equity generously would loose the rule of law to whims about the adequacy of excuses, divergent responses to claims of hardship, and subjective notions of fair accommodation. We believe, therefore, that any resort to equity must be reserved for those rare instances where—due to circumstances external to the party's own conduct—it would be unconscionable to enforce the limitation period against the party and gross injustice would result.

Pelzer, 378 S.C. at 522–23, 662 S.E.2d at 621 (quoting Harris v. Hutchinson, 209 F.3d 325, 330 (4th Cir. 2000) (holding habeas petitioner's missing filing deadline due to erroneous advice from counsel not extraordinary circumstance requiring equitable tolling)).

In Pelzer, a post-conviction relief applicant notarized and mailed his application before the statute of limitations expired but mailed it to the Office of Appellate Defense instead of to the county Clerk of Court for filing. 378 S.C. at 518, 662 S.E.2d at 619. The Office of Appellate Defense forwarded it to the Clerk, but it was not received by the Clerk until after the statute of limitations had expired. Id. at 518–19, 662 S.E.2d at 619. The circuit court dismissed the application as untimely. The Court of Appeals affirmed, finding that mailing did not constitute filing and “the narrow window by which Pelzer's application missed the statute of limitations [could not] be considered as so exceptional a circumstance as to warrant equitable tolling.” Id. at 522, 662 S.E.2d at 621.

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Our appellate courts have also chosen not to extend the doctrine of equitable tolling to situations where the applicant claimed he was ignorant of the statute of limitations because he was incarcerated in another state. See Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005) (holding incarceration in another state does not toll the running of the statute of limitations).

However, our courts have held that the statute of limitations may be equitably tolled for the filing of a post-conviction relief application in limited circumstances. See Ferguson v. State, 382 S.C. 615, 677 S.E.2d 600 (2009) (finding the statute of limitations should be equitably tolled when a mentally incompetent PCR applicant was prevented from timely filing by his mental incompetency; if the application was filed within one year of the applicant regaining competency, the PCR action may proceed); Mose v. State, 420 S.C. 500, 803 S.E.2d 718 (2017) (allowing equitable tolling where the applicant notarized and relinquished control of his application to prison authorities for mailing seventeen days prior to the filing deadline, but due to circumstances outside applicant's control, the application was not filed until three days past the deadline). Equitable tolling may be allowed where "extraordinary circumstances prevented the plaintiff from filing despite his or her diligence" and where "the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim." Pelzer, 378 S.C. at 521, 662 S.E.2d at 621.

In Allegation 1(a) of his initial PCR application, Applicant alleges the statute of limitations should be tolled due to Counsel's failure to advise him of his right to post-conviction relief and that the circumstances of his confinement stemming from the COVID-19 national emergency prevented him from filing timely. Subsequently, in Allegation 1 of his amended PCR application, Applicant alleges that his untimely filing was caused by his own fear that law enforcement would retaliate against him and his family if he filed for PCR. The Court finds none of these alleged

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reasons for Applicant's untimely filing warrant applying the doctrine of equitable tolling in this case.

First, Counsel had no duty to advise Applicant of his right to PCR. See Sutton v. State, 361 S.C. 644, 648, 606 S.E.2d 779, 781 (2004) ("[W]e decline to impose a duty on trial or appellate counsel to inform a convicted defendant of the availability of PCR or the one-year deadline to file an application."), *abrogated on other grounds by Bray v. State*, 366 S.C. 137, 620 S.E.2d 743 (2005). Additionally, Applicant's own "[i]gnorance of the statute of limitations is no excuse for late filing." Leamon, 363 S.C. 432, 611 S.E.2d 494.

Second, Applicant has failed to establish how he was prevented from filing a timely application due to the circumstances of his confinement during the COVID-19 emergency. Applicant had from October 16, 2020, until October 18, 2021, to file within the statute of limitations; moreover, he did not file this application until July 8, 2024, nearly three years after the statute of limitations expired. Applicant has failed to offer any explanation as to how circumstances related to the COVID-19 pandemic prevented him from filing his application, both during the one-year limitations period and for multiple years thereafter.

Finally, Applicant's claim that he feared retaliation for filing a PCR action is not credible. Applicant presented no objectively reasonable basis for this alleged fear, but merely offered extensive speculation, baseless hearsay, and vague accusations of conspiracy and misconduct against a host of individuals supposedly involved in his case. Nevertheless, Applicant obviously *did* end up filing a PCR application, which casts substantial doubt on the authenticity of his purported fears. Even if his fears were genuine, however, this Court finds Applicant's mere subjective beliefs about possible retaliation do not warrant equitable tolling. In order to function, the statute of limitations must be calculated based on *objective* criteria, not on each applicant's

individual mental or emotional state. See Harris, 209 F.3d at 330 (equitable tolling should *not* be based on “whims” or “subjective notions,” but on “circumstances external to the party’s own conduct”).

Applicant also raises a claim that he was denied his right to a direct appeal of his conviction and sentence due to the ineffective assistance of counsel pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). If there were any merit to this claim, then the statute of limitations would not apply. See Wilson v. State, 348 S.C. 215, 218, 559 S.E.2d 581, 583 (2002) (holding the one-year statute of limitations does not apply “where the applicant was denied his direct appeal due to ineffective assistance of counsel”). However, as explained in further detail below, Applicant’s White claim is meritless. The Court finds Applicant never asked Counsel to file an appeal, and Counsel had no duty to further consult with Applicant about an appeal in this case. Therefore, the holding of Wilson is not implicated, and the statute of limitations must be applied.

Because this application is untimely, and Applicant has failed to establish any basis for equitably tolling the statute of limitations in this case, the Court finds this PCR action must be dismissed on this procedural issue alone. Nevertheless, because an evidentiary hearing was necessary to resolve the merits of Applicant’s White claim, the parties took the opportunity to address the merits of Applicant’s other substantive issues at the same proceeding in the interest of judicial economy.

Accordingly, and in the interest of completeness, the Court addresses the merits of the Applicant’s remaining issues:

Ineffective Assistance of Counsel, Generally

In a PCR action, the applicant bears the burden of proving the allegations in his application by a preponderance of the evidence. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985); Rule

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71.1(e), SCRCR. Where the application alleges ineffective assistance of counsel as a ground for relief, the 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. "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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 687; 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. (quoting 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

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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).

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 (quoting Strickland, 466 U.S. at 694). "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.

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, 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, 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."). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); See Jamison v. State, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality

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that generally attaches to a guilty plea"). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. 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)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Id. at 696–97.

Coercion by Counsel

Applicant contends his guilty plea was not voluntarily entered but was the product of coercion and intimidation by Counsel. The Court finds this allegation is without merit.⁶

At the evidentiary hearing, Applicant testified that he pled guilty because Counsel told him he would likely be convicted at trial and receive a life sentence. Applicant testified that it made more sense to take a thirty-year sentence than to risk a life sentence if he lost at trial. Counsel testified that he believed Applicant's chances of an acquittal at trial were "slim to none," and he advised Applicant to plead guilty in order to take advantage of the negotiated sentence offered by the State.

Far from establishing any sort of improper "coercion," the evidence presented at the

⁶ The plea transcript confirms Applicant understood his charges and that his plea was voluntary (Tr. 5:23-25, 6:1-6, 7:14-25); that he not under the influence of any drugs or alcohol that would impair his ability to plea voluntarily (Tr. 8:1-14, 12:6-11); Applicant allocated to the facts, told the Court that no one forced him to plea to the charges, and that there were no promises made to him other than the negotiated plea (Tr. 20:15-21, 21:12-17, 22:14-17); that he had been given enough time to make his decision to plea (Tr. 22:18-22); and that he had met with his attorney several times and was satisfied with his attorney (Tr. 22:18-22, 21:18-20).

evidentiary hearing shows that Counsel merely gave Applicant accurate information about the risks of proceeding to trial and being exposed to a life sentence compared to the certainty of receiving a thirty-year sentence by accepting the State's plea offer. The record does not support the contention that counsel's advice was improper. On the contrary, Counsel had a duty to convey this sort of information to his client and to give Applicant the benefit of his professional experience in weighing the chances of success at trial, which Counsel reasonably concluded were "slim to none." Moreover, it seems clear that Applicant understood this information correctly, and he rationally decided to accept the negotiated plea deal, reasoning sensibly that thirty (30) years was better than life imprisonment.⁷ Applicant has wholly failed to substantiate his claim that Counsel "coerced" him into taking the plea; Counsel simply offered Applicant a rational and accurate assessment of the risks and benefits of his available options, and Applicant made a free, knowing and voluntary decision of his own. The Court finds Applicant is not entitled to PCR on this ground.

Accordingly, this Court finds these allegations are Denied.

Counsel's Failure to Investigate or Present Evidence of Self-Defense

Applicant contends Counsel was ineffective for failing to investigate evidence that would have supported a defense of self-defense. Applicant claims the victim attacked Applicant with a knife after Applicant accused the victim of sleeping with Applicant's wife at the time. Applicant claims he managed to take the knife away from the victim and was then forced to stab the victim in self-defense. Had Counsel appropriately investigated his defense of self-defense, Applicant argues, he would not have taken the guilty plea but would have insisted on going to trial. The Court finds this allegation is without merit.

⁷Applicant told the Court that he understood he had a constitutional right to a jury trial, but that he did not want to exercise that right. Tr. 13:5-25, 14:4-7.

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Counsel testified that he considered presenting a defense of self-defense, but his investigation led him to conclude it would be difficult to substantiate Applicant's self-defense claim for several reasons: first, the victim was an elderly man who had previously suffered a stroke that left him with weakness in one side; second, the injuries on the victim's body were very severe, including an "ear-to-ear" laceration of the throat, defensive wounds on the hands, and blunt trauma to the head that cracked the skull; third, Applicant's own mother stated that she saw Applicant standing over the victim and swinging a weapon at the victim's head; and finally, immediately after the killing, Applicant tied up his mother and dragged her upstairs, then grabbed some valuables from the house and fled. Counsel testified these facts led him to conclude that Applicant's chances of a successful self-defense claim at trial were "slim to none."

The Court finds Counsel's testimony credible. It is clear that Counsel performed an adequate investigation and sufficiently familiarized himself with the facts of the case to evaluate the viability of raising a self-defense claim at trial. Counsel's pessimistic assessment of Applicant's chances at trial was well-informed and objectively reasonable, given the overwhelming nature of the evidence refuting self-defense. Accordingly, the Court finds Applicant has failed to prove Counsel's performance was deficient in this regard.

Moreover, Applicant has completely failed to present any of the supposedly overlooked evidence of self-defense at the evidentiary hearing to substantiate this allegation. Therefore, Applicant has not met his burden of proving he was prejudiced by Counsel's decision. See, e.g., Garren v. State, 423 S.C. 1, 13–14, 813 S.E.2d 704, 711 (2018) (holding trial counsel's failure to procure and present evidence cannot be deemed prejudicial unless the omitted evidence is presented at the PCR hearing).

Because Applicant has not met his burden of proving either deficiency or prejudice on this

ground, the Court finds this allegation of ineffective assistance is meritless.

Accordingly, this Court finds these allegations are Denied.

Counsel's Failure to Obtain DNA Evidence from the Knife

Applicant contends Counsel was ineffective for failing to obtain DNA evidence from the knife that was found beside the victim's body. The Court finds this allegation is without merit.

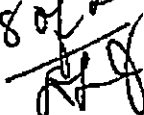
At the evidentiary hearing, Applicant admitted that any DNA evidence taken from the knife probably would not have mattered because there was no question both Applicant and the victim left DNA on the knife. Counsel also testified that he did not see how DNA testing would have benefited Applicant's self-defense claim. The Court finds Counsel's testimony and reasoning credible. Even if the victim's DNA were found on the knife, all that would prove is that the knife came into contact with the victim's body—a fact which is not in dispute, since both Applicant and the State agree that the victim was wounded with the knife. In other words, the discovery of the victim's DNA on the knife would not be inconsistent with the State's theory of the case. Since DNA testing would have been pointless, Counsel cannot have been deficient for failing to request it.

Moreover, Applicant has not produced any DNA analysis of the knife to substantiate this allegation. Therefore, he has failed to meet his burden of proving prejudice. See Garren, 423 S.C. at 13–14, 813 S.E.2d at 711. The Court finds Applicant has failed to prove this allegation of ineffective assistance of counsel.

Accordingly, this Court finds these allegations are Denied.

Counsel's Failure to File Appeal

Applicant contends Counsel was ineffective for failing to file an appeal from his convictions and sentences. The Court finds this allegation is without merit.

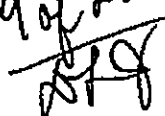
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Where a PCR applicant can establish that he was denied a direct appeal due to counsel's deficient performance, he is entitled to seek belated review of direct appeal issues. White, 263 S.C. 110, 208 S.E.2d 35. Counsel has an obligation "to follow the defendant's express instructions with respect to an appeal," and failure to do so constitutes deficient performance. Roe v. Flores-Ortega, 528 U.S. 470, 478 (2000). However, at the evidentiary hearing, Applicant admitted he never asked Counsel to file a direct appeal because he was "in a bad headspace." In addition, Counsel credibly testified that Applicant *never* expressly instructed him to file an appeal. Counsel cannot have been deficient for failing to follow instructions that were never issued.

In cases—such as this one—where a defendant did *not* clearly instruct counsel to file an appeal, the court must determine whether counsel had an obligation to consult with the defendant about an appeal. Flores-Ortega, 528 U.S. at 478. Although counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a *trial*, a different standard applies to a guilty plea:

Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 380 S.C. 223, 224–25, 670 S.E.2d 373, 374 (2008) (citations omitted). This is because a guilty plea reduces the scope of appealable issues and indicates that the defendant seeks an end to further judicial proceedings. Flores-Ortega, 528 U.S. at 480 (2000). Therefore, in a collateral action attacking a guilty plea, the "bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief." Jones v. State, 382 S.C. 589, 596, 677 S.E.2d 20, 23–24 (2009) (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)), *abrogated on other grounds by* Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). "Instead, there must

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be proof that extraordinary circumstances exist such that the defendant should have been advised of the right to appeal.” *Id.* at 596, 677 S.E.2d at 24.

The Court finds this was not a case where “extraordinary circumstances” required Counsel to consult with Applicant about appealing his guilty plea conviction and sentence. Neither Applicant nor Counsel were able to identify any nonfrivolous grounds for an appeal, and the Court cannot discern any such grounds in the record. Similarly, there is no evidence that Applicant ever demonstrated an interest in challenging his conviction or sentence; on the contrary, Counsel credibly testified that he saw no reason to appeal because Applicant received the negotiated sentence he wanted. The Court finds Counsel had no constitutional duty to consult with Applicant about filing an appeal from his guilty plea.

Accordingly, this Court finds these allegations are Denied

Counsel’s Failure to Challenge Indictments

Applicant contends Counsel was ineffective for failing to move to quash his indictments. The Court finds this allegation is without merit.

Counsel credibly testified that he rarely pays any attention to indictments in guilty plea cases because, even if there were defects in the indictments, a motion to quash would be pointless because the State could simply obtain a new indictment. However, he credibly testified that he did go over all the elements of the charges and what the State would have to prove. The Court finds Counsel has articulated a valid reason for not moving to quash the indictments. An indictment is merely a notice document, and there is no dispute that Applicant had adequate notice of the charges he was facing. *See State v. Gentry*, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005) (“The indictment is a notice document.”). Therefore, the Court finds Counsel was not deficient.

Moreover, Applicant failed to point out any defects in the indictments which could have

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supported a motion to quash. Therefore, he has failed to prove that a motion to quash would have been successful, and the Court finds Applicant has not met his burden of proving prejudice.

Accordingly, this Court finds these allegations are Denied.

Newly Discovered Evidence of Infidelity by Applicant's Ex-Wife

Applicant contends “newly discovered evidence” supports his innocence. Specifically, Applicant claims to possess evidence—in the form of body-worn camera footage, dashcam footage, witnesses, phone calls, and “thousands” of pornographic videos—proving acts of infidelity by his ex-wife with the victim, with law enforcement officers, and with numerous other individuals. The Court finds this allegation is without merit.

Applicant did not present any of this purported extensive evidence at the evidentiary hearing. Therefore, he has not met his burden of proof. See Garren, 423 S.C. at 13–14, 813 S.E.2d at 711. Moreover, the Court fails to see how any such evidence, even if it did exist, would have helped Applicant at trial. Regardless of whether Applicant’s obsession with his ex-wife’s purported adultery has any basis in fact, none of the “evidence” Applicant claims to possess tends to support his theory of self-defense or to explain away the State’s overwhelming evidence of guilt. The Court finds Applicant has not met his burden of proof as to this allegation.

Accordingly, this Court finds these allegations are Denied.

CONCLUSION

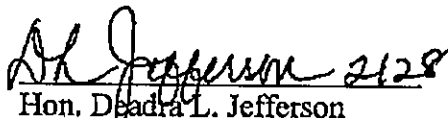
Based on the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Accordingly, this application must be denied and dismissed with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel’s receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant

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

IT IS THEREFORE ORDERED, AJUDGED, AND DECREED that Applicant's application for PCR is Denied and Dismissed with Prejudice; and Applicant must remain in the custody of the State.

IT IS SO ORDERED.


 Hon. Deadra L. Jefferson
 Presiding Judge
 Second Judicial Circuit

February 26, 2026
 Charleston, South Carolina
 At Chambers

