

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from York County

John C. Hayes, III, Circuit Court Judge

---

RECEIVED

JAN 15 2014

S.C. Supreme Court

JIMMY CHARLES KENDALL, III,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001800

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A P P E N D I X

---

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

IN THE COURT OF GENERAL SESSIONS  
SIXTEENTH JUDICIAL CIRCUIT  
11-GS-46-2217

State of South Carolina )

VS. )

Transcript of Record

Jimmy Charles Kendall, )  
III )

November 2, 2011  
York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III

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

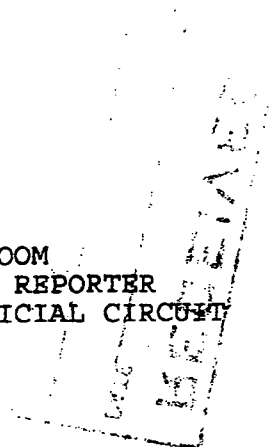
Willy Thompson, Deputy Solicitor  
York, South Carolina

Attorney for the Plaintiff

Phil Smith, Assistant Public Defender  
York, South Carolina

Attorney for the Defendant

SHIRLEY G. BROOM  
CIRCUIT COURT REPORTER  
SIXTEENTH JUDICIAL CIRCUIT



I N D E X

WITNESS

DIRECT CROSS RE-DIRECT RE-CROSS

(No testimony taken)

E X H I B I T S

EXHIBIT NO.	DESCRIPTION	ID	EV
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(No Exhibits)

1           Mr. Thompson - May it please the Court, Your  
2 Honor. This is State of South Carolina versus Jimmy  
3 Charles Kendall, III. He's charged with murder in Warrant  
4 J216499, with forgery in J216500, with grand larceny more  
5 than five thousand dollars in J216501 and then with  
6 driving under suspension, J216471. He's represented by  
7 Phil Smith of the Public Defender's Office. He's here  
8 before the Court today because he's asking to relieve Phil  
9 Smith of counsel in this case.

10           The Court - All right, Mr. Smith I'll let --  
11 anything you want to say before I hear from Mr. Kendall?

12           Mr. Smith - Your Honor, we were appointed --  
13 well, he was arrested in February. I -- I'm sorry, in  
14 January -- I received the file in February and met with  
15 him. In addition, I've gotten Barton O'Kelly from my  
16 office to see him a number of times as well. We have  
17 progressed toward plea negotiations in the case, but those  
18 broke down the last couple of weeks. And when Mr. O'Kelly  
19 and I went to meet with Mr. Kendall last week -- I'm sorry  
20 -- early this week, he indicated he did not wish to speak  
21 with us anymore and wanted to have a new attorney.

22           The Court - All right, Mr. Kendall's what's your  
23 situation?

24           Mr. Kendall - I just don't think I've been  
25 treated fairly. I've seen him only three times since the

5

1 eight months I've been here. He sent his investigator to  
2 talk to me, you know, and -- and you know offer me pleas,  
3 you know, when it's his -- it's his responsibility to do  
4 it, and I wrote him numerous letters, you know, for  
5 information and some other things and I just don't feel  
6 like I need him.

7 The Court - So you want to let him go and not  
8 have an attorney?

9 Mr. Kendall - I need another one, you know,  
10 appointed to me, yes.

11 The Court - Well, you don't get to choose. If  
12 you get an appointed attorney, you don't get to choose who  
13 you get, --

14 Mr. Kendall - Yes.

15 The Court - -- so if you want to let Mr. Smith  
16 go, I'll let him go, but that leaves you without an  
17 attorney. You can certainly hire one, but you don't get  
18 to pick your attorney when you're getting one appointed by  
19 the State, but I'll let -- I'll let Mr. Smith off your  
20 case, but that'll leave you without an attorney.

21 Mr. Kendall - All right.

22 The Court - Is that what you want to do?

23 Mr. Kendall - Yes, sir.

24 The Court - All right. Well, there's a danger  
25 in your representing yourself since you're not an

1 attorney, and an attorney could be of benefit to you, and  
2 as you already know, you're entitled to have an attorney.  
3 I'll appoint Mr. Smith to be stand-by counsel at your  
4 trial so he can sit with you during your trial if you go  
5 to trial and advise you as to procedural matters. Thank  
6 you.

7 Mr. Thompson - Thank you, Your Honor.

8 Mr. Smith - Thank you, Your Honor.

9 (End of transcript)

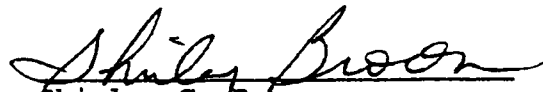
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## Certificate

I, Shirley G. Broom, the undersigned Court Reporter, hereby certify that the foregoing 7 pages constitute a true record of proceedings taken in the case of State of South Carolina vs. Jimmy Charles Kendall, III, as taken by me at the time and place stated.

I, do further certify that the persons were present as stated, that I am not of Counsel for, related to, or in the employe of any of the parties to this action and that I have no interest whatsoever in the outcome of this case.

This the 17<sup>th</sup> day of Sept., 2012.

  
Shirley G. Broom  
Circuit Court Reporter  
Sixteenth Judicial Circuit

STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of York	)	2011-GS-46-02217
	)	
State of South Carolina	)	
	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Jimmy Charles Kendall, III.	)	
	)	

November 29th, 2011  
York, South Carolina

BEFORE:

THE HONORABLE LEE S. ALFORD, JUDGE.

APPEARANCES:

WILLY THOMPSON, ASSISTANT SOLICITOR  
Attorney for the State

PHIL SMITH, PUBLIC DEFENDER  
Attorney for the Defendant

AMINAH R. HARDY, RPR  
Official Court Reporter

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(No exhibits submitted.)

PROCEEDINGS

MR. THOMPSON: Your Honor, this is State of South Carolina versus Jimmy Charles Kendall, III. It's under indictment 2011-GS-46-02217, where he's been indicted for murder. He's pleading guilty to the charge; however, he's currently pro se with standby counsel Phil Smith, and would ask the Court to inquire with him if he would like Mr. Smith to represent him going into the plea.

THE COURT: Mr. Kendall, I know I previously relieved Mr. Smith from representing you. I asked him to be standby counsel in case we went to trial so he could answer questions for you -- not to handle your trial -- answer any questions you might have during your trial. Would you like for him to stand with you and assist you now through this plea and answer any questions that you might have and assist you with that?

THE DEFENDANT: Yeah.

THE COURT: Okay. Mr. Smith, if you would please help represent him with regard to this plea.

MR. SMITH: I will, Your Honor.

MR. THOMPSON: May it please the court, Your Honor. As I stated, Your Honor, this is State of South Carolina versus Jimmy Charles Kendall, III, 2011-GS-46-02217 where he's been indicted for murder. He's pleading guilty under

1 North Carolina versus Alford to this charge. This is for  
2 a negotiated sentencing, Your Honor, we've -- the  
3 negotiation is for a sentence of 30 years. However, we're  
4 asking that the Court defer the sentencing at this time  
5 until the next term that Your Honor is before us here in  
6 York County, which I believe is the January 23rd term of  
7 court. As part of the plea, Your Honor, as well, we'll be  
8 dismissing two indictments, 2011-GS-46-02218, for forgery  
9 and 2011-GS-46-02219, for grand larceny. I would let the  
10 Court know he's currently on a probationary sentence. We  
11 spoke to his probation agent in Lancaster County, and they  
12 are going to handle that when we do the sentencing later  
13 on, and they said they will run that probation violation  
14 concurrent to the charges that are before the Court.

15 We have complied with the Victims' Rights Act, Your  
16 Honor, and as we've already stated, Mr. Smith was  
17 appointed as standby counsel for Mr. Kendall and will  
18 assist him through the plea.

19 THE COURT: Sir, you're Jimmy Charles Kendall, III;  
20 is that correct?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: How old are you, Mr. Kendall?

23 THE DEFENDANT: 32.

24 THE COURT: Mr. Kendall, how far did you go in  
25 school?

1 THE DEFENDANT: The ninth grade.

2 THE COURT: What do you do for job or occupation?

3 THE DEFENDANT: Irrigation, landscaping.

4 THE COURT: Are you married, sir?

5 THE DEFENDANT: No.

6 THE COURT: Do you have any children?

7 THE DEFENDANT: Yeah.

8 THE COURT: What are their ages?

9 THE DEFENDANT: I -- my oldest one is 15, but the  
10 other ones, I don't remember.

11 THE COURT: How much time have you served in jail on  
12 this charge? Well, I said we'll get that later, though.  
13 Don't have to worry about that today. We'll get the  
14 actual -- the imposition of the sentence is when we need  
15 to get that.

16 Mr. Kendall, you're charged today with murder, which  
17 carries a mandatory minimum sentence of 30 years. Carries  
18 a maximum sentence --

19 You haven't noticed it for the death penalty, have  
20 you?

21 MR. THOMPSON: No, Your Honor.

22 THE COURT: So it carries a maximum of life in prison  
23 without parole. Do you understand the charge and the  
24 maximum and minimum sentences you could receive on this  
25 charge?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand this would be, of  
3 course, a no-parole offense? This means you'd be expected  
4 to serve the sentence you actually receive. Do you  
5 understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Understanding that, my understanding is  
8 that you wish to enter a -- well, I need to advise you  
9 also, of course, that this is considered a violent offense  
10 which could affect your ability to participate in certain  
11 programs down in South Carolina Department of Corrections.  
12 It's also classified as a most serious offense. The  
13 importance of that classification is should you get two  
14 most serious offenses on your record or a combination of  
15 three serious and most serious offenses on your record,  
16 upon receiving the second or third such offense, you could  
17 get a sentence of life without parole, so-called  
18 two-strikes and three-strikes rule. This offense, as a  
19 most serious offense, would classify as one of those  
20 strikes under the two- and three-strikes rule. Do you  
21 understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: This, of course, is also classified as  
24 felony. Understanding all that -- you understand all of  
25 that, sir?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Understanding all that, my understanding  
3 is that you wish to enter a plea under North Carolina  
4 versus Alford; is that correct?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand that by entering this  
7 plea, you give up your right to remain silent?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand that by entering this  
10 plea, you give up your right to a trial by jury?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And if you give up your right to trial by  
13 jury, you also give up your right to assert any legal  
14 defenses you might have in a jury trial.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: I'm going to go over that right with you  
17 and the jury trial. If you requested a trial by jury, the  
18 State would give you a trial. At trial, you would have  
19 the right to confront and cross-examine all witnesses  
20 against you. You would have the right to present any  
21 witnesses and/or evidence in your own defense. You would  
22 have the right to testify in your own defense if you wish  
23 to do so, but no one can make you testify in your own  
24 trial. If you decided to go to trial and not testify, the  
25 judge would tell the jury they could not hold your failure

1 to testify against you. In fact, the jury couldn't even  
2 consider your failure to testify in their deliberations on  
3 guilt or innocence. You would be presumed innocent  
4 throughout your trial. The State has to prove you guilty  
5 beyond a reasonable doubt to a jury of 12 people. All 12  
6 people would have to unanimously agree that you were  
7 guilty in order for you to be convicted. Even if you were  
8 convicted, you still have the right to appeal that  
9 conviction. Do you understand your rights with regard to  
10 a trial by jury?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Understanding that right, do you still  
13 wish to enter a plea under North Carolina versus Alford,  
14 or do you wish to go to trial?

15 THE DEFENDANT: A plea.

16 THE COURT: Now, the State has agreed to the minimum  
17 30-year sentence on this charge, and they have agreed to  
18 dismiss two other charges upon acceptance of your plea.  
19 Their understanding is that a probation matter that you  
20 were on probation for now, that would be terminated and  
21 whatever the sentence you received on that would run  
22 concurrent to the sentence, to be served at the same time  
23 as the sentence in case. Now, is that your understanding  
24 of the agreement you have with the Solicitor's Office in  
25 order to enter your plea today?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Has anybody promised you anything other  
3 than that in order to get you to enter your plea?

4 THE DEFENDANT: No.

5 THE COURT: Has anybody threatened you, coerced you,  
6 or forced you to enter a plea against your will?

7 THE DEFENDANT: No, sir.

8 THE COURT: All right. Are you today under the  
9 influence of any mind-altering substance such as alcohol,  
10 drugs, or prescription medications which interfere with  
11 your judgment or ability to understand what you're doing  
12 in court?

13 THE DEFENDANT: No.

14 THE COURT: Do you have any mental, emotional, or  
15 nervous condition that interferes with your judgment or  
16 ability to understand what you're doing in court?

17 THE DEFENDANT: No.

18 THE COURT: Are you entering your plea today of your  
19 own free will?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Please give me the facts, Solicitor.

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

23 This occurred January 3rd of this year here in York  
24 County in the city of Fort Mill at \_\_\_\_\_ Lane in  
25 Fort Mill. The defendant was living with the victim,

1 Linda Hertzog. At the time, they had had a kind of a  
2 rocky relationship with some altercations prior to this  
3 event. On this particular night Your Honor, the defendant  
4 and the victim had been consuming a fair amount of drugs  
5 during the day, crack cocaine and possibly other drugs as  
6 well, which is borne out in the autopsy of the victim.  
7 They began to have arguments and fight with each other as  
8 the day went on.

9       Ultimately during the day, the defendant began -- the  
10 defendant got into a fight with the victim and ultimately  
11 choked her to death, asphyxiated her. He wasn't caught  
12 right away. No one quite realized what happened until  
13 several days later. It was about three days later when  
14 the body was found. Concerns from her job that she was  
15 not there. They began calling. The family, of course,  
16 had been calling her. Ultimately, they found out that the  
17 defendant had taken her cell phone or had her cell phone  
18 with him, and during some of this texted back to some  
19 family members as they texted to make it seem as if she  
20 was still alive and around.

21       But he had taken her vehicle at that time and had  
22 some of her checks, which ultimately he tried to cash at  
23 least one of those checks. But he had taken the vehicle  
24 down to Lancaster County and basically hung out with some  
25 friends there to try to elude any capture at that point.

1 Of course, initially no one knew she was dead. When the  
2 officers found her on the sixth, they knew obviously that  
3 there was foul play immediately. From the autopsy, it  
4 became apparent that she was beaten rather badly. She had  
5 abrasions and bruises all over her body, and it was shown  
6 she died from asphyxiation from someone literally taking  
7 her hand, grabbing underneath the chin. There were marks  
8 under the chin, pulling her head back, and causing her to  
9 suffocate to death. The bruising and abrasions all about  
10 the body were consistent with being dragged and beaten,  
11 and were all consistent with the time of death, so they  
12 would have been contemporaneous with the time of death.

13 The defendant ultimately, when he was caught in  
14 Lancaster County, was arrested initially for driving under  
15 suspension. Fort Mill police officers went out and  
16 interviewed him at some point. When they did, he waived  
17 his rights and gave them a statement. He admitted that he  
18 had been involved in this. He told them that it was not  
19 supposed to happen this way; he didn't intend for this to  
20 happen, but he did admit that they had got into an  
21 altercation and he at least put his arm up against her  
22 chest and neck and pushed her against the refrigerator,  
23 and ultimately they fell to the floor where he said he  
24 heard her neck snap, and and at that point, he left the  
25 scene and went on. But there is evidence from neighbors

1 that he had come back at least once or twice in the days  
2 following and gone into the apartment and come back out.

3 Those are the basic facts that the State would  
4 present at trial, Your Honor, to show that the defendant  
5 was guilty of these charges and it was a murder case.

6 THE COURT: I find the decision of the defendant  
7 Jimmy Charles Kendall, III, to plead under North Carolina  
8 versus Alford to case number 2011-GS-46-2217, charge of  
9 murder. Court finds that his plea be made freely,  
10 voluntarily, and intelligently. To some extent, he's had  
11 the representation of an attorney. The Court previously  
12 excused Mr. Smith -- Phil Smith was representing him on  
13 this charge, allowed him to proceed pro se, although  
14 Mr. Smith is here and available to answer questions and  
15 advise him with regard to this plea and has been present  
16 for that purpose, and assist him with any --

17 I'm sure Mr. Smith has talked with him in the past,  
18 have you not?

19 MR. SMITH: I have, Your Honor.

20 THE COURT: And you all had some problems, I assume  
21 some communication. But you previously discussed all the  
22 issues with him?

23 MR. SMITH: I have, Your Honor, and yesterday as  
24 well.

25 THE COURT: All right. He's had the representation

1 of a competent attorney. And to the extent he relied on  
2 him to represent him, and I'll accept this plea as freely  
3 and voluntarily made. I find the facts presented to the  
4 Court by the Solicitor's Office fully support the plea in  
5 this case.

6 Now, Mr. Kendall, if you disagree with the proceeding  
7 in which we're currently involved, you have ten days from  
8 the date you were actually sentenced. I have accepted  
9 your plea and that plea -- of course, I've accepted the  
10 plea and we're going to defer sentencing until a later  
11 time, but the plea has been made. I've accepted the plea.  
12 But once you're sentenced, you would have ten days from  
13 the date you were actually sentenced to appeal. If you  
14 wanted to appeal, you have ten days from that date to  
15 appeal. Do you understand your right to appeal?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: I'm sure you probably don't want to say  
18 anything else today, give you a chance to offer any  
19 mitigation at the time we actually do the sentencing.  
20 We'll defer that until then as well.

21 Mr. Smith, if he wants you to represent him there,  
22 offer mitigation in his behalf, I ask you to do that as  
23 well.

24 MR. SMITH: Thank you, Your Honor.

25 MR. THOMPSON: Thank you, Your Honor.

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(End of transcript of record.)





1 (ON THE RECORD MONDAY, JANUARY 23, 2012 AT 12:09  
2 P.M..)

3 THE COURT: Thank you. Please be seated everyone.

4 MR. BRACKETT: Jimmy Charles Kendall.

5 (DEFENDANT JIMMY CHARLES KENDALL ENTERING COURTROOM,  
6 WHITE MALE:)

7 MADAME CLERK: Sir, raise your right hand, place your  
8 left hand on the Bible.

9 (WHEREUPON: JIMMY CHARLES  
10 KENDALL, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS  
11 FOLLOWS:)

12 MR. BRACKETT: May it please the Court.

13 THE COURT: Solicitor.

14 MR. BRACKETT: Your Honor, we are back on the record  
15 in regards to Docket No. 2011-GS-46-2217 this being a True  
16 Bill Indictment for the charge of murder charging this  
17 defendant Jimmy Charles Kendall, III. As Your Honor may  
18 recall just to refresh your memory and to make the record  
19 clear, the Defendant was brought to court on November 29th  
20 and entered a plea under Alford to charge of murder for a  
21 negotiated sentence of thirty years without parole.

22 He had two companion charges for forgery and grand  
23 larceny which were to be dismissed pursuant to the plea  
24 agreement. And in addition a probation violation will be  
25 revoked and run concurrent.

-3-

1           He is represented -- He is pro se, however, Mr. Phil  
2           Smith of the Public Defender's Office is standby counsel  
3           and I guess the first thing to clarify at the beginning is  
4           whether or not Mr. Smith will be speaking for him or not.  
5           And then we can go back into a brief recitation of the  
6           facts that we've provided counsel I believe as well as the  
7           Court with the copies of the transcript from the November  
8           29th plea to refresh your memory on the facts and  
9           circumstances of the plea, but we're ready to go forward  
10          with the sentencing. The State has complied with the  
11          Victim Right's Act. There are the family of the victim in  
12          this case is present in the courtroom and I was handed a  
13          note by my victim witness advocate indicating that four  
14          members of the family wish to address the court at the  
15          appropriate time with regards to this matter.

16           THE COURT: Mr. Kendall, do you wish for Mr. Smith to  
17          stand with you, counsel to stand with you and speak with  
18          you or for you or for whenever you wish to speak?

19           MR. KENDALL: Yes, sir.

20           THE COURT: Do you want him to do that for you today,  
21          sir?

22           MR. KENDALL: Yes, sir.

23           THE COURT: My understanding is there is a probation  
24          violation, a matter from Lancaster County with a  
25          recommendation as well.

1 Counsel, does he wish to go forward with the probation  
2 violation now and today?

3 MR. SMITH: He's been served with that and it's his  
4 understanding that would run concurrent with his plea, Your  
5 Honor.

6 THE COURT: All right. And you wish to proceed on  
7 that today?

8 MR. KENDALL: Yes, sir.

9 THE COURT: And have Mr. Smith speak for you on that,  
10 Mr. Kendall?

11 MR. KENDALL: Yes, sir.

12 THE COURT: For the record Mr. Kendall plead, entered  
13 a plea under North Carolina versus Alford on November 29th,  
14 2011 to a charge of murder. The renegotiated sentence of  
15 thirty years. The State also agreed to dismiss certain  
16 companion charges including forgery and grand larceny.

17 Is all that correct?

18 MR. SMITH: It is, Your Honor.

19 THE COURT: Solicitor, is that correct?

20 MR. BRACKETT: Yes, sir.

21 THE COURT: And of course the Court deferred  
22 sentencing until to date and sentencing to take place  
23 today.

24 Ready to proceed, Solicitor?

25 MR. BRACKETT: Yes, sir, Your Honor.

1           As Your Honor will recall from having reviewed the  
2 transcript of the plea, this case took - the incident that  
3 underlies this case took place on January the 5th of 2011.  
4 The Defendant and the victim in this case, Ms. Linda Lee  
5 Hertzog, were at a residence on                   Lane in Fort  
6 Mill, South Carolina. The Defendant and the victim had  
7 been involved in a relationship and on that particular day  
8 the evidence seduced by the investigation revealed that  
9 they had been drinking and using crack cocaine.

10           Apparently at some point in time, and of course there  
11 are no other witness's to this matter except for - no  
12 surviving witnesses except for the Defendant, but the  
13 evidence from sort of a combination of what the Defendant  
14 has indicated as well as what the investigation and the  
15 autopsy reveal, is that at some point in time a  
16 disagreement arose between the defendant and the victim and  
17 a violent struggle ensued.

18           During the course of this struggle multiple bruises  
19 and abrasions and assaults and indications of assaults on  
20 the body of the victim Ms. Hertzog were revealed by the  
21 autopsy including a number of abrasions around the knee and  
22 ultimately the fatal wound being what appeared to be a  
23 choke mark from behind as if the Defendant -- If you recall  
24 Mr. Thompson I believe at the plea indicating as if someone  
25 had grabbed the victim from behind and pulled her head back

1 and during the course of which this caused the asphyxiation  
2 of the victim Ms. Hertzog.

3 The Defendant fled the scene, did not call the police  
4 and was apprehended some days later in the victim's vehicle  
5 in Lancaster County and was arrested and charged at that  
6 point in time. I believe the rest of the facts and  
7 circumstances are laid out in fair detail in the transcript  
8 from the original plea and I won't belabor over it at this  
9 point because this is a negotiated plea.

10 Given the facts and the circumstances I believe the  
11 Defendant attempted to make some sort of argument or told  
12 the police at the time of his arrest indicated that there  
13 may be some self defense involved and of course that was at  
14 odds with what we believed the autopsy showed given the  
15 circumstances of her death. So taking all the facts and  
16 circumstances into consideration the possible defenses and  
17 what might happen at trial we sat down with the family and  
18 went over all the evidence with them and the likelihood of  
19 success at trial balanced against the potential downside of  
20 going to trial we came to a consensus among law enforcement  
21 and the victims's family and our office that a plea to  
22 murder for a thirty year day for day no parole sentence  
23 would be appropriate in this case and that's what we  
24 recommended.

25 So that is the basis for the plea and the reasons for

1 the plea offer. As I indicated there are four members of  
2 the family that wish to address the Court and tell you a  
3 little bit about Ms. Hertzog.

4 THE COURT: Let me hear from them at this time.

5 MR. BRACKETT: We will call them up two at a time.

6 Jessica Waggoner and Patricia Petry.

7 MR. BRACKETT: Ma'am, if you would state your full  
8 name and spell your last so the court reporter can get that  
9 on the record.

10 A. Jessica Faith Waggoner. W-a-g-g-o-n-e-r.

11 And I don't -- I've never met the defendant before,  
12 he's a stranger to me. But I just want to share with the  
13 Court how much one stranger has affected me and my family  
14 immensely. I am thankful for everyone whose help bring him  
15 here today. And I felt that that would give me peace but  
16 yet it doesn't bring my mother back. It only brings a hint  
17 of justice to how my heart feels when I think of this. And  
18 there was many things left unsaid with my mom and I'll  
19 never have that opportunity to say I'm sorry and that I  
20 lived her. So I just hope for the thirty years everyday  
21 that he remembers what he did and how much it affected so  
22 many people. And that's all I have to say.

23 THE COURT: Thank you, ma'am.

24 A. My name is Patricia Petry, I'm the oldest daughter of  
25 Linda Hertzog. Honesty I don't even know what to say. I

1 had it planned. The hurt that one man has caused in her  
2 five children, her grandchildren, even the grandchildren  
3 she has never met and the other family members, the  
4 brothers, the sisters, and her friends who all have gone  
5 now that she is gone. I do appreciate the detectives and  
6 the judicial system here in York County for all their hard  
7 work and their diligence. And I can't even thank them  
8 enough today but the man who took my mother is going to at  
9 least have to do thirty years and hopefully every day of  
10 his life he will see her face and know what he did.

11 This is a picture of my oldest.

12 (PATRICIA PETRY PUBLISHED PHOTO TO THE COURT.)

13 MS. PETRY: They will never see their grandmother  
14 again.

15 THE COURT: Thank you, ma'am.

16 MR. BRACKETT: Your Honor, in addition Ms. Susan  
17 McCorkle and Megan Hertzog would like to address the court.

18 MR. BRACKETT: State your full name and spell your  
19 last.

20 A. My name is Susan McCorkle.

21 (SUSAN MCCORKLE CRYING.)

22 MS. MCCORKLE: It's M-c-c-o-r-k-l-e.

23 Linda was my sister in law but more than that she was  
24 my friend. And he took her and he didn't have to do that.  
25 He could have just walked away, he could have just walked

1 away. She'll never get to see any of her children or her  
2 grandchildren, none of us ever, ever again.

3 A. My name is Megan Hertzog, H-e-r-t-z-o-g.

4 I just want to take this time to say my mother was  
5 there for me for my entire pregnancy.

6 (MEGAN HERTZOG CRYING.)

7 MS. HERTZOG: He took her from us. She was at every  
8 doctor's appointment. That was gonna be her life. And now  
9 she never gets to meet that little boy who did nothing to  
10 anyone.

11 (MEGAN HERTZOG PUBLISHED PHOTO TO THE COURT.)

12 This is my beautiful baby who will never hear from his  
13 grandmother.

14 MR. BRACKETT: Thank you, Your Honor. If you have any  
15 other questions about the case or the facts and  
16 circumstances.

17 THE COURT: Let me ask, Mr. Kendall, were you served  
18 with an arrest warrant for violation of your probation in  
19 Case No.06-GS-29-1438 in court today? Were you served with  
20 that?

21 MR. KENDALL: Yes.

22 THE COURT: And were you originally sentenced on a  
23 charge of assault and battery of a high and aggravated  
24 nature? Were you sentenced to the State Department of  
25 Corrections for a determinative term of four years provided

1 upon the service of one year, balance was suspended to  
2 probation for four years and you were required to get  
3 substance abuse counseling, subjected to random drug and  
4 alcohol testing, complete anger management counseling? Is  
5 all of that correct, sir?

6 MR. KENDALL: Yes, Sir.

7 THE COURT: Please tell me about any other known  
8 violations.

9 AGENT CLARK: Your Honor, in the Warrant W29110026  
10 issued by the Lancaster County Probation Office, he's  
11 charged with failure to follow advice and instructions of  
12 the agent in that he failed to report to the probation  
13 office as instructed by his agent. He missed a scheduled  
14 report on November 4th of '10 after being instructed to  
15 report back on this date for a scheduled violation of  
16 probation summons. He also missed reports for the months  
17 of December, 2010 and January 2011. Failed to gain  
18 permission from the agent before changing his residence.  
19 Per home visit on 1/18/11 it was learned that a new tenant  
20 was occupying the residence and he no longer lived there.  
21 Failed to work at a lawful occupation having been  
22 unemployed since placed on probation and having the ability  
23 to work. Failed to refrain from violating federal, state  
24 or local law by immediately contacting his probation agent  
25 per rap sheet dated 1/26/11 it was learned that Kendall was

-11-

1 arrested on 3/7/10 by Mecklinburg Sheriff's Office for DUI,  
2 DWI. And on 4/4/10 of Lancaster County Sheriff's  
3 Department for DUS and was convicted on May the 11th of  
4 '10. On 1/7/11 he was arrested by Lancaster County  
5 Sheriff's Office for open container and DUS. On 1/7/11  
6 arrested by Lancaster County Sheriff's Office for failure  
7 to appear for traffic offense. He failed to pay his  
8 supervision fees and he failed to pay his court ordered  
9 fine. Your Honor, we also served him with the Citation,  
10 Citation CC4612004.

11 THE COURT: Let me ask him about that.

12 See that Citation now?

13 Mr. Kendall, were you also served with a probation  
14 citation for violation of your probation in this same case?

15 Were you served with that also in court today?

16 MR. KENDALL: Yes, sir.

17 THE COURT: Please proceed.

18 AGENT CLARK: And, Your Honor, in that citation we  
19 charged him with pleading guilty to Indictment 11-GS-46-  
20 2217 for the offense of murder. Your Honor, Mr. Kendall's  
21 original sentence was four years provided on one year, four  
22 years probation so he served the one year and then on  
23 October the 14th of 2008 he was revoked an additional two  
24 years so there is one year remaining to revoke, Your Honor.

25 And we are handling this for Lancaster County

1 Probation Office.

2 THE COURT: Yes, sir.

3 MR. SMITH: Your Honor, with regards to the violation  
4 he understands the violation based upon the plea and  
5 accepts that. He does not wish to say anything concerning  
6 the violation.

7 THE COURT: All right. Anything you wish to offer in  
8 the way of mitigation now will be the opportunity to do  
9 that.

10 MR. SMITH: Thank you, Your Honor.

11 Your Honor, Mr. Kendall has ask me to speak.

12 Obviously in a case where there is a loss of life our court  
13 system in any way feels inadequate to deal with it. There  
14 is some restoration that a family that has lost a member  
15 certainly cannot have no matter what happens here today. I  
16 can just tell Your Honor having been able to speak with  
17 Jimmy he wished me to some how communicate to the Court  
18 that he did not intend all of this to happen. I think  
19 that's obvious somewhat from the facts as the Solicitor has  
20 handed them up or an account of them from the prior plea.

21 But unfortunately there was a mix here of substance  
22 abuse and domestic issues that were ongoing, propensity for  
23 arguing and fighting mixed in with the substances that led  
24 to something that's unfortunate, just simply should not  
25 have happened and he understands that as well.

-13-

1           While his memory of the events are somewhat hazy there  
2           are some of the events that he can put back together, had  
3           questions about how some of the things may have or could  
4           have happened but ultimately he understands he is  
5           responsible that it would make no sense to drag the court  
6           or the family through that trial, through that setting.  
7           There is a loss of life that has occurred and he  
8           understands that he will have to live with being the cause  
9           of that for not only his incarceration period but for the  
10          rest of his life.

11          He had strong feelings that comes across, his  
12          affection for Ms. Hertzog when he speaks with me about it  
13          and explaining that clearly he wouldn't have meant for that  
14          to happen but he's responsible for letting things get out  
15          of hand and wanted me to communicate that to the court.

16                 THE COURT: I understand that.

17                 Mr. Kendall, anything you want to say?

18                 MR. KENDALL: Your Honor, I can't.

19                 THE COURT: Case No.2011-GS-46-2217 Jimmy Charles  
20          Kendall, III, having pled under *North Carolina versus*  
21          *Alford* to a charge of murder, the sentence of the Court is  
22          that he be committed to the State Department of Corrections  
23          for a determinant term of thirty years. He is given credit  
24          for all jail time served since he's been in jail.

25                 You have any idea how much that is at this time?

1 MR. SMITH: I do not, Your Honor.

2 MR. BRACKETT: Three Hundred and eighty-one days, Your  
3 Honor.

4 THE COURT: How many?

5 MR. BRACKETT: Three Hundred and Eighty-one days.

6 THE COURT: I'm going to give you credit for Three  
7 Hundred and Eighty-one days that he's been in jail.

8 In so far as the probation violation in Case No. 06-  
9 GS-29-1438 the Court finds these are substantial willful  
10 violations of probation. He is no longer a suitable  
11 candidate to remain on probation the Court will therefore  
12 revoke his remaining time which appears to be about a year.  
13 I will revoke that time and run that concurrent to the  
14 thirty years and give him credit for any time he served  
15 also on that in jail awaiting disposition.

16 Thank you.

17 AGENT CLARK: Your Honor.

18 THE COURT: Yes, ma'am.

19 AGENT CLARK: Will the service of the time satisfy the  
20 fines and supervision fees; is that correct?

21 THE COURT: Yes, ma'am.

22 AGENT CLARK: Thank you, Your Honor.

23 MR. BRACKETT: Thank you, Your Honor.

24 -- END OF TRANSCRIPT OF RECORD --

25

-15-

CERTIFICATE OF REPORTER

State of South Carolina )

)

County of York )

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 23rd day of January 2012.

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

Wanda Nelson

Wanda Nelson, CVR  
 Certified Verbatim Reporter,  
 Official Court Reporter,  
 Notary Public, in and for  
 The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: 5-30 / 2012

FORM 5

STATE OF SOUTH CAROLINA )  
County of York )

IN THE COURT OF COMMON PLEAS

2012 FEB 29 AM 11:00  
K2

Jimmy Charles Kendall III )  
Full name and prison number (if any) of Applicant )

C.S.P. 2-65  
YORK COUNTY, SC

v. )

State of South Carolina )

APPLICATION FOR  
2012-CP-46-768  
POST-CONVICTION REVIEW

DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

2012 MAR -2 AM 8:22

CERTIFIED TRUE COPY

INSTRUCTIONS B 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 York County Detention Center 1675-3A  
York Highway York S.C 29745
2. Name and location of Court which imposed sentence York County Courthouse  
Post Office Box 649 York S.C 29745
3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_  
N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
(a) Case/Indictment # 2011-GS46-02217 (Murder)

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) 1/23/2012 30 years Violent/Most Serious
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere ✓

7. Did you appeal from the judgment of conviction or the imposition of sentence?

No, Did not have a lawyer/He was stand up counsel

8. If you answered Ayes@ to (7), list:

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

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

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

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

(c) the date of each such result:

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

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

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

9. If you answered Ano@ to (7), state your reasons for not so appealing:

- (a) Did not have a lawyer/fired him but was forced to use him as stand up counsel.

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

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

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

(a) Judge Misconduct

(b) Lawyer Misconduct

(c) ~~Enviendice~~ Enviendice withheld from me

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

(a) Judge ~~Hoves~~ told me that I would have to represent myself concerning →

(b) Philip Smith came to see me 3 times within the first 3 months of this case →

(c) I still dont have my complete motion of discovery and wrote to →

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

(a) any petition in a State Court under South Carolina Law? N/A

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A

(d) any other petitions, motions or applications in this or any other Court? N/A

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

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

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

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

i. N/A

ii. N/A

iii. N/A

(A) My case in trial. Know that I did not have a good understanding of what was going on in this case. Also Judge ~~Alford~~<sup>Alford</sup> knew at this point that I was under the care of Mental Health and taking mind altering drugs. Judge Alford also knew that I was unstable and would not be able to handle representing myself. The solicitor talked to me and told me that if I took this to trial he would make sure that the jury gave me life and that he and judge Alford already spoke about my case and Judge Alford knew what was going on with my case.

B) he never gave me my complete motion of discovery. ~~Mr Smith~~<sup>Mr Smith</sup> knew that I was under the care of mental health and did not have a understanding of what was going on with my case. Mr Smith withheld test results that were taken from the victim. Mr Smith never made an attempt to question my witness to confirm the information I wrote on my statement to investigators. I asked Mr Smith several times when we were going to go over my motion of discovery and where were the evidence and photos the the state had against me he replied we are going to do it soon I want to get your mother here with us. I never saw Philip Smith again he sent his investergator to come and talk to me. We never went over any of my paperwork nither. That's why I fired Mr. Smith because he was not ~~properly~~ representing me to the best.

(C) the Clerk of court for a transcript and my motion but have not received this as of now I also would still like to know what happen to pieces of eviendce that were present at the time of the accident that never were brought into court when I was sentenced

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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?

N/A  
N/A

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A



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

To have a mental evaluation & be able to go over all evidence  
To have a lawyer represent me and to have a fair trial  
To have trial and let a jury see if I'm guilty or not

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA )  
County of York )

VERIFICATION

I, Jimmy C. Kendall III #319409, 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.

Jimmy C. Kendall III

SWORN to and subscribed before me this 23rd day of February, 2012.

[Signature] (L.S.)  
Notary Public Commission Expires

October 8, 2014

My Commission Expires: \_\_\_\_\_

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

I, Jimmy C. Kendall III #319409, 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.

Jimmy C. Kendall III  
Applicant

SWORN or affirmed to and subscribed before me this  
23rd day of February, 2012.

[Signature]  
Notary Public

My Commission Expires  
October 8, 2014  
My Commission Expires: \_\_\_\_\_

19) I also ~~could~~ would like a mental evaluation because during this whole period I have been under the influence of Thiorazine and other mind altering chemicals. Even when I went to court I was under the influence of my medicine.

STATE OF SOUTH CAROLINA )  
 COUNTY OF YORK )  
 )  
 )  
 Jimmy Charles Kendall, III, # 319409, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 SIXTEENTH JUDICIAL CIRCUIT

2012-CP-46-0768

**RETURN AND MOTION TO DISMISS**

The Respondent, making its Return to the application for post conviction relief (PCR) filed February 29, 2012, would respectfully show this Court:

I.

The Applicant is currently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. The Applicant was indicted at the July 2011 term of the York County Grand Jury for Murder (2011-GS-46-2217). On January 23, 2011, the Applicant appeared pro se and pled pursuant to North Carolina v. Alford as indicted to murder.<sup>1</sup> The Honorable Lee S. Alford sentenced Applicant to a term of imprisonment for thirty (30) years. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the York County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the application. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Judge Misconduct"
2. "Lawyer Misconduct"
3. "Evidence withheld from me"

The Applicant fails to allege a claim of ineffective assistance of counsel. The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -

160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. *Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.*

[Emphasis supplied.] S.C. Code Ann. § 17-27-20 (1976).

---

1 Prior to the plea, the Applicant asked for and was granted the relief of Phillip Smith, Esquire as counsel.

These facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Therefore, the Court should summarily dismiss this application for post-conviction relief.

III.

Additionally, the Applicant appeared pro se at the guilty plea hearing. Insomuch as the Applicant states a claim which is recognized in PCR, there can be no ineffective assistance of counsel when the Applicant represents himself. Pursuant to Rule 12(b)(6), SCRCP, this Court should summarily dismiss this allegation because it does not state a claim for which relief may be granted.

IV.

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

V.

WHEREFORE, having made its Return and Motion to Dismiss, the State requests that the Applicant's current application for PCR be summarily denied and dismissed.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON  
Assistant Attorney General

May 15, 2012

By:   
ATTORNEYS FOR RESPONDENT

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

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 )  
 )  
 JIMMY C. KENDALL, III, 319409 )  
 )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 )  
 Respondent. )

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IN THE COURT OF COMMON PLEAS

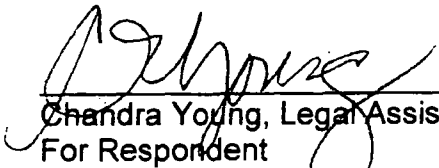
2012-CP-46-0768

AFFIDAVIT OF SERVICE BY MAIL

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

Tyler Bathrick  
 PO Box 10751  
 Rock Hill, SC 29732

DATED this 15<sup>th</sup> day of May, 2012.

  
 \_\_\_\_\_  
 Chandra Young, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA )  
 COUNTY OF YORK )  
 )  
 )  
 Jimmy Charles Kendall, III, # 319409, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 SIXTEENTH JUDICIAL CIRCUIT

2012-CP-46-0768

**CONDITIONAL ORDER OF DISMISSAL**

FILED-RECEIVED  
 2012 MAY 30 AM 9:35  
 DAVID HAMILTON  
 C.C.P. & G.S.  
 YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed

February 29, 2012. The Respondent made its Return and Motion to Dismiss on

*May 15, 2012.*

**PROCEDURAL HISTORY**

The records before this Court indicate that the Applicant is currently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. The Applicant was indicted at the July 2011 term of the York County Grand Jury for Murder (2011-GS-46-2217). On January 23, 2011, the Applicant appeared pro se and pled pursuant to North Carolina v. Alford as indicted to murder. The Honorable Lee S. Alford sentenced Applicant to a term of imprisonment for thirty (30) years. The Applicant did not appeal his conviction or sentence.

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

1. "Judge Misconduct"
2. "Lawyer Misconduct"

*gc 4/11*

## 3. "Evidence withheld from me"

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b) (2003), the Court makes the following findings of fact and conclusions of law:

This Court finds that this matter should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy, may institute, without paying a filing fee, a proceeding under this chapter to secure relief. *Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.*

[Emphasis supplied.] S.C. Code Ann. § 17-27-20 (1976).

These facts do not support a cognizable claim for post-conviction relief under any of

*J. H. #2*

the statutory grounds. Therefore, this Court summarily dismisses this application for post-conviction relief.

In his application, the Applicant states that he asked for and the court granted the relief of Phillip Smith, Esquire as counsel. Thus, an Applicant who represents himself in a proceeding cannot claim ineffective assistance of counsel. Pursuant to Rule 12(b)(6), SCRPC, this Court summarily dismisses this allegation because it does not state a claim for which relief may be granted.

### CONCLUSION

S.C. Code Ann. § 17-27-70(b) states in pertinent part:

When a court is satisfied, on the basis of the application, the answer or motion, and on the record, that Applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and give its reasons for so doing. Applicant shall be given an opportunity to reply to the proposed dismissal.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the York County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Attn: J. Rutledge Johnson, Esquire  
P.O. Box 11549  
Columbia, South Carolina 29211



AND IT IS SO ORDERED this 21<sup>st</sup> day of May, 2012.

John C. Hayes, III  
JOHN C. HAYES, III  
Presiding Judge  
Sixteenth Judicial Circuit Court

York, South Carolina.

STATE OF South Carolina  
56 COUNTY OF York

Jimmy Charles Kendall III #319409  
Applicant

V.

State of South Carolina,  
Respondent

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

2012-CP-46-0768

Applicant Amendment And Response To  
Proposed Dismissal

FILED-RECEIVED  
2012 JUN 18 PM 4:58  
DAVID HAMILTON  
C.C.C.P. & GS  
YORK COUNTY, SC

Before the court in this matter is the applicant pursuant to  
Code Ann 17-27-10 to 16D Post conviction Relief applicant he submitted to the court  
of York 2012. On 5-25-2012 the court, honorable John Hayes, Circuit Court Judge  
Ruled upon the merits of the applicant claim and proposed a dismissal ensue,  
unless the applicant responded with explanation, legal authorities or  
other information to clearly provide the court with applicable review criteria  
under sc. Code Ann 17-27-10 to 16D Post conviction relief.  
Applicant was given 20 days to respond to this court's proposed dismissal order.

— Amendment And Response —

The applicant pursuant to s.c. Code - Ann 17-27-10 to 16D provides that "due process" a  
Constitutional violation occurred by the courts error to appoint counsel to  
the applicant where a "knowing and intelligent waiver" of his right and a subsequent  
hearing pursuant to state v. Hamilton, was not made prior to him in fact or after  
(as read on the record) that he provided to the court quote "I'm not representing  
myself, I need a lawyer". unquote I.d. on record of court proceedings date  
11-2-2011 before the honorable circuit court judge Hayes.

South Carolina constitution Amendment VI provides that as part of due process  
through u.s. constitution Amendment XIV section 1 which provides that  
as part of "due process" a defendant shall be afforded "assistance of  
counsel for his defense". and.....

Article 1, section 3 of the South Carolina Constitution,  
"Nor shall any person be deprived of liberty without due process of law."

"Due process in the case of the defendant / applicant was denied by and  
through the authority of state v. Hamilton and similar s.c. Supreme  
Court cases Cirera 2000 which provide that a hearing must be had to  
determine a defendants, knowing and intelligent ability to represent  
his or her self in a court of law.

and.....

no - pursuant to the record at 1-23-2012 where - as this issue was not properly 57  
ascertained and no competency to stand trial was had in effect prior  
to the courts determinations to represent himself in prose  
The plea entered pursuant to N.C. v. Alford by the applicant is  
"Null" and "void" as the court did not have jurisdiction to  
sentence the appellant as he possessed no assistance of counsel  
for his defence.

Pray - ye - for these reasons the court may issue an order granting  
a summary judgement hearing and or vacate / set aside - judgement  
a conviction in this case submitted this day of 3-2-2012

Jimmy C. Kendall appellant  
name

Date.. 6-14-2012



ALAN WILSON  
ATTORNEY GENERAL

July 10, 2012

The Honorable David Hamilton  
Clerk of Court, York County  
Post Office Box 649  
York SC 29745

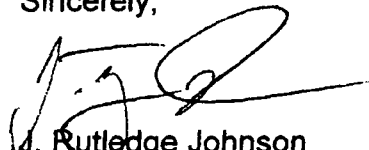
**RE: Jimmy C. Kendall, III v. State of South Carolina  
2012-CP-46-0768**

Dear Mr. Hamilton:

I received the attached "Applicant Amendment and Response to Proposed Dismissal Dated" in the aforementioned matter on June 22, 2012. Please be advised that Rule 11 of the South Carolina Rules of Civil Procedure requires every pleading, motion, or other paper of a party represented by counsel to be signed by at least one attorney of record who is an active member of the South Carolina Bar. If a pleading, motion, or other paper is not signed, "it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant." Rule 11, SCRCP.

Therefore, the State does not consider this document part of this action. According to our records, Inmate Jimmy C. Kendall, III, is represented Julia M. Bass, Esquire. By copy of this letter, I am notifying counsel of the State's position.

Sincerely,



J. Rutledge Johnson  
Assistant Attorney General

cc: Julia M. Bass, Esquire



State of South Carolina  
The Circuit Court of the Sixteenth Judicial Circuit

John C. Hayes, III  
Judge

Moss Justice Center, 2nd Floor  
1675-1H York Highway  
York, SC 29745-7434  
Phone: (803) 628-3047  
Fax: (803) 628-3055  
jhayesj@sccourts.org

July 11, 2012

Mr. Jimmy Kendall, #319409  
Kirkland Correctional Institution  
4344 Broad River Road  
Columbia, SC 29210

Re: Jimmy Charles Kendall, III, #319409 v. State of South Carolina  
C.A. No. 2012-CP-46-0768

Dear Mr. Kendall:

The Clerk has filed your "Applicant (sic) Amedment (sic) and Responce (sic) to Proposed Dismissal Dated." In it you reference my Order of May 25, 2012, mailed to you and your attorney, Julia M. Bass, Esquire on May 30, 2012.

As you have counsel in this Post-Conviction Relief matter, you may not represent yourself and the referenced Application raises no issue for the Court's consideration

I enclose a copy of Judge Lee S. Alford's Order of April 25, 2012, substituting Ms. Bass for Tyler A. Bathrick, Esquire.

Yours very truly,

John C. Hayes, III

JCHIII/fjk  
Enclosure

Cc: Julia M. Bass, Esquire (w/enclosure)  
J. Rutledge Johnson, Esquire (w/enclosure)  
File

60 STATE of South Carolina  
COUNTY of York

Jimmy Charles Kendall III #319409  
Applicant

V.

State of South Carolina,  
Respondent

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

2012-CP-46-0768

Applicant Amendment And Response To  
Proposed Dismissal

FILED-RECEIVED  
2012 JUN 18 PM 4:55  
DAVID HAMILTON  
C.C.C.P. & GS  
YORK COUNTY, SC

Before the court in this matter is the applicant, pursuant to S.C. Code Ann 17-27-10 to 16D Post conviction Relief applicant he submitted to the court of York 2012. On 5-25-2012 the court, honorable John Hayes, Circuit Court Judge ruled upon the merits of the applicant claim and proposed a dismissal. Unless the applicant responded with explanation, legal authorities or other information to clearly provide the court with applicable review criteria under S.C. Code Ann 17-27-10 to 16D Post conviction relief. Applicant was given 20 days to respond to this court's proposed dismissal order.

— Amendment And Response —

The applicant pursuant to S.C. Code - Ann 17-27-10 to 16D provides that "due process" a constitutional violation occurred by the courts error to appoint counsel to the applicant where a "knowing and intelligent waiver" of his right and a subsequent hearing pursuant to State v. Hamilton, was not made prior to him in fact or after (as read on the record) that he provided to the court quote "I'm not representing myself, I need a lawyer". unquote I.d. on record of court proceeding date 11-2-2011 before the honorable circuit court judge Hayes.

South Carolina constitution Amendment VI provides that as part of due process through U.S. Constitution Amendment XIV section 1 which provides that as part of "due process" a defendant shall be afforded "assistance of counsel for his defense". and.....

Article 1, Section 3 of the South Carolina Constitution,  
"Nor shall any person be deprived of liberty without due process of law."  
"Due process in the case of the defendant/applicant was denied by and through the authority of State v. Hamilton and similar S.C. Supreme Court cases Cirera 2000 which provide that a hearing must be had to determine a defendants, knowing and intelligent ability to represent his or her self in a court of law.

and.....

... to the record at 1-23-2012 where - as this issue was not properly ascertained and no competency to stand trial was had in effect prior to the court's determinations to represent himself in pro se. The plea entered pursuant to N.C. v. Alford by the applicant is "null" and "void" as the court did not have jurisdiction to sentence the appellant as he possessed no assistance of counsel for his defence.

Pray-ye - for these reasons the court may issue an order granting a summary judgment hearing and or vacate/set aside - judgement a conviction in this case submitted this day of 3-2-2012

Jimmy C. Kendall appellant  
name

Date.. 6-14-2012

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

IN THE SIXTEENTH JUDICIAL CIRCUIT  
COURT OF COMMON PLEAS  
CASE NO.: 2012-CP-46-768

Jimmy Charles Kendall III #319409, )  
Plaintiff/Petitioner, )  
vs. )  
State of South Carolina, )  
Defendant/Respondent, )

ORDER SUBSTITUTING COUNSEL

DAVID HAMILTON  
C.C.P. & G.S.  
YORK COUNTY, SC

2012 MAY 25 PM 3:03

FILED-RECEIVED

IT APPEARS TO THE COURT that Tyler Bathrick, Esquire, of the York County Bar was appointed as counsel to represent the Plaintiff on his Post- Conviction Relief case on April 9, 2012 by the Honorable Lee S. Alford.

IT FURTHER APPEARS that Julia M. Bass, Esquire of the Horry County Bar consents, by her signature below, to assume representation of the Plaintiff's Post- Conviction Relief case currently pending in York County as substitute counsel for Tyler Bathrick, Esquire.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Julia M. Bass, Esquire, shall be substituted as counsel of record for the Plaintiff and that Tyler Bathrick, Esquire, shall be relieved of his obligation to the Plaintiff as previously appointed by the Honorable Lee S. Alford on April 9, 2012.

IT IS SO ORDERED.

Dated:

*April 25, 2012*

*Lee S. Alford*  
Chief Administrative Judge  
Sixteenth Judicial Circuit

I SO MOVE:

*Tyler Bathrick*  
Tyler Bathrick, Esquire

I CONSENT:

*Julia M. Bass*  
Julia M. Bass, Esquire

FILED-RECEIVED  
2013 MAY 9 AM 10:33  
DAVID H. HILLTON  
C.C. CLERK  
YORK COUNTY, SC

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )  
Jimmy Charles Kendall, III, # 319409, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT  
C.A. NO.: 2012-CP-46-076  
  
APPLICANT'S RESPONSE TO  
CONDITIONAL ORDER OF DISMISSAL  
(Request For Hearing)

This matter comes before the Court upon an Application for Post-Conviction Relief filed February 29, 2012.

On April 9, 2012, the Honorable Lee S. Alford appointed Tyler Bathrick of the York County Bar to represent Applicant. On April 25, 2012, Judge Alford signed an Order substituting Julia M. Bass of the Horry County Bar as substitute counsel for the Applicant and relieved Attorney Bathrick of any further duties of representation of the Applicant.

The Respondent filed a Return and Motion to Dismiss on May 15, 2012. The Honorable Judge John C. Hayes, III, signed a Conditional Order of Dismissal on May 21, 2012 granting Applicant twenty (20) days from the date of service of the Order upon him to show cause why the Order should not become final.

The aforementioned Order Substituting Counsel was filed with the York County Clerk of Court on May 25, 2012. On June 21, 2012, Applicant's new counsel received the Conditional Order of Dismissal. Applicant's counsel requested the transcripts from the Applicant's plea hearings and was given an extension of thirty (30) days by Respondent from the date of her receipt of the transcripts to respond on Applicant's behalf to the Conditional Order of Dismissal. Applicant's Counsel received the plea transcripts from Respondent on April 19, 2013.

## PROCEDURAL HISTORY

The Applicant is currently confined in the South Carolina Department of Corrections pursuant to orders of commitment issued by the York County Clerk of Court. The Applicant was indicted during the July 2011 term of the York County Grand Jury for Murder (Indictment # 2011-GS-46-2217). On January 23, 2012, the Applicant appeared *pro se* and pled pursuant to North Carolina v. Alford as indicted to the charge of Murder. The Honorable Lee S. Alford sentenced Applicant to a term of imprisonment of thirty (30) years. The Applicant appealed neither his conviction nor his sentence.

## SUPPLEMENTAL GROUNDS FOR POST-CONVICTION RELIEF

The Applicant comes before this Court and moves to amend and supplement his previous Application for Post-Conviction Relief. In support of his Application, Applicant alleges that the circuit court erred in allowing him to proceed with his pro se plea because his waiver of his right to counsel was not knowingly and intelligently made. The Applicant contends that, under Faretta, in order to establish a valid waiver of the right to counsel it must be established that the accused is aware of his or her right to counsel and of the dangers and disadvantages of self-representation. Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L.Ed.2d 562 (1975); Bridwell v. State, 306 S.C. 518, 413 S.E.2d 30 (1992). The Applicant contends that his decision to proceed pro se was not knowingly and intelligently made as he did not possess an adequate knowledge of the South Carolina Rules of Evidence, South Carolina case law, state statutory laws, the rules of procedure at trial; the legal challenges he could raise and the defenses available to him. The Applicant further contends that he was not adequately informed of and did not understand the dangers and disadvantages inherent in self-representation.

The Applicant alleges that his extreme difficulty in understanding the English language, both spoken and in written form, further demonstrate his inability to knowingly and intelligently waive his constitutional right to counsel. The Applicant asserts that "the record [must] establish [the defendant] knows what he is doing and his choice is made with eyes open." Faretta, 422 U.S. at 835. The Applicant further contends that "the ultimate test of whether a defendant has made a knowing and intelligent waiver of the right to counsel is not the [circuit court's] advice, but the defendant's understanding." State v. McLauren, 349 S.C. at 493, 563 S.E.2d at 348 (S.C. App. 2002). Although a specific inquiry by the judge expressly addressing the disadvantages of a pro se defense is preferred, the ultimate test is not the trial judge's advice but the accused's understanding. Wroten v. State, 301 S.C. 293, 391 S.E.2d 575 (1990). The Applicant asserts that there is nothing in the record which affirmatively shows that he was literate, competent and had sufficient knowledge and understanding of the dangers of self-representation such that his waiver of the right to counsel was a knowing and voluntary exercise of his informed free will.

The Applicant further contends his waiver of counsel was not knowing and intelligently made as he had not received a mental health examination, which examination he had asked his previous counsel to arrange. Applicant contends that a mental health evaluation was necessary in order to address his mental health issues, his need for medication, his competency and his understanding of the legal proceedings. Applicant contends that he and his previous counsel had discussed whether he, Applicant, was subject to physical and mental impairments which might affect his ability to make decisions. The Applicant contends that he did not have a sufficient background to understand the dangers of self-representation as he had been employed as a lawn care worker and had attended public schools only into the ninth grade. The Applicant asserts that he was not apprised of his rights by any other source. Prince v. State, 301 S.C. 422, 392

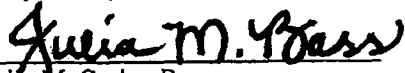
S.E.2d 462 (1990); Wroten v. State, 301 S.C. 293, 391 S.E.2d 575 (1990). The Applicant further asserts his unknowing waiver of counsel was based on what he believes to be mistreatment and neglect by his court-appointed counsel, who failed to obtain a necessary mental health examination; who failed to visit him for months at a time; and who failed to answer his questions, in part due to what Applicant perceived was counsel's overwhelming caseload as a public defender. The Applicant alleges that he is currently receiving medication which has significantly improved his ability to understand, concentrate and manage stressful circumstances. He did not have the advantage of this medication at the time he appeared pro se before the Circuit Court on this charge.

The Applicant contends that there is nothing in the record which indicates the courts considered (1) the defendant's age, educational background, and physical and mental health; (2) whether the defendant was previously involved in criminal trials; (3) whether he knew of the nature of the charge and of the possible penalties; (4) whether he was represented by counsel before trial or whether an attorney indicated to him the difficulty of self-representation in his particular case; (5) whether he was attempting to delay or manipulate the proceedings; (6) whether the accused knew he would be required to comply with the rules of procedure at trial; (7) whether he knew of the legal challenges he could raise in defense to the charges against him; (8) whether the exchange between the defendant and the court consisted merely of *pro forma* answers to *pro forma* questions; and (9) whether the defendant's waiver resulted from either coercion or mistreatment in determining if a defendant had sufficient background to understand the disadvantages of self-representation as outlined in State v. Cash, 309 S.C. 40, 419 S.E.2d 811 (S.C. App. 1992), Bridwell v. State, 306 S.C. 518, 413 S.E.2d 30 (S.C. 1992). Applicant contends that the court's failure to consider these factors was error.

The Applicant moves this Court to dismiss the Conditional Order of Dismissal and to order a full hearing on the merits of his Application for Post-Conviction Relief, as he asserts that he did not possess the skill and experience necessary in order to competently and intelligently choose to waive his constitutional right to counsel and to choose self-representation. He further asserts that he was not aware of the dangers and disadvantages of self-representation, nor could he have known of or appreciated the hazards of proceeding pro se when he appeared in Circuit Court on November 2, 2011, November 29, 2011 and January 23, 2012 regarding his plea. His choice was not made with his "eyes open" as is required under Faretta.

The Applicant further asserts that there exists evidence of material facts not previously presented to and heard by this Court which requires the Court's Conditional Order of Dismissal to be vacated and which requires, in the interest of justice, that he be granted a full hearing on the matters presented in his Application for Post-Conviction Relief.

Respectfully submitted:

  
Julia M. Bass  
1019 24<sup>th</sup> Avenue North, Suite 102  
Mayfair Building  
Myrtle Beach, South Carolina 29577  
(843) 839-2501 Telephone  
(843) 839-2507 Fax  
Attorney for Applicant

May 8, 2013

Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA )  
 COUNTY OF YORK )  
 )  
 )  
 Jimmy Charles Kendall, III, # 319409 )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 SIXTEENTH JUDICIAL CIRCUIT

2012-CP-46-0768

FINAL ORDER OF DISMISSAL

FILED-RECEIVED  
 2013 AUG -1 PM 2:18  
 DAVID HAMILTON  
 C.C.P. & GS  
 YORK COUNTY, SC

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed February 29, 2012. The Respondent (the State) made its Return and Motion to Dismiss on May 15, 2012, requesting that the Application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal dated May 21, 2012, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. The Applicant received a copy of the Conditional Order of Dismissal on June 21, 2012, but did not receive a copy of the Applicant's transcripts until April 19, 2013. The Applicant replied to the Conditional Order of Dismissal on May 8, 2013.

In a document titled "Applicant's Response to Conditional Order of Dismissal," the Applicant argues he is entitled to an evidentiary hearing because he contends his waiver of counsel at the November 2, 2011 hearing was not knowingly and intelligently made. The Applicant further argues the trial court should have conducted a hearing pursuant to Faretta v. California, 422 U.S. 806



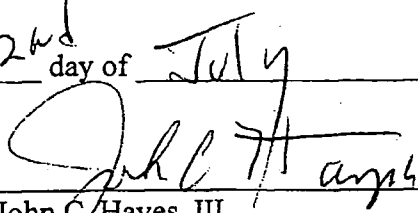
(1975) to determine whether the Applicant knew and understood the dangers of self-representation. This Court has reviewed the Applicant's response to the State's motion to dismiss in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Once the Applicant decided to represent himself, there cease to exist a claim for ineffective assistance of counsel. Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

This Court hereby notifies the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 22<sup>nd</sup> day of July, 2013.

  
 John C. Hayes, III  
 Chief Administrative Judge #2

Sixteenth Judicial Circuit

York, South Carolina.

ARREST WARRANT

J-216499

STATE OF SOUTH CAROLINA  
County/  Municipality of

Fort Mill

THE STATE 201101028

Jimmy Charles Kendall, III  
against

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ SSN: \_\_\_\_\_

Sex: M Race: W Height: 5 7 Weight: 150  
DL State: SC DL #: \_\_\_\_\_

Agency ORI #: SC0460200

Prosecuting Agency: Fort Mill Police Department  
Prosecuting Officer: S. C. Williams - 501

Offense: Murder

Offense Code: 0116

Model/Ordinance Sec: 16-03-0010.0020

This warrant is CERTIFIED FOR SERVICE in the  
County/  Municipality of

I to be arrested and brought before me to be  
healt with according to the law. The accused  
(L.S.)

Signature of Judge \_\_\_\_\_

Date: \_\_\_\_\_

RETURN

A copy of this arrest warrant was delivered to  
defendant JIMMY CHARLES KENDALL  
on 01-26-2011

Signature of Constabular Enforcement Officer \_\_\_\_\_

ETURN WARRANT TO:

York County General Sessions  
1675 York Hwy  
York, SC 29745

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE SOUTH CAROLINA  
County/  Municipality of  
Fort Mill

Personally appeared before me the affiant S. C. Williams

being duly sworn deposes and says that defendant Jimmy Charles Kendall, III  
did within this county and state on or about 01/03/2011

State of South Carolina (or ordinance of  County/  Municipality of Fort Mill)  
in the following particulars:

DESCRIPTION OF OFFENSE: Murder

I further state that there is probable cause to believe that the defendant named above did commit  
the crime set forth and that probable cause is based on the following facts:

That on or about January 3, 2011, the defendant, Jimmy Charles Kendall III, did willfully with malice aforethought, cause the death  
of victim, Linda Lee Hertzog, as a result of asphyxiation. This incident occurring at Lang, Fort Mill, South Carolina,  
and the facts established through police investigation and statement by the defendant.

Signature of Affiant

STATE OF SOUTH CAROLINA  
County/  Municipality of  
Fort Mill

Fort Mill

Affiant's Address 111 Academy Street  
Fort Mill, SC 29715-  
Affiant's Telephone \_\_\_\_\_

DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC  
2012 MAR -2  
CERTIFIED TRUE COPY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that  
on or about 1/3/2011 defendant Jimmy Charles Kendall, III  
did violate the criminal laws of the State of South Carolina (or ordinance of Fort Mill)  
 County/  Municipality of Fort Mill ) as set forth below.

DESCRIPTION OF OFFENSE: Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or  
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of the execution, or as  
soon thereafter as is practicable  
on 01/26/2011

Signature of Issuing Judge  
Peter Joseph Lenzi, Jr.  
Judge Code: 5621

Judge's Address 111 Academy Street  
Fort Mill, SC 29715-  
Judge's Telephone (803)547-2022

Issuing Court:  Magistrate  Municipal

Issuing Court:  Magistrate  Municipal

Issuing Court:  Magistrate  Municipal

Issuing Court:  Magistrate  Municipal

ORIGINAL

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1. Form approved by  
S.C. Judicial Council  
April 21, 2003  
SCCA 516

WITNESSES

FMPD / Williams

DOCKET NO. 2011-GS-46-02217

The State of South Carolina

County of York

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Jimmy Charles Kendall, III

hereby appear in my own proper person and plead guilty to the within indictment or to under NC 15A-101 as charged

Jimmy Charles Kendall, III  
Defendant

ARREST WARRANT NUMBER

J216499

JULY 21, TERM 2011

THE STATE

VS.

JIMMY CHARLES KENDALL, III

Witness  
Paul Wilson Court  
C.C.C. OLS AND G.S. Speid

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

George Williams  
7/21/11

VERDICT

Indictment for

MURDER

Foreperson of Petit Jury

Date:

SC Code: § 16-3-10  
CDR Code: 0116

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF YORK                  )

INDICTMENT

At a Court of General Sessions, convened on July 21, 2011, the Grand Jurors of York County present upon their oath:

**MURDER**

Jimmy Charles Kendall, III, did in York County on or about January 3, 2011, feloniously, willfully and with malice aforethought, kill one Linda Lee Hertzog by means of physically beating and choking her and that the said victim died as a result thereof, all in violation of Section 16-3-10, *Code of Laws of South Carolina* (1976), as amended. The Murder occurred at Lane in the Town of Fort Mill, South Carolina.

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

  
DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF YORK VS. JAIL

INDICTMENT/CASE#: 2011-GS46-02217

STATE Jimmy Charles Kendall III

A/W#: J216499

AKA:

Date of Offense: 1/3/2011

Race: WHITE Sex: M Age: 38

S.C. Code §: 16-03-0010, 0020

DOB: SS#: 2012 MAR - 2

Code #: 0116

Address:

City, State, Zip: FORT MILL, SC 29715

DL#: SID#: SC 0156324

\*CDL Yes No CMV Yes No Hazmat

In disposition of the said indictment comes now the Defendant who was

TO: Murder

SENTENCE SHEET

ORIGINAL

CONVICTED OF or PLEADS

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

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

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

Walter W. Thompson 65118 SC Bar# James Kendall P 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 of \$; plus costs and assessments as applicable\*; the balance is suspended with probation for

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

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 State Department of Corrections. 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 16-25-65 (Criminal 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 GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing

Set by SCDPPPS Recipient: Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund Other:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$180-

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk David Hamilton Court Reporter: Wanda Nelson

Presiding Judge Judge Code: 2113 Sentence Date: 1-23-12