

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County
D. Garrison Hill, Circuit Court Judge

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S.C. Supreme Court

THOMAS GINISKI PIERCE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001818

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

COURT OF GENERAL SESSIONS
2009-GS-23-3739

STATE OF SOUTH CAROLINA,)
vs.)
THOMAS GINISKI PIERCE,)
DEFENDANT.)

TRANSCRIPT OF RECORD
COPY

April 27, 2009
Greenville, South Carolina

B E F O R E:

THE HONORABLE EUGENE C. GRIFFITH, JR., JUDGE.

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

LEIGH B. PAOLETTI, ESQ.
Assistant Solicitor

R. MILLS ARIAIL, JR., ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
	(State's Exhibits)		
S-1	Mental Evaluation.....	3.....	13

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

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P R O C E E D I N G S

(WHEREUPON, State's Exhibit No. 1 was marked for identification only.)

THE CLERK: Your Honor, this is case number 2009-GS-23-3739, the State v. Thomas Pierce. He's indicted and pleading guilty to voluntary manslaughter. He waives the finding of a true bill by the Grand Jury and consents to sentencing on this day.

Raise your right hand, please.

WHEREUPON,

THOMAS GINISKI PIERCE,
after first having been duly sworn, testified as follows:

THE CLERK: State your full name for the record.

DEFENDANT PIERCE: Thomas Giniski Pierce.

THE CLERK: Thank you.

THE COURT: Mr. Ariail, do you represent Thomas Giniski Pierce?

MR. ARIAIL: Yes, Your Honor, I do.

THE COURT: And we've already had a little pre-trial conference in the back. So I'm certain you've explained the charge which is facing him, the punishment it carries, as well as his right to go to trial.

MR. ARIAIL: Yes, Your Honor, I have.

THE COURT: And do you think he understands the elements of this offense, the potential punishment it

1 carries, and such as that?

2 MR. ARIAIL: He does, Your Honor.

3 We've talked in depth in regards to all the specifics
4 of his case.

5 THE COURT: Now, do you believe, based upon your
6 investigation of the facts, that the Solicitor's Office
7 has sufficient evidence which would probably -- or most
8 likely result in a finding of guilt if he were to go to
9 trial?

10 MR. ARIAIL: Yes, Your Honor, I do.

11 THE COURT: And, thus, do you support his decision to
12 plead guilty to voluntary manslaughter today?

13 MR. ARIAIL: I do, Your Honor.

14 THE COURT: Mr. Pierce, I want to ask you a few
15 questions. Tell me, how old are you?

16 DEFENDANT PIERCE: 41, sir.

17 THE COURT: And how far did you go in school?

18 DEFENDANT PIERCE: Twelfth grade.

19 THE COURT: Are you married?

20 DEFENDANT PIERCE: Separated.

21 THE COURT: How many children do you have?

22 DEFENDANT PIERCE: Five.

23 THE COURT: As you stand before me today, do you have
24 any -- in the last 24 hours, have you taken anything, any
25 substance, which would effect your ability to understand

1 my questions today?

2 DEFENDANT PIERCE: No, Your Honor.

3 THE COURT: You're clear headed?

4 DEFENDANT PIERCE: Yes, Your Honor.

5 THE COURT: Now, do you suffer from any type of
6 nervous or physical infirmity, which would effect your
7 ability to understand my questions today?

8 DEFENDANT PIERCE: No, Your Honor.

9 THE COURT: You're ready to go forward?

10 DEFENDANT PIERCE: Yes, Your Honor.

11 THE COURT: Now, the indictment which has been handed
12 up to me says that you, in Greenville County on the 27th
13 day of September, 2006, did willful and unlawfully without
14 malice kill Laquinta Williams by means of shooting her
15 which caused her death, which is in violation of 16-3-50
16 of the South Carolina Code of Laws.

17 Upon presentment today, it's my understanding you
18 wish to enter a plea to voluntary manslaughter; is that
19 correct?

20 DEFENDANT PIERCE: Yes, Your Honor.

21 THE COURT: Now, this indictment has yet to be
22 presented to the Grand Jury of Greenville County; is that
23 right?

24 DEFENDANT PIERCE: Yes, Your Honor.

25 THE COURT: All right. Before I can accept your plea

1 of guilt, I've got to make certain you understand your
2 Constitutional rights to plead guilty. And, in order
3 to do that, I've got to question you a little bit
4 about whether you wish to waive certain rights to your
5 trial.

6 Do you understand that?

7 DEFENDANT PIERCE: Yes, Your Honor.

8 THE COURT: Now, when you plead guilty -- I'm sorry.

9 If you were to go to trial, the State of South
10 Carolina, through the Solicitor's Office in Greenville
11 County, would have the responsibility or the burden of
12 proving your guilt beyond a reasonable doubt.

13 Do you understand that?

14 DEFENDANT PIERCE: Yes, Your Honor.

15 THE COURT: And if the case were called to trial,
16 they would select 12 jurors, who are disinterested and who
17 know nothing of this case. They would sit over in the
18 jury box to consider the facts presented by the Greenville
19 County Solicitor's Office.

20 Do you understand that?

21 DEFENDANT PIERCE: Yes, Your Honor. I understand.

22 THE COURT: And during this presentation of all the
23 evidence through the witnesses, and testimony, hard
24 evidence, whatever the Solicitor's Office has in their
25 file, you'd be allowed to sit with your attorney and

1 listen to all the testimony, to cross-examine the
2 witnesses, if you so pleased, and to present defenses you
3 may have available to you.

4 Do you understand that?

5 DEFENDANT PIERCE: Yes, Your Honor.

6 THE COURT: Now, the State would be responsible for
7 proving your guilt beyond a reasonable doubt. And that
8 is, all 12 jurors would have to unanimously believe and
9 find beyond a reasonable doubt unanimously that you were
10 guilty of voluntary manslaughter.

11 Do you understand that?

12 DEFENDANT PIERCE: Yes, Your Honor.

13 THE COURT: Now, throughout this trial, you'd be
14 allowed to sit there in total silence. You don't have to
15 say a single word in your trial, because you're not
16 responsible for proving anything.

17 Do you understand that?

18 DEFENDANT PIERCE: Yes, Your Honor.

19 THE COURT: Your silence could not be held against
20 you.

21 Do you understand that?

22 DEFENDANT PIERCE: Yes, Your Honor.

23 THE COURT: Now, in order to plead guilty, you must
24 waive your right to a jury trial, waive your right to
25 remain silent, as well as waive all the defenses which you

1 may have.

2 Do you understand that?

3 DEFENDANT PIERCE: Yes, Your Honor.

4 THE COURT: Now, as you stand here before me, do you
5 wish to waive your right to a jury trial?

6 DEFENDANT PIERCE: Yes, Your Honor.

7 THE COURT: Do you wish to waive your right to remain
8 silent?

9 DEFENDANT PIERCE: Yes, Your Honor.

10 THE COURT: And do you wish to waive your right
11 to confront witnesses and present defenses on your
12 behalf?

13 DEFENDANT PIERCE: Yes, Your Honor.

14 THE COURT: Now, additionally, since we talked
15 earlier about your indictment, it's not yet been presented
16 to the Grand Jury of Greenville County, which this
17 indictment is the document which I hold in my hand. Has
18 your attorney explained to you what presentment to the
19 Grand Jury is?

20 DEFENDANT PIERCE: Yes, Your Honor.

21 THE COURT: Do you wish to waive presentment to the
22 Grand Jury and proceed today?

23 DEFENDANT PIERCE: Yes, Your Honor.

24 THE COURT: And you're doing so voluntarily?

25 DEFENDANT PIERCE: Yes, Your Honor.

1 THE COURT: All right. Please give careful attention
2 to the Solicitor as she gives me the facts to support this
3 plea.

4 DEFENDANT PIERCE: Yes, sir.

5 MS. PAOLETTI: Thank you, Your Honor.

6 May it please the Court.

7 THE COURT: Yes, ma'am.

8 MS. PAOLETTI: Just for clarification purposes, we
9 prepared a waiver for voluntary manslaughter for the
10 Defendant to plead to today. He was indicted by the
11 Greenville County Grand Jury for murder. And just for
12 purposes of this plea, we prepared a waiver for him to
13 plead to. So he has been indicted by the Greenville
14 County Grand Jury for murder. And had he elected to
15 proceed to trial, it would have been on the charge of
16 murder today.

17 The facts, Your Honor. On September 27th, 2006, this
18 Defendant and Jarvis Taylor, who's a co-defendant, went to
19 the apartment of the victim, LaQuinta Williams. They went
20 to the apartment off of Winwood Road in Greenville County
21 at the request of Zachary Arnold, who about a week prior
22 had lost a gold necklace at a local nightclub during a
23 fight.

24 Mr. Arnold, who's also charged in this case, learned
25 that the victim's roommate, Sheena Finley, had his

1 necklace. And Mr. Arnold had made several attempts to get
2 the necklace back. Arnold left several voice mails for
3 Finley, and spoke to Ms. Williams as well. Each of his
4 messages became increasingly more threatening. Mr. Arnold
5 was on house arrest himself and was not permitted to leave
6 his house during the nighttime hours.

7 On September 27th, this Defendant, Mr. Pierce, was at
8 Arnold's home in Dixie Circle in Greenville County and
9 overheard Mr. Arnold speaking with someone about the
10 necklace. Mr. Pierce told Mr. Arnold that he would go to
11 the girl's apartment in an attempt to retrieve the
12 necklace for him.

13 Mr. Arnold then provided Mr. Pierce with a .357
14 Magnum loaded pistol, some cash that they wrapped around
15 some torn up paper to give the cash an appearance of being
16 more than what it, actually, was. And Mr. Arnold told
17 Pierce that -- according to Mr. Pierce in his statement to
18 police, "This bitch in Berkley Point got my necklace. Go
19 get it back. Do what you've got to do. And I will take
20 care of you."

21 Jarvis Taylor was instructed by Arnold to ride with
22 Mr. Pierce to the apartment, and to call back and let
23 Arnold know what happened. Mr. Taylor went with
24 Mr. Pierce to the apartment. And while Mr. Pierce went to
25 speak with Finley about the necklace, Mr. Taylor stayed in

1 the vehicle.

2 A short time later, Mr. Taylor told police, in his
3 statement, that he heard a gunshot and Mr. Pierce returned
4 to the car. The two began to leave the apartment complex
5 to return to Arnold's trailer at Dixie Circle. Mr. Pierce
6 told Taylor that he thought he'd shot her. And Taylor
7 immediately called Arnold and told him that Pierce was
8 saying that he had shot the girl in the apartment.

9 When they returned to Arnold's home at Dixie Circle
10 in Greenville, Mr. Pierce returned the gun to Arnold and a
11 fourth co-defendant in the case, Marcus McGee. Taylor --
12 Jarvis Taylor hid Arnold's car at Arnold's request. And
13 two days after the shooting, Mr. Taylor took the .357 and
14 buried the gun. Two days following the shooting,
15 Mr. Arnold and Mr. McGee, also, gave Mr. Pierce cash and
16 crack cocaine, and told him not to talk to the police
17 about the shooting.

18 Mr. Pierce had shot someone that night, and it was
19 Ms. Finley's roommate and friend, LaQuinta Williams. She
20 died as a result of the gunshot wound to her chest through
21 her apartment door. She was 25 years old and had three
22 children.

23 Eventually, both Mr. Taylor and Mr. Pierce gave
24 statements to police about the events surrounding the
25 shooting death of LaQuinta Williams. Taylor took

1 detectives to the gun, which was recovered. Ballistics
2 testing revealed that the gun found and disclosed to
3 police by Mr. Taylor fired the bullet that was retrieved
4 from LaQuinta Williams body at autopsy.

5 Mr. Pierce's statement to police indicates that he
6 accidentally fired the shot that killed LaQuinta Williams.
7 However, the State has an eye witness to the shooting who
8 will testify that Mr. Pierce stepped backwards and pointed
9 the gun at the door and fired. Regardless, the State
10 maintains that the evidence against Mr. Pierce, if a trial
11 were to be held, would support a conviction for murder
12 and, specifically, relies on State v. Wharton. Just for
13 the record, Your Honor, it's 672 SE2d 786, which the State
14 believes would preclude even a jury charge on voluntary or
15 involuntary manslaughter in light of the facts as they
16 would be presented at trial.

17 However, in exchange for his cooperation in the
18 prosecution of the remaining co-defendants in this case,
19 which includes his truthful testimony at trial, the State
20 has agreed to allow the Defendant to plead to voluntary
21 manslaughter with sentencing to be deferred. And any
22 recommendation as to sentence is to be conditioned on his
23 full cooperation and truthful testimony at the trial of
24 any co-defendants. Additionally, Your Honor, other
25 charges are being dismissed as a part of this plea.

1 Your Honor, just for the record, it should be clear
2 that this plea is -- that no part of this plea is intended
3 to suggest that the facts as the State would present them
4 at trial versus Mr. Pierce would prove anything but
5 murder. The reduction in charge and the deferred
6 sentencing is solely in exchange for his truthful
7 testimony against the co-defendants in the case, just for
8 clarity, Your Honor.

9 And the State has had the Defendant's mental
10 evaluation, which the Defense has, marked as State's
11 Exhibit No. 1, and would offer that into evidence for the
12 purposes of this plea that does establish that the
13 Defendant is competent to stand trial.

14 (WHEREUPON, State's Exhibit No. 1 was admitted into
15 evidence.)

16 THE COURT: Thank you, ma'am.

17 MS. PAOLETTI: Thank you.

18 THE COURT: Madam Solicitor, just so I understand the
19 facts, when Mr. Pierce went to the apartment looking for
20 the lady who had the necklace, the lady's roommate was
21 shot through the door?

22 MS. PAOLETTI: Yes, sir.

23 Mr. Pierce knocked on the door. The roommate opened
24 the door. She was -- Mr. Pierce stuck the .357 in through
25 a crack in the door. Ms. Williams was able to shut the

1 door on his arm. He pulled his arm out. And she was able
2 to shut the door and was leaning against it when he fired
3 the weapon and fired through the door through her arm and
4 into her lungs, and she bled out.

5 THE COURT: Thank you, ma'am.

6 MS. PAOLETTI: Yes, sir.

7 THE COURT: Mr. Pierce, did you hear the summary of
8 the facts presented by the State?

9 DEFENDANT PIERCE: Yes, Your Honor.

10 THE COURT: Is that an accurate depiction of the
11 events that night?

12 DEFENDANT PIERCE: Yes, Your Honor.

13 THE COURT: Now, do you understand that the charge of
14 voluntary manslaughter carries more than five years, so
15 you'd be responsible for submitting a DNA sample in
16 compliance with the State data base requirements?

17 DEFENDANT PIERCE: Yes, Your Honor.

18 THE COURT: And this is a most serious offense.
19 Do you understand that?

20 DEFENDANT PIERCE: Yes, Your Honor.

21 THE COURT: And you understand that --

22 This sentence will be deferred, is that my
23 understanding --

24 MR. ARIAIL: Yes, Your Honor.

25 THE COURT: -- that the Clerk recited earlier is

1 different than that.

2 But this sentencing will be deferred until after the
3 testimony regarding the co-defendant, Mr. Zachary Arnold.

4 DEFENDANT PIERCE: Yes, Your Honor.

5 THE COURT: Now, I've been handed to me a copy of an
6 evaluation -- mental evaluation, which was conducted this
7 last January -- a year ago, January 2008.

8 Have you had an opportunity to see this report?

9 DEFENDANT PIERCE: Yes, Your Honor.

10 THE COURT: Has your attorney gone over it with you?

11 DEFENDANT PIERCE: Yes, Your Honor.

12 THE COURT: Do you contest its -- the contents
13 therein?

14 DEFENDANT PIERCE: No, sir.

15 THE COURT: And do you understand what's going on
16 today?

17 DEFENDANT PIERCE: Yes, sir.

18 THE COURT: Have you had enough time to go over all
19 the discovery materials? Because the Solicitor has a
20 large notebook here that's several inches thick. And I'm
21 certain your attorney has received the discovery materials
22 and provided them to you.

23 DEFENDANT PIERCE: Yes, Your Honor.

24 THE COURT: And have y'all had ample time to go over
25 and view all the facts and evidence, which the State has

1 presented?

2 DEFENDANT PIERCE: Yes, Your Honor.

3 THE COURT: Do you need any further time with
4 Mr. Ariail?

5 DEFENDANT PIERCE: No, Your Honor.

6 THE COURT: Any questions he needs to go over with
7 you today about questions I've asked you?

8 DEFENDANT PIERCE: No, Your Honor.

9 THE COURT: Or issues I've brought up?

10 DEFENDANT PIERCE: No, Your Honor.

11 THE COURT: Are you fully satisfied with his
12 assistance that he's provided to you in this matter?

13 DEFENDANT PIERCE: Yes, Your Honor.

14 THE COURT: Okay. I think I've heard enough. I make
15 a finding that in regard to -- I don't have the case
16 number -- I apologize.

17 MS. PAOLETTI: I don't have anything with the waiver
18 number in front of me.

19 Just a moment, Your Honor.

20 THE COURT: That's all right.

21 MS. PAOLETTI: It's 2009 --

22 THE COURT: 2009-GS-23-3739, the State of South
23 Carolina v. Thomas Giniski Pierce for voluntary
24 manslaughter. I find there's a substantial factual basis
25 for this plea presented by the State. I find that

1 Mr. Pierce's decision to enter this plea is both fully and
2 voluntarily made. He's done so with the advice of a
3 competent attorney with whom he's testified under oath
4 that he is completely satisfied. I further find that his
5 waiver -- or right of presentment to the Greenville County
6 Grand Jury has been done voluntarily and with the advice
7 of a competent attorney, also. And I do accept his plea
8 at this time.

9 My understanding, pursuant to the negotiations and
10 the process, is that we will defer sentencing until a
11 later date after the trial of Zachary Arnold, or if that
12 case is resolved by way of plea.

13 MS. PAOLETTI: That's correct, Your Honor.

14 And the fourth co-defendant, Marcus McGee, he was
15 mentioned in the facts. But there is a fourth
16 co-defendant that Mr. Pierce understands that his
17 cooperation is required against as well.

18 THE COURT: All right. Is there anything else --

19 Now, Mr. Pierce, you understand that I have accepted
20 your plea of guilt in this matter for voluntary
21 manslaughter. Do you understand you'll be held until such
22 time as the sentencing is done and the other trial is
23 held?

24 Do you understand that?

25 DEFENDANT PIERCE: Yes, Your Honor.

1 THE COURT: Do you, also, understand that, as a
2 result of this plea, you have a right to appeal your plea.
3 But you have a limited time to do so. And your attorney
4 can explain that to you. Someone must notify you of that
5 right.

6 DEFENDANT PIERCE: Yes, Your Honor.

7 THE COURT: And, Madam Solicitor, I think that it
8 would be appropriate to hear from the victims at the time
9 of sentencing --

10 MS. PAOLETTI: Yes, sir, Your Honor.

11 THE COURT: -- rather than today.

12 MS. PAOLETTI: And I've explained that to them. They
13 simply wanted to be here in support of the State's
14 decision to go forward as we have today, Your Honor. And
15 they are prepared to return and address the sentencing
16 judge at the appropriate time.

17 THE COURT: All right. Is there anything else?

18 MS. PAOLETTI: No, sir, not from the State.

19 THE COURT: I accept your plea.

20 MS. PAOLETTI: Thank you, Judge.

21 MR. ARIAIL: Thank you, Your Honor.

22 THE COURT: And I will hear from you at the time of
23 sentencing, also.

24 DEFENDANT PIERCE: Could I say something?

25 THE COURT: Absolutely.

1 DEFENDANT PIERCE: I would like to apologize to
2 LaQuinta Williams' family for this incident. It shouldn't
3 have happened. And I apologize to my family, too.

4 THE COURT: Very good.

5 Thank you.

6 *****END OF TRANSCRIPT OF RECORD*****
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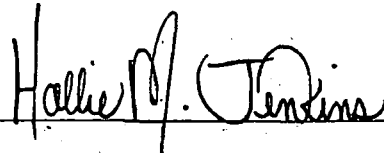
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth 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 captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 27th day of April, 2009.

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

August 25, 2010

A handwritten signature in cursive script, reading "Hollie M. Jenkins", is written over a horizontal line.

Hollie M. Jenkins, Court Reporter

My Commission Expires: 11-17-10

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 THOMAS GINISKI PIERCE,)
)
 DEFENDANT.)
 _____)

2009-GS-23-03739A

TRANSCRIPT OF RECORD

SEPTEMBER 8, 2010
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE ROBIN B. STILWELL

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

LEIGH B. PAOLETTI, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

R. MILLS ARIAIL, JR., ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEXWITNESSPAGE NO.

CERTIFICATE OF REPORTER

16

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(NO EXHIBITS WERE PRESENTED DURING THIS HEARING)

1 **MADAME CLERK:** Your Honor, this is case 2009-GS-23-
2 3739A, the State versus Thomas Giniski Pierce. He's
3 indicted for voluntary manslaughter and has pled to the
4 same.

5 Mr. Pierce, would you please raise your right hand. Do
6 you promise to tell the truth, the whole truth, nothing but
7 the truth so help you God?

8 **MR. PIERCE:** Yes, ma'am.

9 **MADAME CLERK:** Thank you.

10 **THE COURT:** Thank you very much. Okay. All right. I
11 note that this plea has already been accepted. It looks
12 like it was accepted on April 27th, 2009. And sentencing
13 was deferred until such time as the co-defendants came to
14 trial. And I note that that has been resolved.

15 For purposes of the sentencing hearing, Ms. Paoletti,
16 I'd like to hear the facts, keeping in mind, obviously, that
17 I heard a good deal of it yesterday.

18 **MS. PAOLETTI:** Yes, sir, Your Honor.

19 **THE COURT:** Yes, ma'am.

20 **MS. PAOLETTI:** May it please the court. Specifically
21 as the facts relate to Mr. Pierce.

22 **THE COURT:** Yes, ma'am.

23 **MS. PAOLETTI:** On the night of September 27th, early
24 morning hours of September 27th this defendant went to the
25 home of co-defendants Zachary Arnold and Marcus McGee for

1 the purpose of buying crack cocaine. While he was there he
2 had conversation with Zachary Arnold about retrieving the
3 necklace that's been the subject of this case from the
4 victim's apartment and the victim's roommate who had the
5 necklace belonging to Mr. Arnold.

6 Mr. Pierce was given a loaded .357 by Mr. Arnold. And
7 Mr. McGee gave him a cell phone. They also gave him money.
8 I believe he bought crack cocaine before he left. He did go
9 with Jarvis Taylor to the victim's apartment on Glenwood
10 Road in Greenville County, had an altercation with Ms.
11 Williams at the door. The door was slammed. He took a step
12 back and fired the .357 through her apartment door. It went
13 into her arm through and into her lung. She died on her
14 livingroom floor as a result of the gunshot wound.

15 He then left the apartment, went back to Zachary
16 Arnold's home at Dixie Estates where he returned the gun.
17 He was given more cash to keep. He was given more crack
18 cocaine and instructions not to speak to police about what
19 had happened if he was questioned.

20 He went back a couple of days later and was again given
21 cash and crack by Mr. Arnold and Mr. McGee and told again
22 not to talk to police, that they wouldn't have anything on
23 him, that they would protect him. Those are the facts.

24 Your Honor, he did speak to police a couple of times
25 and gave two false statements. Eventually when Captain Ed

1 Blackburn worked with Mr. Pierce, who has a long history,
2 and you'll hear a little bit more about that, they came and
3 spoke to him and he eventually told the truth about what
4 happened.

5 I will say, Your Honor, as far as Mr. Pierce's
6 statement, and there was a lot said about what could be
7 corroborated and what Mr. Crane thought was a lie in that
8 statement, I will tell you that witnesses that I spoke to,
9 and I spoke to every single one except for one who we just
10 couldn't find, and all their stories corroborated what Mr.
11 Pierce told police.

12 THE COURT: Okay. All right.

13 MS. PAOLETTI: He's still willing to cooperate. He met
14 with me as many times as I asked. He was willing to meet
15 with me without his attorney. And Mills, understandably,
16 wanted to be present for those meetings. And they made
17 themselves available, a large part of the reason why I
18 believe Mr. Arnold pled yesterday.

19 THE COURT: Is there a recommendation as to sentencing?

20 MS. PAOLETTI: No, sir, Your Honor.

21 THE COURT: Okay. All right. So I need to scratch
22 through that on this sentence sheet?

23 MS. PAOLETTI: Yes, sir. That's incorrect if it says a
24 recommendation.

25 THE COURT: Okay.

1 MS. PAOLETTI: I'm sorry.

2 THE COURT: That's all right. I just wanted to make
3 sure that I wasn't seeing it wrong. Okay. All right. Mr.
4 Ariail, I'd be happy to hear from you, sir.

5 MR. ARIAIL: Your Honor, in regards to Mr. Pierce, I've
6 been appointed to represent him. And this has been one of
7 the tougher cases I've had dealing with him. He had, as you
8 can see before, a couple of attorneys and was represented by
9 them and we, you know, started having our dealings.

10 From the beginning he has been cooperative to me, has
11 had rational conversations with me, has understood what
12 happened, has told me from the beginning this is the way it
13 happened and has clearly acknowledged and expresses remorse
14 for what he did. There's no question about that. And I'm
15 sitting here, you know, knowing he's in a -- he's in a
16 difficult situation.

17 And I'll tell you a little bit of background with
18 regards to him. He's forty-two, never completed high
19 school. Went to the twelfth grade at JL Mann.

20 He's, as you can see, there's a lot of stuff that he
21 has. Actually while he's been incarcerated here the last
22 four years has had open heart surgery. He is -- when he was
23 thirteen years old was hit by a baseball bat and has a steel
24 plate in his head. And he actually was shot in the eye.
25 He's got a glass eye that he has. He's got a wealth of

1 issues and a lot of physical ailments that he has.

2 And, you know, in regards to him -- the thing I want to
3 draw out the most is when we began on this I sat down with
4 him and explained to him what he'd said in his statement and
5 how -- we went through the whole process of what we would
6 have to prove or what we wouldn't have to prove, what the
7 prosecution would have to prove and what -- how it worked.
8 And the issue is, he said, "you know, I want to do what's
9 right. I shot through the door. I killed Ms. Williams.
10 I'm acknowledging that. And I want to put this behind me."

11 And I said, you know, based on that, based on your
12 statement and all the legal things there, we worked out the
13 plea. He pled to the voluntary manslaughter. And at that
14 time he could have said, you know, I don't want to have any
15 more to do with this, but that's not the way he handled it.
16 He clearly -- there was a lot to this case.

17 And as you probably heard yesterday, I don't know what
18 was represented, but clearly in this case it's our view that
19 Mr. Arnold, Zachary Arnold, who was here yesterday and pled
20 to you to accessory after the -- accessory after the fact,
21 we believe -- and as you can see from the whole testimony,
22 he put in motion a plan to get his necklace back. And he
23 was going to do whatever happened. And Mr. Pierce was the
24 one who, through his own -- own lack of judgment, entered
25 into that plan to get that necklace back.

1 The problem is, my view, and the way I look at it is,
2 and it's no excuse for what was done, but Mr. Arnold took
3 advantage of Mr. Pierce, who has a crack addiction, who
4 clearly was not -- who was down on his luck, having issues,
5 and he put in plan a way to get that bracelet back or get
6 that necklace back, a way to accomplish his plan without him
7 having to go over and do it, without him having to have
8 anything tying him with the situation. And clearly him
9 putting in motion that, my client entered into that venture
10 to go over there and to get that necklace back, which was a
11 stupid thing on his part.

12 But as you can see from the facts, I think what you've
13 heard, he went over there to get this necklace back. He did
14 not intend, nor did he want Ms. Williams to die. He didn't
15 -- he didn't go there saying I'm going to get revenge for
16 you doing this or I'm going to take revenge on any of the
17 individuals in that place. And I know sitting here today
18 that was not his intention.

19 He clearly should not have pulled the trigger on that
20 gun. He should not have gone over there. He should not
21 have tried to do everything that he did. But we cannot go
22 back and take back what has happened. But I know sitting
23 here today that had Zachary Arnold not asked him to go do
24 that he would not have done that and we wouldn't be sitting
25 here today.

1 So with that being said and looking at all the things
2 that we've got he has taken all that into, I guess, his
3 view, I need to get this behind me and said, you know,
4 Zachary Arnold from the beginning said I will protect you, I
5 will take care of you, I will -- you don't have to give a
6 statement, you don't have to do anything. But that's not
7 what he did.

8 He came out and said, you know, I got to, as he'll tell
9 you, I've got to do what's right. I've got to do -- I've
10 got to get this off my chest. And the thing about it is, he
11 did. And it took him three statements to do it.

12 And, you know, that was the -- the issue was -- he
13 finally said, you know, when I sat down with Mr. Blackburn,
14 Detective Blackburn and sat there and I just said I couldn't
15 lie to him, I can't lie anymore, and he gave his statement,
16 which, we believe, is, you know, consistent with exactly
17 what happened, which stands up with what eyewitnesses have
18 seen, with what Jarvis Taylor has said, what other
19 individuals have said. And he came forth with that.

20 As part of that statement and with what he relayed to
21 Mr. Blackburn -- he felt comfortable with Mr. Blackburn.
22 And the issue is, and I can present to the court, he -- Tom,
23 before this time, was a confidential informant for the
24 police department. He worked with them for -- I think it
25 was between fifteen and twenty years that he'd been doing

1 stuff.

2 And I've got a letter from Sergeant Terry Christy and
3 Ed Blackburn. And I spoke with Ed Blackburn yesterday on
4 the telephone. And clearly Ed had no knowledge of what was
5 going on in this case, but he said, you know, when Thomas
6 did -- when he said something was the truth and he led us in
7 that direction, he helped us out. We could -- we could
8 stand by what he said.

9 And in one case he actually helped my father out with
10 the prosecution of Enory Fuller and got a conviction with
11 him. I don't know if you know who that was, but it was a
12 case where he led them to him. It was a situation where Mr.
13 Fuller was robbing different residents and business. And he
14 helped lead them to Mr. Fuller. They then got an arrest
15 based on some of the information they got off of him.

16 So he has done substantial things and helped, as you
17 can see from this letter, has successfully taken several
18 violent offenders off the street. And I'll present that to
19 you so you can take a look.

20 But with that in mind and with the cooperation he's
21 given over time he came and said, "you know, I'm going to
22 help you get a conviction for Mr. Arnold. I'm going to help
23 the Solicitor's Office do what's right because he put the
24 motion in this plan."

25 Now, I understand Mr. Arnold pled to accessory after

1 the fact yesterday, which we were not exactly happy with,
2 clearly, because we think he began this whole thing, started
3 it in motion, but I understand. And he understands that,
4 you know, Mr. Arnold did his part and he's done his part.

5 And he's sitting here today understanding that he's got
6 to face your punishment and he's got to go and face what
7 he's done, for how he's hurt Ms. -- this family, how he's
8 hurt Ms. Williams. There's no question. And he'll sit here
9 today and tell you he deserves to be punished.

10 All that being said, and everything you've seen,
11 everything you've heard about this, he's extremely
12 remorseful. He's extremely sorry. He wants to get this
13 behind him. He understands he's going to serve time.

14 He just simply hopes that based on all the information
15 I've presented, based on your review of the facts of this
16 not being an intentional go-out-and-kill-someone, this was
17 him being involved in a situation which clearly was a
18 situation he should not be involved in -- we're hopeful that
19 you will have some mercy on him, that you will give him the
20 ability -- he's forty-two, give him the ability to get back
21 out and lead a prosperous life or try to, try to get out and
22 do some things.

23 I know he's had issues and confrontations with the law,
24 but we're hopeful that you'll give him the ability to show
25 down the road that he can come back out. He also has some

1 elderly -- parents are having some health issues. And
2 clearly, you know, we want the ability for him to get back
3 out and be able to spend some time with them.

4 And I know it's going to be down the road. I know
5 that, and he knows it too. And he's got to face whatever
6 you decide here today. And I know he wants to address you.

7 Our hope, Your Honor, is that you'll give him a
8 sentence which we believe justifies what he did in this
9 case. And our hope is based on the information you've got,
10 his cooperation, his remorse, his involvement, how it all
11 began with another individual, that you will give him some
12 benefit for that and let him know that you're going to
13 punish him but give him a break for some amount.

14 What we're hoping today, Your Honor, is if you can see
15 fit to give him a sentence of twenty years to be able to
16 allow him to see that, you know, it does help to come
17 forward after this and be able to provide information, but
18 understanding he needs to be punished for what he did. And
19 he can address you. I know he's just got a short thing he
20 wanted to say to the court.

21 **THE COURT:** All right. Mr. Pierce.

22 **MR. PIERCE:** Yes, Your Honor. I'd like to apologize to
23 the family. And I'm very, very, very sorry that this
24 happened. I did not mean to pull the trigger. And I ask
25 that you have mercy and favor on me and not judge me.

1 THE COURT: All right. Mr. Pierce, I appreciate that.
2 Know that although I am the presiding Judge, I don't judge
3 anybody. That's not my -- it's not my place to judge
4 anybody.

5 What I do is I address conduct. And I address conduct
6 in conformity and within the context of the law as passed by
7 the legislature in the State of South Carolina, meaning that
8 I look at the facts and I determine what does the law
9 provide for insofar as sentencing.

10 In this instance I recognize that there were other
11 people involved. I recognize that Mr. Arnold was culpable.
12 And I recognize that there were other co-defendants who
13 share blame. But none of it would have happened had you not
14 decided to pull that trigger. That's just the fact of the
15 matter.

16 I recognize that it was an accident. And I recognize
17 that if you could go back in time you'd take it away. I
18 know that. And I know you're sorry. And I know you're
19 contrite. But your sorrow and your contrition is not going
20 to bring back that young lady.

21 I do recognize that you have worked with the police.
22 And I recognize that you've worked with the police
23 heretofore. I recognize that you've entered a plea and that
24 you entered a plea sometime ago. You should be given
25 consideration for that.

15

1 Mr. Ariail has suggested that it is appropriate that
2 you spend a substantial time in jail, and I agree with that.
3 The sentence of this court is you be committed to the State
4 Department of Corrections for a period of twenty-four years.
5 All right. Good luck to you, sir.

6 MR. ARIAIL: And, Your Honor, and is part of that
7 credit for time served too? I guess that's ---

8 THE COURT: Yes, sir.

9 MR. ARIAIL: I just wanted to make sure ---

10 THE COURT: How much?

11 MS. PAOLETTI: I didn't figure out the days, Your
12 Honor, because he's been back and forth to SCDC, but it's
13 since 10/11/06.

14 THE COURT: All right. I'm going to put in there since
15 10/11/06.

16 MR. ARIAIL: Thank you, Your Honor.

17 THE COURT: All right. Good luck to you.

18 (HEARING ENDED AT 1:53 PM)

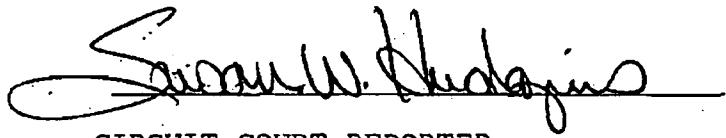
19 (END OF REQUESTED TRANSCRIPT OF RECORD)

1 CERTIFICATE OF REPORTER

2 I, THE UNDERSIGNED, SUSAN W. HUDGINS, OFFICIAL COURT
3 REPORTER FOR THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF
4 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
5 TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
6 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL/HEARING
7 OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT
8 COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 8TH DAY
9 OF SEPTEMBER 2010.

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

12 NOVEMBER 1, 2011

13
14
15 

16 CIRCUIT COURT REPORTER

FORM 5

STATE OF SOUTH CAROLINA)

County of GREENVILLE)

IN THE COURT OF COMMON PLEAS

#201290

Thomas Ginishi PIERCE)

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

v.)

State of South Carolina)

2011-CP-23- 05179

APPLICATION FOR

POST-CONVICTION RELIEF

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS JR.
2011/06/10
A 11:10

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 LEE CORRECTIONAL INSTITUTION
990 WISACKY Highway Bishopville S.C. 29010
2. Name and location of Court which imposed sentence GREENVILLE COUNTY
COURTHOUSE - GREENVILLE S.C. 29601
3. Name(s) of co-defendant(s) (if any) MARCUS McGHEE
ZACHARY ARNOLD, JARVIS TAYLOR
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 010569 warrant # 819819 IND 3039A

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 9-18-2010-24 yrs
- (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
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. _____
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) WAS NOT MADE AWARE OF APPEAL

- (b) COUNSEL FAILED TO INFORM DEFENDANT
 (c) OF THAT RIGHT

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

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
 (b) VIOLATION OF MY 5TH, 6TH, 14TH AMENDMENT
 (c) DUE-PROCESS

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

- (a) SEE ATTACHMENT LINE 10 & 11
 (b) _____
 (c) _____

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

- (a) any petition in a State Court under South Carolina Law? N/A
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? 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. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. N/A
 ii. _____
 iii. _____

- iv. _____
- (c) the disposition thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

NO

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

- (a) which grounds have been presented:

i. NONE

ii. _____

iii. _____

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

i. NONE

ii. _____

iii. _____

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) DEFENDANT WAS UNAWARE OF THE
 (b) APPEALS PROCESS AND WAS NEVER
 (c) INFORMED BY COUNSEL

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

(a) your arraignment and plea? PLEA-YES
 (b) your trial, if any? _____
 (c) your sentencing? ✓ YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. ROMILLS ARIAIL JR.
11 NORTH IRVINE STREET, SUITE 11
GREENVILLE S. C. 29601
 ii. _____
 iii. _____

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

i. GUILTY PLEA & SENTENCING HEARING
 ii. _____
 iii. _____

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

VACATE ON DEMAND FOR NEW TRIAL

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

NONE

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of GREENVILLE)

VERIFICATION

I, Thomas G. Pierce, 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 G. Pierce

SWORN to and subscribed before me this 28
day of July 2011.

[Signature] (L.S.)
Notary Public

My Commission Expires: 5-16-12

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

I, Thomas D. Pierce, 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 D. Pierce
Applicant

SWORN or affirmed to and subscribed before me this
28 day of July 2011.

Sharon Ann
Notary Public

My Commission Expires: 5-16-12

Exhibit A

11) STATE CONCISELY AND IN THE SAME ORDER THE FACTS WHICH SUPPORT EACH OF THE GROUNDS SET OUT IN "10":

(A) COUNSEL WAS INEFFECTIVE FOR THE FOLLOWING REASONS:

1. NOT PETITIONING THE COURTS FOR MY CONFESSION (STATEMENT) TO BE SUPPRESSED
 2. NOT APPEALING APPLICANT'S CONVICTION WITHIN 10 DAYS OF CONVICTION AND/OR NOT NOTIFYING APPLICANT OF HIS RIGHT TO APPEAL HIS CONVICTION.
 3. FOR NOT PETITIONING THE COURTS FOR AN MENTAL HEALTH EVALUATION OR COMPETENCE HEARING BEFORE TRIAL.
 4. FOR NOT ASKING JUDGE TO RECONSIDER SENTENCE AT THE CLOSE OF TRIAL.
 5. FOR INSISTING -N- INSTRUCTING APPLICANT TO PLEAD GUILTY
-

Exhibit A CONTINUED

6. NOT PETITIONING THE COURTS TO SUPPRESS ANY EVIDENCE THAT POLICE AND/OR PROSECUTION MIGHT USE FROM CONFESSION THAT WAS NOT VOLUNTARY.
 7. FOR INSISTING -N- INSTRUCTING APPLICANT TO PLEAD GUILTY TO A CRIME WHERE ATTORNEY KNEW CONFESSION (STATEMENTS) WAS COERCED, INVOLUNTARY MADE UNDER DURESS OF IMPRISONMENT, COUNSEL KNEW APPLICANT WAS PLEADING GUILTY UNKNOWNINGLY AND INVOLUNTARY.
 8. FOR NOT REQUESTING A PRELIMINARY HEARING AND/OR MADE SURE THAT APPLICANT GOT HIS PRELIMINARY HEARING THAT HE HIMSELF (APPLICANT) HAD PUT IN FOR - FILED WITH CLERK OF COURT 10-23-08 3:58 PM.
 9. BY NOT OBJECTING TO APPLICANT PLEADING GUILTY IN FRONT OF 1 JUDGE AND SENTENCED BY ANOTHER.
-

Exhibit B

- 11) STATE CONCISELY AND IN THE SAME ORDER THE FACTS WHICH SUPPORT EACH OF THE GROUNDS SET OUT IN (10):
- (B) APPLICANT'S DUE-PROCESS OF LAW WAS VIOLATED IN THE FOLLOWING WAYS:
1. APPLICANT'S MIRANDA RIGHTS WAS VIOLATED AND THAT HE HAD NOT RECEIVED TIMELY MIRANDA WARNINGS, THAT THE WAIVER OF RIGHTS WAS NOT EXPLICIT, AND THAT NEITHER THE READING OF HIS RIGHTS, NOR THE 15-HOUR POLICE INTERROGATION IN A TINY ROOM WAS VIDEO OR AUDIO RECORDED ON OCT. 11, 2006. ALSO INTERROGATED OCT. 4, 6, 2006 FOR SAME CRIME.
 2. by using CONFESSION (STATEMENTS) THAT HAD BEEN OBTAINED BY COERCION, INVOLUNTARY TO GET DEFENDANT TO PLEAD GUILTY.

Exhibit B

CONTINUED

3. By police using duress of imprisonment, coercion, sleep deprivation, withholding of food until confession violated due-process and while applicant was under heavy mental psychological medication.
 4. For not given Applicant his preliminary hearing
-

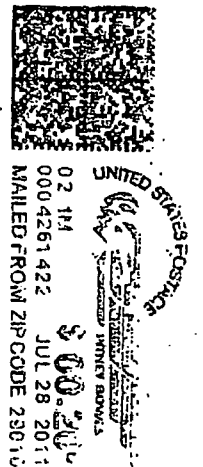
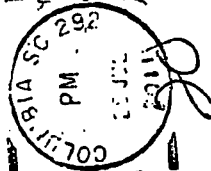
July 27, 2011

DEAR MR. WICKENSIMER,

PLEASE DISREGARD my 1st P.C.R.
APPLICATION DATED 7-26-11, I forgot
to sign the VERIFICATION LINE.
This 2nd P.C.R. Application is signed
CORRECTLY DATE 7-27-11, PLEASE FILE
WITH THE COURT AND SEND ME A
COPY STAMP-DATED-CLOCK. I APOLOGIZE
FOR THE ERROR. THANK YOU FOR YOUR TIME
AND ATTENTION REGARDING THIS MATTER.

Thomas G. Pierce

THOMAS G. PIERCE #201290
 Kershaw South 2118
 Lee Corn. Inst.
 990 Wisacky Hwy
 Bishopville S.C. 29010



MR. PAUL B. WICHENSIMEN
 GREENVILLE COUNTY CLERK OF COURT
 305 EAST NORTH STREET +
 GREENVILLE, SOUTH CAROLINA
 29601

0512310952

WAC I-819819-# Ind. 3739 W

Exhibit A

(CONTINUED)

CIVIL CASE # 2011 CP 2305179

11.) STATE CONCISELY AND IN THE SAME ORDER THE FACTS WHICH SUPPORT EACH OF THE grounds SET OUT IN #10;

(A) COUNSEL WAS INEFFECTIVE FOR THE FOLLOWING REASONS:

10. WAIVED THE DEFENDANTS RIGHT TO A PRELIMINARY HEARING OR FAILED TO DEMAND A PRELIMINARY HEARING IN THIS CASE WHICH WAS CRUCIAL TO THE DEFENSES TO THESE CHARGES IN QUESTION.

11. FAILED TO FULLY PURSUE THE DEFENDANT'S HISTORY OF MENTAL-EMOTIONAL PROBLEMS AND PRIOR DIAGNOSIS AND TO ADDRESS THOSE FULLY IN THE PLEA AND SENTENCING HEARING IN THIS MATTER.

201290

THOMAS G. PIERCE
LEE CORR INST.
BISHOPVILLE S.C. 29010

SEPT. 6, 2011

DEAR MR. WICKENSIMER, PLEASE FILE
WITH THE CLERK OF COURT OFFICE AND THEN
FORWARD TO THE ATTORNEY GENERAL'S
OFFICE, Add to Post-Conviction Application
(Civil CASE # 2011 CP 2305179.) RETURN TO
ME A COPY STAMP-FILE-DATED. THANK YOU
FOR YOUR TIME AND ATTENTION ON THIS
MATTER.

Thomas G. Pierce

Copy mailed to Attorney General / Applicant on <u>Sept 15</u> : <u>2011</u>

Filed P.C.R. Application August 3, 2011 GREENVILLE County
Civil Case # 2011-CP 2305179 Clerk of Court
Warrant # I-819819, Indict. # 010569, 3739A

5 PAGE 2

THE DATE UPON WHICH SENTENCE WAS IMPOSED
AND THE TERMS OF THE SENTENCE:

9-8-2010, 24 YEARS.

I had wrong SENTENCE DATE ON P.C.R.
APPLICATION Filed August 3, 2011, 11:11 AM

THOMAS G. PIERCE # 201290
Kershaw South 2118
LEE Corr. Insti.
990 Wisacky Hwy
Bishopville, S.C. 29010-1775

(AMENDMENT)

2012 JAN 17 PM 2:18

DEC 29, 2011

MR. WICKEN SIMER,

PLEASE FILE both papers with
the clerk office and then forward to the
Attorney General's Office in Columbia, S.C.
I had the wrong SENTENCE date on
P.C.R. Application filed August 3, 2011.
The right SENTENCE date is SEPTEMBER 8, 2011.
PLEASE RETURN TO ME COPIES FILE, STAMP
DATED.

CIVIL CASE # 2011-CP2305179
Warrant # I-819819, indict # 010569, 3739 A

"Sorry for the mistake"

Sincerely,

Thomas G. Pierce # 201290
Kershaw South 2118
LEE CORLE Insti.
990 WISACKY Hwy
Bishopville S.C. 29010-1775

54
STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

THOMAS GINISKI PIERCE, 201290,

Applicant,

- vs -

STATE OF SOUTH CAROLINA,

Respondent,

C/A No: 2011-CP-23-05179

AMENDMENT TO APPLICANT'S
APPLICATION FOR
POST-CONVICTION RELIEF
TO INCORPORATE THE FOLLOWING
CLAIMS FOR RELIEF

I, THOMAS GINISKI PIERCE, the Applicant in the above matter, request this document to be filed within the above Court and become part of the record to those proceedings.

This document contains information and facts concerning issues relevant to the representation of attorney: R. MILLS ARIAIL JR., Esq. of 11 North Irvine Street, Suite 11, Greenville, South Carolina, 29601, being ineffective and prejudicial in the criminal trial of the above Applicant, pursuant to SCRCiv.P. 71.1.

11...STATE CONCISELY AND IN THE SAME ORDER THE FACTS WHICH SUPPORT EACH OF THE GROUNDS SET OUT IN (#10).

1.] Attorney R. Mills Ariail Jr., rendered constitutionally defective assistance by failing to adequately investigate and present mitigating evidence of my dysfunctional background during penalty phase, was deficient performance.

2.] Trial counsel's failure to present mitigating evidence, because I under duress confessed to the crime, was not a

Copy mailed to

Attorney General

on 5 / 31 / 12

[1]

reasonable strategic decision.

3.] Failure to adequately investigate and present mitigating evidence prejudiced me (Applicant).

4.] ~~Counsel fail and was ineffective to not petition and/or motion the court for an private and/or independent mental evaluation or neutral expert witness for competency to stand trial or criminally responsibility, after the State's mental health forensic - USC School of Medicine Psychiatrist, Dr. Richard L. Frierson, had found Applicant competent to stand trial, February 6, 2008, to said charge.~~

5.] Counsel's failure and ineffectiveness to present evidence of Applicant's alleged mental illness as mitigating factor in sentencing phase of murder prosecution, based on counsel's mistaken belief that he could not present such evidence because trial court had found applicant competent to stand trial, was deficient performance, as required to establish defendant's ineffective assistance claim. U.S.C.A. Const Amend. 6. COUNCIL -vs- STATE, 380 S.C. 159, 670 S.E..2d 356 (2009) and ROSEMOND -vs- CATOE, 393 S.C. 320, 680 S.E.2d 5 (2009).

6.] Counsel failed to fully pursue the applicant's history of mental-emotional problems and prior diagnosis and to address those fully in the plea hearing, and sentencing.

7.] Counsel waived the defendant's right to a preliminary hearing in this case which was crucial to the defense to these charges in question....

8.] Counsel was ineffective for not requesting a preliminary hearing and/or make sure that Applicant got his preliminary hearing that he himself had motion the court - filed with clerk of court on October 23, 2008., at 3:58 p.m.

9.] Counsel was ineffective for not appealing Applicant's conviction within 10 days of conviction and/or not notifying Applicant of his right to appeal his conviction.

** NELSON -vs- PEYTON, 415 F.2d 1154 (4th Cir.1969).

Indigent defendant has right to be informed of appeal and manner and method for taking appeal.

** CHERRY -vs- STATE, 386 S.E.2d 624 (1989).

10. Counsel was ineffective for not petitioning the Court for my confession (statement) to be suppressed.

11.] Counsel was ineffective for insisting -n- instructing Applicant to plead guilty to a crime where (Attorney Mr. Ariail, Jr.) knew confession was coerced, involuntary made under duress of imprisonment, Attorney knew Applicant was Pleading guilty unknowingly and involuntary.

12.] Counsel was ineffective for not petitioning the Court to suppress any evidence that police and/or prosecutor might use from confession that was not voluntary.

13.] Applicant's DUE PROCESS of LAW violation: Applicant's Miranda Rights was violated and that he had not received timely Miranda warnings, that the waiver of rights was not explicit, and that neither the reading of his rights, nor the 15 hour police interrogation in a tiny room full of police was video or audio recorded on. October 11, 2006.

14.] DUE PROCESS was violated - by using confession of Applicant that had been obtained by coercion, involuntary to get Applicant to plead guilty.

15.] By police using duress of imprisonment, coercion, sleep deprivation, withholding of food until confession violated DUE-PROCESS and while Applicant was under heavy mental

psychological medication: Seroquel for paranoid schizophrenic.

16.] Applicant's DUE PROCESS was violated where police promised not to seek life in prison and get food from McDonalds if applicant confessed to crime.

** JESSE BLACKBURN -vs- ALABAMA, 361 U.S. 190, 80 S.Ct. 274, 4 L.ed.2d 242 (1960).

** Mrs. Ruth Stevens, only stated to detectives that she saw a short black man dressed in black with black hat. This not an eyewitness, she does not positively identify anybody. Counsel R. Mills Ariail, Jr., didn't interview this so-called eyewitness, therefore he was ineffective. C/A No: 2011-CP-23-05179.

17.] Counsel failed and was ineffective for not investigating and/or interviewing witnesses who detectives stated in the arrest warrant (I-819819), that they had multiple EYEWITNESSES statements and cell phone records placing the accused as the shooter and driver of a vehicle described by witnesses, at scene of crime. But through my MOTION OF DISCOVERY RULE 5, the statements never existed. Trial counsel was ineffective for not interviewing these said witnesses. Neither did he do any background checks to see if any (they) existed, neither did he gather any statements or request the N.C.I.C. Sled report of said witnesses. Counsel was ineffective for not requesting PHOTO-LINE UP.

** Counsel withheld discovery favorable to defendant, that which the outcome to show that it was never any eyewitnesses or phone calls that existed, in the fact that the warrant (I-819819), was obtained under false findings - doesn't have identify voice recording.

18.] Counsel failed to raise any argument against the manner in which the confession was obtained.

19.] Counsel failed to move for mistrial, if counsel would have

moved for mistrial and the said evidence was showed to be false and if it had - was brought to the Courts attention that no recorded voice calls of Applicant or witnesses existed, it is a strong possibility that a judge couldn't entertained it.

The Supreme Court has stated, ~~it will not entertain anything~~ that is not presented to them, so was ^{counsel} ineffective and deficient performance for not bringing said witnesses - evidence to Court's attention.

20.] Applicant contest that his "MIRANDA RIGHTS" was violated not explicit due to him not knowing them. Also he was Questioned for this said charge (#I-819819) 3 times without having an attorney present, after requesting one.

21.] Applicant is contesting that his attorney, Mr. R. Mill Ariail, Jr. was ineffective because he was informed by me that he was interrogated by Greenville Police some 15 hrs., without water, restroom or food until compel to confess. Applicant didn't know what to do due to the pressure of the police. I informed Mr. Ariail, that the police started making promises to me.

The applicant was hungry, tired and under psychotic mental medication (Seroquel), unable to function properly, after long travel from Kirkland R&E Institution in Columbia back to Greenville Law Enforcement Center, only to be questioned a 3rd time.

22.] Counsel was ineffective, because counsel prejudiced applicant by instructing -n- insisting Applicant to plead guilty, knowing that once he plead guilty, he would give up some rights of the United States Constitution: (e.g. 1... to face his accusers; 2... waive the right to be judged by his peers; 3... also, the judge would not have to look any further into my case, because it would be no further findings needed). Attorney Mr. R. Ariail was in partnership to conspire and aid the State, because

Mr. Ariail knew according to RULE 11, once I plead guilty, it would be extremely hard to give the Plea back, after RULE 11 has been read.

Attorney Ariail failed to explain to me the consequences of pleading guilty to said charge, therefore he was ineffective.

The facts show in this case that the defendant was interrogated at the Greenville Police Station and that there are significant discrepancies between the Applicant's version of what transpired at the interrogation and the officer's version. Under these circumstances, where the very content and substances of the interrogation are in dispute, the Applicant is at a significant disadvantage in demonstrating the facts.

In any swearing match between the police officers and a defendant, the officers invariably (always) receive the benefit of the doubt because of the official status. This advantage to the State is particularly unfair in situations such as the interrogation in this case, when the state itself has the means and ability to faithfully record everything which transpires through video taping or audio tape recording. Yet, in this case, the officers admitted that they made a conscious decision not to tape record the interview, despite the fact that the equipment to make a recording was available.

This conscious decision to make sure that the Court and the Jury would not hear the actual statements of the Applicant is a violation of his right to due-process under the Fifth and Fourteenth Amendments of the United States Constitution and under Article 1, § 3 of the South Carolina Constitution.

** Northwestern Reporter 2nd Series, held that pursuant to Supreme Court Supervisory Power to ensure fair Administration of Justice, all custodial interrogation including any information about rights, any waivers of those rights, and all questioning occurs at place of detention, and if Law Enforcement Officers fail to comply with recording requirements, any statements made

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in response to interrogations may be suppressed at trial.

** Pacific Reporter 2nd Series, custodial interrogation in place of detention, including giving of accused's "MIRANDA RIGHT" must be electronically recorded to satisfy the due-process requirements. Recordings must clearly indicate that it recounts entire interview and an explanation should be given at the beginning and end, before and after.

** MINNESOTA -vs- SCALES, 518 N.W. 2d (1994).

** ALASKA -vs- STEPHAN 711 P.2d 1156 (1985)

ATTENTION: ... Interrogated October 11, 2006, 8:30 am until 11:30 pm, the extended long interrogation "incommunicado - not allowed to communicate with others, without access to family or legal counsel is coercive and violative of due-process," -- in a tiny room with only police officer's present, some 15 hrs. Withholding of food, water, and restroom until compelled to give some kind of confession, -- say anything to help detectives solve crime.

"THE GEORGETOWN LAW JUDICIAL PROCEDURE JOURNAL 2011 Edition," states - that police interrogation of a suspect in custody threatens the Fifth Amendment Right privilege against "SELF-INCRIMINATION, by providing police officers with an opportunity to:... 1... Actively compel confessions through overly coercive interrogation; or,... 2... Passively compel confession by exposing suspect to the inherently coercive environment, created by custodial interrogation.

Greenville Police interrogators falsely told Applicant, that they had a eyewitness or witnesses who saw they say Applicant commit crime. The police misconduct in misrepresenting evidence is a deplorable practice but none the less, condones the fruits of these acts.

** Attorney R. Mills Ariail Jr., was ineffective and let my due-process be violated for not Petitioning the Courts and not requesting for the Grand Jury Impanelment Documents that states pursuant to U.S.C. Amend. 14, S.C. CODE 1976, § 14-7-1700, §1720, and §1770, SCRCrim.P. RULE 5 and GEORGE ALLEN EVANS -vs- STATE, 363 S.C. 495, 611 S.E.2d 510 (2005) (Grand Jury impanelments documents may be released to a defendant prior to trial upon a timely request or to an Applicant in a PCR Proceeding, the stage Applicant is presently in. As an Applicant, I'm allowed to obtain and use the impanelment documents in preparing a defense and ensuring protection of my due process rights.

** NOTE **..... Greenville County Public Defender, (Timothy Sullivan), filed MOTION FOR MENTAL EVALUATION that took place at, S.C. Department of Mental Health, CBHS Forensic Center, 7901 farrow Road, Columbia, South Carolina, 29203-3220, ORDERED by the Honorable J. Mark Hayes II, January 30, 2008.

Evaluated by three doctors:

- 1.] Dr. Richard L. Frierson, Professor of Psychiatry
U.S.C. School of Medicine; S.C. Dept. of Mental Health
Forensic Evaluation Center.
- 2.] Jamae Campell, MD., Resident of Psychiatry
U.S.C. School of Medicine
- 3.] Randi Pickens, LSW-CP

On February 6, 2008, I was found competent to stand trial. Attorney Timothy Sullivan did not get a MOTION to the Courts for an independent and/or neutral expert witness for mental evaluation.

Attorney Tim Sullivan was "RELEASED" as my counsel by Judge Larry Patterson and I was appointed new counsel (R. Mills Ariail

6
Jr.), January 2009, who refused to request for an neutral expert witness for an independent mental evaluation or criminal responsibility, because of pressured confession.

MENTAL HEALTH HISTORY

1. Marshall I. Pickens Behavioral Center, child name: Thomas Giniski Fleming. Greenville Hospital system, 701 Grove Road, Greenville, SC.
2. GREENVILLE County Detention Center Mental Health.
3. Greenville County School District "Special Education."
4. Patric B. Harris Psychiatric Hospital, Anderson, South Carolina.
5. South Carolina Department of Corrections
6. Tom J. Ervin, Attorney at Law, P.O. Box 10693, Greenville, South Carolina, 29603
7. Greenville County - Social Security Administration Office.
8. Greenville County Mental Health
9. Greenville Memorial Hospital System.

BACKGROUND....

As a child I was committed to Marshal I. Pickens Behavioral Center, 701 Grove Road, Greenville, SC. 29601 (child name Thomas Giniski Fleming). While there treated for A.D.H.D. with methylpenidate (Ritalin).

Prescribe Mental Health Medication while incarcerated at Greenville County Detention Center, October 11, 2006 until placed in the S.C. Dept. of Corrections on September 8, 2010 - 20 McGee St. Greenville, SC. 29601.

~~Attended Special Education classes in Greenville County School District.~~

Committed to Patrick B. Harris Psychiatric Hospital in Anderson, South Carolina.

The year 2006-07 incarcerated in S.C. Dept. of Corrections, evaluated by Mental health Psychiatrist, DR. Michael J. Kirby, whom diagnosed me as "MI-2 serious Mental illness - Psychosis due to traumatic brain damage." Have diagnosis in Dr. Kirby's handwriting. SEE: EXHIBIT "A" Attached.

Mental Health Evaluation Records, from the attorney who helped me get my Mental Health SSI monthly check processed; Mr. TOM J. Ervin, Attorney at Law, P.O. Box 10693, Greenville SC. 29603. Phone No: 864-235-6254 and Greenville County Social Security Administration Office - Pelham Road.

Greenville County Mental Health.

At the age of 9 years old, I was hit in the left side of my head with a Aluminum Baseball Bat that caused severe swelling of the brain, and cracked skull that resulted in plate being put in the left side of my head. The head injury caused severe damage to my motorskills, functioning, paranoia, depression, suicidal thoughts, mental and emotional problems. In my late 20's, I started to use drugs.

At 31 years of age, I was shot point-blank in the forehead

(Exhibit
A)

CIVIL CASE
#2011-CP-23-05179
THOMAS G. PIERCE #201290-
I-819819
010569

DR. Kirby - psychiatrist of S.C. DEPT. OF CORRECTION
This is my diagnosis in DR. MICHAEL J. KIRBY handwriting HE GAVE
ME AT LEE C.I. 2006-07 MENTAL EVALUATION.

Psychosis due
to Traumatic Brain
Damage.
MI-2 Serious
mental illness.

with a large caliber handgun and the bullet tore out the structure of my right eye, that resulted in doctors having to remove my eye completely. The Bullet is lodged in my head on top of my right temple.

Any kind of hard blow to my head, could cause bullet to move and possibly cause major damage.

Based on a battery of test by Nero-Surgeons, they stated they believe that there was evidence of a little brain disfunction, particularly in the front lobe.

After this incident my mental and emotional problems got worse and so did my drug addition.

** Attorney R. Mills Ariail was ineffective for waiving my Preliminary Hearing without my consent, violating my DUE-PROCESS Protection. 14th U.S.C. Amendment.

Attorney R. Mills Ariail, Jr., was ineffective for allowing my DUE-PROCESS to be violated. Why?.... A Preliminary Hearing in a criminal case is primarily for the accused benefit and is in the nature of a personal right or privilege which may be waived, either expressly or by implication - but it must be waived voluntarily.

I (Applicant), signed a request for NOTICE OF A PRELIMINARY HEARING, on October 11, 2006, the same day I was Arraigned on Warrant No: I-819819, before Magistrate Judge Jennifer Presnell #6362 with then attorney Timothy Sullivan whom was later released from my case by Chief Judge Larry R. Patterson, on October 17, 2008.

I (Applicant), filed (Pro Se) a MOTION FOR REQUEST FOR PRELIMINARY HEARING, to the Greenville County Clerk of Court, stamped filed on the 23rd day of October, 2008.

In January, 2009, I was appointed counsel R. Mills Ariail, Jr., who I immediately notified by phone and in person, that I

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had filed a motion with the Court, requesting a Preliminary Hearing. Attorney Ariail, stated to me that I didn't need a Preliminary hearing, because I confessed to the crime.

Attorney R. Mills Ariail, Jr., was ineffective and let my ~~DUE PROCESS~~ be violated, for not objecting to Applicant being instructed and insisting, pressure to plead guilty in front of one Judge and was sentenced by another Judge.

Attorney R. Mills. Ariail, Jr., instructed and insisted that I plea and be sentenced by same Judge, a lenient judge that Mr. Ariail says he knows personally, the Honorable Eugene C. Griffith, who presided over my plea hearing, April 27, 2009, the day I was scheduled to go to trial, but the Honorable Robin Stilwell who sentenced my co-defendant Zachary Arnold, in the middle of his trial who all of a sudden Plead Guilty, on September 7, 2010.

Also sentenced me on September 8, 2010, the next day. Is this a conflict of interest on Judge Robin Stilwell's behalf.

THE REMAINDER OF THIS
PAGE LEFT BLANK INTENTIONALLY

RESPECTFULLY SUBMITTED

Thomas Linsb's Peice # 201290

This 22 day of MAY, 2012.

68

Thomas G. Pierce
DOC No: 201290
Lee Correctional Institution
Kershaw Unit, Room No: 2118
990 Wisacky Highway
Bishopville, South Carolina

29010

May 22, 2012.

Honorable Paul B. Wickensimer
Clerk of the Court of Common Pleas
Greenville County Courthouse, Room No: 224
305 East North Street.
Greenville, South Carolina 29601-2120

NOW COMES the Applicant, Thomas G. Pierce, #201290 to move the Court by way and through my attorney, Ms. Caroline M. Horlbeck, Esq., at 101 Whitsett Street, Greenville, South Carolina, 29601

RE: COPIES OF AMENDED P.C.R. Issues to Civil Case No: 2011-CP-23-05179, that was sent to the State Attorney General's Office from the Greenville County Clerk of Court's Office, dated September 15th and November 3, 2011.

My concern is that I was not provided with a copy showing that all parties was served with a copy of my Amended P.C.R. Issues. I am unaware if the Attorney General's Office received it. Also, I'm petitioning and requesting the Greenville County Clerk of Court's Office, that it be filed, documented that these P.C.R. Issues (Amended), I submitted on September 15th and November 3rd, of 2011, and all ineffective issues by way and through my Attorney, Ms. Caroline M. Horlbeck, I the applicant submitted, Pro Se.

I request that (All) P.C.R. Issues to Civil Case No: 2011-CP-23-05179 and P.C.R. briefs be placed on Court Record, so that it will be reserved for later review proceedings to be readdressed through the Court of Appeals, etc... if necessary.

Last but not least I'm asking to be served with a filed stamp

copy, for my personal review. As a matter of personal records, SCRCiv.P., RULE 71.1, state that all amended P.C.R. issues be made before or on the date of Evidentiary Hearing.

~~I'm ignorant to the Law and I have no communications, --~~
~~whatsoever, with my appointed counsel.~~ I just want to make sure all of my issues to Civil Case No: 2011-CP-23-05179 are submitted prior to my hearing.

Thank you for your time and attention on this important matter.

Sincerely

Thomas G. Pierce 5-22-2012

Thomas G. Pierce
DOC No: 201290
APPLICANT.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2011-CP-23-5179
COUNTY OF GREENVILLE	)	
	)	
Thomas Giniski Pierce,	)	
S.C.D.C. No. 201290,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief (PCR) application filed August 3, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Applicant waived presentment to the Greenville County Grand Jury for the charge of voluntary manslaughter (2009-GS-23-3739A). R. Mills Ariail, Jr., Esquire represented the Applicant.

On April 27, 2009, the Applicant pled guilty to voluntary manslaughter before the Honorable Eugene C. Griffith. Sentencing was deferred to a later date. On September 8, 2010, the Honorable Robin B. Stilwell sentenced the Applicant to twenty-four (24) years imprisonment. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, and the sentencing transcript.

II.

In his application for post-conviction relief¹ the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "Not petitioning the courts for my confession (statement) to be suppressed."
 - b. "Not appealing Applicant's conviction within 10 days of conviction and/or not notifying Applicant of his right to appeal his conviction."
 - c. "For not petitioning the courts for an mental health evaluation or competence hearing before trial."
 - d. "For not asking judge to reconsider sentence at the close of trial."
 - e. "For insisting-N-instructing Applicant to plead guilty."
 - f. "Not petitioning the courts to suppress any evidence that police and/or prosecution might use from confession that was not voluntary."
 - g. "For insisting-N-instructing Applicant to plead guilty to a crime where attorney knew confession (statements) was coerced, involuntary made under duress of imprisonment, counsel knew Applicant was pleading guilty unknowingly and involuntary."
 - h. "For not requesting a preliminary hearing and/or made sure that Applicant got his preliminary hearing that he himself (Applicant) had put in for- filed with Clerk of Court 10-23-08 3:58pm."
 - i. "By not objecting to Applicant pleading guilty in front of 1 judge and sentenced by another."
2. "Applicant's Due-Process of law was violated"
 - a. "Applicant's Miranda Rights was violated and that he had not received timely Miranda warnings, that the waiver of Rights was not explicit, and that neither the reading of his rights, nor the 15-hour police interrogation in a tiny room was video or audio recorded on Oct. 11, 2006. Also interrogated Oct. 4, 6, 2006 for same crime."
 - b. "By using confession (statements) that had been obtained by coercion, involuntary to get defendant to plead guilty."
 - c. "By police using duress of imprisonment, coercion, sleep deprivation, withholding of food until confession violated due-Process and while Applicant was under heavy mental psychological medication."

¹ The Applicant filed subsequent amendments to his PCR application on September 15, 2011 and November 3, 2011.

d. "For Not given Applicant his Preliminary hearing."

For purposes of this return, Respondent interprets all allegations as ineffective assistance of counsel.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at

2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

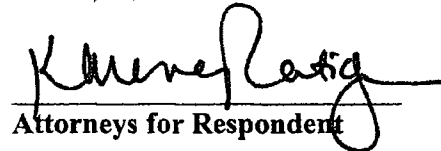
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

December 30, 2011

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

2011-CP-23-5179

THOMAS GINISKI PIERCE, 201290

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

Respondent.

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

Thomas Giniski Pierce, 201290
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010

DATED this 30th day of December, 2011.


 Judy A. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS
2011-CP-23-05179

THOMAS GINISKI PIERCE,
APPLICANT,)

vs.)

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA,
RESPONDENT.)

ORIGINAL

June 19, 2013
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

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

BRIAN P. JOHNSON, ESQ.
Attorney for the Applicant

KAREN C. RATIGAN, ESQ.
Assistant Attorney General

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

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

Page No.

(AW) THOMAS GINISKI PIERCE:

Direct Examination by Mr. Johnson.....4
Cross-Examination by Ms. Ratigan.....19
Redirect Examination by Mr. Johnson.....24

(RW) MILLS ARIAIL:

Direct Examination by Ms. Ratigan.....26
Cross-Examination by Mr. Johnson.....36

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
	(Applicant's Exhibits)		
A-1	Amendment.....4		25
A-2	Letter (undated).....13		25
A-3	Letter dated 3/30/09.....24		25

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

P R O C E E D I N G S

THE COURT: This is 2011-CP-23-5179, Thomas G. Pierce v. State of South Carolina. Mr. Pierce is present with his lawyer, Mr. Johnson.

And, yes, ma'am, Ms. Ratigan.

MS. RATIGAN: Thank you, Your Honor.

May it please the Court.

This is the case of Pierce v. State. Mr. Pierce waived presentment on the charge of voluntary manslaughter. He was represented on that charge by Mr. Ariail. On April 27th of 2009, he pled guilty to voluntary manslaughter before Judge Griffith. The sentencing was deferred to a later date.

On September 8th of 2010, Judge Stilwell sentenced him to 24 years imprisonment. He did not file an appeal.

I would note that we have members of the victim's family that are seated behind me. They're here to observe today. And we, also, have Mr. Ariail here. So the State is ready to proceed.

THE COURT: Mr. Johnson.

MR. JOHNSON: Thank you, Your Honor.

If I may proceed, I'd like to call my first witness.

THE COURT: Yes, sir.

MR. JOHNSON: I'd like to call Mr. Pierce to the stand.

1 THE COURT: Okay. Mr. Pierce, come around.

2 THE CLERK: Mr. Pierce, please, place your left hand
3 on the Bible and raise your right hand, as best you can.

4 WHEREUPON,

5 THOMAS GINISKI PIERCE,
6 after first having been duly sworn, testified as follows:

7 THE CLERK: Thank you.

8 Please state your full name for the record.

9 THE WITNESS: Thomas Giniski Pierce.

10 THE CLERK: Thank you.

11 You may be seated.

12 MR. JOHNSON: I would like to have this marked.

13 (WHEREUPON, Applicant's Exhibit No. 1 was marked for
14 identification only.)

15 DIRECT EXAMINATION

16 BY MR. JOHNSON:

17 Q Mr. Pierce, you did prepare a document in support of
18 your claims against Mr. Ariail; is that true?

19 A Yes, sir.

20 Q I'm about to hand you what's marked as Court's [sic]
21 Exhibit No. 1. Is that that document?

22 A Yes, sir.

23 Q And you have that document in front of you?

24 A Yes, sir.

25 MR. JOHNSON: And, Ms. Ratigan, I believe you have a

1 copy.

2 BY MR. JOHNSON:

3 Q And this document was, actually, filed with the Clerk
4 of Court at one point; is that right?

5 A Yes, sir.

6 Q Mr. Pierce, you have filed an application for PCR
7 based upon ineffective assistance of counsel; is that
8 true?

9 A Yes, sir.

10 Q All right. Let's go over your claims. And what I'll
11 do is we can refer to your document in order to go along
12 those specific claims.

13 Your first claim is that you state that Mr. Ariail
14 was -- gave you ineffective assistance of counsel; is that
15 right?

16 A Yes, sir.

17 Q Okay. Let's go over those ways. What is the --
18 number one, did you have any issues with the evidence that
19 you felt that Mr. Ariail should have challenged?

20 A Yes, sir, my confession.

21 Q Your confession. What about the confession should he
22 have challenged?

23 A Sir, I was held in a tiny room for 15 hours by
24 Greenville City Police. They had come and got me from R&E
25 Kirkland Institution in Columbia. I was up under psych

1 medications for paranoid schizophrenia. And it was a long
2 ride back. And they didn't want to give me no restroom
3 break or food until I made some kind of confession.

4 Q Had you spoken with them before?

5 A Yes, sir.

6 Q When did you speak with them before approximately?

7 A October the 11th.

8 Q What year?

9 A 2006.

10 Q Okay.

11 A And I'll say September of 2006. I know it was on
12 three occasions.

13 Q Three occasions?

14 A Yes, sir.

15 Q So let's start with the first occasion, how did that
16 transpire?

17 A Well, they talked to me for about an hour or two, and
18 let me go. I was on the street. The second time, the
19 same thing happened. The third time, I happened to go to
20 the Department of Corrections for a violation of
21 probation.

22 And once I got to the Department of Corrections, they
23 come and got me a third time. And each time, I did ask
24 for a lawyer to be present. And the confession was
25 neither video or audiotaped. I don't think I really

1 understood my Miranda rights. I just think that the way
2 they got the confession was wrong.

3 Q So when they pulled you, you stated they held you for
4 15 hours?

5 A Yes, sir, in the Greenville County Law Enforcement
6 Center upstairs in the detective division.

7 Q So they took you from where you were at Kirkland and
8 brought you back to Greenville?

9 A Yes, sir.

10 Q Okay. And then, at that point, you got back to
11 Greenville. This is a 15-hour time period that you're
12 referring to?

13 A Yes, sir. They picked me up at 7:00 that morning
14 from Columbia. I was booked into the Greenville County
15 Detention Center at 11:35 that night.

16 Q Now, you stated that you asked for counsel. Do you
17 remember when you asked for counsel?

18 A On all three occasions, sir.

19 Q Okay. Now, on this last occasion, that's the
20 occasion where the confession in this matter was given; is
21 that right?

22 A Yes, sir.

23 Q And, on this occasion, did you ask for counsel before
24 or after you gave this confession?

25 A Throughout the interrogation. And they was like, you

1 don't need no counsel. We know you.

2 Q And who is "we"?

3 A Detective Few -- no, excuse me, Detective Flavel and
4 Detective Conroy.

5 Q Okay. And why did they say they knew you?

6 A Well, I had been an informant for 20 years with their
7 boss, Lieutenant Ed Blackburn and Terry Christy
8 [phonetic].

9 Q Okay. So, at that point, they told you that you
10 didn't need an attorney. How many times do you estimate
11 that you asked for an attorney?

12 A Approximately three times, maybe four.

13 Q And you did ask for an attorney before you gave the
14 confession?

15 A Yes, sir.

16 Q Okay. Now, did you sign a Miranda waiver?

17 A Like probably three or four hours into the
18 interrogation.

19 Q And after which point, did you, again, ask for an
20 attorney?

21 A Yes, sir.

22 Q Okay. Now, at that point in time, you stated that
23 you may have been under the influence of a drug. What was
24 that drug?

25 A Seroquel. It's for paranoid schizophrenia.

1 Q What sort of effects did the Seroquel have on you
2 personally?

3 A It's a mind-altering drug. It changes the chemicals
4 in the brain, the front lobe of the brain. It can cause
5 dizziness, light-headedness, blurred vision.

6 Q Okay. Now, how long have you suffered from mental
7 illness?

8 A Since I've been -- I was hit in the head when I was
9 13 years old with a baseball bat, and ever since then.
10 That was probably 1981 or 1982.

11 Q And so that's about 24, 25 years at that point in --

12 A Yes, sir. And I have a history of in and out of
13 mental hospitals.

14 Q Okay. Now, during this 15-hour time period, did
15 they -- did the officers ever give you any food, or water,
16 or anything of that nature?

17 A Not until I confessed, sir.

18 Q So after -- you're stating that after you confessed
19 is when they fed you?

20 A Yes, sir, from McDonalds. They gave me food from
21 McDonalds. Detective Flavel had an officer go purchase
22 food from McDonalds for me.

23 Q Now, did you and your attorney, Mr. Ariail, discuss
24 these issues as you're portraying them to the Court today?

25 A Yes, sir. I told him that. And he said, Well, you

1 done confessed, it don't make no difference.

2 Q Okay. Did you discuss the admissibility of those --
3 of your confession at trial, if you were to go to trial?

4 A Would I be able to discuss it?

5 Q Did you discuss it with Mr. Ariail?

6 A No, sir, I didn't. When I was -- when I went to my
7 plea hearing, I was told by Mr. Ariail -- he insisted and
8 he instructed me to say yes to all of the judge's
9 questions.

10 Q Okay. So you're stating here today that Mr. Ariail
11 told you what to say at the plea hearing?

12 A He insisted.

13 Q Okay. Now, why is it that you followed along with
14 that?

15 A I didn't know no better.

16 Q Okay. Were you, also, being treated for the same
17 issues as prior with mental health -- with mental history?
18 Were you being treated for those at the time of -- well,
19 first of all, let's be clear. There are two sets of
20 pleas; is that correct?

21 A Yes, sir. I pled April 27th, 2009. And I was
22 sentenced on September 8th, 2008.

23 Q Now, can you tell the Court why they did it that way?

24 A It was told to me that I was supposed to testify at
25 my co-defendant's trial, Zachary Arnold. Well, Mr. Ariail

1 told me that -- go ahead and plead guilty and I'll get you
2 sentenced in front of Judge Eugene C. Griffith, Jr., who's
3 a close friend of mine. He's a golf buddy of mine. And
4 I'll get you 15 years. So I went for that.

5 Q Okay. So you stated to the Court that you were told
6 you would get 15 years?

7 A Yes, sir.

8 Q Now, when you went before Judge Griffith, you,
9 obviously, were not sentenced to time at that point?

10 A No, sir. It was deferred to a year later.

11 Q Okay. Now, when you were brought back a year later,
12 what was the circumstances of that proceeding?

13 A Well, my -- the day before I got sentenced, the
14 Honorable Robin Stilwell was in the trial of my
15 co-defendant, Zachary Arnold. And for some reason,
16 Zachary Arnold pled guilty in the middle of the trial.
17 That was September 7th, 2008. And September 8th, 2008,
18 the next day, Robin Stilwell, the same judge who heard my
19 co-defendant's trial, sentenced me.

20 Q Do you feel that you were prejudiced by that specific
21 issue?

22 A Of course. Mr. Stilwell said that, Ms. Paoletti, I
23 have heard the facts of this case, remember, the day
24 before, so you ain't got to go into detail. And I felt
25 like that prejudiced me. If he didn't know the facts

1 until probably that day and his first time meeting me, it
2 would have been a different outcome.

3 Q Now, let's go back to the plea before Judge Griffith.
4 As understand it, one of your claims is that you didn't
5 understand the maximum and minimum sentences of your
6 charges; is that true?

7 A Exactly. It was never explained to me. The
8 Honorable Eugene C. Griffith didn't even explain it to me.

9 Q Can you go -- can you portray for the Court what
10 exactly happened per the transcripts that you were given,
11 or do you need --

12 A As I can recall, Judge Griffith said, you know, your
13 punishment carries a minimum of five years and you can
14 submit to DNA testing. And my lawyer should have told me
15 that, but my lawyer didn't.

16 They had a pre-trial meting before I even come into
17 the courtroom. And I don't even know what that was all
18 about. I was never told about that. And it's not in the
19 transcript. And I think if they had a meeting before I
20 come in the courtroom about me, it should be in the
21 transcript and I should know about it.

22 Q Okay. Now, you just stated to the Court that -- you
23 said the Judge told you that it was a minimum of five
24 years, and you would be submitted to DNA testing?

25 A No. It can carry five -- as low as five years, and

1 you can submit to DNA testing.

2 Q Was a maximum sentence ever portrayed to you?

3 A No, sir. There was no maximum sentence ever told.

4 Q Is that something that you were aware of despite the
5 Judge never addressing it with you?

6 A No, I wasn't.

7 Q So you didn't know what the maximum sentence was?

8 A No, sir. I have a letter from my lawyer. And you
9 have that letter that he says that you ought to go ahead
10 and just plead straight up. Ms. Paoletti is not going to
11 guarantee no number. We'll just see what she does after
12 your testimony against your co-defendant.

13 And I, also, asked Mr. Ariail -- in 2008 in October,
14 pro se, I put in for a preliminary hearing on my charges.
15 Well, in January of 2009, I get Mr. Ariail appointed to
16 me. And I tells [sic] him about the preliminary hearing.
17 And he says, You don't need no preliminary hearing, you
18 need to confess. And it's found with the Clerk, the Clerk
19 of Court of Greenville County.

20 MR. JOHNSON: I would like to have this marked.

21 (WHEREUPON, Applicant's Exhibit No. 2 was marked for
22 identification only.)

23 BY MR. JOHNSON:

24 Q Mr. Pierce I'm about to show you what's going to be
25 marked as Applicant's Exhibit No. 2.

1 I'm going to ask you if you recognize this?

2 A Yes, sir.

3 Q What is it?

4 A That is my motion to have a preliminary hearing for
5 the following charges, the following three charges that
6 were pending against me at the time.

7 Q Okay. Now, you just briefly touched upon it, but did
8 you personally waive that right to a prelim, or did
9 someone else do that on your behalf?

10 A I didn't waive it. My attorney must have waived it.
11 Because he told me if I pled -- if I confessed to the
12 crime, there's no need for a preliminary hearing. I
13 haven't waived -- I didn't waive nothing.

14 Q Okay. So you would have preferred to have a
15 preliminary hearing?

16 A Yes, sir. Because let me state that if -- without my
17 confession, there was no evidence to my crime at all.

18 Q Okay. I'd, also, like to go to the plea itself.
19 Now, we just discussed you were sentenced originally by
20 Judge Griffith -- well, you were -- your plea was accepted
21 by Judge Griffith, and you were sentenced by Judge
22 Stilwell?

23 A Yes, sir.

24 Q Now, another one of your claims is you stated that
25 Mr. Ariail didn't present certain issues to the Court at

1 the time of your plea that could have helped you. Can you
2 portray those to the Court?

3 A I think he should have brought to the Court's
4 attention my mental health illness background. I think
5 that would have been important to the Court to know. I
6 was found competent by Dr. Frierson of the South
7 Carolina -- the University of South Carolina Medical
8 School. And I felt like Mr. Ariail should have got a
9 neutral expert witness to challenge that competency that
10 Dr. Frierson had diagnosed me of.

11 Q Now, with regards to the plea itself, do you think --
12 are you asserting that he should have made a point to tell
13 the Judge that history, and that it could have assisted
14 you in some fashion?

15 A Yes, sir.

16 Q Can you, please, portray to the Court how you think
17 that would have worked, or how you would propose doing it?

18 A My mental health history, the hurt that's been done
19 to my body as far as being hit in the head, shot in the
20 face, a bullet still lodged in my head. That contributes
21 to my mental illness.

22 Q So let me slow you down. So you're stating that you
23 had been shot previously in the past as well?

24 A Yes, sir. I was shot in the face and the bullet tore
25 my eye out, and it's still lodged in my temple.

1 Q And how long ago did this happen?

2 A That was in 1999.

3 Q And this is in addition to what happened in 1983 with
4 you being hit?

5 A Yes, sir.

6 Q Okay. And then how long have you been seeing mental
7 health people?

8 A All my life. As a child, I was in Marshall Pickens
9 Behavior Center for a period of three to five years placed
10 on psych medicine. And from there on, just in and out of
11 psych hospitals.

12 Q And is it your testimony today that this was not
13 brought to the sentencing judge's attention?

14 A Not at all.

15 Q Did you ever have discussions with Mr. Ariail? Was
16 he aware of these issues?

17 A Yes, sir. And he was like, that don't matter, you
18 done confessed.

19 Q Okay. Now, did you speak with Mr. Ariail after you
20 had been sentenced?

21 A Yes, sir. And he never made me -- he just told me,
22 you got 24 years, be happy with that, and good luck.

23 Q Okay.

24 A There was no mention of no appeal, or what can I do
25 to challenge that sentence, nothing. He just left me in

1 the dark.

2 Q If you were to have spoken with him regarding an
3 appeal, what would you have wanted to do?

4 A I would have wanted an appeal.

5 Q Do you know based upon what circumstances you would
6 have wanted an appeal?

7 A Reconsideration of the sentence.

8 Q Okay. Well, you wanted a reconsideration of the
9 sentence, or you wanted that in addition to an appeal, or
10 you wanted both?

11 A Both.

12 Q You wanted both?

13 A Yes, sir.

14 Q Okay. And your motion to reconsider, you wanted it
15 to be based upon your mental health history that was --

16 A And his promise that I would get 15 years.

17 Q Okay. Now, with regards to an appeal, what legal
18 issue would you have wanted to bring to the Court's
19 attention on appeal?

20 A I don't know that much about the law. I just -- I
21 would have asked him to explain it to me.

22 Q Okay. But you never had these conversations --

23 A I never had that conversation, so I was never made
24 aware.

25 Q Now, I'd like to go back a little bit. Now, you

1 stated that you want -- you would have wished for
2 Mr. Ariail to have challenged the confession?

3 A Yes.

4 Q Okay. Now, is there another -- is there any other
5 pieces of evidence that you thought he should have
6 challenged with regards to the evidence against you?

7 A Yes. The police had told me that they had an
8 eyewitness, a Ruth Stevens to the crime. And in her
9 statement, Ruth Stevens says that, I saw a black male
10 dressed in all black stuck back and -- short in the
11 door.

12 Well, when I told Mr. Ariail about it, he was like,
13 Well, she's saying that's you. That's not saying that's
14 me. She's saying she saw a short black man. He should
15 have showed her a photo lineup and told her to pick out a
16 person who you think, or whatever, did this. Because the
17 police say you're an eyewitness. That's not an
18 eyewitness.

19 Q So you're stating that he should have investigated
20 that issue further?

21 A He should have investigated, yes, sir. But his main
22 thing was, you confessed, there's nothing I can do, just
23 go ahead and plead. I'll get you 15 years.

24 MR. JOHNSON: Mr. Pierce, please, answer any
25 questions that Ms. Ratigan has for you.

CROSS-EXAMINATION

BY MS. RATIGAN:

Q So how many meetings would you say you had with Mr. Ariail before you pled guilty, Mr. Pierce?

A He come to see me several times in the detention center.

Q Okay. So y'all would have meetings at the detention center?

A Well, we had a meeting, also, one time with Ms. Paoletti and the detectives over in LEC to discuss if I was to go to trial and Zachary Arnold was to go to trial what I was supposed to say to the Court.

Q Okay.

A -- to help convict him.

Q So when you would have these meetings with Mr. Ariail, did you give him your version of what had happened that night, your story?

A Yes, ma'am.

Q Okay. And when you had meetings with him, would you review the State's evidence, the discovery materials?

A Part, he had at one time. And he said he'd have to get back with me for the second part and -- which he did. But there was no discovery about what the police said that they had tape recordings, they had an eyewitness that saw me at the crime. And I think that was very important. He

1 should have -- this so-called eyewitness tape recorder [sic]
2 and let me hear it.

3 Q So you would have reviewed things like the police
4 report, the supplemental report, the autopsy, your
5 statement, y'all looked at all that stuff?

6 A Yes, ma'am.

7 Q And you did go over your statement with Mr. Ariail?

8 A Yes, ma'am.

9 Q And you told him what you told the Court today that,
10 you know, you were held for a long time, denied food,
11 denied water? You told all of that to Mr. Ariail?

12 A Yes, ma'am.

13 Q And I think your testimony was he, basically, said it
14 didn't matter because you had confessed. Does that sound
15 right?

16 A Yes, ma'am. Well, he wrote a letter telling me we
17 might can challenge it. And then he said, well, I don't
18 know, it's best for you to plead straight up. If my
19 lawyer had liked [sic] to have put in an exhibit to the
20 Court, I mean -- wouldn't it be good to put it on record?

21 Q But when you were talking to Mr. Ariail, did he kind
22 of communicate to you that this confession was really
23 going to hurt your case?

24 A Sort of. But, again, ma'am, what -- my confession
25 and the way I was pressured into it, the State didn't have

1 no evidence.

2 Q I understand. But he told you that regardless, this
3 looked really bad that there was a confession?

4 A Yes, ma'am.

5 Q So are you saying today that you're innocent?

6 A I didn't say that.

7 Q Okay. Just that the State didn't have any evidence
8 against you except for this confession, is that what
9 you're saying?

10 A I was pressured into confessing to a crime.

11 Q When did Mr. Ariail tell you that you would get 15
12 years if you pled guilty? Do you remember?

13 A Right after the meeting with me, him, Ms. Paoletti,
14 Detective Few, and Detective Conroy at the Greenville
15 County Detention Center -- I mean, law enforcement center.

16 Q Okay. Well, you pled guilty on April 27th of 2009.
17 Was it around that time? Was it much further in advance?
18 Do you remember when that meeting was?

19 A It was probably a month or so before then.

20 Q Okay. And your testimony is, basically, Mr. Ariail
21 said if you go ahead and plead in front of Judge Griffith,
22 if you'll go ahead, I'll get you that 15 years?

23 A Yes, sir [sic]. Because they was golfing buddies.
24 And he's a lenient judge.

25 Q Okay. Did he ever show you anything in writing like

1 a letter or an e-mail from the State saying that the State
2 was going to offer you 15 years?

3 A No. I just went on his word.

4 Q He just said that he would get you that 15 years?

5 A Yes. The only thing he showed me was a letter he
6 said that Ms. Paoletti said just -- she's not going to
7 offer no number. That's just -- we'll go with your
8 testimony and we'll take it from there.

9 Q Okay. So he showed you a letter from the State that
10 said she's not going to make an offer?

11 A No. He wrote that to me in this letter.

12 Q Okay. I got you.

13 Now, when you went to plead and were sentenced later,
14 the State made a comment that there was no kind of
15 sentence recommendation. Do you remember that?

16 A (There was no response.)

17 Q I think it was at the sentencing hearing.

18 A No. What happened is Robin Stilwell said, I see the
19 State has got a recommendation on my plea sheet. And she
20 said, No, Your Honor, that's an error. Those might not
21 have been her direct words, but he said something about
22 it, Judge Stilwell.

23 Q Okay.

24 A Because he thought it was a recommendation.

25 Q Got you.

1 A As a matter of fact on that sentencing sheet, it
2 should show that it's marked, but scratched over.

3 Q Okay. Well, why didn't you ever tell Judge Stilwell
4 that Mr. Ariail had promised you that you would get 15
5 years?

6 A Well, he insisted and instructed me to say yes to all
7 the judges answers [sic], period.

8 Q And your testimony today is that he never brought up
9 an appeal at all, like he just never even mentioned it?

10 A No, ma'am.

11 Q All right. And you don't exactly know what you
12 wanted to have appealed, you just know you wanted an
13 appeal?

14 A Well, he should have explained to me that I had that
15 option.

16 Q Okay.

17 A I mean, he's my attorney. I don't know nothing about
18 that. He should have told me that I had an option for
19 that.

20 MS. RATIGAN: That's all I have, Your Honor.

21 THE COURT: Redirect?

22 MR. JOHNSON: Briefly, Your Honor.

23 THE WITNESS: You are who, Your Honor?

24 THE COURT: Sir?

25 THE WITNESS: You are who?

1 THE COURT: I'm Gary Hill.

2 THE WITNESS: Okay. I just wanted to know.

3 THE COURT: That's fine, yes.

4 THE WITNESS: Thank you.

5 THE COURT: Go ahead.

6 MR. JOHNSON: I'm just waiting to have her --

7 MS. RATIGAN: I'm looking at this letter real quick,
8 Judge.

9 THE COURT: Where are you now? At Lee?

10 THE WITNESS: Yes, sir, in Bishopville, South
11 Carolina. It's about two and a half hours away from here.

12 REDIRECT EXAMINATION

13 BY MR. JOHNSON:

14 Q Mr. Pierce, you just stated that there was a
15 letter that was sent to you by Mr. Ariail. Is that that
16 letter?

17 A Yes, sir. And it's got his office heading and his
18 name at the top.

19 Q And is it signed by Mr. Arial?

20 A Yes, sir.

21 MR. JOHNSON: I'd like to have this marked.

22 (WHEREUPON, Applicant's Exhibit No. 3 was marked for
23 identification only.)

24 MR. JOHNSON: And, Your Honor I'd like to enter all
25 of these exhibits into evidence at this time.

1 MS. RATIGAN: I have no objection, Your Honor.

2 THE COURT: They're in evidence.

3 (WHEREUPON, Applicant's Exhibit Nos. 1, 2, and 3 were
4 admitted into evidence.)

5 MR. JOHNSON: I have no further questions.

6 THE COURT: All right. Mr. Pierce, you can step
7 down, sir.

8 THE WITNESS: Thank you kindly.

9 MR. JOHNSON: Mr. Pierce, that's theirs now.

10 THE WITNESS: Sir?

11 MR. JOHNSON: The exhibits all stay in the courtroom.

12 (Pause.)

13 MR. JOHNSON: Your Honor, that concludes the
14 Applicant's case.

15 THE COURT: Ms. Ratigan.

16 MS. RATIGAN: Thank you, Your Honor.

17 We call Mr. Ariail.

18 THE CLERK: Mr. Ariail, raise your right hand and
19 place your left hand on the Bible.

20 WHEREUPON,

21 MILLS ARIAIL,

22 after first having been duly sworn, testified as follows:

23 THE CLERK: Thank you.

24 Please state your name for the record.

25 THE WITNESS: Mills Ariail.

DIRECT EXAMINATION

BY MS. RATIGAN:

Q Mr. Ariail, do you recall representing Mr. Pierce on this charge?

A Yes.

Q And were you appointed, or were you retained?

A I was appointed.

Q And did you file Brady and Rule 5 motions?

A I did.

Q Did you receive those materials from the State?

A Yes. I think I received them from the State. And, also, he had, I think, two appointed attorneys before me. So I got some material from them and, also, discussed the case with them. I think it was Chase Harbin and Tim Sullivan.

Q Did you review the discovery materials with Mr. Pierce?

A Yes, in depth.

Q Did he tell you kind of his version of events?

A Yes. We discussed all the discovery materials. And then the relevant portion that I discussed with him was his, I guess, interview with Detective Flavel, Detective Blackburn. I think it was Detective Conroy that was in there, too, at the time, as to his -- how this -- how the events transpired.

1 Q So you did discuss with Mr. Pierce kind of the
2 circumstances surrounding the interrogation and
3 confession?

4 A Yes. We went over all that. We went over all the
5 individuals that were involved. And we went back and
6 forth in regards to his statement, and the voluntariness
7 of it, and whether or not he invoked his right to counsel.

8 Q Did you speak to the officers involved?

9 A I did.

10 Q And after speaking to the officers involved and
11 speaking to Mr. Pierce, did you believe there was a valid
12 challenge to the voluntariness of the confession?

13 A I guess there were two things I looked at when I went
14 through it. One was the question of whether or not he was
15 put in a room and not given the ability to get out, not
16 given any food. I didn't have anything that showed that.
17 And, actually, I don't even -- when I discussed it with
18 him, I don't think that was an issue.

19 Because what had happened in this case was he had
20 talked with Detective Flavel at one point in time. I
21 think it was on October 5th of 2006. He was being held
22 for a probation, I think, violation. And he said I wanted
23 to -- actually, he said I want an attorney, or I want to
24 talk to Detective Blackburn during that time. It was part
25 of one of the statements.

1 So that's when he came back from SCDC and Detective
2 Blackburn was there. And he provided his statement at
3 that time. And that's when he signed the Miranda -- the
4 waiver and everything of that nature.

5 And I discussed it with him in regards to the
6 invocation of his right to counsel and then his beginning
7 to speak again and having a conversation with him. We
8 went through all of that. I, actually -- I think we went
9 over the research that I had found and potential
10 likelihood of when...

11 Q In your opinion, would you have had a valid basis to
12 challenge the voluntariness of the confession?

13 A I, certainly, thought that we had an argument. I
14 told him I didn't -- I mean, I could never give him a
15 guarantee as to whether or not we were going to win it.

16 The only -- the other issue I had was that was not
17 the whole evidence in this case. There were accounts from
18 other individuals, I think, co-defendants. There was one
19 that was a Jarvis Taylor, I think, was the individual that
20 had transported Mr. Pierce to the location. He was
21 waiting to provide testimony. There were other
22 individuals involved, along with an eyewitness that saw
23 him there.

24 Also, the key individual that had sent Mr. Pierce
25 over there to get this necklace was still involved. There

1 were other individuals which I -- you know, if they
2 testified -- that's what I told him that this -- even if
3 his -- you know, all this is suppressed, then we still
4 have the issue we have to face with the other testimony.

5 Q So would you have explained to him kind of the impact
6 that the confession had on the case?

7 A Sure, I did.

8 Q And you went through the discovery with him. So he
9 was aware there were these other co-defendants and an
10 eyewitness. Y'all talked about all that?

11 A Oh, there's no question about that. It was the one
12 thing we discussed in detail, all the other individuals
13 and whether or not they were credible, what information --
14 you know, he provided a bunch of information about those
15 individuals. Some ladies -- I think Honey. There was
16 another individual that was involved who was -- witnessed
17 all of this that kind of transpired.

18 Q Now, Mr. Pierce testified that an eyewitness -- I
19 believe he named her as Ruth Steven, his contention that
20 she wasn't an actual eyewitness. Do you have any
21 recollection of what her statement was, or what her
22 testimony would have been?

23 A My recollection and going back through the file, I
24 think she was in the hallway. And he acknowledged in, I
25 think, his confession that there was an individual there

1 who came out of one of the other doors and had seen him.

2 The question, I think, we went back and forth with
3 from the beginning was what type of clothing, the things
4 she saw, all of that nature, which Mr. Pierce testified I
5 didn't have any -- I know we could have probably argued
6 some of this stuff he was saying at trial. But I thought
7 she was -- that was going to be up to a jury whether to
8 hear that and make their determination on it, whether they
9 thought she -- they found her credible.

10 Q Was there any further investigation you could have
11 gone down with the eyewitness?

12 A There was nothing that I saw at the time that I could
13 do in regards to that. And I don't think that was -- from
14 his standpoint was one of the things that we really talked
15 about too much, or I saw anything else we could do with
16 that.

17 Q Okay. Now, when you reviewed the charge with him, I
18 believe the transcript stated, at one point, he had
19 originally been indicted for murder; is that correct?

20 A Yes.

21 Q But y'all decided to waive him -- waive presentment
22 on a separate voluntary manslaughter charge?

23 A Yeah. The way this worked and what I remember was we
24 prepared this up to the Friday before trial. I still
25 didn't know, I think, going into the weekend whether or

1 not we were going to have that.

2 So I had prepared and we had made a decision to go
3 forward and were going to, you know, make all these
4 decisions. I think he decided during the weekend that he
5 wanted to plead guilty. We had discussed and I think I
6 sent him a letter before that indicating what they were
7 looking for in the voluntary manslaughter. I did not put
8 in my letter, as I see, the terms that it carried.

9 But I had, clearly, told him that -- I mean, he
10 already knew he was serving, you know, potentially 30
11 years for the murder. And we discussed the potential, you
12 know, range he was looking at of five to 30. And
13 understanding -- I put in my letter that I see here, I
14 told him there were no guarantees in regards to what he
15 was going to get, and it was solely going to be based off
16 of, you know, the judge making a decision after hearing
17 the testimony and his testimony at trial.

18 Q So you did explain to him the sentence range on
19 voluntary manslaughter?

20 A Oh, I, certainly, did.

21 Q Had you, also, explained to him the sentence range on
22 murder?

23 A Yes, I did.

24 Q Did Mr. Pierce tell you that at the time of the
25 confession he had been taking something called Seroquel?

1 A I went back -- I cannot recall if he did say that. I
2 know that -- you know, we went back and forth in regards
3 to that. And that was not one of our -- I mean, I think
4 the only issue that he had in regards to the confession
5 was being in the room, being locked up, or being there for
6 a long point of time and not being fed. Seroquel never
7 came into our evaluation. And I did not see anything that
8 supported that as a means of trying to get it suppressed.

9 Q In the plea transcript, it notes he had been
10 evaluated for competency. Is that something that you had
11 requested, or had that been done by one of his prior
12 lawyers? Do you remember?

13 A I went back and looked at that. I think Tim Sullivan
14 was the one that was cc'd on the mental evaluation. I
15 think that was -- and I can't remember if Tim was the
16 first attorney and Chase was the second attorney.
17 Somebody requested it. I looked at it.

18 And it clearly says he's competent to stand trial and
19 understood. And at no point during my communications with
20 Mr. Pierce did I ever feel that he did not understand what
21 was going on, or had any issues understanding where he --
22 what he faced.

23 Q Did he share with you that he had a history of mental
24 illness and psychiatric treatment?

25 A I think we discussed some of that.

1 Q Did he ever -- did you and he ever discuss the idea
2 of getting a defense expert to challenge his competency?

3 A No, we did not.

4 Q Mr. Pierce stated that he filed a pro se request for
5 a preliminary hearing. Do you recall ever discussing that
6 with him?

7 A Yeah. And I went back through my files. And when I
8 got on this case, I think -- let's see. I think this was
9 October 17th, 2008, was when that was filed. I got it in
10 January, I think, of 2009 was when I was appointed.

11 I don't recall a -- you know, any discussion in
12 regards to this. I know that Mr. Pierce filed -- and I've
13 got a -- there was a voluminous amount of motions that he
14 filed pro se that I got over 100, I think, that he had
15 filed. I don't remember speaking with the clerk in
16 regards to a prelim or discussing it with him. I don't
17 know if it was ever set, or if it was waived, or anything
18 of that nature. But I didn't -- certainly -- I mean,
19 it was sent by him. I don't know if they
20 communicated with him or copied my name on it. I just
21 don't remember.

22 Q And -- but there wasn't a prelim, to the best of your
23 recollection?

24 A To the best of my recollection, I did not attend a
25 prelim. And I don't have any notes that I did.

1 Q Did you ever tell Mr. Pierce that if he were to plead
2 guilty before Judge Griffith that he'd get a 15-year
3 sentence?

4 A Never.

5 Q Was there any kind of offer from the State in this
6 case?

7 A I think the offer was to plead straight up to
8 voluntary manslaughter.

9 Q Did you ever make any kind of promises or hold out
10 hope of any particular sentence that Mr. Pierce would
11 receive?

12 A No. And I, specifically, said that in my -- I think
13 I said I can't tell you what the sentence will be in my
14 letter. Because they were going to defer sentencing
15 until after Mr. Arnold's trial. And it was all based
16 upon his testimony and other things we were going to
17 submit.

18 One of the things that he wanted me to submit on his
19 behalf was that it was -- clearly, that he had helped law
20 enforcement beforehand, Detective Blackburn, some of these
21 other individuals, which we did at that later date.

22 Q When you were kind of preparing Mr. Pierce for the
23 plea hearing, did you instruct him on how to answer the
24 questions?

25 A I never instruct anybody on how to answer questions.

1 Q And, in terms of an appeal, did you ever discuss with
2 him appealing the guilty plea?

3 A I don't remember any discussion in regards to
4 appealing the guilty plea. I mean, he knew clearly going
5 in it what we were looking for. And I guess -- he pled
6 guilty. And then he was sentenced later -- I think a year
7 later, or somewhere close to that. Clearly, after the
8 first one, we did not discuss it because we were waiting
9 for that.

10 After the sentencing, I don't even remember -- I
11 remember a discussion. I knew -- he knew going into it
12 that he was looking at potentially 30 years, you know.
13 Clearly, this is a lot of time for him. He's had some
14 heart issues, other medical issues. But we never
15 discussed after that to appeal it, or any issues that we
16 could appeal.

17 Q And so along those lines, did you ever have a
18 conversation with him about filing a motion to reconsider
19 the sentence?

20 A No, we did not. I mean, I didn't have a discussion
21 with him. I don't think he even raised it in regards to
22 going back and filing that.

23 MS. RATIGAN: That's all I have, Your Honor.

24 THE COURT: Cross-examination, Mr. Johnson.

25 MR. JOHNSON: Thank you, Your Honor.

CROSS-EXAMINATION

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BY MR. JOHNSON:

Q Mr. Ariail, you stated that you didn't have any discussions with him about an appeal?

A Correct.

Q After the plea?

A He never requested that I file an appeal. And there were no appellate issues in that. So I don't remember me, specifically, discussing it with him, raising it with him during that time.

Q So you didn't bring up the issue with him?

A I just can't recall in regards to -- I mean, you know, sometimes I do, sometimes I don't. In this situation, he, you know, says I didn't discuss it. I have nothing that says I did discuss it with him.

Q And y'all didn't discuss the option of asking the Judge to reconsider the sentence?

A I -- if he had asked me to, I believe I would have, in that situation, probably done something. I -- in this case, I don't have anything that he asked me to reconsider. I don't know what we would have asked to reconsider, other than maybe putting some additional evidence in. But, you know, we put everything in. We prepared for that. We had, I thought, enough information there. So I don't remember anything about him asking me

1 to do that.

2 Q Now, one of my client's claims was that you didn't
3 discuss the extensive nature of his mental illness with
4 either -- with the sentencing judge, I guess, aside from
5 the competency evaluation. Is that the way you recall the
6 situation?

7 A I don't remember. And I hadn't looked at the
8 sentencing sheet in regards to that. I can't remember --
9 the transcript to determine whether or not I said anything
10 about that. I don't know if he testified to that.

11 I know the main things that we wanted to -- we
12 discussed where he had been a very big help to the
13 Greenville Police Department for a long time. This was a
14 very -- I think one of the key things is, you know, I
15 still to this day don't believe that he meant to do what
16 he was doing. It was a snap decision in regards to it.
17 He acknowledged that. I think that and -- I don't know if
18 mental issues came into play in this. I just didn't --
19 you know, I didn't know how to really deal with that. I
20 don't even know if I put that in there.

21 Q Were you aware -- and I can't remember how you
22 answered. Were you aware of the mental issues?

23 A Yeah. We discussed that in regards to -- I mean, I
24 think I read his evaluation and looked at that. We had
25 discussed it. And we had even -- that's when I first

1 started -- wanted to find out whether or not he had mental
2 issues during that confession, or the issues with that as
3 to whether or not he understood what he was doing. We
4 discussed all of that.

5 Q And did you discuss his extensive history of
6 treatment?

7 A We did. We went over that. And he told me -- I
8 think a lot of that was in the evaluation, the mental
9 evaluation. And he gave me other information in regards
10 to that.

11 Q Now, I don't believe you brought this up, but did you
12 discuss -- did you ever discuss with my client or with the
13 Court the bullet dodging his brain, or the brain injury he
14 suffered when he was younger?

15 A I don't know if I brought that up. I don't -- I
16 can't recall. I know I had discussed it with him.
17 Because, clearly, I knew that he has a false eye. And we
18 had discussed that in detail.

19 I don't -- I mean, I guess when I looked at this, was
20 this something that was going to impact whether or not he
21 knew what he was doing at the time, or any issues like
22 that? I think I might have brought it up to some degree
23 during the discussions. I don't know if I brought it up
24 during the sentencing, or in the guilty plea.

25 Q Would you agree that a head injury of both of those

1 sorts, especially when you put them together with a mental
2 illness -- history of mental illness may have had an
3 effect on how a judge viewed my client?

4 A It could have had something -- my problem with that
5 was if I didn't think that it was tied into him doing it,
6 I didn't know -- you know, I don't think that was one
7 thing that he looked at me and said, well, you know,
8 there's my mental illness, or this was an issue and this
9 is why I did this. I mean, this was a planned type of
10 action to go over, to get a necklace, and to do certain
11 things. And it was -- you know, I just didn't know how to
12 proceed with that.

13 I thought the best course of action with him during
14 the sentencing was, first of all, cooperation, and then
15 for him to, you know, express remorse. And there was some
16 other things. But, you know, his background in regards to
17 helping the police, that's what I thought...

18 Q So you made -- what you're saying is you made the
19 informed decision not to bring those issues up to the
20 Court?

21 A And I don't know if -- I mean, I'll have to go back
22 and look. I don't know if I brought them up or not in
23 regards to any type of mental illness he might have had.
24 If I didn't, I made a decision not to go with that.

25 Q Okay. Now, with regards to Ruth Stevens, I believe

1 you testified that you were aware of her potential -- she
2 was the potential eyewitness?

3 A Okay. Yeah.

4 Q Now, did you know whether or not she could identify
5 Mr. Pierce as the person who committed the murder?

6 A Well, they had not done a photo lineup, if I remember
7 correctly on this. They had some question as to what he
8 had on and the clothing that he was wearing. And she -- I
9 don't have her statement exactly, but I think she said it
10 was a short, stocky, black male. So, other than that,
11 that's what we were going on with her.

12 Q So did you ever investigate or find out whether or
13 not she could for sure or not identify Mr. Pierce as the
14 culprit in this --

15 A I didn't speak with her personally from what I
16 remember.

17 Q Now, you testified earlier you, also, don't remember
18 speaking to him regarding the prelim. Is that -- did I
19 recall that correctly?

20 A I just -- I mean, I was nearly three years into it
21 when this began. I don't recall having a discussion with
22 him about a -- we were kind of -- I mean, when I got it in
23 January, I think he pled in April. So we went from
24 that -- I don't know if we discussed it. I just can't
25 recall.

1 Q So y'all never -- what you're saying today is y'all
2 never discussed that issue as far as you remember?

3 A I'm not saying we didn't. I'm just saying I cannot
4 recall him bringing that up. I don't remember seeing this
5 document right here. I mean, there -- this is the
6 document you said about the preliminary hearing. I don't
7 remember seeing that. I don't remember being in contact
8 with Donna Bearden or anybody with -- you know, to
9 schedule it.

10 Q Now, you did state earlier that you knew that he had
11 filed several pro se documents with the clerk; is that
12 right?

13 A There were numerous documents, yeah, I mean.

14 Q Did you ever have the opportunity to review those
15 documents?

16 A I did. We discussed a lot of them in depth and a lot
17 of the stuff that -- it was kind of redundant. There was
18 a lot of different things that we had already gotten.
19 There were some things that we ruled out. We discussed
20 most of that. And I told him I'd be glad to file any
21 other ones if we need to. The main ones we discussed were
22 really motions to suppress, and other things of that
23 nature.

24 Q Now, the request for a prelim would have likely been
25 one of those document; is that right, that he filed with

1 the Court?

2 A Yeah. I mean, I think this shows that it was filed
3 October 23rd. Yeah, there's a clocked copy right here.

4 Q Now, with regards to the pleas, were you -- you
5 stated you weren't aware that my client was taking the
6 Seroquel?

7 A No. I don't know if I was unaware if he was taking
8 it. I mean, I -- we had had a discussion in regards to
9 that. I knew that he was having that medication. What I
10 was told -- I believe I had a discussion with him whether
11 or not that effected him with his confessions, and all
12 that.

13 And there was nothing that I determined during that
14 time that he was not understanding what he was doing
15 during that from all the reports that I read and all the
16 information I received from them -- from Detective Flavel
17 and the supplemental reports. I didn't see anything that
18 was effecting him during that time.

19 Q Okay. Now, with regards to what -- the statements of
20 the police officers. Now, have you ever been in a
21 situation where you challenge the veracity of those
22 statements --

23 A Sure.

24 Q -- of the police officers?

25 A Right.

1 Q And in an instance where you were to challenge the --
2 someone's confession, obviously, I guess if it was only
3 given to the officers, the evidence that you have in your
4 favor would be to put your client on the stand?

5 A Sure.

6 Q Okay. Now, did y'all discuss what his potential
7 testimony would be in that situation?

8 A Yeah. We discussed all of that.

9 Q So there would -- there is some evidence that could
10 have shown -- if the Judge believed him, there is some
11 evidence that could have shown that he -- his confession
12 was involuntary?

13 A There was some evidence there, certainly. And we
14 discussed that. And the question I told him is if we were
15 to do that, then we were going to not be able to plead to
16 voluntary manslaughter.

17 So I -- the letter I think I sent to him, basically,
18 said I thought he had a -- I think I said a good argument
19 to keep it out. However, I couldn't give him any
20 guarantees that the Judge would suppress it. Therefore,
21 he needed to make a decision as to whether or not he
22 wanted to go forward with that, or plead guilty to
23 voluntary manslaughter.

24 Q Now, absent the confession, and absent Ruth Stevens
25 testimony, was there other evidence that the State had to

1 support a conviction that didn't come as a result of my
2 client's confession?

3 A Yeah. I think there was a co-defendant. There were
4 co-defendants, I think, Jarvis Taylor, Zachary
5 Taylor [sic]. There was two individuals there. There was
6 a Honey. I mean, I can go back and look at my file.
7 There were numerous witnesses that were at a house when
8 they sent -- Zachary Taylor [sic] sent -- or Zachary
9 Arnold, excuse me, I get his name mixed up sometimes. He
10 sent Mr. Pierce and, I think, Jarvis Taylor over to
11 retrieve a necklace. They testified they left. And then
12 they came back.

13 There were -- from what I remember, too, there was
14 cell phone triangulation. There were other things that
15 showed that they were in that vicinity at the time. I
16 think there was a car that was stolen that was placed with
17 them, or something of that nature.

18 Q Now, would you agree with the statement that the
19 co-defendants were, essentially, caught based upon the
20 statement of my client?

21 A I'm going to have to say that I cannot totally recall
22 that. Because I haven't gone back through the -- I mean,
23 I went through most of the statements. But I don't know
24 if solely because of him. I think some had been
25 interviewed prior to it and provided information. I can't

1 be definitive on that.

2 MR. JOHNSON: Your Honor, I have no further questions
3 of this witness.

4 THE COURT: Redirect?

5 MS. RATIGAN: No redirect, Your Honor.

6 And the State would rest.

7 THE COURT: Thank you, Mr. Ariail.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: Any further evidence?

10 MR. JOHNSON: No further evidence to present from the
11 Applicant, Your Honor.

12 THE COURT: Okay. Do you wish to make any kind of
13 argument at this time?

14 MR. JOHNSON: Sure.

15 And I, actually -- Your Honor, my client asserts
16 that, obviously, with regards to the confession that it
17 should have been challenged. We believe that the
18 testimony presented here today could have established that
19 the statement was involuntary under the circumstance with
20 regards to Mr. Ariail stating that there was, actually, a
21 potential issue that he could have fought against in
22 regards to my client's testimony being potentially
23 presented.

24 There's, also, testimony that they did not discuss
25 the right to an appeal or the right to reconsider -- to

1 request the Judge to reconsider the sentence. My client,
2 essentially, gave testimony today that had he knew at the
3 time that he may have wished to proceed in one or both of
4 those fashions.

5 He, also, gave testimony that at his plea, there was
6 no evidence given of his extensive mental health history,
7 or the bullet lodged in his head, or the injury he
8 suffered when he was a child in 1983. I believe the
9 testimony was that could have influence the Judge's
10 sentence one way or the other. That issue, also, should
11 have -- could have been brought up on a motion to
12 reconsider, if not done initially, if they had discussed
13 that issue.

14 They -- my client, also, did not have a prelim.
15 There is evidence that's been presented that he did want
16 one. There's no evidence to suggest that he, at any
17 point, waived that right to a prelim. I do believe that
18 Mr. Ariail testified that he and Mr. Pierce had discussed
19 his pro se documents with the waiver of a prelim being one
20 of those. And, yet, as I understand it, he discussed --
21 they did not discuss whether or not he wanted a prelim.
22 So I do believe that he did not voluntarily waive that
23 right as well. And that the -- Mr. Ariail was ineffective
24 for that reason.

25 My client has testified that he was told how to

1 answer the questions, that he was promised 15 years.
2 Obviously, that's just on the basis of my client. But I
3 guess we see from -- a difference from the letter that was
4 presented that's in evidence stating that they were
5 preparing for trial, and the difference between that and
6 then over the weekend my client decides to plead guilty, I
7 think, supports that motion.

8 With regards to the confession, once more, Your
9 Honor, I think I've gotten to this issue. I do believe it
10 was stated that my client was interviewed three different
11 times in which case he did ask for an attorney. That
12 could have been established.

13 My client, also, asserts that it was stated that
14 there was evidence of potential audio or video of the
15 confession, and that was never related to my client in
16 regards to whether that, actually, existed.

17 My client, also, has asserted that he was not
18 informed of the maximum sentence with regards to voluntary
19 manslaughter. And the transcript, actually, reveals the
20 Judge revealing the minimum sentence was five years, but
21 the maximum sentence was, actually, not communicated. And
22 my client has testified today that he did not know the
23 maximum sentence.

24 Your Honor, I believe that's all the argument I have
25 before you.

1 THE COURT: Thank you.

2 Ms. Ratigan, do you wish to make any argument?

3 MS. RATIGAN: Very briefly, Your Honor.

4 The State's main contention is that Mr. Pierce has
5 not met his burden of proof regarding the confession.
6 He's presented no witnesses or no evidence today to
7 support his allegation that the confession was
8 involuntary. He's mentioned tapes. There's been no tapes
9 presented today. He's -- both he and Mr. Ariail state
10 that they discussed the matter. Mr. Ariail said he had no
11 basis really to challenge it, but that he had talked to
12 the officers and investigated what Mr. Pierce told him.

13 Regarding the history of mental illness and
14 psychiatric issues, again, there's been no evidence
15 presented today that he does, in fact, have a history of
16 physical or psychiatric issues that would have mitigated
17 against the voluntariness of the statement. So, again,
18 that's a speculative argument.

19 In terms of things like the minimum and maximum
20 sentences, Mr. Ariail testified he relayed those both for
21 the original murder charge and the subsequent voluntary
22 manslaughter charge.

23 Let's see. What else?

24 The issue about a preliminary hearing. As Your Honor
25 know, there's no Constitutional right to a preliminary

1 hearing. The State would argue that he hasn't really
2 shown today that the failure to have a preliminary hearing
3 impacted the outcome of his case.

4 Let's see. I'm going to try to hit all the points
5 here.

6 And I guess the other big issue that came up was
7 about the appeal. He stated, specifically, that
8 Mr. Ariail never mentioned an appeal to him. And
9 Mr. Ariail testified that he did not recall discussing an
10 appeal. However, the United States Supreme Court in the
11 case of Roe v. Flores-Ortega stated that in terms of
12 guilty pleas, it is not incumbent upon trial counsel --
13 it's not incumbent upon plea counsel to advise of the
14 right to appeal in a guilty plea case, unless either the
15 client asks for it, asks about an appeal, or there's some
16 kind of substantial circumstance such that a reasonable
17 person would want to appeal.

18 In this case, Mr. Pierce pled guilty without a
19 recommendation. He was sentenced within the range.
20 Mr. Ariail says he never requested an appeal. There were
21 no appealable issues. So we would argue that he was not
22 ineffective for failing to discuss the appeal right
23 because there was no reason to.

24 And I guess the only other issue that I forgot to
25 mention was the 15-year "promise." There's been no

1 evidence presented today that Mr. Ariail promised a
2 15-year sentence in exchange for a plea. There's no
3 written plea offer from the State.

4 He, clearly, pled guilty without a recommendation.
5 When he was sentenced, Mr. Pierce made no objection. He
6 made no comment. I've got no letters. I've got nothing
7 written to Mr. Ariail or anyone else saying, you know, I
8 was promised 15 years, why did I get 24.

9 So, again, Your Honor, we'd simply state that he
10 hasn't met his burden of proving his allegations today.

11 THE COURT: Okay. Thank you.

12 I'll let you know my decision, hopefully, in the next
13 several weeks.

14 Thank you for your presentations.

15 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

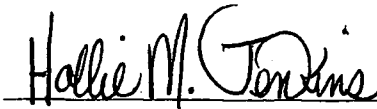
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth 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 captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 19th day of June, 2013.

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

December 11, 2013



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA } IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE } FOR THE THIRTEENTH JUDICIAL CIRCUIT

THOMAS GINISKI PIERCE, 201290,

C/A No: 2011-CP-23-05179

Applicant,

- vs -

AMENDMENT TO APPLICANT'S
APPLICATION FOR
POST-CONVICTION RELIEF
TO INCORPORATE THE FOLLOWING
CLAIMS FOR RELIEF

STATE OF SOUTH CAROLINA,

Respondent,

I, THOMAS GINISKI PIERCE, the Applicant in the above matter, request this document to be filed within the above Court and become part of the record to those proceedings.

This document contains information and facts concerning issues relevant to the representation of attorney: R. MILLS ARIAIL JR., Esq. of 11 North Irvine Street, Suite 11, Greenville, South Carolina, 29601, being ineffective and prejudicial in the criminal trial of the above Applicant, pursuant to SCRCiv.P. 71.1.

11...STATE CONCISELY AND IN THE SAME ORDER THE FACTS WHICH SUPPORT EACH OF THE GROUNDS SET OUT IN (#10).

1.] Attorney R. Mills Ariail Jr., rendered constitutionally defective assistance by failing to adequately investigate and present mitigating evidence of my dysfunctional background during penalty phase, was deficient performance.

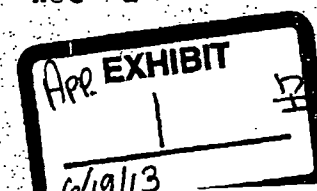
2.] Trial counsel's failure to present mitigating evidence, because I under duress confessed to the crime, was not a

Copy mailed to

Attorney General / Pierce

on 5-1-31-12

[1]



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reasonable strategic decision.

3.] ✓ Failure to adequately investigate and present mitigating evidence prejudiced me (Applicant).

* 4.] ✓ Counsel fail and was ineffective to not petition and/or motion the court for an private and/or independent mental evaluation or neutral expert witness for competency to stand trial or criminally responsibility, after the State's mental health forensic - USC School of Medicine Psychiatrist, Dr. Richard L. Frierson, had found Applicant competent to stand trial, February 6, 2008, to said charge.

* 5.] ✓ Counsel's failure and ineffectiveness to present evidence of Applicant's alleged mental illness as mitigating factor in sentencing phase of murder prosecution, based on counsel's mistaken belief that he could not present such evidence because trial court had found applicant competent to stand trial, was deficient performance, as required to establish defendant's ineffective assistance claim. U.S.C.A. Const Amend. 6. COUNCIL -vs- STATE, 380 S.C. 159, 670 S.E..2d 356 (2009) and ROSEMOND -vs- CATOE, 393 S.C. 320, 680 S.E.2d 5 (2009).

* 6.] ✓ Counsel failed to fully pursue the applicant's history of mental-emotional problems and prior diagnosis and to address those fully in the plea hearing, and sentencing.

7.] ✓ Counsel waived the defendant's right to a preliminary hearing in this case which was crucial to the defense to these charges in question....

8.] ✓ Counsel was ineffective for not requesting a preliminary hearing and/or make sure that Applicant got his preliminary hearing that he himself had motion the court - filed with clerk of court on October 23, 2008., at 3:58 p.m.

9.] ✓ Counsel was ineffective for not appealing Applicant's conviction within 10 days of conviction and/or not notifying Applicant of his right to appeal his conviction.

** NELSON -vs- PEYTON, 415 F.2d 1154 (4th Cir.1969).

Indigent defendant has right to be informed of appeal and manner and method for taking appeal.

** CHERRY -vs- STATE, 386 S.E.2d 624 (1989).

10.] ✓ Counsel was ineffective for not petitioning the Court for my confession (statement) to be suppressed.

11.] ✓ Counsel was ineffective for insisting -n- instructing Applicant to plead guilty to a crime where (Attorney Mr. Ariail, Jr.) knew confession was coerced, involuntary made under duress of imprisonment, Attorney knew Applicant was Pleading guilty unknowingly and involuntary.

12.] ✓ Counsel was ineffective for not petitioning the Court to suppress any evidence that police and/or prosecutor might use from confession that was not voluntary.

~~X~~ 13.] ✓ Applicant's DUE PROCESS of LAW violation: Applicant's Miranda Rights was violated and that he had not received timely Miranda warnings, that the waiver of rights was not explicit, and that neither the reading of his rights, nor the 15 hour police interrogation in a tiny room full of police was video or audio recorded on. October 11, 2006.

14.] ✓ DUE PROCESS was violated - by using confession of Applicant that had been obtained by coercion, involuntary to get Applicant to plead guilty.

15.] ✓ By police using duress of imprisonment, coercion, sleep deprivation, withholding of food until confession violated DUE-PROCESS and while Applicant was under heavy mental

psychological medication: Seroquel for paranoid schizophrenic.

16.] Applicant's DUE PROCESS was violated where police promised not to seek life in prison and get food from McDonalds if applicant confessed to crime.

** JESSE BLACKBURN -vs- ALABAMA, 361 U.S. 190, 80 S.Ct. 274, 4 L.ed.2d 242 (1960).

** Mrs. Ruth Stevens, only stated to detectives that she saw a short black man dressed in black with black hat. This not an eyewitness, she does not positively identify anybody. Counsel R. Mills Ariail, Jr., didn't interview this so-called eyewitness, therefore he was ineffective. C/A No: 2011-CP-23-05179.

Look in G.V.I.R. SUPPLEMENT Report?

17.] Counsel failed and was ineffective for not investigating and/or interviewing witnesses who detectives stated in the arrest warrant (I-819819), that they had multiple EYEWITNESSES statements and cell phone records placing the accused as the shooter and driver of a vehicle described by witnesses, at scene of crime. But through my MOTION OF DISCOVERY RULE 5, the statements never existed. Trial counsel was ineffective for not interviewing these said witnesses. Neither did he do any background checks to see if any (they) existed, neither did he gather any statements or request the N.C.I.C. Sled report of said witnesses. Counsel was ineffective for not requesting PHOTO-LINE UP.

** Counsel withheld discovery favorable to defendant, that which the outcome to show that it was never any eyewitnesses or phone calls that existed, in the fact that the warrant (I-819819), was obtained under false findings - doesn't have identify voice recording.

18.] Counsel failed to raise any argument against the manner in which the confession was obtained.

19.] Counsel failed to move for mistrial, if counsel would have

moved for mistrial and the said evidence was showed to be false and if it had - was brought to the Courts attention that no recorded voice calls of Applicant or witnesses existed, it is a strong possibility that a judge couldn't entertained it.

The Supreme Court has stated, it will not entertain anything that is not presented to them, so was ^{COUNSEL} ineffective and deficient performance for not bringing said witnesses - evidence to Court's attention.

~~20.]~~ Applicant contest that his "MIRANDA RIGHTS" was violated not explicit due to him not knowing them. Also he was Questioned for this said charge (#I-819819) 3 times without having an attorney present, after requesting one. *MR. ARIAIL WAS INEFFECTIVE TO NOT CHALLENGED THIS?*

~~21.]~~ Applicant is contesting that his attorney, Mr. R. Mill Ariail, Jr. was ineffective because he was informed by me that he was interrogated by Greenville Police some 15 hrs., without water, restroom or food until compel to confess. Applicant didn't know what to do due to the pressure of the police. I informed Mr. Ariail, that the police started making promises to me.

The applicant was hungry, tired and under psychotic mental medication (Seroquel), unable to function properly, after long travel from Kirkland R&E Institution in Columbia back to Greenville Law Enforcement Center, only to be questioned a 3rd time. *OCT. 11, 2006 DAY OF CONFESSION*

~~22.]~~ Counsel was ineffective, because counsel prejudiced applicant by instructing -n- insisting Applicant to plead guilty, knowing that once he plead guilty, he would give up some rights of the United States Constitution: (e.g. 1... to face his accusers; 2... waive the right to be judged by his peers; 3... also, the judge would not have to look any further into my case, because it would be no further findings needed). Attorney Mr. R. Ariail was in partnership to conspire and aid the State, because

Mr. Ariail knew according to RULE 11, once I plead guilty, it would be extremely hard to give the Plea back, after RULE 11 has been read.

Attorney Ariail failed to explain to me the consequences of pleading guilty to said charge, therefore he was ineffective.

* The facts show in this case that the defendant was interrogated at the Greenville Police Station and that there are significant discrepancies between the Applicant's version of what transpired at the interrogation and the officer's version. Under these circumstances, where the very content and substances of the interrogation are in dispute, the Applicant is at a significant disadvantage in demonstrating the facts.

* In any swearing match between the police officers and a defendant, the officers invariably (always) receive the benefit of the doubt because of the official status. This advantage to the State is particularly unfair in situations such as the interrogation in this case, when the state itself has the means and ability to faithfully record everything which transpires through video taping or audio tape recording. Yet, in this case, the officers admitted that they made a conscious decision not to tape record the interview, despite the fact that the equipment to make a recording was available.

* This conscious decision to make sure that the Court and the Jury would not hear the actual statements of the Applicant is a violation of his right to due-process under the Fifth and Fourteenth Amendments of the United States Constitution and under Article 1, § 3 of the South Carolina Constitution.

** Northwestern Reporter 2nd Series, held that pursuant to Supreme Court Supervisory Power to ensure fair Administration of Justice, all custodial interrogation including any information about rights, any waivers of those rights, and all questioning occurs at place of detention, and if Law Enforcement Officers fail to comply with recording requirements, any statements made

in response to interrogations may be suppressed at trial.

** Pacific Reporter 2nd Series, custodial interrogation in place of detention, including giving of accused's "MIRANDA RIGHT" must be electronically recorded to satisfy the due-process requirements. Recordings must clearly indicate that it recounts entire interview and an explanation should be given at the beginning and end, before and after.

** MINNESOTA -vs- SCALES, 518 N.W. 2d (1994).

** ALASKA -vs- STEPHAN 711 P.2d 1156 (1985)

ATTENTION: ... Interrogated October 11, 2006, 8:30 am until 11:30 pm, the extended long interrogation "incommunicado - not allowed to communicate with others, without access to family or legal counsel is coercive and violative of due-process," -- in a tiny room with only police officer's present, some 15 hrs. Withholding of food, water, and restroom until compelled to give some kind of confession, -- say anything to help detectives solve crime.

"THE GEORGETOWN LAW JUDICIAL PROCEDURE JOURNAL 2011 Edition," states - that police interrogation of a suspect in custody threatens the Fifth Amendment Right privilege against "SELF-INCRIMINATION, by providing police officers with an opportunity to:... 1... Actively compel confessions through overly coercive interrogation; or,... 2... Passively compel confession by exposing suspect to the inherently coercive environment, created by custodial interrogation.

* Greenville Police interrogators falsely told Applicant, that they had a eyewitness or witnesses who ^{SAID} ~~saw~~ they ^{SAW} ~~saw~~ Applicant commit crime. The police misconduct in misrepresenting evidence is a deplorable practice but none the less, condones the fruits of these acts.

** Attorney R. Mills Ariail Jr., was ineffective and let my due-process be violated for not Petitioning the Courts and not requesting for the Grand Jury Impanelment Documents that states pursuant to U.S.C. Amend. 14, S.C. CODE 1976, § 14-7-1700, §1720, and §1770, SCRCrim.P. RULE 5 and GEORGE ALLEN EVANS -vs- STATE, 363 S.C. 495, 611 S.E.2d 510 (2005) (Grand Jury impanelments documents may be released to a defendant prior to trial upon a timely request or to an Applicant in a PCR Proceeding, the stage Applicant is presently in. As an Applicant, I'm allowed to obtain and use the impanelment documents in preparing a defense and ensuring protection of my due process rights.

** NOTE **..... Greenville County Public Defender, (Timothy Sullivan), filed MOTION FOR MENTAL EVALUATION that took place at, S.C. Department of Mental Health, CBHS Forensic Center, 7901 farrow Road, Columbia, South Carolina, 29203-3220, ORDERED by the Honorable J. Mark Hayes II, January 30, 2008.

Evaluated by three doctors:

- 1.] Dr. Richard L. Frierson, Professor of Psychiatry
U.S.C. School of Medicine; S.C. Dept. of Mental Health
Forensic Evaluation Center.
- 2.] Jamae Campell, MD., Resident of Psychiatry
U.S.C. School of Medicine
- 3.] Randi Pickens, LSW-CP

On February 6, 2008, I was found competent to stand trial. Attorney Timothy Sullivan did not get a MOTION to the Courts for an independent and/or neutral expert witness for mental evaluation.

Attorney Tim Sullivan was "RELEASED" as my counsel by Judge Larry Patterson and I was appointed new counsel (R. Mills Ariail

Jr.), January 2009, who refused to request for an neutral expert witness for an independent mental evaluation or criminal responsibility, because of pressured confession.

MENTAL HEALTH HISTORY

1. Marshall I. Pickens Behavioral Center, child name: Thomas Giniski Fleming. Greenville Hospital system, 701 Grove Road, Greenville, SC.
2. GREENVILLE County Detention Center Mental Health.
Psychiatrist Dr. Martin
3. Greenville County School District "Special Education."
4. Patric B. Harris Psychiatric Hospital, Anderson, South Carolina.
5. South Carolina Department of Corrections
6. Tom J. Ervin, Attorney at Law, P.O. Box 10693, Greenville, South Carolina, 29603
7. Greenville County - Social Security Administration Office.
8. Greenville County Mental Health
9. Greenville Memorial Hospital System.

BACKGROUND....

As a child I was committed to Marshal I. Pickens Behavioral Center, 701 Grove Road, Greenville, SC. 29601 (child name Thomas Giniski Fleming). While there treated for A.D.H.D. with methylpenidate (Ritalin).

Prescribe Mental Health Medication while incarcerated at Greenville County Detention Center, October 11, 2006 until placed in the S.C. Dept. of Corrections on September 8, 2010 - 20 McGee St. Greenville, SC. 29601.

Attended Special Education classes in Greenville County School District.

Committed to Patrick B. Harris Psychiatric Hospital in Anderson, South Carolina. P.O. Box 2407

29622

The year 2006-07 incarcerated in S.C. Dept. of Corrections, evaluated by Mental health Psychiatrist, DR. Michael J. Kirby, whom diagnosed me as "MI-2 serious Mental illness - Psychosis due to traumatic brain damage." Have diagnosis in Dr. Kirby's handwriting. SEE: EXHIBIT "A" Attached.

* Mental Health Evaluation Records, from the attorney who helped me get my Mental Health SSI monthly check processed; Mr. TOM J. Ervin, Attorney at Law, P.O. Box 10693, Greenville SC. 29603. Phone No: 864-235-6254 and Greenville County Social Security Administration Office - Pelham Road.

* Dr. DAVID Tollison - EVALUATED "Psych" on 12-2-05.

Greenville County Mental Health.

At the age of 9 years old, I was hit in the left side of my head with a Aluminum Baseball Bat that caused severe swelling of the brain, and cracked skull that resulted in plate being put in the left side of my head. The head injury caused severe damage to my motorskills, functioning, paranoia, depression, suicidal thoughts, mental and emotional problems. In my late 20's, I started to use drugs.

At 31 years of age, I was shot point-blank in the forehead

#2011-CP-23-05179

THOMAS G. PIERCE #201290-

I-819519

010569

(EXHIBIT
A)

DR. Kirby - psychiatrist of S.C. DEPT OF CORRECTION
This is my diagnosis in DR. MICHAEL J. KIRBY handwriting HE GAVE
ME AT LEE C.I. 2006-07 MENTAL EVALUATION.

Psychosis due
to Traumatic Brain
Damage.

MI-2 Serious
mental illness.

with a large caliber handgun and the bullet tore out the structure of my right eye, that resulted in doctors having to remove my eye completely. The Bullet is lodged in my head on top of my right temple.

Any kind of hard blow to my head, could cause bullet to move and possibly cause major damage.

Based on a battery of test by Nero-Surgeons, they stated they believe that there was evidence of a little brain disfunction, particularly in the front lobe.

After this incident my mental and emotional problems got worse and so did my drug addition.

** Attorney R. Mills Ariail was ineffective for waiving my Preliminary Hearing without my consent, violating my DUE-PROCESS Protection. 14th U.S.C. Amendment.

Attorney R. Mills Ariail, Jr., was ineffective for allowing my DUE-PROCESS to be violated. Why?.... A Preliminary Hearing in a criminal case is primarily for the accused benefit and is in the nature of a personal right or privilege which may be waived, either expressly or by implication - but it must be waived voluntarily.

I (Applicant), signed a request for NOTICE OF A PRELIMINARY HEARING, on October 11, 2006, the same day I was Arraigned on Warrant No: I-819819, before Magistrate Judge Jennifer Presnell #6362 with then attorney Timothy Sullivan whom was later released from my case by Chief Judge Larry R. Patterson, on October 17, 2008.

* I (Applicant), filed (Pro Se) a MOTION FOR REQUEST FOR PRELIMINARY HEARING, to the Greenville County Clerk of Court, stamped filed on the 23rd day of October, 2008.

In January, 2009, I was appointed counsel R. Mills Ariail, Jr., who I immediately notified by phone and in person, that I

had filed a motion with the Court, requesting a Preliminary Hearing. Attorney Ariail, stated to me that I didn't need a Preliminary hearing, because I confessed to the crime.

Attorney R. Mills Ariail, Jr., was ineffective and let my DUE PROCESS be violated, for not objecting to Applicant being instructed and insisting, pressure to plead guilty in front of one Judge and was sentenced by another Judge.

Attorney R. Mills. Ariail, Jr., instructed and insisted that I plea and be sentenced by same Judge, a lenient judge that Mr. Ariail says he knows personally, the Honorable Eugene C. Griffith, who presided over my plea hearing, April 27, 2009, the day I was scheduled to go to trial, but the Honorable Robin Stilwell who sentenced my co-defendant Zachary Arnold, in the middle of his trial who all of a sudden Plead Guilty, on September 7, 2010.

Also sentenced me on September 8, 2010, the next day. Is this a conflict of interest on Judge Robin Stilwell's behalf.

THE REMAINDER OF THIS
PAGE LEFT BLANK INTENTIONALLY

RESPECTFULLY SUBMITTED

Thomas Giesb's Piece # 201290This 22 day of MAY, 2012.

JUNE 13, 2013

INEFFECTIVE ASSISTANCE OF COUNSEL ISSUES:

D. MR. ARIALL, JR. WAS INEFFECTIVE FOR FAILING TO PETITION THE COURT, PRIOR TO APPLICANT'S PLEA, FOR A DENNO HEARING, WAS PREJUDICIAL TO THE DEFENSE; ESPECIALLY, GIVEN THE FACT THAT APPLICANT INFORMED COUNSEL THAT HIS CONFESSION MIGHT BE THE PRODUCT OF POLICE COERCION AND HIS MIRANDA WARNINGS WERE UNTIMELY ADMINISTERED. A CONVICTION IN WHOLE OR IN PART, ON A COERCED CONFESSION, REGARDLESS OF ITS TRUTH, AND EVEN THOUGH THERE MAY BE SUFFICIENT OTHER EVIDENCE TO SUPPORT THE CONVICTION, IS A VIOLATION OF APPLICANT'S DUE PROCESS PROTECTIONS.

JACKSON V. DENNO, ID. AT 376.

* PLEASE MAKE COPIES FOR YOUR FILES AND RETURN ME BACK ORIGINALS. I ALSO WOULD LIKE A COPY OF PSYCHIATRIST DR. FRANK MARTIN-MENTAL HEALTH NOTES "GREENVILLE COUNTY DETENTION CTR. 2007-2010.

* JOHNSON MAKE SURE YOU FILE 59 E RULE
PLEASE MAKE SURE YOU FILE ALL ISSUES - DENNO

2) BEFORE I WAS ESCORTED INTO COURTROOM MR. ARIAL INSISTED AND INSTRUCTED ME TO SAY YES TO ALL OF THE JUDGES QUESTIONS? THAT HE ASKED ME.

A. JUDGE EUGENE C. GRIFFITH JR. APRIL 27, 2009
PLEA TRANSCRIPTS:

* PAGE 4 LINE 5-10:

MR. ARIAL DID NO KIND OF INVESTIGATION AT ALL, THEREFORE HE KNEW OF NO FACTS. AGAIN WITHOUT MY COERCED CONFESSION THE SOLICITOR HAD NO CASE. MR. ARIAL WAS INEFFECTIVE FOR NOT DOING THOROUGH INVESTIGATION.

* PAGE 4 LINE 23-25:

ON MORNING OF PLEA HEARING APRIL 27, 2009, RIGHT BEFORE I LEFT G.C.D.C. TO GO TO COURT I TOOK PSYCH MEDICATION SEROQUEL PRESCRIBE BY DR. FRANK MARTIN, IT WAS PRESCRIBE TO ME FROM PSYCH DOCTOR ON STREETS, S.C.D.C. DR. M. KIRBY FOR BIPOLAR DISORDER.

* SEROQUEL - WORKS BY CHANGING THE ACTIONS OF CHEMICALS IN THE BRAIN, IT HELPS MENTAL ILLNESS THAT CAUSES DISTURBED UNUSUAL THINKING, IT WORKS BY CHANGING THE ACTIVITY OF CERTAIN NATURAL SUBSTANCES IN THE BRAIN.

B. Judge EUGENE C. Griffith Jr. APR. 127, 2009

PLEA Transcripts:

* PAGE 5 line 5:

MR. ARIAIL, should have told the courts about my MENTAL AND PHYSICAL infirmities, I HAVE bullet lodged in head right temple, PLATE on left side of head.

* PAGE 8 Line 14-19:

MR. ARIAIL did not EXPLAIN to me, what PRESENTMENT to the Grand Jury is? HE AGAIN insisted -N- instructed me to YES to ALL of the Judges Questions?

* PAGE 12 line 7:

MR. ARIAIL WAS INEFFECTIVE FOR NOT INTERVIEWING the Police SO-CALL EYEWITNESS RUTH STEVENS in her STATEMENT AND GREENVILLE Police SUPPLEMENTAL REPORT - SHE SAYS SHE SAW black man in black hat AND clothing ~~5~~ STEP BACK AND FIRE Gun into door, SHE NEVER POSITIVELY IDENTIFY by FACE. MR. ARIAIL should have shown MS. STEVENS A Photo-line UP to SEE who she IDENTIFIES.

* PAGE line 9-13:

MR. ARIAIL WAS INEFFECTIVE FOR NOT CHALLENGING the STATE diagnosis! MR. ARIAIL should have motion court to get NEUTRAL EXPERT witnesses

C. Judge Eugene C. Griffith, Jr. April 27, 2009
 PLEA Transcript:

* PAGE 14 line 13:

Judge FAILED to APPRAISE defendant in
 open court to the MANDATORY minimum-
 maximum possible penalty, Boykin v Alabama

* PAGE 18 line 1-5:

MIL. ARIALL WAS ineffective for not making
 sure that I ~~know~~^{WAS AWARE} I could APPEAL,
 he NEVER mention it to me. (The court
 stated that someone must notify you
 of that right to APPEAL)

* (Smith vs. State 424 S.E.2d 480, 309 S.L.413 (1992))
 states that trial counsel is REQUIRED to MAKE
 certain a defendant is MADE fully AWARE
 of his or her APPEAL rights.

PRELIMINARY HEARING I REQUESTED

GREENVILLE Municipal Court

To Whom it May Concern,

I THOMAS GINISKI PIERCE REQUEST

PRELIMINARY HEARING FOR THE FOLLOWING CHARGES;

1. MURDER-WARRANT # I-819819 indictment # 06-GS-23, 010569
2. A.B.U.I.H-I-819769 indictment # 06-GS-23, 010572
3. MALICIOUS INJURY TO PERSONEL PROPERTY
WARRANT # I-819770 indictment # 06-GS-23, 010571

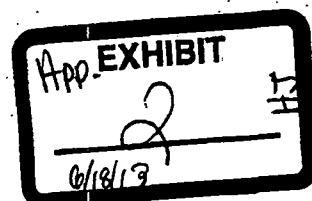
Sworn to And subscribe before me this 17th
Day of October 2008

Notary Public: Colleen F. Rollins

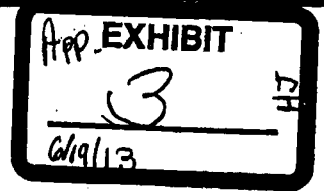
My Commission Expires: 10-17-2016

RESPECTFULLY Submitted,
Thomas G. Pierce

THOMAS G. PIERCE #477
20 MC GEE STREET
GREENVILLE, S.C. 29601-2210



R. MILLS ARIAIL, JR.
ATTORNEY AT LAW



11 NORTH IRVINE STREET, SUITE 11 • GREENVILLE, SC 29601
PHONE 864.232.9390 • FAX 864.232.9392 • E-MAIL MILLS@RMALAWOFFICE.COM

March 30, 2009

Mr. Thomas G. Pierce
Greenville County Detention Center
20 McGee St
Greenville, SC 29601

RE: The State v. Thomas G. Pierce
Warrant Nos.: I-819769; I-819770; I-819819

Dear Thomas:

I have completed my research in regards to the admissibility of your statement and I believe we have a good argument to keep it out. However, I cannot guarantee you that it will be suppressed by the Judge prior to your trial.

Furthermore, I have spoken with the Assistant Solicitor in your case and she will not agree to any cap if you were to plead to Voluntary Manslaughter. She cannot commit to any number of years at this time. Therefore, the best that we can do right now is to plead straight up and defer sentencing until after Zachary Arnold's trial. That way you can have the benefit of your testimony at trial to help you out.

In my conversations with the Assistant Solicitor, she has indicated that even if your statement is excluded she is going to use Jarvis Taylor as a witness and he will say exactly what you said in your statement. It is my view that his testimony could either turn the jury against you or help you out. It all depends on how he comes off on the witness stand. After his testimony, I will do whatever I can to exclude the eyewitness testimony based upon the information we discussed.

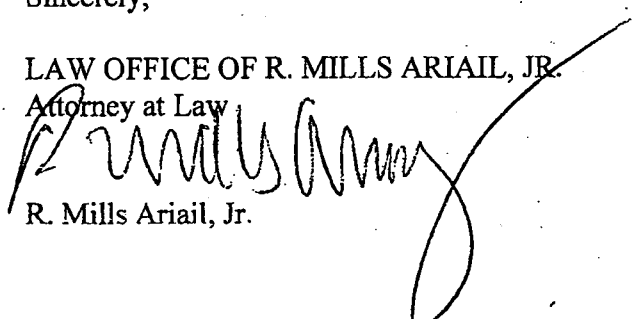
During our conversations, you have continued to tell me that you did not have anything to do with this shooting. If you were to plead guilty to voluntary manslaughter, you would have to admit to the following: (1) that you unlawfully killed; (2) a human being; (3) in a sudden heat of passion soon after a legally sufficient provocation; and (4) the killing was done without malice aforethought. If you cannot admit to these elements then you cannot plead guilty. Based on our conversations, I do not believe you can admit to these elements in front of a judge.

Therefore, it is up to you to decide whether or not you want to go to trial or plead guilty to voluntary manslaughter. You need to make this decision this week. The longer we wait the less time we have to prepare for trial.

Please feel free to contact me if you have any questions or concerns.

Sincerely,

LAW OFFICE OF R. MILLS ARIAIL, JR.
Attorney at Law


R. Mills Ariail, Jr.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

Thomas G. Pierce, 201290
Lee CI., Kershaw Unit #2118(B)
990 Wisacky Highway
Bishopville, South Carolina 29010

2012 SEP 25 P 1:10

Mr. Brian P. Johnson, Esquire
522 North Church Street
Greenville, South Carolina 29601

RE: Thomas G. Pierce -vs- State of South Carolina
Amend P.C.R. Application (2011-CP-23-05179)

Dear Mr. Johnson:

How are you Sir? I wrote you July 24, 2012, to thank you for sending me my Plea and Sentencing Transcripts, and to check to see if you have had any progress in trying to fulfill any of my request that I had ask of you in that letter.

Have you had a chance to review the Cause of Action argument that I sent along with that letter?

Once you have reviewed my Cause of Action Argument, I wish for your professional assistance to incorporate this claim to my current P.C.R. Application. At the same time, please provide me with a copy of those amendments, reflecting the date in which these documents were filed with the Court.

Also, Sir,... please amend the following two new issues to my current P.C.R. Application.

- A]. Attorney R. Mills Ariail, Jr., was ineffective for failing to petitioning the Court, prior to trial, for a "Blair Hearing" to determine the defendant's mental competency, when Mr. Ariail knew that the defendant had a history of mental problems.
- B]. During the time of my pressured confession, I never wrote said statement, Detective C.H. Flavell #0087, wrote everything in his handwriting and coached me along on what he wanted me to say. I told Mr. Ariail about this and he stated that it doesn't matter, "you confessed." Mr. Ariail was deficient and prejudicial for not moving before the Court, prior to trial, for a Jackson -vs- Denno Hearing, to determine whether my statement was given freely without police intervention.

Please, ... Mr. Johnson, try to fulfill my request, relevant to this letter and my letter dated July 24, 2012.

Thank you for your time and attention on this matter.

With kind regards, ... I remain,

Respectfully Entrusted

Thomas G. Pierce
Thomas G. Pierce, #201290
Lee Correctional Institution
APPLICANT.

This 14th day

of SEPTEMBER, 2012.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Thomas Giniski Pierce,)
 S.C.D.C. No. 201290,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.,)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2011-CP-23-5179

ORDER OF DISMISSAL

FILED-CLERK OF COURT
 GREENVILLE CO S.C.
 PAUL A. WICKES

2013 AUG - 7 PM 3:40

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 3, 2011. The Respondent made its return on December 30, 2011. An evidentiary hearing into the matter was convened on June 19, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Brian P. Johnson, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, R. Mills Ariail, Jr., Esquire. The Court had before it the guilty plea and sentencing transcripts, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and the Applicant's Exhibits 1-3.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant waived presentment to the Greenville County Grand Jury for the charge of voluntary manslaughter

¹
 9/14

(2009-GS-23-3739A). R. Mills Ariail, Jr., Esquire represented the Applicant.

On April 27, 2009, the Applicant pled guilty to voluntary manslaughter before the Honorable Eugene C. Griffith and sentencing was deferred to a later date. On September 8, 2010, the Honorable Robin B. Stilwell sentenced the Applicant to twenty-four (24) years imprisonment. The Applicant did not appeal.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:¹

1. Ineffective assistance of counsel:
 - a. "Not petitioning the courts for my confession (statement) to be suppressed."
 - b. "Not appealing Applicant's conviction within 10 days of conviction and/or not notifying Applicant of his right to appeal his conviction."
 - c. "For not petitioning the courts for an mental health evaluation or competence hearing before trial."
 - d. "For not asking judge to reconsider sentence at the close of trial."
 - e. "For insisting-N-instructing Applicant to plead guilty."
 - f. "Not petitioning the courts to suppress any evidence that police and/or prosecution might use from confession that was not voluntary."
 - g. "For insisting-N-instructing Applicant to plead guilty to a crime where attorney knew confession (statements) was coerced, involuntary made under duress of imprisonment, counsel knew Applicant was pleading guilty unknowingly and involuntary."
 - h. "For not requesting a preliminary hearing and/or made sure that Applicant got his preliminary hearing that he himself (Applicant) had put in for- filed with Clerk of Court 10-23-08 3:58pm."
 - i. "By not objecting to Applicant pleading guilty in front of 1 judge and sentenced by another."
2. "Applicant's Due-Process of law was violated":
 - a. "Applicant's Miranda Rights was violated and that he had not

¹ This Court notes the Applicant filed a pro se document captioned "Amendment to Applicant's Application for Post-Conviction Relief to Incorporate the Following Claims for Relief" on May 31, 2012. As counsel had been appointed by that date, however, this Court cannot consider the document. See Rule 11(a), SCRCP; Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002) (holding there is no constitutional right to hybrid representation either at trial or on appeal).

received timely Miranda warnings, that the waiver of Rights was not explicit, and that neither the reading of his rights, nor the 15-hour police interrogation in a tiny room was video or audio recorded on Oct. 11, 2006. Also interrogated Oct. 4, 6, 2006 for same crime."

- b. "By using confession (statements) that had been obtained by coercion, involuntary to get defendant to plead guilty."
- c. "By police using duress of imprisonment, coercion, sleep deprivation, withholding of food until confession violated due-Process and while Applicant was under heavy mental psychological medication."
- d. "For Not given Applicant his Preliminary hearing."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the

applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated he had several meetings with plea counsel and that they reviewed the discovery materials, his version of events, his statement to police, and the impact his statement had upon the defense case. The Applicant stated plea counsel should have challenged his statement based upon: the conditions of interrogation before the statement, that he asked for an attorney, and that he was taking medication at the time. The Applicant admitted, however, that he did sign the waiver of rights. The Applicant stated he made a pro se request for a preliminary hearing and that, while plea counsel said it was unnecessary because he confessed, he did not waive that hearing. The Applicant stated plea counsel failed to investigate that an eyewitness did not identify him as the perpetrator. The Applicant stated plea counsel promised he would receive a fifteen year sentence if he pled guilty. The Applicant stated plea counsel told him how to answer the plea judge's questions during the plea colloquy. The Applicant stated plea counsel should have consulted an expert to challenge his competency to plead guilty. The Applicant stated plea counsel never mentioned the possibility of an appeal.

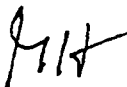
Plea counsel testified he was the third attorney appointed in this case and that he received discovery materials from both the two previous attorneys and the State. Plea counsel testified he also discussed the case with the two previous attorneys. Plea counsel testified he and the Applicant discussed the discovery materials in depth and reviewed the Applicant's version of events. Plea counsel testified they also reviewed the Applicant's statement and the circumstances surrounding it. Plea counsel testified he looked into the voluntariness of the

statement and spoke to the officers involved. Plea counsel testified he did not recall discussing whether to have a preliminary hearing. Plea counsel stated there was nothing further to investigate about the eyewitness in the case, as the Applicant admitted in his statement that someone had seen him. Plea counsel testified he never told the Applicant he would receive a fifteen year sentence if he pled guilty and that he did not make any promises about what sentence the Applicant would receive. Plea counsel testified he did not instruct the Applicant about how to answer the plea judge's questions. Plea counsel testified the Applicant informed him about his prior mental health history and treatment but that one of the Applicant's previous attorneys had him undergo a competency evaluation. Plea counsel testified he did not have any concerns about the Applicant's competency. Plea counsel testified they did not discuss an appeal and noted he did not believe there were any appealable issues from the guilty plea hearing.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge that the facts recited by the solicitor were true. (Plea transcript, p.14). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty and was satisfied with plea counsel's representation. (Plea transcript, pp.6-8; p.16).

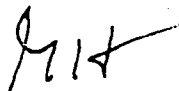
This Court finds the Applicant failed to meet his burden of proving plea counsel should have challenged the voluntariness of his statement. Plea counsel testified he reviewed the circumstances surrounding the interrogation and statement, explored the issue of voluntariness,



and spoke to the officers involved. This Court finds plea counsel's testimony is credible. This Court finds the Applicant has failed to present evidence to support his allegation that a further investigation would have led to the suppression of the statement. See, e.g., Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). Regardless, even without the Applicant's statement, the State had strong evidence of guilt. Plea counsel noted the co-defendants and an eyewitness gave statements in this case and would have all testified if the case had gone to trial. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

This Court finds the Applicant failed to meet his burden of proving he should have had a preliminary hearing in his case. This Court notes a defendant has no constitutional right to a preliminary hearing. State v. Keenan, 278 S.C. 361, 365, 296 S.E.2d 676, 678 (1982). This Court finds the Applicant has failed to demonstrate how a preliminary hearing would have changed the outcome of his case – especially in light of the fact that he had given a statement.

This Court finds the Applicant failed to meet his burden of proving plea counsel should have investigated that an eyewitness described someone he did not resemble. Plea counsel testified this was of no consequence because the Applicant acknowledged in his statement that someone saw him. Plea counsel testified there was nothing to investigate and the eyewitness's testimony would have been a jury question as to her credibility. This Court agrees and notes the



Applicant has failed to present any evidence of what he believes plea counsel could have found if he had investigated this issue further. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial). Similarly, while the Applicant argued plea counsel should have presented evidence of his mental health history, he has failed to present any documents or expert testimony on the matter. As such, this argument is entirely speculative in nature. See, e.g., Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, "any finding of prejudice is merely speculative").

This Court finds the Applicant failed to meet his burden of proving plea counsel promised he would receive a fifteen year sentence if he pled guilty. Plea counsel testified he never made a promise or guarantee about the sentence the Applicant would receive. This Court finds plea counsel's testimony is credible. Further, the record refutes the Applicant's allegation. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007). During the sentencing hearing, the assistant solicitor stated there was no recommendation as to sentence and the plea judge changed the sentencing sheet to reflect this. Neither plea counsel nor the Applicant objected. (Sentencing transcript, p.6).

This Court finds the Applicant failed to meet his burden of proving he is entitled to a review of any direct appeal issues. Plea counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either: (1) that a rational

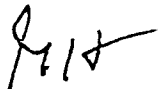
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defendant would want to appeal or (2) that this defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). In order to make this determination, "courts must take into account all the information counsel knew or should have known." Id. (citing Strickland, 466 U.S. at 690, 104 S. Ct. at 2066). Although not determinative, a highly relevant factor will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because a plea may indicate the defendant seeks an end to judicial proceedings. Id. As this Court finds there is nothing in the record to indicate the Applicant reasonably demonstrated to plea counsel that he was interested in appealing, the allegation is denied.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.



CONCLUSION

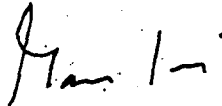
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 1st day of August, 2013.



D. Garrison Hill
Presiding Judge
Thirteenth Judicial Circuit

Greenville

, South Carolina.

WITNESSES

C Flavell

Greenville Police Department

10/11/2006

ARREST WARRANT NUMBER

Ref: 1819819

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-23- 3739A

LBP

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

9-8-10

TERM 2009

Deferral

THE STATE

vs.

THOMAS GINISKI PIERCE

PLEAD GUILTY

Indictment for

0217

VOLUNTARY MANSLAUGHTER

VIOLATION § 16-3-50

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
VOLUNTARY MANSLAUGHTER

At a Court of General Sessions, convened on _____ the Grand Jurors of Greenville
County present upon their oath:

That THOMAS GINISKI PIERCE did in Greenville County, on or about the 27th day of September, 2006,
willfully and unlawfully, without malice aforethought, kill LAQUINTA WILLIAMS by means of shooting her
and LAQUINTA WILLIAMS died as a proximate result thereof. This is in violation of §16-3-50 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.

Lucy B. Pasolunghi
SOLICITOR