

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Appeal from Dorchester County

Diane Schafer Goodstein, Circuit Court Judge

**RECEIVED**

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**S.C. Supreme Court**

DEVIN MILLER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001390

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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Appellate Defender

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

COURT OF DORCHESTER  
FIRST JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

CASE NO. 07-GS-18-1283

versus

)  
)  
) TRANSCRIPT OF RECORD

DEVIN DEVON MILLER

)  
) DATE:

DEFENDANT

)  
) AUGUST 26, 2008

BEFORE:

HONORABLE JAMES C. WILLIAMS, JR., PRESIDING JUDGE

APPEARANCES:

HARRISON BELL, ESQUIRE  
ASSISTANT SOLICITOR  
FOR THE STATE

THOMAS R. SIMS, ESQUIRE  
ATTORNEY AT LAW  
FOR THE DEFENDANT

HARRY A. WALKER (MRS.)  
COURT REPORTER, FIRST JUDICIAL CIRCUIT  
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ROWESVILLE, SOUTH CAROLINA 29133

I N D E X

PAGE

EXAMINATION BY THE COURT:

DEVIN DEVON MILLER 4, 7

DEFENSE COUNSEL SIMS 5

SENTENCE OF THE COURT 27

E X H I B I T S

NONE.

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DATE:  
AUGUST 26, 2008  
(The following takes place  
in chambers.)

SOLICITOR BELL: YOUR HONOR, THIS  
WOULD BE IN REFERENCE INDICTMENT NUMBER 2007-GS-18-1283,  
THE STATE VERSUS DEVIN DEVON MILLER. HE IS CHARGED IN  
THIS INDICTMENT AND IT'S BEEN TRUE BILLED BY THE GRAND  
JURY FOR MURDER. THE STATE WOULD ACCEPT A PLEA TO  
VOLUNTARY MANSLAUGHTER.

THE COURT: ALRIGHT, MR. MILLER,  
RAISE YOUR RIGHT HAND, PLEASE, SIR.  
(Whereupon, Devin Devon Miller  
is duly sworn.)

(NOTE: Blank lines on this page do not indicate any  
part of record has been omitted. Headers on testimony  
pages and hard page breaks between testimony are now  
required by the Court. See next ensuing page for  
sequential continuation of record.)

EXAM - DEVIN DEVON MILLER BY THE COURT

4

EXAMINATION OF DEVIN DEVON MILLER

BY THE COURT:

1 Q. HOW OLD ARE YOU, SIR?

2 A. TWENTY-FOUR.

3 Q. HOW FAR DID YOU GO IN SCHOOL?

4 A. A YEAR OF COLLEGE.

5 Q. HAVE YOU EVER BEEN TREATED FOR DRUG ABUSE, ALCOHOL  
6 ABUSE OR MENTAL ILLNESS?

7 A. NO.

8 Q. HAVE YOU HAD ANY DRUGS, ALCOHOL, MEDICATION OR  
9 ANYTHING IN THE LAST TWENTY-FOUR HOURS THAT WOULD  
10 KEEP YOU FROM UNDERSTANDING WHAT'S GOING ON IN  
11 COURT TODAY?

12 A. NO.

13 (NOTE: Blank lines on this page do not indicate any  
14 part of record has been omitted. Headers on testimony  
15 pages and hard page breaks between testimony are now  
16 required by the Court. See next ensuing page for  
17 sequential continuation of record.)  
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19

EXAM - DEFENSE COUNSEL SIMS BY THE COURT

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EXAMINATION OF DEFENSE COUNSEL SIMS

BY THE COURT:

1  
2  
3 Q. MR. SIMS, HAVE YOU EXPLAINED TO YOUR CLIENT THE  
4 CHARGES HE IS FACING, THE EVIDENCE THE STATE HAS  
5 AGAINST HIM, THE POSSIBLE PENALTY -- HE'S ACTUALLY  
6 CHARGED WITH MURDER WHICH CARRIES UP TO LIFE IN  
7 PRISON. THE STATE HAS AGREED TO TAKE A PLEA TO  
8 VOLUNTARY MANSLAUGHTER WHICH CARRIES UP TO THIRTY  
9 YEARS IN PRISON. IT IS NO PAROLE, MOST SERIOUS,  
10 AND VIOLENT. AND HAVE YOU EXPLAINED TO HIM HIS  
11 CONSTITUTIONAL RIGHTS?

12 A. YES, SIR, I'VE EXPLAINED TO HIM HIS CONSTITUTIONAL  
13 RIGHTS, THAT HE CAN GO TO TRIAL. WE ARE HERE  
14 TODAY PREPARED FOR TRIAL IF HE CHOSE TO GO TO  
15 TRIAL, BUT HE WOULD BE, WE WOULD BE WILLING TO GO  
16 FORWARD TODAY WITH THE TRIAL.

17 Q. ALRIGHT, SIR. AND DO YOU BELIEVE HE UNDERSTANDS  
18 EVERYTHING THAT YOU EXPLAINED TO HIM?

19 A. YES, SIR, I TALKED WITH HIM AND HE HAD THE  
20 OPPORTUNITY TO HAVE HIS GRANDMOTHER, HIS  
21 GRANDFATHER AND HIS MOTHER DURING THE COURSE OF  
22 THE DISCUSSIONS.

23 Q. ALRIGHT. AND HOW HAS HE ADVISED YOU HE WISHES TO  
24 PLEAD?

25 A. HE HAS ADVISED ME, YOUR HONOR, THAT HE WISHES TO

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PLEAD GUILTY TO THE MANSLAUGHTER.

Q. AND DO YOU AGREE WITH HIS DECISION TO PLEAD  
GUILTY?

A. YES, SIR.

(NOTE: Blank lines on this page do not indicate any  
part of record has been omitted. Headers on testimony  
pages and hard page breaks between testimony are now  
required by the Court. See next ensuing page for  
sequential continuation of record.)

EXAM - DEVIN DEVON MILLER BY THE COURT

EXAMINATION OF DEVIN DEVON MILLER

BY THE COURT CONTINUES:

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3 Q. MR. MILLER, YOUR ATTORNEY TELLS ME HE'S EXPLAINED  
4 TO YOU THE CHARGES YOU ARE FACING, THE EVIDENCE  
5 THE STATE HAS AGAINST YOU, THE POSSIBLE PENALTY,  
6 AND YOUR CONSTITUTIONAL RIGHTS. HE SAYS THAT HE  
7 BELIEVES YOU UNDERSTAND ALL OF THOSE MATTERS AND  
8 YOU WANT TO PLEAD GUILTY. IS THAT RIGHT?

9 A. YES, YOUR HONOR.

10 Q. NOW, IN ORDER TO PLEAD GUILTY YOU HAVE TO GIVE UP  
11 CERTAIN RIGHTS THAT YOU HAVE. THE FIRST OF THESE  
12 IS YOUR RIGHT TO REMAIN SILENT. THAT IS YOUR  
13 RIGHT TO SAY NOTHING ABOUT THE CHARGES. YOU  
14 CANNOT BE FORCED TO TESTIFY AGAINST YOURSELF. BUT  
15 WHEN YOU PLEAD GUILTY YOU GIVE UP THAT RIGHT IN  
16 ORDER TO ADMIT THE TRUTH OF THE CHARGES AGAINST  
17 YOU.

18 AND YOU HAVE A RIGHT TO A JURY TRIAL. THAT IS  
19 YOUR RIGHT TO HAVE A JURY DETERMINE WHETHER OR NOT  
20 YOU ARE, IN FACT, GUILTY OF THESE CHARGES BEYOND A  
21 REASONABLE DOUBT. A JURY WOULD BASE ITS DECISION  
22 ON THE TESTIMONY AND THE EVIDENCE PUT UP BY THE  
23 STATE'S WITNESSES. YOUR ATTORNEY COULD CROSS-  
24 EXAMINE THOSE WITNESSES AND CALL WITNESSES ON YOUR  
25 OWN BEHALF, AND PUT UP ANY DEFENSE THAT YOU MIGHT

1 HAVE TO THE CHARGES. YOU WOULD BE PRESUMED TO BE  
2 INNOCENT IF YOU HAD A JURY TRIAL, THE BURDEN WOULD  
3 BE ON THE STATE TO CONVINCe ALL TWELVE JURORS OF  
4 YOUR GUILT.

5 DO YOU UNDERSTAND BOTH YOUR RIGHT TO REMAIN SILENT  
6 AND YOUR RIGHT TO HAVE A JURY TRIAL?

7 A. YES, SIR.

8 Q. DO YOU UNDERSTAND THAT IN ORDER TO PLEAD GUILTY  
9 YOU HAVE TO GIVE UP BOTH OF THOSE RIGHTS?

10 A. YES.

11 Q. AND THAT'S WHAT YOU WANT TO DO?

12 A. YES.

13 Q. YOU DON'T WANT A JURY TRIAL?

14 A. NO.

15 Q. THE INDICTMENT SAYS THAT HERE IN DORCHESTER  
16 COUNTY, ON OR ABOUT THE NINETEENTH OF JULY, TWO  
17 THOUSAND AND SEVEN, THAT YOU SHOT ERNEST SEAMORE  
18 WRIGHT. THE INDICTMENT ALLEGES THAT, WITH MALICE,  
19 AND AS I SAID, CHARGES YOU WITH MURDER. THE STATE  
20 HAS REDUCED THAT CHARGE TO VOLUNTARY MANSLAUGHTER,  
21 BUT THE ALLEGATIONS ARE THAT YOU SHOT MR. WRIGHT  
22 THAT NIGHT CAUSING HIS DEATH HERE IN DORCHESTER  
23 COUNTY. DO YOU UNDERSTAND THAT CHARGE?

24 A. YES.

25 Q. HOW DO YOU PLEAD TO THAT CHARGE?

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A. GUILTY.

Q. NOW; HAS ANYBODY PROMISED YOU ANYTHING OR THREATENED YOU TO GET YOU TO PLEAD GUILTY?

A. NO.

Q. ARE YOU SATISFIED WITH YOUR ATTORNEY?

A. YES.

Q. DID YOU EXPLAIN TO MR. SIMS EVERYTHING ABOUT THIS CASE SO HE COULD GIVE YOU GOOD ADVICE?

A. YES.

Q. HAS HE FAILED TO DO ANYTHING THAT YOU THINK HE NEEDS TO DO TO HELP YOU IN THIS CASE?

A. NO.

Q. HAVE YOU UNDERSTOOD ALL OF THE QUESTIONS THAT I HAVE ASKED YOU?

A. YES.

Q. HAVE YOU ANSWERED MY QUESTIONS TRUTHFULLY?

A. YES.

Q. DO YOU UNDERSTAND THAT IF YOU WANTED TO FILE AN APPEAL IN THIS CASE YOU WOULD HAVE TO DO THAT WITHIN TEN DAYS?

A. YES.

THE COURT: I'LL ACCEPT HIS PLEA. I FIND A SUBSTANTIAL FACTUAL BASIS FOR HIS PLEA, HIS DECISION TO PLEAD GUILTY IS FREELY AND VOLUNTARILY MADE, HE'S KNOWINGLY AND INTELLIGENTLY WAIVED HIS RIGHT TO A

1 JURY TRIAL, AND HE'S HAD THE SERVICES OF AN ATTORNEY  
2 WITH WHOM HE SAYS HE'S SATISFIED.

3 AND WE TOOK THE PLEA IN THE BACK, ON  
4 THE RECORD, BECAUSE THE JURY IS WAITING IN THE COURTROOM  
5 AND I DIDN'T, WE COULDN'T TAKE THIS PLEA IN FRONT OF THE  
6 JURY, AND I REALLY HAD NOWHERE ELSE TO SEND THEM. BUT  
7 I KNOW THERE ARE OTHER FAMILY MEMBERS ON BOTH SIDES THAT  
8 WANT TO BE HEARD. AND SO, WE'LL TAKE A FEW MINUTES  
9 RECESS WHILE I GO DEAL WITH THE JURY, AND THEN WE'LL GO  
10 BACK INTO THE COURTROOM WHERE WE'LL HAVE ROOM FOR  
11 EVERYBODY TO BE PRESENT.

12 MR. SIMS: YOUR HONOR, HE HAS  
13 INDICATED TO ME THAT HE WANTED TO AT LEAST EXPRESS  
14 SOMETHING TO THE FAMILY.. HE WANTED TO EXPRESS TO THE  
15 FAMILY, SO WILL WE BE ABLE TO DO THAT ALSO?

16 THE COURT: WE'LL DO ANYTHING --  
17 I'LL HEAR FROM EVERYBODY OUT ON THE RECORD. I'VE TAKEN  
18 THE PLEA BUT I'LL HEAR FROM EVERYBODY OUT ON THE RECORD  
19 IN THE COURTROOM WHERE WE'VE GOT ROOM FOR EVERYBODY TO  
20 BE THERE.

21 MR. SIMS: YES, SIR.

22 THE COURT: AND HE'LL CERTAINLY HAVE  
23 AN OPPORTUNITY TO SAY WHATEVER HE WANTS TO SAY.

24 MR. SIMS: YES, SIR.

25 THE COURT: OKAY, WE'LL BE IN RECESS

1 A FEW MINUTES.

2 (Recess)

3 (Whereupon, the following  
4 takes place in the courtroom.)

5 THE COURT: ALRIGHT, SOLICITOR.

6 SOLICITOR BELL: THANK YOU, YOUR  
7 HONOR. IF IT PLEASE THE COURT, THIS OCCURRED ON JULY  
8 NINETEENTH, TWO THOUSAND SEVEN. THIS OCCURRED AT  
9 SUMMERSET APARTMENTS IN FRONT OF THE K BUILDING, AND  
10 THAT'S AT ROAD IN THE TOWN  
11 OF SUMMERVILLE IN DORCHESTER COUNTY. THE EVIDENCE THAT  
12 THE STATE WOULD PRESENT AT THE TRIAL, YOUR HONOR, IS  
13 THAT ON THAT OCCASION, ON THAT EVENING, EARLY THAT  
14 EVENING THE DEFENDANT, MR. MILLER, HAD COME AND DRIVEN  
15 INTO THE APARTMENT COMPLEX. HE HAD PREVIOUSLY BEEN  
16 DATING A FEMALE THAT WAS A COUSIN OF THE VICTIM. HE HAD  
17 PARKED AROUND THE OPPOSITE, KIND OF CATER-CORNERED FROM  
18 THE K BUILDING. AN INDIVIDUAL THAT HE HAD KNOWN BECAUSE  
19 HE HAD LIVED THERE WITH THE GIRL FOR SOME TIME PRIOR TO  
20 THIS, HE CALLED HIM OVER AND ASKED HIM, ASKED THIS OTHER  
21 INDIVIDUAL TO GO FIND THE GIRL AND LET HER KNOW HE WAS  
22 HERE. INSTEAD THIS INDIVIDUAL WENT OVER TO THE GIRL'S  
23 CURRENT BOYFRIEND AT THE TIME AND A COUSIN, AND THEY  
24 WENT UP TO AN APARTMENT AND THEY SAID HE TOLD THEM THAT  
25 HER EX-BOYFRIEND WAS AROUND. SO, TWO OR THREE OF THEM

1 WENT DOWN -- TWO OF THEM WENT OUT OF THE FRONT OF THE  
2 APARTMENT BUILDING, ONE -- THE INDIVIDUAL THAT HAD COME  
3 OVER TO TELL THEM ABOUT IT WENT OUT THE BACK BECAUSE HE  
4 WAS GOING BACK WHERE HE HAD LAST SEEN THE CAR. THESE  
5 TWO INDIVIDUALS, ONE OF WHICH WAS THE VICTIM, ERNEST  
6 WRIGHT, AND CEDRIC WILLIAMS WHO WAS THE GIRLFRIEND --  
7 THE BOYFRIEND OF THE GIRL, WENT OUT FRONT. THEY SAW  
8 THIS BLACK GRAND AM GRAND PRIX DRIVE IN FRONT OF THEM,  
9 PARK, AND THE POOL IS RIGHT IN FRONT OF THE K BUILDING,  
10 PARKED NEXT TO THE POOL, PULL OUT AND SLOWLY COME BY.  
11 BOTH OF THEM WENT OUT FROM THE FRONT OF THE BUILDING  
12 BETWEEN PARKED CARS. THE VICTIM, MR. WRIGHT, WENT OVER.  
13 A WINDOW WAS DOWN IN THE CAR, HE ASKED, IS THAT DEVIN?  
14 HE ASKED THAT A COUPLE OF TIMES. THE PERSON, THE VOICE  
15 SAID, NO, AND THEN THE WITNESSES SAY ALL OF A SUDDEN  
16 THEY SAW THE FLASH OF GUN FIRE COMING FROM THE VEHICLE  
17 AS IT SPED AWAY BACK, IT WAS HEADED IN THE DIRECTION OF  
18 THE ENTRANCE/EXIT OF THE APARTMENT COMPLEX. APPARENTLY,  
19 THE VICTIM, SEAMORE WRIGHT, RAN AROUND, CAME BACK  
20 BETWEEN THE PARKED CARS, DOWN THE SIDEWALK, AND FELL  
21 RIGHT IN FRONT OF THE K BUILDING. HE HADN'T REALIZED HE  
22 WAS HIT. IT WAS A SINGLE GUN SHOT THAT WENT INTO, I  
23 THINK HIS RIGHT SIDE AND KIND OF WENT UP AND HIT HIS  
24 LIVER, HIT HIS DIAPHRAGM, AND EXITED IN THE REAR. THE  
25 POLICE WERE CALLED. THERE WAS A WITNESS THAT SAW THE

1 VEHICLE SPEEDING OUT OF THE APARTMENT COMPLEX, CAME IN  
 2 AND SAW SEAMORE WRIGHT. MR. WRIGHT, ALL HE HAD ON WERE  
 3 SOME SHORTS OVER SWIMMING TRUNKS, HE APPARENTLY HAD BEEN  
 4 SWIMMING IN THE POOL EARLIER THAT EVENING. HE HAD NO  
 5 SHIRT, NO SHOES ON. PEOPLE WERE ADMINISTERING FIRST AID  
 6 TO HIM, THE POLICE HAD BEEN CALLED. THE POLICE GOT  
 7 THERE, CORDONED OFF THE AREA, THE DETECTIVES CAME AND  
 8 STARTED FINDING -- THEY GOT THE NAME OF DEVIN WHO MAY  
 9 HAVE BEEN INVOLVED. AN OFFICER, AN OFF DUTY OFFICER WAS  
 10 ACTUALLY NEAR THE VICINITY WHERE THE DEFENDANT, MR.  
 11 MILLER, WAS RESIDING IN APARTMENTS, HAD GONE OVER, SAW  
 12 A VEHICLE THAT MATCHED THE DESCRIPTION, A BLACK GRAND  
 13 PRIX, FELT IT WAS WARM, HEARD, YOU KNOW, THE SOUND A CAR  
 14 MAKES WHEN IT'S JUST BEEN TURNED OFF AND CLICKING AND  
 15 ALL THAT, KIND OF SAT THERE. THEY BROUGHT THE INITIAL  
 16 WITNESS WHOSE NAME WAS BAXTER, THEY BROUGHT HIM BY ON A  
 17 SHOW UP TO SAY, IS THAT HIM OR NOT, AND HE IDENTIFIED  
 18 MR. MILLER. THEY HAD GOTTEN UP WITH MR. MILLER AND  
 19 BROUGHT HIM OUT TO THE SHOW UP LINEUP. THE POLICE TOOK  
 20 HIM TO THE HEADQUARTERS, THEY GOT A SEARCH WARRANT FOR  
 21 MR. MILLER'S APARTMENT. THEY FOUND A NINE MILLIMETER  
 22 HI-POINT GUN AND A BOX OF AMMUNITION WRAPPED IN A WHITE  
 23 T-SHIRT UNDER, BETWEEN THE MATTRESSES IN HIS BEDROOM.  
 24 THEY FOUND THE MAGAZINE IN THE DRAWER OF ANOTHER  
 25 BEDROOM. AT THE SCENE THEY RECOVERED THREE, THREE

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1 CARTRIDGES AND THEY ALSO, THEY TOOK HIS VEHICLE IN, THEY  
2 FOUND THREE OTHER CARTRIDGES IN THE VEHICLE. HE HAD,  
3 WHEN HE WAS SHOOTING BACKWARD HE HAD HIT THE CAR RIGHT  
4 BEHIND THE DRIVER'S POST, AND THEY FOUND BULLET  
5 FRAGMENTS THERE. THEY ALSO FOUND A BULLET FRAGMENT IN  
6 A PARKED CAR AT THE APARTMENT COMPLEX AS WELL THAT HE  
7 HIT WHEN FIRING. ALL OF THESE MATCHED UP TO THE HI-  
8 POINT BULLET. THE ONLY OTHER EVIDENCE OF ANY WEAPON IN  
9 THE AREA WAS, THEY FOUND AN INTACT FORTY-FIVE CALIBER  
10 BULLET UNDER ONE OF THE PARKED CARS IN THE AREA WHEN  
11 THEY WERE DOING THE CRIME SCENE. AND IN THE MEANTIME  
12 WHEN THEY WERE DOING THE SEARCH WARRANT ON HIS APARTMENT  
13 THEY TOOK HIM TO SUMMERVILLE POLICE DEPARTMENT, AND  
14 AFTER MIRANDA TWO DETECTIVES WERE TALKING WITH HIM, AND  
15 HE ADMITTED TO SHOOTING THE VICTIM, MR. WRIGHT. HE SAYS  
16 THAT HE SAW A GUN AND THEY TOLD THE POLICE WHERE HIS GUN  
17 WAS AT THAT TIME.

18 THOSE ARE BASICALLY THE FACTS IN  
19 THIS CASE, YOUR HONOR, AND I KNOW THAT THE -- I DON'T  
20 KNOW IF BOTH PARENTS BUT I KNOW THAT THE FATHER OF THE  
21 VICTIM WOULD LIKE TO ADDRESS THE COURT AT THE  
22 APPROPRIATE TIME.

23 MR. WRIGHT, I'M SORRY, MR. MILLER,  
24 AS I SHOW, HAS NO PRIOR RECORD.

25 THE COURT: ALRIGHT. I'LL BE GLAD TO

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HEAR FROM ANYBODY ON BEHALF OF THE VICTIM, OR HIS FAMILY AT THIS TIME.

ERNEST WRIGHT (FATHER OF VICTIM):

I WOULD LIKE TO SAY - - -

THE COURT: YES, SIR, THAT'S FINE, AS LONG AS YOU TALK LOUD ENOUGH FOR EVERYBODY CAN HEAR YOU. YOUR NAME, PLEASE?

ERNEST WRIGHT: ERNEST WRIGHT.

THE COURT: YES, SIR.

ERNEST WRIGHT: I'M SEAMORE'S FATHER.

THE COURT: YES, SIR.

ERNEST WRIGHT: I WOULD LIKE TO SAY I DON'T HAVE NO DISRESPECT FOR HIS MOTHER BECAUSE HIS MOTHER REALLY DON'T HAVE ANYTHING TO DO WITH IS ACTIONS, BUT I JUST WANT TO LET HIM KNOW WHAT HE DID. HE TOOK AWAY MY SON THAT I LOVED DEARLY, AND I, YOU KNOW, MISS HIM VERY, VERY MUCH. AND I REALLY JUST DON'T HAVE NO MERCY FOR HIM BECAUSE MY SON IS IN THE GRAVE, SO I DON'T HAVE NO SYMPATHY FOR HIM WHATEVER HAPPENS TO HIM TODAY, BUT I JUST WANT TO LET HIS MOTHER KNOW THAT WE DON'T HAVE NO DISRESPECT FOR HER BECAUSE THE ONLY THING SHE COULD DO WAS RAISE HIM. THAT'S ALL SHE COULD DO IS RAISE HIM.

THE COURT: HOLD UP JUST A SECOND,

1 UNTIL THAT TRAIN GOES BY.

2 ERNEST WRIGHT: SHE CAN'T BE HELD  
3 FOR WHAT HE DID, AND I KNOW FOR A FACT THAT SHE'S A GOOD  
4 MOTHER. BUT AS FAR AS HIM, HE SHOULD HAVE THOUGHT ABOUT  
5 IT BEFORE HE DONE IT, SO I JUST DON'T HAVE NO SYMPATHY  
6 FOR HIM.

7 THE COURT: ALRIGHT, THANK YOU, SIR.

8 SOLICITOR BELL: YOUR HONOR, IF I  
9 MAY, MR. WRIGHT, JUST -- I COULD ASK YOU, YOU AND YOUR  
10 FAMILY ARE IN AGREEMENT WITH THIS PLEA, A PLEA TO  
11 VOLUNTARY MANSLAUGHTER?

12 ERNEST WRIGHT: YES, SIR.

13 SOLICITOR BELL: AND YOU UNDERSTAND  
14 EVERYTHING I'VE TALKED TO YOU ABOUT?

15 ERNEST WRIGHT: YES, SIR.

16 SOLICITOR BELL: THANK YOU.

17 THE COURT: ALRIGHT, YES, SIR,  
18 ANYTHING ELSE FROM THE STATE?

19 SOLICITOR BELL: ANY OTHER FAMILY  
20 WOULD LIKE TO TALK?

21 THE COURT: ALRIGHT, MR. SIMS.

22 MR. SIMS: YOUR HONOR, THIS IS TRULY  
23 AN UNFORTUNATE SITUATION WHERE ONE YOUNG MAN IS DEAD AND  
24 ANOTHER YOUNG MAN IS FACING CONSIDERABLE AMOUNT OF TIME  
25 IN JAIL.



1 TESTIFIED THAT HE HAD GONE -- THAT HE HAD MET HER AT HER  
2 JOB, I BELIEVE SHE WORKED AT WAL-MART, AT THE DRUGSTORE.  
3 SHE WORKED, HE WENT THERE, THEY TALKED, HE WAS SUPPOSED  
4 TO MEET HER THAT NIGHT. HE WENT TO THE APARTMENT  
5 COMPLEX, HE WAS DRIVING THE CAR, HE WENT TO THE COMPLEX  
6 TO GET HER. HE SAW MR. BAXTER, COURTNEY BAXTER, AND  
7 ASKED MR. BAXTER IF HE WOULD GO TO JOLISA -- HE WAS  
8 PARKED BY HER APARTMENT, AND HE ASKED HIM IF HE WOULD GO  
9 AND GET HER AND TELL HER THAT DEVIN WAS THERE. HOWEVER,  
10 MR. BAXTER CHOSE TO TAKE IT UPON HIMSELF, RATHER THAN GO  
11 AND DO AS HE HAD BEEN ASKED, TO GO AND TALK WITH MR.  
12 SEAMORE, UNFORTUNATELY, GARRETT, ROD, TIM, AND THEY ALL  
13 WENT UPSTAIRS TO TIM'S APARTMENT AND HE BEGAN TO EXPLAIN  
14 TO THEM THAT DEVIN WAS IN THE PLACE LOOKING FOR JOLISA.  
15 MR. BAXTER GAVE A STATEMENT TO THE POLICE OFFICERS. HE  
16 GAVE THAT STATEMENT TO THE POLICE OFFICERS AND HE  
17 INDICATED THAT, IN FACT, HE DID DO THAT, HE WENT AND  
18 TOLD EVERYBODY THAT DEVIN WAS THERE. THEY DID NOT KNOW  
19 DEVIN WAS THERE, NOBODY KNEW HE WAS THERE OTHER THAN MR.  
20 BAXTER. HAD HE JUST SAID, MINDED HIS OWN BUSINESS AT  
21 THAT POINT AND SAID, SHE WASN'T THERE, WE WOULD NEVER  
22 HAVE THIS. BUT AFTER THAT, HE TESTIFIES IN HIS  
23 STATEMENT, ON HIS STATEMENT THAT HE GAVE TO THE  
24 SUMMERSVILLE POLICE DEPARTMENT THAT THEY ALL WENT  
25 DOWNSTAIRS. HE SAYS IN HIS STATEMENT THAT WHEN HE CAME

1 BACK DOWNSTAIRS HE SAW TWO OF THE YOUNG MEN IN THE COURT  
2 WAY TRYING TO HIDE THEMSELVES OR SECRET THEMSELVES, BENT  
3 OVER LIKE THEY WERE HIDING THEMSELVES. HE SAYS THAT HE  
4 WENT THROUGH THE BACK WAY TO SEE IF DEVIN HAD GONE  
5 THROUGH THE BACK WAY. HE SAYS AT THAT POINT HE CAME  
6 OUT, AND HE SAYS IN HIS STATEMENT THAT MR. SEAMORE WAS  
7 RUNNING TOWARDS THE CAR. MY CLIENT, OF COURSE,  
8 TESTIFIED -- AND ALL OF THE WITNESSES, AND EVERY WITNESS  
9 THAT THE STATE WOULD HAVE BROUGHT FORTH THAT WAS OUT  
10 THERE, NOT THE POLICE OFFICERS, WOULD INDICATE THAT  
11 THOSE FOUR PEOPLE HAD COME OUT OF THE APARTMENT TO FIND  
12 DEVIN, BECAUSE THEY WERE ASKING, IS THAT DEVIN? THERE  
13 HAD BEEN BAD BLOOD BETWEEN THEM BEFORE, MY CLIENT WOULD  
14 HAVE TESTIFIED THAT HE HAD BEEN BEAT UP A COUPLE OF  
15 TIMES BY THEM. AND WHEN HE CAME THERE AND HE SAW MR.  
16 SEAMORE, HIS STATEMENT TO ME AND HIS STATEMENT TO  
17 SUMMERVILLE POLICE DEPARTMENT WAS THAT MR. SEAMORE HAD  
18 A WEAPON. IN FEAR HE FIRED, HE BENT DOWN AND FIRED.  
19 THE EVIDENCE WOULD HAVE SHOWN THAT HE HIT HIS CAR ON A  
20 NUMBER OF TIMES AS HE WAS TRYING TO GET AWAY, HE SHOT  
21 HIS CAR, AND THERE'S NO QUESTION ABOUT THAT, THAT HE  
22 SHOT UP HIS OWN CAR. HE DID NOT KNOW THAT HE HAD EVEN  
23 HIT ANYONE. HE WENT HOME AND THE POLICE OFFICERS CAME  
24 TO HIS HOME AND, OF COURSE, THE SCENARIO STARTED FROM  
25 THERE, WHEN HE WAS TOLD THAT THE YOUNG MAN HAD DIED, HAD

1 BEEN KILLED. HE WAS CHARGED, HE GAVE THE POLICE  
2 OFFICERS THE SAME STATEMENT THAT I HAVE GIVEN THIS COURT  
3 TODAY.

4 THIS YOUNG MAN IS A QUIET YOUNG MAN,  
5 HAS NO PRIOR RECORD. HE HAS NEVER BEEN IN ANY TROUBLE,  
6 HE WORKED, HAD A GOOD JOB, HE WORKED AND HE HAS BEEN, HE  
7 WAS REALLY RAISED, IN MY UNDERSTANDING, INITIALLY BY HIS  
8 GRANDPARENTS. HE MOVED IN WITH HIS MOTHER, AND THEY  
9 WERE ALL INVOLVED, AND THEY'VE BEEN VERY CONCERNED WITH  
10 WHERE WE ARE TODAY AND FINDING, IN TERMS OF WHERE WE  
11 FIND OURSELVES.

12 YOUR HONOR, THOSE ARE BASICALLY THE  
13 FACTS OTHER THAN WHAT MR. BELL HAS GIVEN YOU. THAT WAS  
14 OUR POSITION, THAT WAS WHAT WE WERE PREPARED TO PRESENT  
15 TO THE JURY. AND WE, YOUR HONOR, AT THIS POINT, WOULD  
16 ASK THE COURT TO LISTEN TO ALL OF THE FACTS, TO MAKE A  
17 DECISION, AND TO BE AS LENIENT AS THIS COURT CAN  
18 POSSIBLY BE IN REGARDS TO WHAT HAPPENED OUT THERE THAT  
19 NIGHT. IT IS A TRAGIC SITUATION. AND I'VE BEEN  
20 PRACTICING LAW FOR TWENTY-NINE YEARS AND I HAVE SEEN ALL  
21 KINDS OF -- I'VE PROSECUTED FOR OVER TWELVE YEARS, AND  
22 I HAVE SEEN ALL KINDS OF CASES THAT COME. THIS STRIKES  
23 ME AS ONE OF THE MOST TRAGIC SITUATIONS IN THE TWENTY-  
24 NINE YEARS, WHERE TWO YOUNG MEN, ONE DEAD AND ONE IS NOW  
25 GOING TO FACE A PRISON SENTENCE ALL BECAUSE ONE PERSON

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CHOSE TO DO WHAT HE WANTED TO DO AS OPPOSED TO GOING AND  
JUST SAYING, SHE'S NOT HERE. YOU KNOW, IF SHE'S NOT  
HERE, AND HE LEAVES, AND NOBODY DIES, WE WOULD NOT BE  
HERE TODAY, THERE WOULD NOT BE TRAGEDY IN MR. WRIGHT'S  
FAMILY, THERE WOULD NOT BE TRAGEDY IN MR. MILLER'S  
FAMILY, AND WE PROBABLY WOULD HAVE NEVER KNOW, OR THEY  
WOULD HAVE NEVER KNOWN ME NOR WOULD ANYONE ELSE.

WE AGAIN WOULD ASK THE COURT TO BE  
AS LENIENT AS POSSIBLE.

I BELIEVE HIS MOTHER IS HERE.

THE COURT: YES, MA'AM.

MOTHER OF DEFENDANT: I WOULD LIKE  
TO APOLOGIZE TO THE FAMILY.

THE COURT: CAN YOU COME UP A LITTLE  
BIT, PLEASE, SO THE COURT REPORTER CAN HEAR YOU.

MR. SIMS: THIS IS CELESTE MILLER.

THE COURT: YOUR NAME, PLEASE?

CELESTE MILLER: MY NAME IS CELESTE  
MILLER, I'M DEVIN MILLER'S MOTHER.

THE COURT: CELESTE?

CELESTE MILLER: CELESTE MILLER.

THE COURT: MS. MILLER. ALRIGHT.

CELESTE MILLER: I'M DEVIN MILLER'S  
MOTHER.

THE COURT: YES, MA'AM.

1                    CELESTE MILLER: AND THE ONLY THING  
2 I WANT TO SAY IS THE SAME THING THAT I HAD TO SAY THE  
3 DAY THAT IT HAPPENED, IS THAT I'M SORRY, AND IT  
4 SHOULDN'T HAVE EVER HAPPENED, BUT I'M JUST SORRY.

5                    THE COURT: THANK YOU, MA'AM.

6                    GRANDMOTHER OF DEFENDANT: I'M  
7 DEVIN'S GRANDMOTHER, AND THIS IS A VERY, VERY HARD, SAD  
8 DAY FOR ME TODAY. I DIDN'T EVER THINK THIS WOULD COME  
9 TO SEAMORE AND DEVIN. WE LIVED, HIS GRANDMOTHER AND I  
10 LIVED ON, IN THE SAME SUBDIVISION FOR THIRTY SOME YEARS.  
11 I'VE BEEN THERE SINCE SEVENTY-FOUR. WHEN I MOVED OUT  
12 THERE HIS MOTHER, YOUNG, HIS MOTHER WAS A CHILD. AND  
13 WHEN THEY STARTED, GOT MARRIED, START HER OWN FAMILY, I  
14 IMAGINED THAT MY GRANDCHILDREN, SEAMORE'S GRANDMOTHER  
15 WAS THERE, AND I IMAGINE WHEN HIS MOTHER AND HIS FATHER  
16 WAS WORKING THAT HE WOULD BE WITH HIS GRANDMOTHER. AND  
17 HIS GRANDMOTHER IS AN EXCEPTIONAL NEIGHBOR, SHE'S AN  
18 EXCEPTIONAL WOMAN, AND SHE RAISED HER CHILDREN RIGHT.  
19 WHATEVER THE CHILDREN DECIDED TO DO AFTER THEY LEAVE OUR  
20 CARE, THE NEWSPAPER AND THE WORLD WILL TELL YOU THAT  
21 IT'S NOT WHAT WE WANTED IT TO BE. AND I HURT SO BAD  
22 BECAUSE SEAMORE STAYED ON MY FRONT PORCH AND IN MY HOUSE  
23 SO MUCH, AND A LOT OF TIMES I'D RUN HIM OFF THE PORCH,  
24 BECAUSE MY PORCH WAS LOADED WITH ALL THE BOYS, MY HOUSE  
25 WAS THE STOPPING OFF HOUSE FOR ALL OF THEM, ALL THE

1 NEIGHBORHOOD BOYS. AND A LOT OF TIMES WHEN SEAMORE, WE  
2 LIVED MAYBE ABOUT SEVENTY-FIVE FEET FROM THE PARK IN OUR  
3 SUBDIVISION. WHEN SEAMORE WAS GONE TOO LONG WHEN HE WAS  
4 YOUNGER AND HIS GRANDMOTHER DIDN'T KNOW WHERE HE WAS AT,  
5 SHE'D PASS MY HOUSE MANY DAYS DOWN THERE, SOMETIMES  
6 SHE'D HAVE A LITTLE STICK IN HER HAND, WHERE IS SEAMORE,  
7 HAVE Y'ALL SEEN SEAMORE? I'D SAY, NO, HE AIN'T HERE.  
8 I'D SAY, HE MUST BE DOWN THERE TO THE PARK WITH THE REST  
9 OF THE GANG, AND THAT'S WHAT I'D REFER TO THEM. AND  
10 SOMETIMES SHE DIDN'T GO DOWN THERE, SHE WOULD YELL FROM  
11 HER HOUSE -- MY HOUSE WAS ON THE OTHER SIDE -- CALLING  
12 SEAMORE. AND SOMETIMES, LIKE I SAID, SHE'D HAVE TO WALK  
13 DOWN THERE TO THE PARK TOWARDS MY HOUSE. AND THIS IS  
14 THE MOST HEARTBREAKING THING THAT EVER HAPPENED TO ME  
15 AND IN MY FAMILY. I FEEL JUST AS BAD AS THAT FAMILY  
16 FEELS. THE ONLY THING THAT I HAVE THE EDGE ON THEM  
17 BECAUSE WHETHER DEVIN IS IN THE PENITENTIARY OR WHEREVER  
18 HE'S AT I CAN SEE DEVIN. THEY CANNOT LOOK, NO LONGER  
19 SEE SEAMORE. AND I KNOW SEAMORE WAS LOVED JUST LIKE WE  
20 LOVE DEVIN. THIS WAS SOMETHING THAT SHOULDN'T HAVE  
21 NEVER HAPPENED. AND I DON'T THINK IT WOULD HAVE BEEN,  
22 BUT DEVIN'S LOVE FOR SEAMORE'S FIRST COUSIN, HIS  
23 MOTHER'S SISTER'S DAUGHTER. DEVIN, YOU KNOW, I HAVE TO  
24 SAY WHAT I FEEL, AND I'M ALMOST EIGHTY YEARS OLD, AND  
25 YOU CAN UNDERSTAND THAT I'M TAKING A LITTLE LONG, MAYBE

1 I'M GOING TO BAT, OR WHATEVER HAVE YOU, BUT I AM DOING  
2 THE BEST I CAN, AND I AM TRUTHFUL. AND HIS FAMILY CAN  
3 SAY, I HAVEN'T TOLD A LIE SO FAR AND I DON'T INTEND TO  
4 TELL A LIE. AND HIS LOVE FOR SEAMORE'S FIRST COUSIN  
5 STARTED ALL OF THIS. WE TRIED ALL WE COULD, HOPING THAT  
6 THEY WOULDN'T FALL IN LOVE BECAUSE DEVIN WAS MAYBE THREE  
7 OR FOUR YEARS YOUNGER THAN SHE IS -- OLDER THAN SHE IS.  
8 BUT THERE WAS NOTHING THAT WE COULD DO. HER MOTHER, HIS  
9 MOTHER, GRANDMOTHER, AND EVERYBODY, THE MOTHER, THE  
10 GRANDMOTHER COME IN MY HOUSE AND TOLD ME SHE DIDN'T  
11 WANT, SHE WANTED JOLISA TO GO ON AND FLY AS HIGH AS SHE  
12 COULD FLY, AND SHE DIDN'T WANT HER TO COME DOWN WITH NO  
13 BABY OR WHATEVER ELSE, AND WE DIDN'T WANT THAT FOR DEVIN  
14 EITHER. AND I'M SORRY, I'M SORRY. Y'ALL DON'T KNOW HOW  
15 MY HEART IS BLEEDING FOR Y'ALL TODAY, AND I HOPE Y'ALL  
16 DON'T HOLD NO MALICE AGAINST ME AND MY HUSBAND FOR WHAT  
17 HAPPENED. WE'RE SORRY, WE'RE SORRY. GOD KNOWS IF I  
18 COULD UNDO IT I WOULD UNDO IT TODAY, BUT I CAN'T, I  
19 CAN'T, AND I DO THE BEST BY THEM THAT I CAN DO.

20 THANK YOU, Y'ALL, FOR PUTTING UP  
21 WITH ME SO LONG, BUT I HAD TO SAY WHAT I THOUGHT WAS  
22 RIGHT.

23 THE COURT: THANK YOU, MA'AM. AND  
24 WHAT'S YOUR NAME? I KNOW YOU'RE HIS GRANDMOTHER.

25 MS. CAMPBELL: FLORENCE CAMPBELL,

1 I'M HIS GRANDPARENT, THIS IS HIS GRANDFATHER HERE.

2 THE COURT: MS. CAMPBELL.

3 MR. SIMS: FLORENCE CAMPBELL.

4 THE COURT: ALRIGHT, THANK YOU,  
5 MA'AM.

6 GRANDFATHER OF DEFENDANT: I'M THE  
7 GRANDFATHER OF DEVIN MILLER. AND WHAT HAPPENED I'M VERY  
8 SORRY FOR THE FAMILY AND I'M VERY SORRY FOR DEVIN.  
9 THAT'S ALL I'VE GOT TO SAY. THANK YOU.

10 THE COURT: THANK YOU, MR. CAMPBELL.  
11 ANYTHING ELSE, MR. SIMS?

12 DEFENDANT MILLER: AS FAR AS I'VE  
13 GOT TO SAY, WHAT HAPPENED THAT NIGHT, IT HAPPENED  
14 THIRTEEN MONTHS AGO, AND IT AIN'T BEEN A DAY THAT PASSES  
15 BY YET THAT I AIN'T THOUGHT ABOUT WHAT HAPPENED. I  
16 SUBMITTED THE TRUTH BEFORE I WAS EVEN GIVEN THE CHARGE.  
17 AND I AIN'T NEVER SEEN THE STATEMENT SINCE THEN. AND I  
18 COULD READ IT WORD FOR WORD BECAUSE IT'S THE TRUTH. I'M  
19 VERY SORRY ABOUT WHAT HAPPENED. IT'S THEIR FAMILY  
20 MEMBER, I KNOW THAT. I KNOW HIM JUST LIKE THEY KNOW ME.  
21 THEY WATCHED ME GROW UP BECAUSE WE GREW UP TOGETHER.  
22 AND THEY KNOW ME, THEY KNOW EVERY BIT OF ME. THEY KNOW  
23 HOW I ACTED ON MY CHARACTER AND EVERYTHING. THEY KNOW  
24 I AIN'T THE TYPE, THEY KNOW IT. BUT I'M SORRY, I CANNOT  
25 TURN BACK THE HANDS OF TIME. AND IF I GO BACK TO THAT

1 NIGHT, IF I GO BACK TO THAT NIGHT THAT THAT HAPPENED,  
2 JULY NINETEENTH, I WAS IN MY CAR, I HAD NO INTENTIONS OF  
3 DOING ANYTHING LIKE THAT. HOW I REACTED, ANYBODY WOULD  
4 HAVE MADE THAT REACTION. HE HAD A BIG CHROME PISTOL IN  
5 MY FACT. I HAD MY PISTOL IN MY CAR, MY WEAPON WAS  
6 REGISTERED IN MY NAME, MY CAR WAS REGISTERED IN MY NAME.  
7 I STILL DON'T FEEL LIKE I BROKE ANY LAW, I JUST REACTED  
8 NORMALLY. BUT IF IT WAS UP TO ME, I JUST WISH HE WOULD  
9 HAVE SHOT FIRST, AND IT WOULD HAVE BEEN HIM STANDING UP  
10 HERE. BECAUSE I AIN'T MADE FOR NO TIME, AND I AIN'T  
11 READY TO DO NO TIME. HE SHOULD HAVE BURIED ME, AND IT  
12 SHOULD HAVE BEEN HIM STANDING UP HERE. I KNOW THEY HATE  
13 ME, I KNOW THEY HATE MY GUTS, AND I DON'T BLAME THEM, I  
14 DON'T BLAME THEM FOR HATING ME. I PROBABLY WOULD HAVE  
15 HATED THEM, TOO, IF IT WAS ME. BUT IF I GO BACK TO THAT  
16 NIGHT, THAT SECOND, THAT INSTANT, THERE'S NOTHING I  
17 COULD HAVE CHANGED, THERE'S NOTHING I COULD HAVE  
18 CHANGED. I BEEN THINKING ABOUT, WHAT IF I DIDN'T SHOT,  
19 THAT HORRIBLE THOUGHT OF HIM PUTTING SOMETHING IN MY  
20 HEAD. I CAN'T CHANGE WHAT I DONE, I CAN'T CHANGE IT. I'M  
21 SORRY ABOUT WHAT HAPPENED. I'M SORRY, I'M SORRY, BUT I  
22 CAN'T TURN BACK THE HANDS OF TIME. I CAN'T SAY, IF.  
23 I'VE JUST GOT TO MOVE FORWARD NOW. BUT THIS IS NOT  
24 BECAUSE OF ME AND THIS IS NOT BECAUSE OF HIM. THEY  
25 KNOW, MY FAMILY KNOWS, EVERYBODY THAT KNOWS BOTH OF THE

1 FAMILIES KNOW WHO STARTED THIS, AND THEY KNOW WHO THIS  
2 IS BEHIND. AND SHE'S GOING TO HAVE TO LIVE WITH THAT  
3 BURDEN ON HER CHEST THE REST OF HER DAYS. SHE MIGHT BE  
4 FREE OUT THERE IN THAT WORLD, BUT SHE'S GOING TO FEEL  
5 MORE SORROW THAN ANY OF US, ME OR HIM. SHE TRIED TO  
6 TAKE OUT TWO BIRDS WITH ONE STONE, BUT I'M STILL  
7 STANDING, AND I'M GOING TO BE STANDING, AND I'M GOING TO  
8 BE ALRIGHT.

9 THE COURT: THANK YOU, SIR.

10 ANYTHING ELSE, MR. SIMS?

11 MR. SIMS: YOUR HONOR, I DON'T THINK  
12 THAT I CAN DO ANYMORE THAN WHAT HAS ALREADY BEEN DONE.

13 THE COURT: WELL, IT CERTAINLY IS A  
14 TRAGEDY FOR BOTH FAMILIES, AND I HOPE THAT THEY CAN  
15 BEGIN TO BRING SOME CLOSURE. YOU CAN'T REPLACE  
16 ANYTHING, YOU CAN'T CHANGE ANYTHING, BUT I HOPE YOU WILL  
17 BE ABLE TO HAVE SOME CLOSURE AND PUT YOUR LIFE BACK  
18 TOGETHER.

19 SENTENCE OF THE COURT

20 THE SENTENCE OF THE COURT IS THAT  
21 YOU, DEVIN MILLER, BE COMMITTED TO THE STATE DEPARTMENT  
22 OF CORRECTIONS FOR A PERIOD OF TWENTY YEARS. YOU'LL GET  
23 CREDIT FOR ANY TIME THAT YOU'VE SERVED.

24 GOOD LUCK TO YOU, SIR.

CERTIFICATE

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I, THE UNDERSIGNED, MRS. HARRY A. WALKER, OF ROWESVILLE, SOUTH CAROLINA, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR DORCHESTER COUNTY, SOUTH CAROLINA, ON THE TWENTY-SIXTH DAY OF AUGUST, 2008.

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

DATE: OCTOBER 3, 2009

*Harry A. Walker*  
\_\_\_\_\_  
(MRS.) HARRY A. WALKER

FORM 5

STATE OF SOUTH CAROLINA )  
County of Dorchester )  
Devin Miller 330228 )  
Full name and prison number (if any) of Applicant )

IN THE COURT OF COMMON PLEAS

v. )  
State of South Carolina )

APPLICATION FOR  
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legible 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 Lieber
2. Name and location of Court which imposed sentence Dorchester County Gaerel Sessions
3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) N/A
  - (b) \_\_\_\_\_

2009 MAY 15 4 15 PM  
CLERK OF COURT  
DORCHESTER COUNTY

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

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

(a) 8/26/08

(b) 20 years 85%

(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?

yes

8. If you answered "yes" to (7), list:

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

i. The South Carolina Court of Appeals

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. Dismissed

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. 10/15/08

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) \_\_\_\_\_

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

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

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

(a) Ineffective assistance of counsel

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

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

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

(a) Failed to inform and provide me favorable evidence

(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? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? \_\_\_\_\_

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

(a) the specific nature thereof:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_
- 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. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- 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) Ineffective assistance of counsel (1st application)  
 (b) \_\_\_\_\_  
 (c) \_\_\_\_\_

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

- (a) your arraignment and plea? yes  
 (b) your trial, if any? \_\_\_\_\_  
 (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 "yes" to one or more parts of (17), list:

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

- i. Thomas Sims  
 \_\_\_\_\_  
 \_\_\_\_\_  
 ii. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 iii. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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

- i. arraignment and plea, sentencing  
 \_\_\_\_\_  
 \_\_\_\_\_  
 ii. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 iii. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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

New trial

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

No

STATE OF SOUTH CAROLINA )  
County of Dorchester )

VERIFICATION

2009 MAY 15 PM 4:52  
CLERK OF COURT  
DORCHESTER COUNTY

I, Devin D. Miller, 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.

Devin Miller  
Devin Miller

SWORN to and subscribed before me this 12 day of May, 09.  
Amytha Bee (L.S.)  
Notary Public

My Commission Expires: 8/10/2011

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

I, Devon D. Miller, 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.

Devon Miller  
Applicant

SWORN or affirmed to and subscribed before me this  
12 day of May, 07

[Signature]  
Notary Public

My Commission Expires: 8/20/2011

FILED-RECORDED  
2009 MAY 15 PM 4:52  
CLERK OF COURT  
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

2009 - CP - 18 - 1350

Devin D. Miller, # 330228,  
Applicant,

vs.

AMENDED APPLICATION FOR  
POST-CONVICTION RELIEF

State of South Carolina,  
Respondent.

2009 JUL 13 AM 10:50  
DORCHESTER COUNTY

In accordance with Title 17, Chapter 27, Section 10 et seq. of S.C. Code of Laws and Rule 15 (a) of S.C. Rules of Civil Procedure, Applicant Devin D. Miller hereby amend the original Application for Post-Conviction Relief ("PCR") to allege additional grounds for relief. In his current application for PCR, Applicant has alleged that his plea counsel was ineffective for failing<sup>or</sup> to inform and provide [Applicant] favorable evidence." This Amended Application is intended to incorporate the issue presented in the current application.

In addition to the allegation currently listed in Applicant's PCR application, Applicant alleges as follows:

1). My guilty plea was involuntarily entered because the trial judge and my plea counsel allowed me to plead guilty to the relevant charges in ignorance of the direct consequence of the mandatory post-~~conviction~~ release supervision requirement; the afore-said individuals failed to inform me that I will be required to participate in CSP after my release from imprisonment.

Participation in the post-release community supervision program is a direct consequence of a conviction for a no-parole offense.

Applicant hereby contends that participation in the post-release Community Supervision Program ("CSP") required by Section 24-21-560 is a direct consequence of a conviction for a no-parole offense. The basis for Applicant's contention is because participation in the CSP is mandatory and, therefore, it impacts the sentence imposed with a definite, immediate and largely automatic effect on the offender's punishment. see, People v. Catu, 792 N.Y.S.2d 887 (Ct.App. 2005) (stating "post-release supervision is a direct consequence of a [no-parole] conviction [because] imposition of supervision is mandatory and thus 'has a definite, immediate and largely automatic effect of defendant's punishment.'") (emphasis in original); see also, Cuthrell v. Director of Patuxent Institution, 475 F.2d at 1366 (stating "The distinction between 'direct' and 'collateral' consequences of a plea turns on whether the result represent a definite, immediate and largely automatic effect on the defendant's punishment.").

Therefore, because the CSP is mandatory and thus has a definite, immediate and largely automatic effect upon a defendant's punishment, the CSP is a ~~DEFINITE~~ direct consequence of a conviction for a no-parole offense.

Failure to inform Applicant that his sentence included supervised release component rendered his guilty plea unknowing and involuntary.

Applicant is serving a sentence of (20) years after having entered a guilty plea to a non-parolable offense. see, Transcript of Guilty Plea Hearing; and § 24-13-100 (defining "no-parole" offenses). Because Applicant is convicted

of a no-parole offense, his sentence included a mandatory period of up to two years' post-release supervision whereupon the Applicant's release from imprisonment he will be required to participate in a Community Supervision Program ("CSP"). see, § 24-21-560 of S.C. Code Ann. (supp. 2003). Applicant was not informed of the post-release supervision component prior entering his guilty plea to the no-parole offense. see, Tr. of Gilty Plea. Hrg.

Applicant contends that his guilty plea was unknowingly and involuntarily entered because he did not know of the direct consequence of the CSP prior to pleading guilty. see, State v. Hazel, 271 S.E.2d 602 (S.C. 1980) ("Defendant's guilty plea was not knowing since it was entered without understanding of mandatory punishment for [offense], and, thus, was entered in ignorance of its direct consequences and was invalid."); Cuthrell v. Director of Patuxent Institution, 475 F.2d 1364 (1977) ("In order for a plea of guilty to be valid the defendant must be aware of all the direct consequences of his plea."); see also, People v. Latu, 792 N.Y.S.2d 887 (Ct. App. 2005) ("Failure to inform robbery defendant that [no-parole] sentence included supervised release component rendered his guilty plea unknowing and involuntary."); People v. Van Deusen, 7 N.Y.3d. 744, 819 N.Y.S.2d 854, 853 N.E.2d 233 (2006) (stating "At the time defendant pleaded guilty, she did not possess all the information necessary for an informed choice among different possible courses of action because she was not told that she would be subject to mandatory post-release supervision as a consequence of her guilty plea. Accordingly, defendant's decision to plead guilty cannot be said to have been knowing, voluntary and intelligent."); People v. Hill, 9 N.Y.3d 189, 879 N.E.2d 152, 849 N.Y.S.2d 13, 2007 N.Y. Slip Op. 08782 (holding "failure to advise defendant pleading guilty that a period of post-release supervision follows a [no-parole] sentence violates due process, and requires reversal of the conviction...").

In Carter v. McCarthy, the federal Court of Appeals held that where a statute imposes mandatory post release supervision term to be served following completion of period of confinement, such supervision term is a direct consequence of a guilty plea and defendant must be advised of it in order for his guilty plea ~~to be a voluntary and intelligent plea~~ to comport with due process. 806 F.2d 1373, cert. denied 108 S.Ct. 198, 484 U.S. 870, 98 L.Ed.2d 149.

The Carter court also noted:

"a mandatory [post release supervision] terms involves the imposition of an additional adverse consequence upon the defendant - a substantial period of time during which freedom is limited significantly commencing 'after' the defendant has served his sentence of imprisonment."

Id. (emphasis in original)

More importantly, the Carter court stated:

"... for purposes of determining whether a plea is voluntarily and intelligently made, the critical fact is not that the imposition of the [post release supervision] term is to be served in addition to the term of confinement under the sentence. In these circumstances, the judge handling the criminal proceedings must advise the defendant, [among other things], of the maximum period his liberty may be restrained both by way of imprisonment and [post release supervision]."

Id.

The Applicant contends that he was prejudiced by this lack of information which result in him entering a guilty plea in ignorance of the direct consequences of the CSP because he would not have pled guilty had he known: (1) that he would be required to participate in the CSP after his term of confinement; (2) the nature of the supervised release; or (3) of the consequences

attendant on its violation. see, Alexander v. State, 402 S.E.2d 484 (S.C. 1991) (stating "Defendant's testimony that he would not have pled guilty established 'prejudice' element.>").

Therefore, whereas the Applicant was not aware of the direct consequence of the CSP before pleading guilty, his guilty plea was unknowingly and involuntarily entered and must be vacated.

WHEREFORE, having amended his application for PCR, the Applicant respectfully prays the Court grant him a New Trial.

Devin Miller

Devin D. Miller, #330228

Lieber Correctional Inst.

P.O. Box 205

Ridgeville, S.C. 29472

June 14, 2009

Ridgeville, South Carolina

---

### CERTIFICATE OF SERVICE

I, Devin D. Miller, do hereby certify that I served the Amended Application for Post-Conviction Relief upon the Respondent by mailing a copy thereof, in the U.S. Mail postage prepaid, to the below listed address:

Office of the Attorney General

Post Office Box 11549

Columbia, S.C. 29211

7/17/09

5 of 5

Devin Miller

STATE OF SOUTH CAROLINA )  
COUNTY OF DORCHESTER )

IN THE COURT OF COMMON PLEAS

2009-CP-18-1350

Devin D. Miller, #330228,

Applicant,

v.

State of South Carolina,

Respondent.

**RETURN**  
(Appointment of Counsel Request)

FILED-RECORDED  
2009 NOV 24 PM 3:27  
DORCHESTER COUNTY CLERK OF COURT

The Respondent, making its Return to the application for post conviction relief filed May 15, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. The Applicant was indicted at the January 2007 term of the Dorchester County Grand Jury for Murder (2007-GS-18-0109). Applicant was represented by Thomas R. Sims, Esquire. On August 26, 2008, the Applicant pled guilty to the reduced charge of Voluntary Manslaughter before the Honorable James C. Williams, Jr. Applicant was sentenced to twenty (20) years incarceration.

A notice of appeal was filed. The appeal was dismissed on October 15, 2008, due to failure to provide a written explanation showing that there is an issue which can be reviewed on appeal. The remittitur was sent on October 31, 2008.

Attached herewith and incorporated herein are the records of the Dorchester County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South

Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
  - a. "Failed to inform and provide me favorable evidence."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

## III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### IV.

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

#### V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

HENRY D. McMASTER  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

MARY S. WILLIAMS  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

11/16, 2009.

STATE OF SOUTH CAROLINA )  
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 COUNTY OF DORCHESTER )  
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 Devin D. Miller, 330228 )  
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 Applicant, )  
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 vs )  
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 STATE OF SOUTH CAROLINA, )  
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 Respondent. )  
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IN THE COURT OF COMMON PLEAS

2009-CP-18-1350

AFFIDAVIT OF SERVICE BY MAIL

FILED-RECORDED  
 2009 NOV 24 PM 3:37  
 CLERK OF COURT  
 DORCHESTER COUNTY

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:

**William H. Sloan, Jr., Esquire**  
**Sloan Law Firm**  
**1055 North Main Street, Suite F**  
**Summerville SC 29483**

DATED this 19th day of November, 2009.

*E. K. Randall*  
 Aughty E. K. Randall, Legal Assistant  
 For Respondent

1 STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
 2 COUNTY OF DORCHESTER )  
 3  
 4 DEVIN MILLER )  
 )  
 5 APPLICANT, ) TRANSCRIPT OF RECORD  
 ) 2009-CP-18-01350  
 6 -vs- )  
 ) MARCH 1, 2010  
 7 STATE OF SOUTH ) ST. GEORGE, SOUTH CAROLINA  
 CAROLINA, )  
 8 )  
 RESPONDENT.

9  
10 (POST CONVICTION RELIEF HEARING)

11 B E F O R E:  
12 THE HONORABLE DIANE S. GOODSTEIN, JUDGE.  
13

14  
15 A P P E A R A N C E S:

16 CHARLES T. BROOKS, ESQUIRE  
17 ATTORNEY FOR THE APPLICANT

18 MARY S. WILLIAMS, ASSISTANT ATTORNEY GENERAL  
19 ATTORNEY FOR THE RESPONDENT

20  
21 MICHAEL R. WATTS  
CIRCUIT COURT REPORTER  
22  
23  
24  
25

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NO.	DESCRIPTION	ID.	EV.
S-1	LETTER, DATED 10/27/08		23

1 (PROCEEDINGS, MARCH 1, 2010)

2 THE COURT: All right. And this is?

3 MS. WILLIAMS: This is Devin Miller.

4 Mr. Miller was charged with murder. He actually  
5 pled guilty to the reduced charge of voluntary manslaughter  
6 on August 26th, 2008, before judge Williams, and he received  
7 a sentence of 20 years. He was represented by Mr. Sims.

8 He timely filed his application on May the 15th of  
9 2009, and there was an appeal and it was dismissed for no  
10 appealable issue. Remittitur was sent October 31st, 2008.

11 He is represented today by Mr. Brooks.

12 He has alleged ineffective assistance of counsel  
13 for failure to inform and provide favorable evidence.

14 There was an amended application in which he  
15 alleged involuntary plea, and trial judge and plea counsel  
16 failed to inform the applicant they do have community  
17 supervision upon release.

18 THE COURT: Okay. Any preliminary matters?

19 And good morning, Mr. Brooks.

20 MR. BROOKS: How are you doing, judge?

21 No preliminary matters, judge. We are ready to  
22 begin.

23 THE COURT: Wonderful. Call your first witness.

24 MR. BROOKS: We call Mr. Miller to the stand.

25 THE COURT: Come on, Mr. Miller. Come on around.

1           DEVIN MILLER, having been first duly sworn,  
2 testified as follows:

3           THE COURT: You can be seated, Mr. Miller. That  
4 chair won't move, but you can move that microphone a little  
5 bit closer to you.

6           Mr. Miller, you wore your jacket this morning. I  
7 know it was cold outside. Is it cold downstairs?

8           THE WITNESS: Yes, ma'am. Yes, Your Honor, it's  
9 very cold.

10          THE COURT: You know, we just can't get the air  
11 and the heat regulated in this building, but, hey, the  
12 best -- I notice you got your coat on. It's cold  
13 downstairs?

14          THE WITNESS: Real cold.

15          THE COURT: Real cold. Okay. Thank you for that.  
16 We will see what we can do about that. Thank you, George.  
17 Maybe we can work on that. Thank you for that, Mr. Miller.

18          Your witness, Mr. Brooks.

19          MR. BROOKS: Thank you, judge.

20          THE COURT: Uh-huh.

21 DIRECT EXAMINATION BY MR. BROOKS:

22 Q. Mr. Miller, you were represented in this matter by Mr.  
23 Sims?

24 A. That's correct.

25 Q. And your family retained him, is that correct?

1 A. Correct.

2 Q. This involved a shooting that occurred here, is that  
3 right?

4 A. That's correct too.

5 Q. And an individual with the last name of Wright was the  
6 victim that was killed, is that correct?

7 A. That's correct too.

8 Q. Now, do you recall how many times that you met with Mr.  
9 Sims in preparation for this case?

10 A. Like in between two and three times.

11 THE COURT: How many did you say again?

12 THE WITNESS: Like two or three times.

13 THE COURT: Two or three times.

14 BY MR. BROOKS:

15 Q. And what did you tell him happened that night?

16 A. I told him the same thing I told the detectives that  
17 was at the county.

18 Q. Which was?

19 A. I was acting in self-defense.

20 Q. All right. Now, I understand that, but I was wanting  
21 to take me back through the incident.

22 A. That's it.

23 Q. You were in a car? You were coming to visit somebody?

24 A. Yeah, I had -- I had -- I was the leaseholder. I had  
25 an apartment out there, me and a girl I was staying with

1 and --

2 Q. Okay.

3 A. But I leave -- I was staying back down the road and me  
4 and her was like still seeing each other undercover and I  
5 went to meet her that night. It was some bad blood between  
6 me and her family, like her family already like jumped me a  
7 couple of times, or whatever, so like we was enemies then.  
8 I went to see her that night. And I told a neighbor of mine  
9 to go get her out of the house and I parked behind the next  
10 building because I didn't want nobody to see me, but instead  
11 of going to get her, he went and got them, so they went --

12 Q. Hold on. When you say them, who is them?

13 A. It was him --

14 Q. The deceased?

15 A. Yeah, and a couple of his family members and a home  
16 boy, but it was four of them altogether. Him, plus three  
17 more.

18 Q. Was one of the guys now supposed to be seeing this girl  
19 that you were coming to see?

20 A. I thought it was family.

21 Q. All right.

22 A. Yeah.

23 Q. But you didn't know you had a beef with them, is that  
24 right?

25 A. Yeah.

1 Q. They didn't like you and you didn't like them?

2 A. They didn't like me. I was okay is what I'm saying.

3 Q. They didn't like you?

4 A. Yeah.

5 Q. Okay. And what happened next when they came? They  
6 came down, what happened?

7 A. What happened, they stopped me -- they stopped me. I  
8 was trying to get -- like when I told him -- I told my  
9 neighbor to go get her out of the house, he said okay. It  
10 took five, ten minutes, and it was getting too long, so I  
11 started to leave. And when -- it's like one way out,  
12 Summerset Apartments, so that was between me and the exit.  
13 About the time I realized who it was, it was too late. By  
14 the time I stopped, like four guys approached my window. I  
15 had the same car since -- since 2003, I had the same car  
16 probably about two or three years at the time, so everybody  
17 knew who I was. Asked was it me like three times and I said  
18 no, no, no. I tried to leave. I tried to leave. Like he  
19 came -- he rushed me with his weapon. It was raised at my  
20 head.

21 THE COURT: Whoa, whoa, whoa, whoa. Now, you are  
22 speaking so quickly, I can't hear you. You got to slow down  
23 a little bit.

24 THE WITNESS: Yes.

25 BY MR. BROOKS:

1 Q. Take your time, Devin. Try and get --

2 THE COURT: All right. Now, I heard you say that  
3 you stopped and four guys approached?

4 THE WITNESS: Uh-huh.

5 THE COURT: Now, tell me what happened next and  
6 you got to go slow.

7 BY MR. BROOKS;

8 Q. And take your time, Devin, because what we are trying  
9 to do is I'm trying to show the court the background on what  
10 happened in this situation. Okay?

11 A. All right.

12 I stopped like -- the one that hollered -- the one that  
13 hollered to me, I knew who it was. I knew who he was  
14 exactly. He stopped me. It was only one of them at first.  
15 Once he stopped, then once I realized who it was, one turned  
16 to four:

17 THE COURT: I'm sorry?

18 THE WITNESS: I said once I stopped one turned to  
19 four.

20 THE COURT: Oh, one person turned into four  
21 people?

22 THE WITNESS: Yeah, it was one person originally  
23 hollering after me. By the time I stopped it was four  
24 people, you know what I'm saying, come from all over the  
25 place, whatever. Like people don't be standing in the

1 middle of the parking lot at eleven o'clock at night, but  
2 they just happened to be there, you know, so I stopped.

3 I -- I -- I grabbed my weapon before I even seen  
4 that weapon.

5 THE COURT: You said "I grabbed my weapon before I  
6 saw another weapon"?

7 THE WITNESS: Yeah, I had my weapon before I even  
8 seen that weapon, you know what I'm saying, so by the time I  
9 stopped they was lined up outside my car window. He asked  
10 was it me three times. I said --

11 THE COURT: He asked "is it you?"

12 THE WITNESS: He said "was it Devin?"

13 THE COURT: He said is that you?

14 THE WITNESS: Yeah.

15 THE COURT: Okay.

16 THE WITNESS: He is saying like was it me, like  
17 what I'm doing out here --

18 THE COURT: Okay.

19 THE WITNESS: -- stuff like that. So I said no  
20 three times and I pulled off. He rushed my car.

21 THE COURT: Wait a minute. Let me ask you this.  
22 Did he ask you if it was you?

23 THE WITNESS: Uh-huh.

24 THE COURT: Is that what -- or did he say -- or  
25 did he ask you "what are you doing out here?"

1 THE WITNESS: No, he said "is that you, Devin? Is  
2 that Devin?"

3 THE COURT: "Is that you, Devin?"

4 THE WITNESS: Yeah.

5 THE COURT: Okay. Okay. He said "is that you,  
6 Devin," and you said "no."

7 THE WITNESS: But he knew it was me.

8 THE COURT: I got you.

9 THE WITNESS: He knew it was me. All the other  
10 people who was with him knew it was me, but I said no  
11 anyway.

12 THE COURT: I understand.

13 THE WITNESS: So I got off the brakes and tried to  
14 pull up casually, not no hurry. They got speed bumps and  
15 all that out there, so when I pulled off -- you know, if you  
16 pull off casually, anybody could have, you know what I'm  
17 saying, easily run down a car. You know what I'm saying, a  
18 handgun is accurate for like 25, 30 feet, so it will take  
19 like forever for me to get from 30 feet away. He could have  
20 done shot me up 10 times before I got 30 feet away from him.  
21 So by the time I pulled off, he rushed. The gun was like  
22 naturally on the same level as my head. If I'm in a car and  
23 he's standing next to it, his gun is like naturally with my  
24 head. So when I pulled off, he raised his gun. I ducked,  
25 started firing blindly. I ain't never see -- I never saw

1 him get hit. I never saw nothing. I was just shooting to  
2 keep from getting shot. I like hit the inside of my car  
3 like three or four times. Then I went to my mother's house  
4 and that's when I called. I called the police and tell the  
5 police there was a shooting. By the time they was already  
6 there.

7 BY MR. BROOKS:

8 Q. But did you -- did you tell all of this to Mr. Sims?

9 A. That's correct, I told him the story.

10 Q. Now, you -- in this case you pled guilty?

11 A. Yeah.

12 Q. And why did you plead guilty then?

13 A. Because I was under the impression that those other  
14 three guys -- as far as the other three guys would like get  
15 on the stand and lie like -- well, not lie, but just make it  
16 seam like I'm wrong and whoever -- you know what I'm saying.  
17 And I didn't know that they had -- I had evidence in my  
18 favor like. Like the bullet, I never knew about the bullet.  
19 I never knew they found a bullet. If I knew they found a  
20 bullet, I would have took it to trial.

21 Q. Take your time. Which bullet are you referring to?

22 A. A .45 bullet. I had -- I had a Highpoint 9-millimeter.

23 Q. Okay. Where did they find the .45 bullet?

24 A. By the victim.

25 Q. By the victim?

1 A. By the victim.

2 Q. Okay. And obviously the .45 was not yours, because you  
3 had a 9-millimeter, is that correct?

4 A. That's correct.

5 Q. Okay. And you are saying you did not know about this  
6 prior to the guilty plea?

7 A. I did not know about it. My first time hearing about  
8 it is when I heard Harrison Bell say it.

9 Q. Harrison Bell, the solicitor?

10 A. Uh-huh.

11 Q. And he was reciting it as a part of the plea?

12 A. Uh-huh.

13 THE COURT: That's a yes?

14 THE WITNESS: Yes. Yes.

15 THE COURT: Okay.

16 BY MR. BROOKS:

17 Q. And that's the main reason -- that is the reason why  
18 you are asking this court here today to set aside your  
19 guilty plea, is that correct?

20 A. Right.

21 Q. And you and I talked about that, isn't that correct?  
22 We have talked about what the ramifications would be if you  
23 win your PCR, you would go back and face murder?

24 A. That's correct.

25 Q. And you understand what murder carries?

1 A. That's correct.

2 Q. Okay. And obviously understanding that, you want this  
3 court to grant your application and give you a new trial, is  
4 that correct?

5 A. That's correct.

6 Q. And that's because you feel that you had a very strong  
7 self-defense case?

8 A. That's what it was, that's correct.

9 Q. Okay. And that's something that you are saying your  
10 lawyer did not talk to you about and exercise with you, is  
11 that correct?

12 A. That's correct. I was under the impression of that the  
13 whole time until like jury selection.

14 Q. Okay. Is there anything else you want to tell the  
15 court about the application that we haven't covered?

16 A. No. No, sir.

17 Q. Okay. Answer any questions of Ms. Williams.

18 THE COURT: Cross-examination.

19 CROSS EXAMINATION BY MS. WILLIAMS:

20 Q. Mr. Miller, you understood what the charge of voluntary  
21 manslaughter was that you were facing, correct?

22 A. Correct.

23 Q. And you understood that the potential sentence was 30  
24 years?

25 A. Correct.

1 Q. And in terms of evidence, you are aware of your own  
2 statement?

3 A. Correct.

4 Q. The statements of other people that were there?

5 A. I never saw them. I was aware of them for what he told  
6 me.

7 Q. And you are aware of the various bullets found from  
8 your weapon, is that correct?

9 A. Correct.

10 Q. And you heard the recitation of facts given by the  
11 solicitor?

12 A. Correct.

13 Q. The statement made by your attorney at the plea?

14 A. Correct.

15 Q. Did your attorney want to go to trial?

16 A. It was my -- it was -- it was -- it was me. It was my  
17 choice, but he was like giving me his advice, telling me he  
18 wouldn't advise this because of the experience he has and  
19 stuff.

20 Q. He advised you not to go to trial, or to go to trial?

21 A. I would say not, because I took his opinion very  
22 strongly. I never been to General Sessions. I never been  
23 in no -- I didn't have no charges before, so whatever he  
24 said, that was basically my choice.

25 Q. Did y'all talk about how you would proceed at a trial?

1 A. He told me -- he told me like about witnesses, like the  
2 State had like 20 some witnesses, or something, expert  
3 witnesses, or something.

4 Q. Did he talk about you testifying?

5 A. Yeah, he told me that I was the only person there. He  
6 told me if I get in front of the jury, it would be just me.  
7 He did tell me that.

8 Q. And did you talk to another attorney at some point?

9 A. In the beginning before him?

10 Q. You didn't talk to anybody right before this plea?

11 A. No. No.

12 Q. Someone that was maybe not in South Carolina?

13 A. No.

14 Q. Do you think your family might have done so?

15 A. No, not that I'm aware of.

16 Q. And are you aware of any communication from Mr. Sims  
17 after your plea, either to yourself or to your family?

18 A. They tried to contact him several times, but they say  
19 they can't get in contact with him.

20 THE COURT: You have got to speak up a little bit  
21 for us.

22 A. Oh, my family said they tried to contact him several  
23 times, but he couldn't never get in contact with him.

24 BY MS. WILLIAMS:

25 Q. You are not aware of any letters or anything from him?

1 A. No. No. No, ma'am.

2 Q. All right. Thank you, Mr. Miller.

3 THE COURT: Redirect?

4 MR. BROOKS: No, ma'am, Your Honor.

5 THE COURT: Come on back down, Mr. Miller. Sit  
6 right there with your attorney.

7 Your next witness.

8 MR. BROOKS: Judge, that would be the case.

9 THE COURT: All right.

10 Yes, ma'am, Ms. Williams.

11 MS. WILLIAMS: Your Honor, the State would call  
12 Mr. Thomas Sims.

13 THE COURT: Okay, Mr. Sims.

14 THOMAS SIMS, ESQUIRE, having been first duly  
15 sworn, testified as follows:

16 THE COURT: Just be seated, Mr. Sims, and when you  
17 are seated, state your full name for the record and adjust  
18 that microphone.

19 THE WITNESS: My full name is Thomas Ray Sims.

20 THE COURT: Ray is R-A-Y?

21 THE WITNESS: R-A-Y.

22 THE COURT: Thank you.

23 Your witness.

24 DIRECT EXAMINATION BY MS. WILLIAMS:

25 Q. Mr. Sims, can you tell me briefly about your experience

1 as a criminal attorney?

2 A. Yes, I began practicing law in 1978, in Mississippi.

3 I was licensed in South Carolina back in 1980.

4 I spent from '81 to '91 as the assistant solicitor,  
5 deputy solicitor, and acting solicitor for the 1st Judicial  
6 Circuit.

7 I went in my own practice and I have been primarily a  
8 criminal lawyer all during that time up until today.

9 Q. And you were retained by Mr. Miller, is that correct?

10 A. I was retained by his family, yes.

11 Q. Okay. And during the course of the representation did  
12 you have an opportunity to meet with Mr. Miller?

13 A. Yes, I did.

14 Q. Okay. Can you tell me what you recall about meeting  
15 with Mr. Miller?

16 A. I met with him in the Dorchester County jail, and on  
17 each occasion we went through the information that I had,  
18 the facts. I met with him and we talked about his case and  
19 how we would -- how I was going to proceed.

20 Q. All right. And you also met with his family members,  
21 is that correct?

22 A. Yes, his grandmother, grandfather, and his mother.

23 Q. All right. As the result of your investigation and  
24 your communications with these people, were you preparing to  
25 go to trial?

1 A. I came to court on Monday morning ready to go to trial.

2 Q. And what was your defense at trial?

3 A. Well, again, as he said, self-defense, because I  
4 felt --

5 Let me give you a rundown. I do know this case.

6 There were several issues in terms of how we were going  
7 to proceed. They had indicated -- or the solicitor's office  
8 had indicated that this was a jealous rage situation, but I  
9 felt that the evidence from their own witnesses would prove  
10 that that was not the case. The young man whom he talked to  
11 and told that he was going -- that he wanted to meet the  
12 girl. Instead of going and meeting -- instead of going and  
13 telling people that he was going to meet the girl, he went  
14 and told the guys who had beat him up before that he was  
15 there.

16 And this young man also was going to testify that as he  
17 came downstairs, he saw these same people hiding or  
18 crouching in the hallway and he just kept on walking.

19 There was also another issue as it relates -- and I  
20 told him that there was a question about the search warrant.  
21 The search warrant was issued in Dorchester County, but it  
22 was executed in Colleton County, and they did not go get  
23 counter-signed by the Colleton County magistrate, and they  
24 were going to try to defend on the basis that they had one  
25 of the cross cultural raid team people there, but that was

1 not a magistrate. So that was an issue which would have  
2 kept out the gun if Judge Williams who ruled in our favor.

3 There were other issues that we were going to  
4 cross-examine the young lady, because there was a  
5 relationship between the two of them, even after they had  
6 supposedly separated.

7 The mother was also going to testify as it relates to  
8 those issues.

9 I felt I had a good case and this was a case that I  
10 could probably win. However, on Monday morning, when I got  
11 there, his grandmother, his grandfather, and his mom, they  
12 had a meeting outside the courtroom with an attorney from  
13 Dorchester -- I mean from Colleton County, a Mr. Smoak, who  
14 had told them that he had talked with Judge Williams and  
15 Judge Williams told them that he was going to give -- he  
16 would give him in a case like this 10 years, suspended upon  
17 the service of five. I know that wasn't true. I told them  
18 that I had worked with Judge Williams for almost 20 years,  
19 or better, and I had never seen him in a case where there  
20 was a death that he would give somebody a sentence like  
21 that. That just simply wasn't true.

22 We were allowed to go into the attorneys room at the  
23 old courthouse. His mother, his grandfather, and his  
24 grandmother were there and they emphasized that they did not  
25 want him to go to trial and face the murder charge, that

1 they felt that what they had been told would happen. And I  
2 specifically said to them "that's not what I know and that's  
3 not what I believe."

4 THE COURT: That was after you went back into  
5 chambers?

6 THE WITNESS: That was back when all of us was  
7 together when we were back in the -- in the room where all  
8 the -- where the lawyers and everybody was meeting, and I  
9 told them that that just simply is not something that I  
10 believe was going to happen.

11 But I always -- I told him, and I told everybody,  
12 "I'm ready to go to trial. I think this is a case that I  
13 can win. However, if I go to trial and you get convicted,  
14 I'm not going to be the one doing the time, so this is the  
15 decision that you got to make in regards to this issue." He  
16 decided -- and we had gone over all the evidence. He  
17 decided that he was going to do the plea.

18 BY MS. WILLIAMS:

19 Q. And when you say you went over the evidence, can you  
20 tell me did you go over the statements of the --

21 A. We went over the -- we went over the statements, yes,  
22 we did.

23 Q. Did you go over the bullet evidence?

24 A. We went over all the evidence. And I told him that one  
25 of the things that was in his favor is he shot up his own

1 car, and that would substantiate his own testimony in  
2 regards to -- you know, he was -- he was kind of ducking and  
3 shooting, and we had the pictures of the car and the bullet  
4 holes in the car.

5 Q. Do you recall if there was a .45-caliber bullet there  
6 that he had testified to?

7 A. There was a .45-caliber bullet that was found, but it  
8 wasn't found, if I can recall correctly, not by the victim,  
9 but it was found out there in that area.

10 Q. Okay. Now, if you proceeded to trial, did you plan to  
11 have him testify?

12 A. Yes. He had no prior record. He made a good witness,  
13 as far as I was concerned. He would be able to testify.  
14 And I did tell him, you know, a lot would depend upon how he  
15 came across to the jury.

16 Q. And did you explain to him the possible sentence that  
17 he could receive as a result of this plea?

18 A. Yes, 30 years. And that was my -- and I told him he  
19 would get anywhere from zero to 30 years, but I did not see  
20 Judge Williams giving him a 10 year, suspended upon the  
21 service of a five year sentence.

22 Q. All right. Following this plea did you have any  
23 communication with Mr. Miller or his family by a letter?

24 A. Yes, I did.

25 MS. WILLIAMS: May I approach the witness, Your

1 Honor?

2 THE COURT: You may.

3 BY MS. WILLIAMS:

4 Q. I have here a letter dated October 27th, 2008. Can you  
5 tell me is that a letter that was sent from you?

6 A. Yes, this letter was sent to Mr. And Mrs. Pink Campbell  
7 in Walterboro. This was his grandmother and grandfather.

8 MS. WILLIAMS: I would move this into evidence for  
9 the court at this time.

10 THE COURT: Did you show it to Mr. Brooks?

11 MR. BROOKS: I got it.

12 THE COURT: You got it.

13 Any objection?

14 MR. BROOKS: No objection.

15 THE COURT: Very well.

16 (Letter, dated 10-27-08, from Mr. Sims, marked and  
17 received into evidence as State's Exhibit No. 1)

18 MS. WILLIAMS: May I approach?

19 THE COURT: Sure. Thank you.

20 BY MS. WILLIAMS:

21 Q. And, finally, Mr. Sims, did you advise Mr. Miller  
22 regarding community supervision, or anything of that nature?

23 A. No, I didn't.

24 Q. Thank you for your time.

25 A. Uh-huh.

1 THE COURT: All right, cross-examination?

2 CROSS EXAMINATION BY MR. BROOKS:

3 Q. Mr. Sims, did you tell Mr. Miller or advise Mr. Miller  
4 to go to trial?

5 A. That was my position, that we were ready to go to  
6 trial. I came in on Monday morning, I'm ready to go to  
7 trial. I got everything that -- you know, my trial notebook  
8 and everything. I'm ready to go, and I telling them we are  
9 ready to go. I believe we may have chosen a jury. Outside  
10 the hearing of the jury when this plea was going, so we did  
11 choose a jury in preparation for trial.

12 Q. Did you talk with this other lawyer?

13 A. Mr. Smoak, no. He came in. He sat there with his  
14 grandmother and his grandfather and his mom and he  
15 introduced himself. He said a few words, but I never was  
16 privy to the conversation that he and his grandmother and  
17 his grandfather and his family had. I was never privy to  
18 that.

19 Q. Okay. You never had a chance to really talk to him  
20 about this?

21 A. Mr. Smoak?

22 Q. Right.

23 A. Uh-uh. I was, on the one hand, kind of perturbed that  
24 on the last moment here comes a Johnny-come-lately and he is  
25 going to interfere in my case. You know, I'm ready to go to

1 trial and all of the sudden here comes someone who  
2 apparently they believed had more juice than I had and had a  
3 better understanding of what was going on and had more  
4 insight with the judge and could get a better deal.

5 Q. And he never addressed the court during the plea, did  
6 he?

7 A. I don't think so. I don't remember him, no.

8 Q. And you communicated all of this to Devin about being  
9 prepared to go to trial and a .45 bullet that was found at  
10 the scene?

11 A. It is my understanding -- to the best of my  
12 recollection I communicated everything that I had gone  
13 through that trial, because I had gone through it on a  
14 number of occasions. I was very -- one of those cases where  
15 when -- you know, in this business as a defense lawyer, when  
16 you get a good case, you really want to be ready for it, and  
17 I felt that I had a good case. I felt that this was a case  
18 that we had a good shot at winning, but then when the family  
19 comes in and sits down and says that another lawyer has had  
20 an inside job with the judge and this other lawyer is now  
21 saying that "hey, this is what I -- "this is what the judge  
22 is going to give him, because I put in the fix, so to  
23 speak," okay, and they decided to go with the fix, that was  
24 contrary to what I told them would happen.

25 Q. Is it your testimony that you told Devin about the .45

1 bullet?

2 A. To the best of my recollection, I did.

3 And as I said, I don't think? When he said that the  
4 bullet was next to the defendant, that bullet was not next  
5 to the defendant. It was out there in the area.

6 Q. You mean the decedent, right?

7 A. Yeah, I'm sorry, the decedent, yeah.

8 To be best of my recollection I picked up the wrong  
9 file. I picked up DeShawn Miller, which is a juvenile, as  
10 opposed to Devin Miller, which was a -- which was that,  
11 because I do have all those pictures in there. I think I  
12 still have those pictures, but to the best of my  
13 recollection there was no indication -- this was a full  
14 bullet. It wasn't a shell casing. That's something else  
15 you need to understand, too, because if they were shooting,  
16 it would have been a shell -- a .45 shell casing and not a  
17 .45 bullet.

18 Q. Okay. But you did communicate that to them?

19 A. To the best of my recollection, yes.

20 Q. And you did communicate to him that he should go to  
21 trial?

22 A. That was my position.

23 Q. Are you saying that he said "hey, I want to go ahead  
24 and take the plea?"

25 A. In the conversation with his family, in my -- my

1 practice has always been, "look, I'm ready to go trial. I  
2 think we got a good case here. I think we got a heck of an  
3 opportunity to win this case, but I'm not the one. If the  
4 jury turns against us, I'm not the one who is going to jail.  
5 I have laid out all the facts to you and I have told you  
6 where we stand and where we are going and I'm ready to go to  
7 trial," and that's what I told him. I told his grandmother,  
8 his grandfather, and his mother.

9 MR. BROOKS: Beg court's indulgence, Your Honor.

10 THE COURT: All right.

11 (Off the record)

12 (Back on the record)

13 MR. BROOKS: No other questions, Your Honor.

14 THE COURT: Redirect?

15 MS. WILLIAMS: Nothing further.

16 THE COURT: Mr. Sims, I'm just looking at the  
17 transcript at page 14 and it says -- and this is colloquy  
18 given by Mr. Bell and he says "the only other evidence of  
19 any weapon in the area was they found an intact .45-caliber  
20 bullet under one of the parked cars in the area when they  
21 were doing the crime scene."

22 THE WITNESS: Uh-huh.

23 THE COURT: Does that refresh your --

24 THE WITNESS: Yeah, that refreshes my  
25 recollection, in that it was under a car and not under the

1 victim, that -- which is what Mr. Miller testified to. I  
2 thought it was out there in the area somewhere, but it was  
3 not under the victim.

4 THE COURT: Uh-huh. I don't know if that prompts  
5 any questions. That issue had come up, I thought I would  
6 just ask. Does that prompt questions from either of you?

7 MR. BROOKS: No.

8 MS. WILLIAMS: No.

9 THE COURT: Come on down.

10 THE WITNESS: Thank you.

11 THE COURT: Call your next witness, please.

12 MS. WILLIAMS: I have nothing further.

13 THE COURT: All right. Of course, you have  
14 already submitted the transcript.

15 Any reply, Mr. Brooks?

16 MR. BROOKS: No reply, judge.

17 THE COURT: Very well.

18 MR. BROOKS: We would put forth a brief argument.

19 THE COURT: I'm happy to hear from you, yes, sir.

20 MR. BROOKS: May it please the court?

21 THE COURT: Yes, sir.

22 MR. BROOKS: In regards to Mr. Miller's  
23 post-conviction relief application, we would basically  
24 submit to the court that my client did not fully understand  
25 that there was several defenses, things he could have used

1 in order to support his argument of self-defense. We feel  
2 that that was inadequately communicated to my client, as he  
3 testified, and, therefore, we would ask the court to  
4 respectfully grant his application and give him a new trial.

5 THE COURT: Thank you ever so much. I appreciate  
6 that Mr. Brooks.

7 Well, I'm going to ask the State to draft for me a  
8 proposed order and I will review it. Please give it to Ms.  
9 Mills, of course, when you give to me.

10 All right. Thank you all so much.

11 (END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth 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 trial of the captioned case, relative to appeal, in the Court of General Sessions for DORCHESTER County, South Carolina, on the 1ST day of MARCH, 2010.

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

SEPTEMBER 10, 2012.

Michael R. Watts

Michael R. Watts  
Circuit Court Reporter

**FILE COPY****Thomas Ray Sims, Attorney at law**

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October 27, 2008

Mr. & Mrs. Pink Campbell  
125 Franklin Street  
Walterboro, SC 29488

Re: State V Devin Devone Miller

Dear Mr. Campbell:

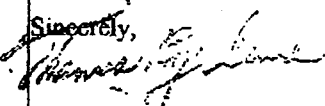
In the State of South Carolina, when a person pleads guilty and files an appeal of that guilty plea, it is necessary for the attorney to provide the Court with a written explanation showing that there is an issue which can be reviewed. As the attorney who filed the appeal, based on your request, I had no issue that I could say to the Court that should be reviewed.

As I explained to you in my office, I saw nothing that could have been appealed in the plea. However, you insisted that I perfect the appeal. As you may recall Devin plead guilty after you and his mother decided that he should not face a trial. I was prepared to go to trial and fully explained that there were several issues which could be used in the trial. I explained that if my motions were granted they would effect the kind of evidence that could be used by the State. I also explained that I believed we had a good chance because of the way that this incident happened. All of the facts and my theory of the case was explained to you, Devin and his mother. However, you and the family made the decision to accept the plea offer.

I also explained that what you had been told by the other lawyer whom you consulted was not likely. You said that he told you that he talked with the judge and that his opinion was that Devin would get ten (10) years suspended upon the service of five (5) years. I told you, Devin and his mother that such a sentence was unlikely. I explained that a young man was dead and that I had no reason to believe that such a sentence would be given. I told you that the judge had desertion to sentence Devin anywhere from probation to thirty (30) years, and that it was totally up to the judge. Knowing this you'll decided that the plea was the way to go.

Again, the appeal has been dismissed.

Sincerely,

  
Thomas Ray Sims  
Attorney-at-Law

pc

1 STATE OF SOUTH CAROLINA

2 COUNTY OF DORCHESTER

CIRCUIT COURT  
2013-CP-18-01350

3

4 DEVIN MILLER,  
Applicant,

5

-vs-

TRANSCRIPT OF RECORD

6

7 STATE OF SOUTH CAROLINA,  
Respondent.

8

9

Post Conviction Relief Hearing

10

Heard on Thursday, December 1, 2011

11

Saint George, South Carolina

12

13 BEFORE:

14

THE HONORABLE DIANE SCHAFFER GOODSTEIN

15

16

17 APPEARANCES:

18

Counsel on Behalf of the Applicant:  
Charles T. Brooks, III, Esq.

19

20

Counsel on Behalf of the Respondent, State of SC:  
Mary S. Williams, Esq.  
Rob D. Corney, Esq.

21

22

23

Cheri L. Young, RPR  
Circuit Court Reporter  
P O Box 5232  
Aiken, SC 29803-5232

24

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EXHIBIT INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

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1 ON THURSDAY, DECEMBER 1, 2011 AT 4:54 P.M.:

2 THE COURT: We are on the record with Mr. Miller.

3 Yes?

4 MS. WILLIAMS: Yes, ma'am. May it please the Court.

5 THE COURT: Very well. And sometime ago, Mr. Miller,  
6 represented by Mr. Brooks, withdrew his application for  
7 PCR. Mr. Brooks, I don't know if you remember.

8 MR. BROOKS: No, no, no. He went forward.

9 THE COURT: Help me. I'm listening.

10 MR. BROOKS: He went forward.

11 MS. WILLIAMS: On March 1st, 2010.

12 THE COURT: Oh, he did that already?

13 MS. WILLIAMS: Yes, ma'am. And he wrote you after the  
14 hearing.

15 THE COURT: He did.

16 MS. WILLIAMS: And said that he felt like his attorney  
17 had not been prepared.

18 THE COURT: Right.

19 MS. WILLIAMS: And you asked me to not prepare an  
20 order and bring him back when you were presiding in  
21 court. And so, we're here.

22 THE COURT: That's right.

23 MS. WILLIAMS: And just to refresh your memory on what  
24 his situation was, in August 2008 he had pled guilty to  
25 voluntary manslaughter down from murder. He had been

1 represented by Mr. Simms on that matter.

2 THE COURT: Right.

3 MS. WILLIAMS: And he had presented several issues at  
4 his PCR hearing.

5 I believe he had primarily ineffective assistance of  
6 counsel. He had said that, you know, he just felt like  
7 the evidence was overwhelming or he was -- he thought the  
8 other people would make it seem like he was kind of wrong  
9 in this situation. He talked a lot about the  
10 investigation and some of those issues.

11 THE COURT: Here's my memory. My memory was that it  
12 was -- are you telling me that -- my memory is that it was  
13 a withdrawal and then I got a letter that said I don't  
14 want a withdrawal.

15 MR. BROOKS: No.

16 THE COURT: No?

17 MR. BROOKS: No, no.

18 THE COURT: Okay.

19 MR. BROOKS: It was a guilty plea. We went forward  
20 with a PCR.

21 THE COURT: Okay.

22 MR. BROOKS: There were issues my client raised about  
23 potentially being a self-defense issue, that he was  
24 alleging against Mr. Simms, his plea counsel --

25 THE COURT: Okay.

1 MR. BROOKS: -- and that he should have gone to  
2 trial. So we had a PCR. This was in March of 2010.

3 THE COURT: I am confused. I am so sorry.

4 MR. BROOKS: And we're here today and I'm wondering  
5 why we're here unless you're going to grant my client his  
6 PCR.

7 THE COURT: Well, I got a letter from him.

8 MS. WILLIAMS: Yes, ma'am. That's what you told me.  
9 I think your law clerk had contacted --

10 THE COURT: I did. I received a letter from  
11 Mr. Miller.

12 MS. WILLIAMS: And I don't believe I have a copy of  
13 that. I've looked in my file. I don't see it. I don't  
14 see anything in my file, a letter from him, but I do  
15 recall getting an e-mail from the law clerk and being  
16 instructed to bring him back. So I did.

17 THE COURT: Right. Do you recall the letter,  
18 Mr. Miller?

19 THE APPLICANT: Yeah, I sent a letter to the clerk.

20 THE COURT: Say what?

21 THE APPLICANT: I sent a letter to the clerk of court.

22 THE COURT: You sent a letter to the clerk of court?  
23 Well, they brought to it me. Help me. Would you please  
24 help an old lady remember?

25 THE APPLICANT: I never did get a notice on the 1st of

1 March that I was coming. So I felt like I was unprepared  
2 so I just wanted Mr. Brooks saying --

3 THE COURT: That's -- in other words, you were  
4 concerned that, that there were other things that you  
5 wanted to bring to the Court's attention and to  
6 Mr. Brooks' attention, you felt you hadn't been able to do  
7 because you didn't have enough to time to prepare.

8 THE APPLICANT: I got the notice on the 8th of March  
9 but my --

10 THE COURT: That's been a long time ago. You got a  
11 memory still. Go ahead. Now, what? You got your notice  
12 like in March.

13 THE APPLICANT: On the 8th of March but my appearance  
14 is on the 1st. Like so after I left this court, I got my  
15 legal letter saying I must go on the 1st.

16 THE COURT: I'm not understanding.

17 MR. BROOKS: I think what may have happened, Judge,  
18 sometimes guys are slow in getting their mail in SCDC.

19 THE COURT: Yes, I know they do.

20 MR. BROOKS: So we may have sent him a letter saying,  
21 hey, your case is coming up. And I think he actually got  
22 the letter after the hearing. So he felt like he didn't,  
23 he was quite sure -- he had made sure he put all his  
24 issues on the record and that's what prompted him to write  
25 the letter.

1 THE COURT: Is that right? You're just worried that  
2 you've not had the opportunity to present your case  
3 fully?

4 THE APPLICANT: Yeah. Pretty much. Yeah.

5 THE COURT: Thank goodness. Thank you. All right.  
6 And -- all right.

7 Talk to me about that, Mr. Brooks. Have you had a  
8 chance to address that with Mr. Miller, whether or not you  
9 all have had an opportunity to go through all of the  
10 matters and issues fully?

11 MR. BROOKS: He wants his PCR. We're saying, you know  
12 -- I would say we put enough on the record why he should  
13 get his PCR granted. I don't know what else that we  
14 didn't talk about back in March that we didn't put out  
15 there because we talked about the issues about the gun and  
16 the bullets and other people there and why it was a  
17 potential self-defense case and all of those issues.

18 I don't know if there's anything else that we didn't  
19 discuss that Your Honor may not have taken into account.  
20 I don't know.

21 But I would basically reiterate for my client, he  
22 feels that we put forth in our application that he should  
23 be granted his post conviction relief for a new trial and  
24 have his plea overturned.

25 THE COURT: Have you spoken to him post letter?

1 MR. BROOKS: Up until -- not until today.

2 THE COURT: Okay. Okay. Well, here's where we are.  
3 I need you to focus this way. You're trying to see if  
4 there's some family folks that are here. Mr. Miller, is  
5 that what you're trying to do, see if you have some family  
6 here?

7 THE APPLICANT: Yes, ma'am. It's been a long time.

8 THE COURT: Do you have family members here?

9 THE APPLICANT: Yes, ma'am.

10 THE COURT: Are they here?

11 UNIDENTIFIED SPEAKER: Yes.

12 THE COURT: Just turn around and wave at them. I know  
13 you want to. Go ahead and do that. There they are.  
14 Everybody says hi. All right.

15 Now, here's what we're going to do, okay. Because let  
16 me tell you the reality is, is that all I remember was  
17 getting a letter from you, being worried about you and  
18 stopping it until I could get you back here. Gee whiz.  
19 It took a while, didn't it, Mr. Miller?

20 Obviously, to be fair to you, I'm going to have to get  
21 the transcript and read it because I don't go from my law  
22 clerk's notes. That's not fair to you, you know what I'm  
23 saying? Because normally I don't let these things  
24 languish. I make a decision, you know, when I'm hearing  
25 it, get my law clerk, do my work, get my orders and get it

1 done.

2 Well, obviously that's not happened. And -- because  
3 it's been such a long time. So here's what I'm going to  
4 do. What I'm going to do is I am going to order the  
5 transcript from March so I've got it because I've got to  
6 read it. You know what I'm saying, to order the  
7 transcript? Do you know what that means?

8 THE APPLICANT: Yes, ma'am.

9 THE COURT: And that's going to take me a while to  
10 get. So I'm going to order the -- actually, I'm going to  
11 get the attorney general to order me the transcript so I  
12 can look at it. Thank you, ma'am. Tell them it's coming  
13 from me.

14 MR. BROOKS: Can we get a copy of that, too, Judge?

15 THE COURT: You've got to get the Office of Indigent  
16 Defense to pay for it, but I got to have it.

17 MR. BROOKS: But the attorney general when they get it  
18 they send me transcripts of --

19 THE COURT: They're not supposed to unless the court  
20 reporter's paid for, but we'll work that out. I've got to  
21 have it though because I've got to review it interimly  
22 (verbatim), because that's going to take a while, I want  
23 you to meet with Mr. Miller and review whether or not you  
24 want to supplement the record. And if you do, I want you  
25 to let the attorney general know and then we will

1 supplement it the next term. Okay?

2 MR. BROOKS: Yes, ma'am.

3 THE COURT: You very well may not need to but you've  
4 been at a disadvantage because I got the letter and you  
5 didn't get the letter.

6 MR. BROOKS: Judge, I have no idea -- the only thing I  
7 can do is write him and he tells me if there's other  
8 things to discuss and I can just put it on the record.

9 THE COURT: Well give it the thought, give it the  
10 consideration. If there's something thrilling and  
11 exciting that, you know, you need to address, I want you  
12 to address it. Okay.

13 So, interrimly (verbatim) I will be getting what I need  
14 to do my review which will be the transcript. We'll take  
15 it from there. Okay. If I don't hear from -- if the  
16 attorney general doesn't hear from you though in 60 days,  
17 she's just going to presume she doesn't need to schedule  
18 anything in that, or he or they. Okay? Is that clear?  
19 No?

20 MR. BROOKS: Not really.

21 THE COURT: Let me go over it with you again.  
22 Mr. Brooks, let me be clear. I got a letter from your  
23 client.

24 MR. BROOKS: Right. Yes, ma'am.

25 THE COURT: I've got a duty when I get those letters

1 to act appropriately. The action that I took was to say  
2 he had to come back during the next term. Okay? Okay.

3 When these things are done I want them done. I don't  
4 know if it was your problem. I don't know if it was his  
5 problem. I don't know if he wanted to withdraw it.  
6 Okay. He didn't make it back the next time. Okay.

7 MR. BROOKS: Yes, ma'am.

8 THE COURT: I don't know if it was because you were in  
9 trial or what.

10 MR. BROOKS: Yes, ma'am.

11 THE COURT: But I heard it in March and it's  
12 November. And I have no memory, okay, although I  
13 undertook my action in March when I got his letter. Okay.

14 MR. BROOKS: Yes, ma'am.

15 THE COURT: Okay. I'm at a disadvantage. I don't  
16 like being at a disadvantage. Okay?

17 MR. BROOKS: Yes, ma'am.

18 THE COURT: All right. He's your client.

19 MR. BROOKS: Yes, ma'am.

20 THE COURT: He's the one with the problem. It's not  
21 my problem. Okay?

22 MR. BROOKS: Yes, ma'am.

23 THE COURT: Okay. So you're going to get with him and  
24 you're going to find out if there is a problem or not. Do  
25 you understand?

CERTIFICATE OF REPORTER

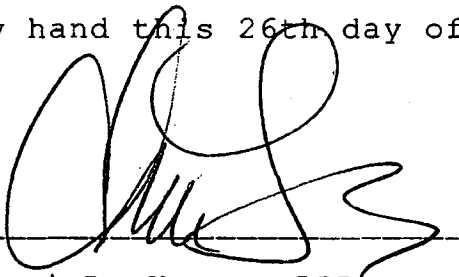
STATE OF SOUTH CAROLINA )

COUNTY OF AIKEN )

I, Cheri L. Young, Registered Professional Reporter and Official Court Reporter for the State of South Carolina, Second Circuit-At Large, do hereby certify that the foregoing is a true, accurate and complete transcript of record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Dorchester County, on Thursday, the 1st day of December, 2011.

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

I have hereunder set my hand this 26th day of August, 2013.



Cheri L. Young, RPR  
Official Court Reporter

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STATE OF SOUTH CAROLINA )  
 COUNTY OF DORCHESTER )

IN THE COURT OF COMMON PLEAS  
 FOR THE FIRST JUDICIAL CIRCUIT

Devin Miller, #330228, )  
 Applicant, )

Case No. 2009-CP-18-1350

v. )

**ORDER OF DISMISSAL**

State of South Carolina, )  
 Respondent. )

### PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed May 15, 2009 and amended on July 13, 2009. The Respondent made its Return on November 16, 2009. An initial evidentiary hearing into the matter was convened on March 1, 2010, at the Dorchester County Courthouse; a subsequent hearing was held on December 1, 2011. Applicant was present at both hearings and was represented by Charles T. Brooks, III, Esquire. Respondent was represented by Assistant Attorney Generals Mary S. Williams and Robert D. Corney of the South Carolina Attorney General's Office.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. Applicant was indicted during the January 2007 term of the Dorchester County Grand Jury for Murder (2001-GS-18-0109). Applicant was represented by Thomas R. Sims, Esquire. On August 26, 2008, Applicant appeared before the Honorable James C. Williams, Jr., where he pled guilty to the lesser included offense of Voluntary Manslaughter. Judge Williams sentenced Applicant to twenty years imprisonment.

A notice of appeal was filed on Applicant's behalf. The South Carolina Court of Appeals dismissed Applicant's appeal on October 15, 2008 for "failure of [Applicant] to provide written

explanation showing there [was] an issue which can be review of appeal” from his guilty plea. The Remittitur was sent on October 31, 2008.

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

1. Ineffective Assistance of Counsel.
  - a. “Failure to inform and provide favorable evidence”

In his amended application, filed July 13, 2009, Applicant alleged that his guilty plea was involuntarily entered because Counsel “failed to inform him of the direct consequences of the mandatory post-release supervision requirement.”

#### **SUMMARY OF TESTIMONY PRESENTED**

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from plea counsel, Thomas R. Sims, Esquire (herein “Counsel”). This Court also had before it a copy of the Applicant’s guilty plea transcript, the records of the Dorchester County Clerk of Court, Applicant’s appellate records, and Applicant’s records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified that his family retained Counsel to represent him and that he met with Counsel “like two or three times” before his guilty plea hearing. He testified that he informed Counsel that he was acting in self-defense during the incident giving rise to this murder charge. Applicant elaborated that four individuals approached and confronted him at his significant other’s apartment and he “grabbed [his] weapon before [he] even seen [another] weapon.” Applicant testified that he “ducked, started firing blindly. [He] never saw [the victim] get hit . . . [he] was just shooting to keep from getting shot.” In regards to his allegation that Counsel was ineffective for failing to provide him with favorable evidence,

Applicant testified that he never knew that the State found a .45 caliber bullet, which he felt was exculpatory because he "had a Highpoint 9-millimeter." Applicant elaborated that the first time he was made aware of this was during his guilty plea.

During cross-examination, Applicant testified that he gave a statement to law enforcement implicating himself in the shooting. Applicant testified that it was "[his] choice" to go forego a trial based on the advice and experience of his attorney. He elaborated that Counsel informed him that "the State has like 20 some witnesses . . . expert witnesses" who would testify against him if he proceeded to trial.

Following Applicant's testimony, Respondent provided testimony from Counsel. Counsel testified that he has been practicing law since 1978 and has been a member of the South Carolina Bar since 1980. He elaborated that he was an Assistant Solicitor, Deputy Solicitor, and acting Solicitor from 1981 to 1991, and since 1991 he has been a sole practitioner with a focus on criminal defense. Counsel testified that he was retained by Applicant's family and met with Applicant several times, as well as members of Applicant's family. Counsel testified that he reviewed the facts of the case and Applicant's version of events at these meetings. Counsel testified that he was ready to proceed to trial and was prepared to set forth a defense of self at trial, as well as challenge the search warrant which produced the weapon used in the crime. Counsel testified that he told Applicant and Applicant's family: "I'm ready to go to trial. I think this is a case that I can win. However, if I go to trial and you get convicted, I'm not going to be doing the time, so this is a decision that you got to make in regards to this issue." Counsel testified that after such discussion and reviewing all the evidence, Applicant decided to enter a guilty plea to the lesser included offense of voluntary manslaughter. Counsel testified that he reviewed all evidence with Applicant, including all bullet evidence and the statements of

Applicant and witnesses. Counsel testified that if Applicant pled guilty to voluntary manslaughter, he would be sentenced up to thirty years imprisonment. Counsel testified that following Applicant's guilty plea, he was contacted by Applicant's family. Counsel testified that he responded by letter dated October 27, 2008, which was entered without objection as State's Exhibit #1.

### 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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's testimony is not as credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

#### *Ineffective Assistance of Counsel*

In a post-conviction relief action, an applicant has the burden of proving the allegations in his application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, an applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant must

overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). 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. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action. This Court finds that Applicant's allegations that he was denied effective assistance of counsel due to Counsel's "fail[ure] to inform and provide [] favorable evidence" is without merit. This Court finds that the guilty plea transcript, along with Counsel's credible testimony, reveals the proficient competency of counsel. Applicant alleges that Counsel failed to inform him of the existence of a .45 caliber bullet at the crime scene as well as develop viable defenses. However, Counsel testified that he reviewed Applicant's case extensively with Applicant and Applicant's family and he was fully prepared to proceed to trial. Additionally, the guilty plea transcript reveals that the plea court thoroughly explained to Applicant that this was a "no parole" offense, as well as a most violent and a serious offense. This Court finds that Counsel demonstrated the degree of skill, knowledge and professional judgment that is expected

of an attorney who practices criminal law. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

**CONCLUSION**

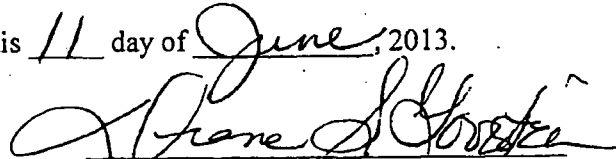
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 11 day of June, 2013.

  
 DIANE S. GOODSTEIN  
 Presiding Judge  
 First Judicial Circuit

Orangeburg, South Carolina

**WITNESSES**

Williams, Sheri Harmon

**DOCKET NO. 2007GS18-1283**

**The State of South Carolina**

County of

**DORCHESTER**

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

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

SPD

Agency Case #: 07-050254

**COURT OF GENERAL SESSIONS**

September 04, 2007 TERM

Defendant

**ARREST WARRANT NUMBER**

J092299

Arrested: Jul 20, 2007

Witness:

C.C.C. PLS. AND G.S.

**ACTION OF GRAND JURY**

**TRUE BILL**

Devlin Devon Miller

**DATE**

8-30-07

Foreperson of Grand Jury  
Date: August 30, 2007

**VERDICT**

Indictment for

**MURDER**

SC Code: 16-03-10 / 16-03-20

CDR Code: 0116

Class: FEL-X

Foreperson of Petit Jury

Date:

FILED - RECORDED  
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CLERK OF COURT  
COUNTY

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )

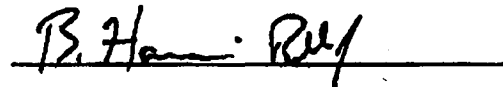
INDICTMENT  
2007GS18-1283

At a Court of General Sessions, convened on September 04, 2007 the Grand Jurors of Dorchester County present upon their oath:

**MURDER**

The defendant, Devin Devon Miller, did in Dorchester County on or about July 19, 2007, with malice aforethought, kill one Earnest Seamoore Wright by means of shooting the victim, and the said victim did die as a proximate result thereof, this being in violation of section 16-3-10 of the South Carolina Code of Laws, as amended and the common law of South Carolina.

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



B. Harrison Bell Jr., SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF DORCHESTER  
TE VS.

INDICTMENT/CASE#:

Devin Devon Miller

2007GS18-1283

AW#: J092299

AKA:

Date of Offense: 7/19/2007

Race: B

Sex: M

Age: 23

S.C. Code §: 16-03-10 / 16-03-20

DOB:

SS#:

CDR Code #: 0116

Address:

City, State, Zip

Summerville, SC 29483

DL#

SID#

CASE RESTORED

SENTENCE

PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Voluntary manslaughter

In violation of § 16-3-50 of the S.C. Code of Laws, bearing CDR Code # 0 / 2 / 1 / 7

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

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (Defendant initial)  
The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:

B. H. [Signature]  
Solicitor

Devin Miller  
Defendant

[Signature]  
Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 20 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_ years and/or to pay a fine of \$\_\_\_\_; provided that upon the service of \_\_\_ days/months/years and/or payment of \$\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_

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

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

SPECIAL CONDITIONS:

RESTITUTION:  Heard,  Waived,  Ordered  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_  
 set by SCDPPPS \_\_\_\_\_

PTUP \_\_\_\_\_ days/hours Public Service Employment  
Obtain GED \_\_\_\_\_  
Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling \_\_\_\_\_  
Random Drug/Alcohol Testing \_\_\_\_\_  
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: \_\_\_\_\_

Recipient: _____	
*Fines:	\$
\$14-1-208 (Assessments 107.5%)	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100
\$14-1-211(A)(2) (DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$12
\$35.13 (Public Def/Prob)	\$500
\$73.3, 1B TP (Law Enforce. Funding)	\$25
\$33.7, 1B TP (Drug Court Surcharge)	\$100
\$50-21-114(BUI Breath Test Fee)	\$50
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$ 13390

Appointed PD or appointed other counsel, \$35.13 TP  
Requires \$500 be paid to Clerk during probation.

[Signature]  
Clerk of Court/ Deputy Clerk  
Court Reporter: [Signature]

PRESIDING JUDGE [Signature]  
Judge Code: 0114  
Sentence Date: 8-26-08

STATE OF SOUTH CAROLINA

COUNTY OF Donchester

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2009-CP-18-1350

Plaintiff(s)

vs.

Devin D Miller

Defendant(s)

(Please Print)

Submitted By: \_\_\_\_\_

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

SC Bar #: \_\_\_\_\_

Telephone #: \_\_\_\_\_

Fax #: \_\_\_\_\_

Other: \_\_\_\_\_

E-mail: \_\_\_\_\_

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
- NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- |   |  |   |   |
|---|--|---|---|
| <p><b>Contracts</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Construction (100)</li> <li><input type="checkbox"/> Debt Collection (110)</li> <li><input type="checkbox"/> Employment (120)</li> <li><input type="checkbox"/> General (130)</li> <li><input type="checkbox"/> Breach of Contract (140)</li> <li><input type="checkbox"/> Other (199)</li> </ul>   | <p><b>Torts - Professional Malpractice</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Dental Malpractice (200)</li> <li><input type="checkbox"/> Legal Malpractice (210)</li> <li><input type="checkbox"/> Medical Malpractice (220)</li> <li><input type="checkbox"/> Nurse/1st Med Mal (230)</li> <li><input type="checkbox"/> Other (299)</li> </ul>   | <p><b>Torts - Personal Injury</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Assault/Slander/Libel (300)</li> <li><input type="checkbox"/> Conversion (310)</li> <li><input type="checkbox"/> Motor Vehicle Accident (320)</li> <li><input type="checkbox"/> Premises Liability (330)</li> <li><input type="checkbox"/> Products Liability (340)</li> <li><input type="checkbox"/> Personal Injury (350)</li> <li><input type="checkbox"/> Wrongful Death (360)</li> <li><input type="checkbox"/> Other (399)</li> </ul> | <p><b>Real Property</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Claim &amp; Delivery (400)</li> <li><input type="checkbox"/> Condominium (410)</li> <li><input type="checkbox"/> Foreclosure (420)</li> <li><input type="checkbox"/> Mechanic's Lien (430)</li> <li><input type="checkbox"/> Partition (440)</li> <li><input type="checkbox"/> Possession (450)</li> <li><input type="checkbox"/> Building Code Violation (460)</li> <li><input type="checkbox"/> Other (499)</li> </ul>  |
| <p><b>Inmate Petitions</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> PCR (500)</li> <li><input type="checkbox"/> Sexual Predator (510)</li> <li><input type="checkbox"/> Mandamus (520)</li> <li><input type="checkbox"/> Habeas Corpus (530)</li> <li><input type="checkbox"/> Other (599)</li> </ul>  | <p><b>Judgments/Settlements</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Death Settlement (700)</li> <li><input type="checkbox"/> Foreign Judgment (710)</li> <li><input type="checkbox"/> Magistrate's Judgment (720)</li> <li><input type="checkbox"/> Minor Settlement (730)</li> <li><input type="checkbox"/> Transcript Judgment (740)</li> <li><input type="checkbox"/> Dispendens (750)</li> <li><input type="checkbox"/> Other (799)</li> </ul> | <p><b>Administrative Law/Relief</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Nonstate Driver's License (800)</li> <li><input type="checkbox"/> Judicial Review (810)</li> <li><input type="checkbox"/> Relief (820)</li> <li><input type="checkbox"/> Permanent Injunction (830)</li> <li><input type="checkbox"/> Forfeiture (840)</li> <li><input type="checkbox"/> Other (899)</li> </ul>   | <p><b>Appeals</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Arbitration (900)</li> <li><input type="checkbox"/> Magistrate-Civil (910)</li> <li><input type="checkbox"/> Magistrate-Criminal (920)</li> <li><input type="checkbox"/> Municipal (930)</li> <li><input type="checkbox"/> Probate Court (940)</li> <li><input type="checkbox"/> SC DOT (950)</li> <li><input type="checkbox"/> Worker's Comp (960)</li> <li><input type="checkbox"/> Zoning Board (970)</li> <li><input type="checkbox"/> Administrative Law Judge (980)</li> <li><input type="checkbox"/> Public Service Commission (990)</li> <li><input type="checkbox"/> Employment Security Comm (991)</li> <li><input type="checkbox"/> Other (999)</li> </ul> |
| <p><b>Special/Complex Other</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Environmental (600)</li> <li><input type="checkbox"/> Automobile Arb (610)</li> <li><input type="checkbox"/> Medical (620)</li> <li><input type="checkbox"/> Other (699)</li> <li><input type="checkbox"/> Pharmaceuticals (630)</li> <li><input type="checkbox"/> Unfair Trade Practices (640)</li> <li><input type="checkbox"/> Out-of State Depositions (650)</li> </ul> |  |   |   |

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 CLERK OF COURT  
 DONCHESTER COUNTY  
 SOUTH CAROLINA

Submitting Party Signature: \_\_\_\_\_

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

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.