

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Greenville County

S.C. Supreme Court

G. Edward Welmaker, Circuit Court Judge

CHAVIS L. COX,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001427

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

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Attorney General

South Carolina Commission on Indigent
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2011 CP 23 06134

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

COURT OF GENERAL SESSIONS
2010-GS-23-02433

STATE OF SOUTH CAROLINA,

vs.

TRANSCRIPT OF RECORD

CHAVIS LARANZO COX,
DEFENDANT.

ORIGINAL

November 4, 2010
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

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

JULIE J. ANDERS, ESQ.
Assistant Solicitor

SCOTT D. ROBINSON, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

1
2 THE CLERK: Your Honor, this is case number
3 2010-GS-23-02433, the State v. Chavis Laranzo Cox,
4 indictment for murder and possession of a weapon during
5 the commission of a violent crime, pleading to murder. It
6 is a true bill.

7 Would you raise your right hand to be sworn in.

8 WHEREUPON,

9 CHAVIS LARANZO COX,

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

11 THE CLERK: Thank you.

12 THE COURT: Okay. Good morning, Mr. Cox.

13 How old are you, sir?

14 DEFENDANT COX: 21.

15 THE COURT: And how far have you gone in school?

16 DEFENDANT COX: Ninth grade with a GED.

17 THE COURT: And what kind of work have you done in
18 the past?

19 DEFENDANT COX: Landscaping, fast-food restaurants.

20 THE COURT: And are you under the influence of any
21 alcohol, drug, or medication?

22 DEFENDANT COX: No, sir.

23 THE COURT: Have you had enough time to talk to
24 Mr. Robinson about your case?

25 DEFENDANT COX: Yes, sir.

1 THE COURT: Are you fully satisfied with his services
2 as your lawyer?

3 DEFENDANT COX: Yes, sir.

4 THE COURT: Have you met with him for as long as you
5 needed to?

6 DEFENDANT COX: Yes, sir.

7 THE COURT: And has he done everything you've asked
8 him to do?

9 DEFENDANT COX: Yes, sir.

10 THE COURT: And have you ever been treated for any
11 emotional, psychiatric, or psychological condition?

12 DEFENDANT COX: Down at the correctional institution
13 that I'm at, I was put on some medication.

14 THE COURT: And are you taking that medication now?

15 DEFENDANT COX: Yes, sir.

16 THE COURT: Does it effect your ability to process
17 information, or to understand what's happening here today?

18 DEFENDANT COX: No, sir.

19 THE COURT: Does it affect your ability to make
20 rational decisions?

21 DEFENDANT COX: No, sir.

22 THE COURT: Are you pleading guilty, Mr. Cox, because
23 you are guilty?

24 DEFENDANT COX: Yes, sir.

25 THE COURT: And do you understand the elements of the

1 crime of murder that the State would have to prove beyond
2 a reasonable doubt to convict you?

3 DEFENDANT COX: Yes, sir.

4 THE COURT: And do you understand that the maximum
5 sentence for this charge is life in prison?

6 DEFENDANT COX: Yes, sir.

7 THE COURT: And do you understand that it is
8 classified as a violent offense, as well as a most serious
9 offense?

10 DEFENDANT COX: Yes, sir.

11 THE COURT: And do you understand that if you are
12 ever convicted again of a serious or most serious offense,
13 you'd be subject to a mandatory life sentence without any
14 possibility or hope of parole?

15 DEFENDANT COX: Yes, sir.

16 THE COURT: And do you understand further that an
17 offense classified as violent under South Carolina law may
18 affect your ability to, among other things, be eligible
19 for parole or other credits you might otherwise receive in
20 the Department of Corrections?

21 DEFENDANT COX: Yes, sir.

22 THE COURT: And are you relying on anyones prediction
23 or promise as to when you might be paroled or eligible for
24 parole by entering this plea?

25 DEFENDANT COX: No, sir.

1 THE COURT: Understanding the consequences of
2 pleading to a violent and a most serious offense, do you
3 still wish to plead guilty, sir?

4 DEFENDANT COX: Yes, sir.

5 THE COURT: And do you understand the two strikes and
6 three strikes law?

7 DEFENDANT COX: Yes, sir.

8 THE COURT: And do you understand entering this plea
9 will mean you will have a strike on your record?

10 DEFENDANT COX: Yes, sir.

11 THE COURT: Do you have any questions of me about
12 that law?

13 DEFENDANT COX: No, sir.

14 THE COURT: Have you fully discussed it with
15 Mr. Robinson?

16 DEFENDANT COX: Yes, sir.

17 THE COURT: Do you understand that by entering your
18 plea, you must give up your right to a jury trial?

19 DEFENDANT COX: Yes, sir.

20 THE COURT: And has anyone threatened you or put any
21 pressure on you whatsoever to get you to come into court
22 today and enter your plea?

23 DEFENDANT COX: No, sir.

24 THE COURT: Are you doing so of your own free choice
25 and will?

1 DEFENDANT COX: Yes, sir.

2 THE COURT: Have you had enough time to think about
3 what you're doing, sir?

4 DEFENDANT COX: Yes, sir.

5 THE COURT: Do you understand that if you did have a
6 jury trial, you'd be presumed innocent, and at such a
7 trial, you would not have to prove you were innocent or
8 prove you were not guilty?

9 DEFENDANT COX: Yes, sir.

10 THE COURT: And do you understand that at your trial
11 before a jury, you could testify, or you could choose not
12 to testify? If you chose not to testify, the Court would
13 tell the jury you have the absolute right to remain silent
14 guaranteed by the Constitution, and they could not hold
15 that against you in any way, or take it into account
16 whatsoever in determining whether you were guilty or not
17 guilty?

18 Do you understand that, Mr. Cox?

19 DEFENDANT COX: Yes, sir.

20 THE COURT: Do you, also, understand that at your
21 trial, you could present any defenses you may have,
22 present other evidence or witnesses, you could use the
23 subpoena power of the Court to bring witnesses in and
24 testify? You could confront the State's evidence,
25 cross-examine the witnesses, and have your lawyer

1 represent you at your trial.

2 Do you understand those rights you would have at a
3 jury trial?

4 DEFENDANT COX: Yes, sir.

5 THE COURT: I don't know if you have a defense or
6 not, but do you understand by pleading guilty, you must
7 give up your right to present a defense, and, also, the
8 right to challenge or contest any of the evidence in your
9 case, including any statements you may have given,
10 searches that were made, or testing that was done or
11 should have been done?

12 Do you understand that, Mr. Cox?

13 DEFENDANT COX: Yes, sir.

14 THE COURT: Now, understanding all those rights and
15 understanding further you must give them up in order to
16 plead guilty, do you still want to plead guilty, sir?

17 DEFENDANT COX: Yes, sir.

18 THE COURT: Now, I have a three-page form that I use
19 in guilty pleas that goes over all the rights that I've
20 gone over with you. Have you had enough time to review
21 that form?

22 DEFENDANT COX: Yes, sir.

23 THE COURT: And did you understand each question on
24 the form?

25 DEFENDANT COX: Yes, sir.

1 THE COURT: And did you answer each question
2 truthfully?

3 DEFENDANT COX: Yes, sir.

4 THE COURT: And is that your signature on the third
5 page, sir?

6 DEFENDANT COX: Yes, sir.

7 THE COURT: Do you have any questions of me about the
8 form, or about anything related to the guilty plea
9 process, or any of the rights you give up by pleading
10 guilty?

11 DEFENDANT COX: No.

12 THE COURT: Have you understood all my questions,
13 sir?

14 DEFENDANT COX: Yes, sir.

15 THE COURT: And, at this time, I'm going to ask you
16 to listen carefully. Ms. Anders is going to set forth the
17 facts. And I'm going to ask you if you agree with her
18 version.

19 Thank you.

20 MS. ANDERS: May it please the Court.

21 On November 2nd, 2009, at about 4:45 p.m., the
22 20-year-old Defendant went to the 38-year-old victim's
23 residence, that's Haneef's Auto Parts and Accessories at 2
24 Randolph Street in Greenville County. The Defendant went
25 to look at speakers. The Defendant and victim talked for

1 a while. Nobody else was in the store. And then the
2 victim started playing a video game, a Playstation game.
3 And the Defendant shot and killed the victim while he was
4 playing that game.

5 The victim was shot once above his right ear. And he
6 died at the hospital. There was no indication of a fight
7 or struggle. Several people in the shopping center heard
8 the shot, including a security guard. One of the
9 witnesses who heard the shot immediately flagged down a
10 Greenville County Sheriff's Office deputy who was
11 patrolling the area.

12 The security guard who heard the shot ran toward
13 Haneef's store. And he stopped this Defendant as he was
14 leaving through the door. There was no exit, other than
15 the front door, and no one else was nearby or inside the
16 store.

17 Two guns were found inside the Defendant's vehicle,
18 including the gun that the Defendant used to shoot the
19 victim. Gunshot residue was found on the Defendant's
20 shirt sleeve. And the Defendant's DNA was found on the
21 grip of the handgun.

22 The Defendant did cooperate with law enforcement.
23 Greenville County Sheriff's Office Investigator Whaley,
24 who is present in the courtroom today, did Mirandize this
25 Defendant properly. And this Defendant admitted to

1 shooting the victim in the head. The confession was
2 recorded. The Defendant, however, gave no reason for the
3 murder, other than that he had smoked marijuana two hours
4 prior, and he started thinking that he didn't like the
5 victim, and that he felt envious.

6 Your Honor, those are the facts as they would be
7 presented at trial.

8 THE COURT: All right. Is that what happened,
9 Mr. Cox?

10 DEFENDANT COX: Yes, sir.

11 THE COURT: And you don't have any kind of promise or
12 deal with the State, do you, sir?

13 DEFENDANT COX: No, sir.

14 THE COURT: Other than to, I think, dismiss count two
15 of the indictment, which is the charge of possession of a
16 weapon during the commission of a violent crime.

17 DEFENDANT COX: Yes, sir.

18 THE COURT: All right. And, as I advised you
19 earlier, you have the right to a jury trial. And do you
20 understand that at your trial, you could only be convicted
21 if all 12 jurors agreed that the State had proven each and
22 every element of the crime beyond a reasonable doubt?

23 Do you understand that, sir?

24 DEFENDANT COX: Yes, sir.

25 THE COURT: And, as I mentioned, you would not have

1 any burden of proof whatsoever, and you would not be
2 forced -- could not be forced to testify or present any
3 evidence whatsoever.

4 Do you understand that?

5 DEFENDANT COX: Yes, sir.

6 THE COURT: All right. Understanding all those
7 rights, again, do you still wish to plead guilty, sir?

8 DEFENDANT COX: Yes, sir.

9 THE COURT: All right. I find there's a factual
10 basis for the plea. It's been entered into freely and
11 voluntarily, and with the assistance of competent counsel.

12 And, yes, sir, Mr. Robinson.

13 MR. ROBINSON: May it please the Court.

14 Your Honor, as was said initially, he is 21 years of
15 age. He did complete the ninth grade. He did get his
16 GED. Chavis has one child. The child looks up to his
17 father.

18 Chavis, after this experience, he's been extremely
19 remorseful. Every time he talks to me, he's crying or
20 being very, very upset. He's told his son the error of
21 his ways and the mistakes that he's made. And he wants
22 to -- he's told his son he doesn't want him to make the
23 same mistakes he made in this case. This was a big
24 mistake, a great terrible, terrible mistake that Chavis
25 lives with. And he's extremely sorry for this. He's

1 sorry to the family. He's sorry to the victim and so
2 forth in this case.

3 As far as a prior record, Your Honor, he was serving
4 a YOA sentence, I believe. And he did -- he's been in
5 jail since this happened back in November of 2009.

6 Your Honor, this is a horrible, horrible incident
7 that occurred. And he's -- as you can see, he's very,
8 very sorry about this. And he knows that he is going to
9 have to spend some time in jail, obviously, as a result of
10 this.

11 But we'd ask the Court for the minimum sentence in
12 this case, which I've explained to him is a day-for-day
13 sentence with no possibility of parole or probation. He
14 understands all that. But we'd ask the Court for the
15 minimum sentence in this case, if the Court sees fit.

16 And Mr. Cox would, also, like to say something as
17 well to the Court. And he'd address the Court when he
18 addresses the family as well, Your Honor.

19 Mr. Cox, would you like to say something?

20 DEFENDANT COX: Can I say it to the family?

21 MR. ROBINSON: No.

22 You can't turn around. Just say to the Court what
23 you want to say.

24 DEFENDANT COX: I know what I did was wrong. I mean,
25 I'd like to apologize. I'm very sorry that I took a loved

1 one away. I don't know how many kids he had, but I know
2 he had some kids, and it hurt, you know.

3 Since the first day I got locked up -- well, arrested
4 for the charge, I've had to sit down and think about what
5 I did, and it hurt. I cried. When I first -- at the
6 scene, when they had me in the squad car, I seen his wife.
7 She pulled up. And she was screaming that that was her
8 husband in there. And then it hurt even more to know that
9 he was married with kids. And I wish I could bring him
10 back for them.

11 But I just want to say I'm sorry. I pray. I've
12 asked God to forgive me. And I hope that they can find it
13 in their hearts to forgive me, which I know will be hard
14 because they loved him very much. I'd just like to say
15 I'm sorry.

16 MR. ROBINSON: Thank you, Your Honor.

17 MS. ANDERS: Your Honor, the Defendant does have a
18 prior record, if you would like that, sir.

19 THE COURT: Yes, ma'am.

20 MS. ANDERS: From 2006, he has a burglary second
21 conviction, malicious damage under \$1,000, and auto
22 breaking; in 2007, he did receive a Youthful Offender Act
23 sentence suspended on probation. And he did violate that
24 probation on two occasions prior to this incident.

25 He was arrested on the date of the murder. He spent

1 13 days in our county jail before he was violated on that
2 Youthful Offender Act. I'm not sure if it was probation
3 or parole. And he has been at SCDC for 350 days as of
4 today.

5 Mr. Haneef's family is here. And Angela Stewart, his
6 wife, is here with many of her relatives. And, at the
7 appropriate time, Your Honor, she would like to be heard.

8 THE COURT: Okay. Certainly.

9 If you'd just provide your name, for the record. I'd
10 be glad to hear anything you'd like to say, ma'am.

11 MS. ANGELA STEWART: My name is Angela Stewart.

12 I want to thank you, Your Honor, for the opportunity
13 to speak today. My name is Angie Stewart. I am the wife
14 of Al Waajid Haneef.

15 On November the 2nd, 2009, my life was changed
16 forever. I received a call that there had been a shooting
17 at our place of business, which is called Haneef's Auto
18 Parts and Accessories. We struggled for about three years
19 to be able to start and open this business. I was so
20 proud of him. We had a legitimate business that my
21 husband worked every day to be able to support his family.
22 We have two kids and three grandchildren. Our goal in
23 life was to be able to have enough resources so that we
24 could send our grandkids to college.

25 When I arrived at the store on November 2nd, the

1 ambulance had already put my husband in the vehicle. I
2 tried to beat on the back door of the ambulance to let me
3 in. I chased the ambulance all the way down White Horse
4 Road beating on the door. I thought if I could just get
5 into the ambulance just to pray over my husband's body,
6 everything would be okay.

7 When I got to the hospital, they wouldn't let me see
8 my husband. I begged and I pleaded. I just wanted to
9 kiss his feet. I was told, no, because of forensics.

10 My life has been so devastated ever since, because I
11 have to live with the fact that I never got a chance to
12 say good bye. The morning when he left home, that
13 morning, his last words to me was, I'm gone. And at the
14 end of the day, he was gone.

15 My husband and I did not know the Defendant. We had
16 no relationship with him. My husband was at his business
17 minding his own business when the Defendant decided to
18 enter our business and kill my husband. This was a
19 senseless act, no reason, no justification. It was
20 premeditated.

21 Your Honor, I beg you to give him the maximum allowed
22 by law, which is life in prison. He killed a man that
23 spent his memory to young boys -- mentoring to young boys
24 to stay in school, stay out of trouble, and stop the
25 violence. Everything that he worked so hard to prevent

1 was the reason that he was killed.

2 I was his world, he was mine. I feel like my life is
3 over. Before this occurred to my husband, I decided to go
4 back to college to finish my degree so I could become a
5 magistrate judge. My husband told me not to worry about
6 anything, that he would take care of the family and the
7 bills. He wanted me to concentrate on school. He was so
8 proud of all the awards and grades that I had received
9 while in college.

10 On May 11th, 2010, I received my degree. Not only
11 did I receive my degree, but I graduated top of my class.
12 My school, they performed a ceremony for my family to
13 recognize all my accomplishments. But there was one
14 person missing. This person had went through the struggle
15 with me, this person had told me that everything was going
16 to be all right when everything was not all right. This
17 person helped me type papers. This person laid beside me
18 at night while I studied late. This was not my degree,
19 Your Honor, this was our degree.

20 Because of the Defendant, the four years that I had
21 struggled in school was not able to be celebrated as I had
22 planned. I don't know how to keep going. I don't know
23 how to explain to my grandkids that Papa Six [phonetic]
24 will never come back. I walk around every day lying to
25 people, telling people that I'm okay when I'm not. I lay

1 in the bed at night reaching out for my husband, and he's
2 not there so I cry until I fall asleep.

3 My husband was killed because the Defendant thought
4 my husband had money. But I refuse today to apologize for
5 all the things that me and my husband have, because we
6 worked every day for it. We did not go out and rob or
7 kill anyone. We did not steal or cheat anyone.

8 For the Defendant to go to our place of business and
9 shoot my husband, it was a senseless act. I have two sons
10 that's older than the Defendant. And I teach my sons
11 every day that you have to abide by the law and any law
12 that you break, you must be punished and you must have to
13 pay for it. So there is no way that he can bring my
14 husband back. There's no way he can take away the hurt or
15 pain.

16 So I ask you, I beg you, Your Honor, on the mercy of
17 the Court, if he could get the maximum sentence by law.
18 Because my husband did not deserve this. My family did
19 not deserve this. And there's no way that you, or him, or
20 nobody can put us back together. There's no way that we
21 can go on without this day. There's no way that we can
22 make it.

23 This was not the Defendant's first crime. He did
24 crimes over and over again until it escalated to murder.
25 Murder is the ultimate crime. If we give him 20, 30

1 years, he's able to come back at the age of 40, 50 years
2 old. My husband didn't even get to live to see that age.
3 If he comes out at the age of 40 or 50 years old with no
4 job, how is he able to come back and start over again? I
5 don't want him to come back and start robbing and killing
6 again, because I don't want to have to live with the fact
7 that one day, my grandkids might have to go through the
8 same situation. I beg that this never happens to nobody
9 else's family, because this is a devastating act.

10 Again, Your Honor, I ask you and I beg you for the
11 maximum.

12 THE COURT: Thank you, Ms. Stewart.

13 Okay. Anything further from the State?

14 MS. ANDERS: No, sir.

15 THE COURT: From the Defense?

16 MR. ROBINSON: No, sir, Your Honor.

17 THE COURT: What was -- the 2007 YOA, what was that
18 for?

19 MS. ANDERS: Burglary second degree non-violent,
20 malicious damage less than \$1,000, and an auto breaking
21 charge.

22 THE COURT: Oh, okay. So that's what -- it was the
23 2006 incident?

24 MS. ANDERS: Yes, Your Honor.

25 The incidents occurred in 2006. And he was convicted

1 in 2007.

2 THE COURT: All right. I thought for a minute there
3 that the YOA was a separate crime from those that you had
4 told me about earlier.

5 Well, I appreciate what Ms. Stewart said.

6 And, ma'am, I congratulate you on your degree. And I
7 know that I can't possibly imagine -- nobody in here can
8 possibly imagine what you and your family have had to
9 endure as a result of this.

10 And, Mr. Cox, I understand your remorse, and you
11 have accepted responsibility.

12 The minimum sentence is 30 years, the maximum
13 sentence is life. By pleading guilty, of course, you have
14 saved the State the expense and time of trial, and the
15 families -- not only on the victim's side, but on your
16 family's side as well the anguish of a protracted trial.

17 The sentence of the Court on indictment
18 #2010-GS-23-2433, count one, is that you be committed to
19 the Department of Corrections for a period of 40 years
20 with credit for time served.

21 Thank you very much.

22 *****END OF TRANSCRIPT OF RECORD*****
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 4th day of November, 2010.

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

October 31, 2011



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA)

County of Greenville)

IN THE COURT OF COMMON PLEAS

Chavis Laranzo Cox #327335)
Full name and prison number (if any) of Applicant)

2011-CP-23- 06134

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

ENTERED COMPUTER

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution, 990 Wisacky Hwy
Bishopville SC 29010

2. Name and location of Court which imposed sentence Greenville County Court
house, 305 East North Street, Greenville, South Carolina, 29601

3. Name(s) of co-defendant(s) (if any) N/A

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2010GS2302433

(b) _____

(c) _____

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

(a) November 4th 2010 (40 years) Mandatory

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO

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

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

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

(c) the date of each such result:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

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

(a) Counsel failed to file Notice of Appeal

- (b) _____
- (c) _____

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

- (a) Ineffective Assistance of Counsel
- (b) Insufficient Indictment
- (c) Prosecutorial Misconduct

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

- (a) "See Attached"
- (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? Yes

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

- (a) the specific nature thereof:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. _____
 - iii. _____

iv. _____
(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

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) Pending Post-Conviction Hearing
 (b) _____
 (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
- i. John I. Mauldin, Room 123, Greenville County Courthouse, Greenville SC 29601
 - ii. Brian Johnson, 305 East North Street Suite 123, Greenville SC 29601
 - iii. Scott D. Robinson, Post office Box 10042 Federal Station, Greenville SC 29603
- (b) the proceedings at which each such attorney represented you:
- i. John Mauldin assisted in Motions.
 - ii. Brian Johnson assisted in Preliminary hearing presentation
 - iii. Scott Robinson assisted in Motion, arraignment, Plea and Sentencing

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

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Chavis Laranzo Cox, 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.

Chavis L. Cox

Chavis L. Cox

SWORN to and subscribed before me this 7 day of July, 2011.

Debra Sims (L.S.)
Notary Public

My Commission Expires: 11-4-2015

Application To Proceed without
Payment of Costs and Affidavit
in Support Thereof

I Chavis Laranzo COX hereby apply for leave to proceed in this action without prepayment of fees or costs or security thereof. 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 proceedings, or give security therefor.

Chavis L. Cox
Applicant

Sworn or affirmed to and subscribed before me this

7 day of July 2011

Debra Swiss
Notary Public

My Commission expires: 11-4-2015

Ineffective Assistance Of Counsel Allegations

Petitioner asserts that his plea was involuntary.

Counsel was ineffective for not explaining in depth the full meaning of trial. In which petitioner did not fully understand the meaning of a trial. Petitioner told Counsel that he had not wanted trial, due to the knowledge he obtained and meaning of trial. Petitioner thought trial was only to prove innocence or guilt, however, petitioner wanted to prove that the elements of the crime was Manslaughter and not Murder. If not had been for Counsel's ineffectiveness, petitioner would have went to trial.

Counsel was ineffective for advising to plea without disclosure of Rule 5. Counsel was ineffective for allowing solicitor to solicit a plea agreement on the defendant relinquishing petitioner's right to discovery in petitioner's criminal case. Rule 3.4 RI. DE, Rule 407 SCACR. Petitioner claims that if he would have had access or had been exposed to prosecutor's file he would of went to trial. If not had been for Counsel's ineffectiveness, Petitioner would have chosen to go to the

Counsel was ineffective by rendering erroneous advice thus making plea involuntary. Counsel told petitioner to falsely answer the questions of the judge "Pretrial Inquiry" so that he wouldn't receive a life sentence. Counsel advised petitioner that the questions were just court formality. If not had been for Counsel's ineffectiveness, Petitioner would have went to trial.

Counsel was ineffective for advising petitioner to plea after petitioner elucidated that it wasn't intentional. Petitioner told Counsel that he went to scare victim not kill him. Counsel was ineffective for coercing him to plea murder. If had not been for Counsel's ineffectiveness, Petitioner would have went to trial.

petitioner asserts that defense Counsel's erroneous advice that defendant would receive a maximum of a life sentence if he proceeded trial, therefore constitutes ineffective assistance and rendered guilty plea invalid. If not had been for Counsel's ineffectiveness petitioner would have went to trial.

Counsel was ineffective for failing to file Notice of Appeal.

Counsel was ineffective for not objecting to Indictment

Counsel was ineffective for failing to object to the improper sentencing.

Indictment Insufficient For Murder Allegation

Petitioner asserts that indictment is insufficient because it fails to state the elements of Murder pursuant to 17-19-30. Also indictment fails to allege time and place of death.

Prosecutor Misconduct Allegation

Petitioner asserts that Prosecutor threaten and forced petitioner to plea, thus making petitioner's Plea involuntary.

The Solicitor stated; "I can assure you of that, if you do not accept today's offer and go in there today then you will be placed on the docket for trial and I will recommend as well make sure that you spend the rest of your natural life in prison." Petitioner claims that because of Prosecutors threat and unprofessionalism it forced him to plea involuntarily.



Office of the Clerk of Court

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

www.greenvillecounty.org

SEPTEMBER 14 2011

CHAVIS L COX 327335
LEE CORRECTIONAL INSTITUTE
SMU 47
990 WISACKY HWY
BISHOPVILLE SC 29010

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

2011 SEP 14 P 2:39

ENTERED COMPUTER

CHAVIS COX

ENCLOSED YOU WILL FIND A COPY OF YOUR POST CONVICTION
RELIEF APPLICATION. YOUR CIVIL CASE NUMBER IS
2011CP2306134

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

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

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

THANK YOU
CLERK OF COURT'S OFFICE

PCR

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

) THIRTEENTH JUDICIAL CIRCUIT

Chavis Cox,

) C.A. No.: 2011-CP-23-6134

Plaintiff

) AMENDED PETITION FOR
) POST CONVICTION RELIEF

v.

State of South Carolina

Defendant.

2012 DEC 14 P 3:56

CLERK OF COURT
GREENVILLE CO. S.C.
KIMBERLY

JW

The Defendant, by and through his counsel, Caroline M. Horlbeck, respectfully amends his Petition for Post Conviction Relief to allege the following:

Applicant asserts that his plea was involuntary. If not had been for counsel's ineffectiveness, applicant would have gone to trial.

I.

The U. S. Supreme Court has stated; we have held that the trial level right to counsel created by the 6th Amendment applies to the state through the 14th Amendment. Having established what is constitutionally binding to the 6th Amendment to the right of effective assistance of counsel, the petitioner asserts that he received ineffective assistance of counsel when counsel advised applicant to plea without disclosure of Rule 5. Counsel was ineffective for allowing Solicitor to solicit a plea agreement on the defendant relinquishing petitioner's right to discovery in petitioner's criminal case. Rule 3.4 RI.DE, Rule 407 SCACR . Petitioner claims that if he would have had access or had been exposed to prosecutor's file he would have gone to trial. Petitioner asserts that he would have been able to prepare a defense based off state's evidence. Petitioner claims that he would have been apprised that there was merely any evidence of malice aforethought (intent). If not had been for counsel's ineffectiveness, Petitioner would have chosen to go to trial.

II.

The U. S. Supreme Court has stated; we have held that the trial level right to counsel created by the 6th Amendment applies to the state through the 14th Amendment. Having established what is constitutionally binding

Respectfully submitted,

Caroline Horlbeck

Caroline Horlbeck
Attorney for the Defendant
101 Whitsett Street
Greenville, S.C. 29601

Greenville, South Carolina
6th day of December, 2012

Copy mailed to
Attorney general
on 12 / 14 / 12

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Chavis Laranzo Cox,)
 S.C.D.C. No. 327335,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2011-CP-23-6134

FILED-CLERK OF COURT
 GREENVILLE CO., S.C.
 2011 SEP 14 PM 2:02
[Signature]

RETURN

ENTERED COMPUTER

In response to the post-conviction relief application filed September 14, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Applicant was indicted by the Greenville County Grand Jury at the April 2010 term of General Sessions for murder (2010-GS-23-2433, count 1) and possession of a weapon during the commission of a violent crime (2010-GS-23-2433, count 2). Scott D. Robinson, Esquire represented the Applicant.

On November 4, 2010, the Applicant pled guilty to murder. The Honorable D. Garrison Hill sentenced the Applicant to forty (40) years imprisonment. The Applicant did not appeal.

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

SCANNED

II.

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

1. Ineffective assistance of counsel.
 - a. Did not explain "in depth the full meaning of trial. In which petitioner did not fully understand the meaning of a trial. Petitioner told counsel that he had not wanted trial, due to the knowledge he obtained and meaning of trial. Petitioner thought trial was only to prove innocence or guilt, however, petitioner wanted to prove that the elements of the crime were manslaughter and not murder. If not had been for counsel's ineffectiveness, petitioner would have went to trial."
 - b. Advised "to plea without disclosure of Rule 5. Counsel was ineffective for allowing solicitor to solicit a plea agreement on the defendant relinquishing petitioner's right to discovery in petitioner's criminal case."
 - c. Rendered "erroneous advice thus making plea involuntary. Counsel told petitioner to falsely answer the questions of the judge "Pretrial Inquiry" so that he wouldn't (illegible) a life sentence. Counsel advised petitioner that the questions were just court formality. If not been for counsel's ineffectiveness, Petitioner would have went to trial."
 - d. Advised "petitioner to plea after petitioner elucidated that it wasn't intentional. Petitioner told counsel that he went to scare victim not kill him. Counsel was ineffective for coercing him to plea murder. If had not been for counsel's ineffectiveness, petitioner would have went to trial."
 - e. Did not file a notice of appeal.
 - f. Did not object to indictment.
 - g. Did not object to sentencing.
2. Insufficient Indictment.
 - a. Indictment "fails to state the elements of Murder pursuant to 17-19-30. Also indictment fails to allege time and place of death."
3. Prosecutorial Misconduct.
 - a. "Prosecutor threaten and forced petitioner to plea, thus making petitioner's plea involuntary."
 - b. "The Solicitor stated, 'I can assure you of that, if you do not accept today's offer and go in there today then you will be placed on the docket for trial and I will recommend as well as make sure that you

spend the rest of your natural life in prison.' Petitioner claims that because of Prosecutors threat and unprofessionalism it forced him to plea involuntarily."

III.

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

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

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

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

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

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

IV.

The Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal

cases.” Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one’s accusers. Id. Moreover, a criminal defendant entering a guilty plea “must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant’s knowing and voluntary waiver of statutory or constitutional rights in a guilty plea “must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Respondent submits the record fully supports the knowing and voluntary nature of

the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248 (1983).

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

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

By:


Attorneys for Respondent

December 30, 2011

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
)
)
 CHAVIS LARANZO COX, 327335)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2011-CP-23-6134

FILED-CLERK OF COURT
 GREENVILLE, S.C.
 2012 JAN 10 PM 2:02

AFFIDAVIT OF SERVICE BY MAIL

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

**Chavis Laranzo Cox, 327335
 Lee Correctional Institution
 990 Wisacky Highway
 Bishopville SC 29010**

DATED this 30th day of December, 2011.

Judy A. Carey
 Judy A. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

CHAVIS L. COX,)
)
 PLAINTIFF,)
)
 -VS-)
)
 THE STATE OF SOUTH CAROLINA,)
)
 DEFENDANT.)
 _____)

2011-CP-23-06134

APRIL 16, 2013

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

CAROLINE HORLBECK, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

KAREN RATIGAN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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PLAINTIFF'S EXHIBITS

NO	DESCRIPTION	ID	EV
	NONE		

DEFENDANT'S EXHIBITS

	NONE		

COURT'S EXHIBITS

	NONE		

1 call Mr. Cox to the stand.

2 THE COURT: Okay, sir, if you would come around
3 to be sworn.

4 THE CLERK: Mr. Cox, please place your left hand
5 on the bible and raise your right hand.

6 You do solemnly swear or affirm that the testimony
7 you're about to give in this case will be the truth, the
8 whole truth and nothing but the truth, so help you God?

9 THE DEFENDANT: Yes, ma'am.

10 THE CLERK: Thank you. You may be seated.
11 Please state your full name for the record.

12 THE DEFENDANT: Chavis Lonzo Cox.

13 CHAVIS L. COX,

14 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION

16 BY MR. HORLBECK:

17 Q. Mr. Cox, where are you currently incarcerated?

18 A. Leath Correctional Institution.

19 Q. Who represented you on the charge?

20 A. Mr. Scott Robinson.

21 Q. And as a result of his representation, did this plea
22 -- did this case end up being handled by a guilty plea or a
23 jury trial?

24 A. Guilty plea.

25 Q. All right. And what charge did you actually plead to?

1 A. Murder.

2 Q. What sentence are you serving?

3 A. Forty years.

4 Q. And did you file the petition for post conviction
5 relief?

6 A. Yes, ma'am.

7 Q. All right. Was Mr. Robinson retained or was he
8 appointed?

9 A. He was retained.

10 Q. All right. Did he charge a retainer, and if so, how
11 much was the retainer?

12 A. The retainer was a thousand dollars.

13 Q. And what was the full amount that he expected you or
14 your family to pay?

15 A. Ten thousand dollars.

16 Q. To your knowledge was the, was the retainer paid?

17 A. No, ma'am. Was the retainer paid?

18 Q. Yes.

19 A. The retainer of a thousand dollars was paid.

20 Q. Okay. And was the remainder of his fee paid to Mr.
21 Robinson?

22 A. No, ma'am.

23 Q. Okay. And what impact do you think that the failure
24 to pay the rest of his fee, what impact do you think that
25 had on Mr. Robinson's representation of you?

1 A. It brought forward a conflict of interest. His
2 interest -- he lost interest in pursuing the rest of the
3 case.

4 Q. All right.

5 A. And being effective for me in that he wasn't fully
6 paid his fees.

7 Q. Okay. Well, let's kind of explore that a little bit
8 more. Let's talk about specifics. Did he investigate your
9 case?

10 A. I'm not sure. He said he had a personal investigator
11 that did that.

12 Q. Yes.

13 A. That investigated the case. However, I did not have
14 any access to the Solicitor's file to see what was
15 investigated.

16 Q. Okay. Did either Mr. Robinson or his investigator
17 review the results of his investigation with you?

18 A. No, ma'am.

19 Q. Okay. To your knowledge had Mr. Robinson or his
20 investigator gone out and interviewed witnesses or the
21 police?

22 A. No, ma'am, not that I know of.

23 Q. Okay. Do you believe that Mr. Robinson was -- were
24 you scheduled for trial that day in front of Judge Hill?

25 A. I was told that if I had not accepted the plea that I

1 would be documented for trial.

2 Q. All right. So you were not actually scheduled for
3 trial that day?

4 A. I don't believe so.

5 Q. All right. If your attorney had been prepared and had
6 investigated the case properly or to your satisfaction,
7 what do you think you would have done differently? Would
8 you still have pled guilty?

9 A. I may have went to trial.

10 Q. Okay. Now, you mentioned a few minutes ago that you
11 didn't have access to the Solicitor's file. Did Mr.
12 Robinson file discovery motions in this case, to your
13 knowledge?

14 A. Either him or the prior attorneys that I had, someone
15 filed the Rule 5 for me. I never received it.

16 Q. Were you out on the street or were you incarcerated
17 somewhere else while this charge was pending?

18 A. I was currently incarcerated at Turbeville
19 Correctional Institution.

20 Q. Okay. Did Mr. Robinson or his investigator ever go to
21 your institution and visit you to discuss this case?

22 A. No, ma'am.

23 Q. Did Mr. Robinson or his investigator ever mail you a
24 discovery package while you were in SCDC?

25 A. No, ma'am.

- 1 Q. Okay. Did anyone from his office ever review
2 discovery with you?
- 3 A. No, ma'am.
- 4 Q. How many times did you meet with Mr. Robinson?
- 5 A. Three.
- 6 Q. All right. Where were you when you met?
- 7 A. Here and we met the first time at the Preliminary
8 Hearing. The second time was the first time he asked me to
9 plead, and I denied it. And the third time was the second
10 time he asked me to plead.
- 11 Q. Okay. And during some of those times that you met
12 with Mr. Robinson, did you meet with his investigator or
13 just Mr. Robinson?
- 14 A. The first two times with Scott Robinson. The third
15 time the investigator was there and he went over the
16 pretrial inquiry with me.
- 17 Q. Okay. By pretrial inquiry, do you mean the
18 questionnaire, Judge Hill's ---
- 19 A. Yes, ma'am.
- 20 Q. --- plea questionnaire?
- 21 A. Yes, ma'am.
- 22 Q. All right. Mr. Robinson's investigator, did he review
23 discovery with you?
- 24 A. No, ma'am.
- 25 Q. All right. Your knowledge of the case was based on

1 what you heard at the Preliminary Hearing; is that correct?

2 A. Yes, ma'am.

3 Q. And if you had -- have you since received a copy of
4 your discovery?

5 A. Yes, ma'am. I received mine approximately June, July
6 of 2011.

7 Q. All right. Was that before or after you had already
8 pled guilty?

9 A. After.

10 Q. Okay. And did you -- have you reviewed that discovery
11 package?

12 A. Yes, ma'am.

13 Q. All right. If you had received discovery and had a
14 chance to review it with your attorney before you pled,
15 would you still have pled guilty?

16 A. No, ma'am.

17 Q. What would you have done differently?

18 A. I would have went to trial.

19 Q. Okay. And why? What is -- why would you have gone to
20 trial based on that ---

21 A. I assume that the State lacked evidence to prove the
22 matters of fact on the murder trial.

23 Q. Okay. Did you -- when you pled guilty, did you tell
24 the Judge that you had not had a chance to review discovery
25 with your attorney?

1 A. No, ma'am. I was told to answer the questions as they
2 coached me to in the Court formality.

3 Q. Okay. Who told you to answer the questions a certain
4 way?

5 A. The investigator.

6 Q. When did the investigator tell you -- and whose
7 investigator?

8 A. I cannot recall his name.

9 Q. Right. But was it a police investigator or Mr.
10 Robinson's investigator?

11 A. Mr. Robinson's investigator. He said he was his
12 personal investigator.

13 Q. Okay. And at what point was the investigator telling
14 you how to answer questions?

15 A. Right before I was to go in front of Judge Hill to
16 plead.

17 Q. Okay. Were you reviewing Judge Hill's questionnaire?

18 A. His questionnaire.

19 Q. Is that -- during that review of the questionnaire, is
20 that when the investigator was telling you how to answer
21 the questions?

22 A. Yes, ma'am. But they were questions that he had me
23 answer falsely. I had to answer some of the questions
24 falsely. I told him I was not satisfied with my attorney
25 at the time.

1 Q. Uh-huh (affirmative.)

2 A. And he didn't conduct everything I asked him to do, so
3 forth and so on. And he say, don't worry about it. You
4 just say it this way so we can proceed on through.

5 Q. All right. And the false answers, were your false
6 answers recorded on Judge Hill's questionnaire?

7 A. As I answered them.

8 Q. Okay. And are you also saying you answered those
9 questions falsely during the plea?

10 A. Yes, ma'am.

11 Q. Okay. All right. So during the plea, you told Judge
12 Hill that you were satisfied with your attorney, when in
13 fact, you were not?

14 A. Yes, ma'am.

15 Q. All right. And tell the Court again why you answered
16 that -- why you answered falsely?

17 A. Well, the investigator tells me to go ahead and answer
18 those that way to proceed on with the plea hearing.

19 Q. Okay. All right. Now, did you make a statement in
20 this case?

21 A. Yes, ma'am.

22 Q. All right. Did your statement include all of the
23 information that was important to the case?

24 A. No, ma'am.

25 Q. All right. What did your -- what information was

1 missing from that statement that you made?

2 A. Actual incident what took place, all of it, didn't
3 really include all of it.

4 Q. Well, let's don't -- tell us the missing information?

5 A. The incident -- evidence as far as the drugs and the
6 arguments that took place in the incident of the murder.

7 Q. Okay. Did your statement -- did you explain in your
8 statement what happened?

9 A. I didn't fully elucidate or elaborate.

10 Q. Okay.

11 A. I started.

12 Q. Did you explain in your statement what the victim did,
13 what actions he took?

14 A. No, ma'am.

15 Q. Okay. That's what I'm saying. Let's talk about it
16 now. Tell us ---

17 A. Okay. As far as me going there? Went there, spoke
18 with him, you know, let him know that what I ---

19 Q. Spoke with who?

20 A. Mr. Haneef.

21 Q. And that's the victim?

22 A. That's the victim.

23 Q. Okay.

24 A. To tell him I couldn't do what I was doing for him any
25 longer, because I couldn't -- was basically abusing the

1 drugs, you know, and I was really supposed to be selling
2 for him. Then there was an argument come in -- that's when
3 the argument starts. So, between -- we had hostile
4 moments. And then as far as, I'm gonna get you if you
5 don't do this. And I had to back on out. He tries to get
6 up. He's a big guy. He's three hundred ninety-nine
7 pounds, you know. So when he's trying to get up, I close
8 my eyes and shoot.

9 Q. Okay. What did the victim do when he got up, when he
10 tried to get up?

11 A. He didn't really do much. He was so obese he wasn't
12 too quick to get up.

13 Q. Was he armed?

14 A. I have no clue.

15 Q. Did he reach for anything?

16 A. He kept trying to reach me and trying to get up at the
17 same time.

18 Q. Okay. All right. But based on that missing -- did
19 you discuss with Mr. Robinson the fact that you left some
20 information out of your statement?

21 A. Yes, ma'am.

22 Q. Okay. And what did -- what was the result of that
23 discussion?

24 A. As I spoke with you, he basically just wanted to know
25 whether I actually killed a man or not. That's all.

1 Q. Did you and Mr. Robinson discuss a self-defense
2 defense?

3 A. It was more I had no defenses.

4 Q. All right. Did you have the opportunity to do any
5 research into the defense of self-defense before you pled
6 guilty?

7 A. No, ma'am.

8 Q. Okay. Have you since learned anything or done
9 anything -- I'm sorry. Strike that. Have you, since your
10 guilty plea, have you done any research into the defense of
11 self-defense?

12 A. Yes, ma'am.

13 Q. Okay. And have you also done some research into
14 manslaughter?

15 A. Yes, ma'am.

16 Q. And do you believe that those may -- that those two
17 things, self-defense and manslaughter, may have been
18 defenses that you could have pursued at trial?

19 A. Yes, ma'am.

20 Q. Okay. And did you and Mr. Robinson ever discuss
21 manslaughter and self-defense?

22 A. We discussed manslaughter a little bit, being that he
23 was saying it couldn't be a manslaughter due to the
24 position of the victim.

25 Q. Okay.

1 A. I'm guessing off the ballistics report and how they
2 stated everything.

3 Q. All right. Did Mr. Robinson bring you the statute or
4 discuss the elements of self-defense and manslaughter with
5 you?

6 A. No, ma'am.

7 Q. All right. And is it your position today that you
8 believe that those two things could have been assertions
9 you could have made at trial?

10 A. Yes, ma'am.

11 Q. And is it your position today that Mr. Robinson should
12 have discussed those two things with you?

13 A. Yes, ma'am.

14 Q. All right. And if he had discussed that with you,
15 would you have -- would you still have pled guilty?

16 A. I would have chosen a trial.

17 Q. All right. And did you ever have the occasion to
18 speak with the Solicitor about this case?

19 A. Yes, ma'am.

20 Q. All right. Well, tell me the Court about how all that
21 resulted. Did you, did you initiate that conversation or

22 ---

23 A. No, ma'am.

24 Q. Who did?

25 A. Mr. Robinson.

- 1 Q. All right. Well, tell the Court what happened?
- 2 A. Okay. As we was conducting beforehand to see if I
3 would plea or not, I was asking for a certain plea. And he
4 said, I can't do that, they're not going to do it, speaking
5 of, I guess, the Solicitor and the Judge or whoever he was
6 speaking of. And I said, man, I really want to try to get
7 this plea right here and if you can't do this, then ... He
8 said, well, give me a minute, if I can go talk to her or
9 whatnot, you'll plea? I said, yeah, if you'll get it this
10 way. And he came back with the Solicitor and she spoke to
11 me and she stated that to her view, and I guess everybody
12 else's view, it was a cold-blooded killing and she wouldn't
13 recommend what I was asking for and she would leave it as
14 it is. And however, had I not taken that plea, that she
15 would put me on the docket for trial and make sure I got a
16 life sentence.
- 17 Q. Okay. Where did this conversation take place?
- 18 A. In the holding cell.
- 19 Q. Of what -- of this courthouse?
- 20 A. This courthouse.
- 21 Q. And who was present for that conversation?
- 22 A. Mr. Robinson and, of course, her.
- 23 Q. And you?
- 24 A. Yes, me.
- 25 Q. Anybody else besides the three ---

1 A. No, ma'am. Just us three.

2 Q. Okay. And how -- I mean, tell me what impact -- how
3 did you feel after that was said to you?

4 A. Threatened.

5 Q. All right.

6 A. Threatened of the life sentence.

7 Q. And what impact did that have on your decision of what
8 to do on your case?

9 A. It made me plead.

10 Q. Okay. Do you think your decision would have been
11 different if those things had not been said to you?

12 A. Yes, ma'am.

13 Q. All right. Would you have gone to trial?

14 A. Yes, ma'am. I would have gone to trial.

15 Q. Okay. Was an appeal filed in this case?

16 A. No, ma'am.

17 Q. Did you ask Mr. Robinson to file an appeal for you?

18 A. No, ma'am. We didn't discuss an appeal.

19 Q. Okay.

20 A. At least to my knowledge. I was told that when you
21 plead guilty, you can't appeal.

22 Q. Who told you that?

23 A. I can't quote. I don't remember. It wasn't Mr.
24 Robinson, though.

25 Q. All right. And are you saying that he should have

1 filed an appeal for you?

2 A. Yeah. Of course.

3 Q. Okay. But you and he did not discuss it?

4 A. Right.

5 Q. All right. And to your knowledge, you did not request
6 that he file an appeal?

7 A. Right.

8 Q. Okay. When did you learn of your right to an appeal?

9 A. After the sentencing, starting to study my case before
10 the PCR and then finding that I could have filed a notice
11 of appeal.

12 Q. All right. Is there anything else that you would like
13 to tell the court? Any allegations that we haven't
14 reviewed today during the hearing?

15 A. No, ma'am.

16 Q. Okay. All right. Do you understand that the Judge
17 today cannot change your sentence?

18 A. Yes, ma'am.

19 Q. Do you understand that the Judge can do one of two
20 things, that the Judge can either grant your petition or
21 deny your petition? Do you understand that?

22 A. Yes, ma'am.

23 Q. Okay. Do you understand that if the Judge denies your
24 petition you'll just have to serve out the remainder of
25 your sentence?

1 A. Yes, ma'am.

2 Q. Do you understand that if the Judge grants your
3 petition today that the case starts all over again and you
4 would be subject to reprosecution?

5 A. Yes, ma'am.

6 Q. That's all I have. Please answer any questions that
7 Ms. Ratigan may have for you.

8 THE COURT: You may cross examine.

9 MS. RATIGAN: Thank you, Your Honor.

10 **CROSS EXAMINATION**

11 **BY MR. RATIGAN:**

12 Q. Mr. Cox, you mentioned that you had some prior
13 attorneys before Mr. Robinson?

14 A. Yes, ma'am.

15 Q. How many prior attorneys did you have before Mr.
16 Robinson?

17 A. When I first was incarcerated, I was appointed to John
18 Mauldin. And then I had Brian Johnson.

19 Q. Okay. So you had two and then you eventually went and
20 you hired Mr. Robinson?

21 A. Yes, ma'am.

22 Q. And your testimony was that one of these lawyers filed
23 those discovery motions for you; you just don't know which
24 one?

25 A. Yes, ma'am.

1 Q. Did you ever review any of the evidence with Mr.
2 Robinson?

3 A. No, ma'am.

4 Q. So you never talked about the statement you gave?

5 A. No, ma'am.

6 Q. Or the gunshot residue that was found on your ---

7 A. No, ma'am.

8 Q. Or the fact that the gun was found in your car?

9 A. No, ma'am.

10 Q. Did you discuss with Mr. Robinson what had happened
11 between you and the victim that day?

12 A. Partially.

13 Q. So you had these three meetings with Mr. Robinson. If
14 you weren't talking about the evidence, what were you
15 talking about?

16 A. The plea.

17 Q. Okay. And when you say the plea, was there a plea
18 offer or was he just trying to give you the option of
19 pleading guilty instead of going to trial?

20 A. He told me to plead; it would be between the minimum
21 and the maximum.

22 Q. So Mr. Robinson told you you were facing thirty to
23 life?

24 A. He said minimum to maximum. Yeah, I believe he said
25 that because he wrote down thirty was the minimum for

1 murder.

2 Q. Okay. So he basically was just telling you you should
3 plead guilty and you'll get something in between these two
4 sentence?

5 A. Yes, ma'am.

6 Q. Did you ever specifically tell him, I don't want to
7 plead guilty, I'm going to trial?

8 A. In a letter ---

9 Q. Okay.

10 A. --- that I may have written.

11 Q. Okay. Well, did he ever respond to you?

12 A. No.

13 Q. To your request for a trial?

14 A. None of my letters were responded to.

15 Q. Now, you said that once you got some of your discovery
16 materials, you went through them and found some things that
17 you wish Mr. Robinson had done. Can you be a little bit
18 more specific? What in that discovery material do you
19 think Mr. Robinson should have followed up on?

20 A. There was -- I found media speculations. I found
21 insufficient on indictment for murder.

22 Q. Wait, stop. Why was it insufficient?

23 A. It did not state that feloniously, wilfully and
24 matters aforethought in deciding the ---

25 Q. So media speculation, insufficient indictment. What

1 else did you see that he should have followed up on?

2 A. Well, statements from the witnesses that so-call call
3 theirselves witnesses. Don't know what happened inside the
4 building; they just know that I was there on the scene.
5 And he could have interviewed the witnesses.

6 Q. Okay. What else?

7 A. As far as my Rule 5, I was obligated to it. Those are
8 just a few things. I can't recall it all, everything.

9 Q. Okay. Did you ever give Mr. Robinson the names of
10 some witnesses or people to talk to on behalf of your case?

11 A. I never knew of all the witnesses.

12 Q. Okay. But you would have know if there were people
13 that you wanted him to talk to. Did you ever ask him to
14 talk to certain people about maybe your relationship with
15 the victim or anything like that?

16 A. No, ma'am.

17 Q. Okay. And you knew going to court that day that there
18 was no recommendation from the State; is that correct?

19 A. Yes, ma'am.

20 Q. And when you had that conversation with Mr. Robinson
21 and Ms. Anders, was that the day that you pled guilty or
22 was there before then?

23 A. I'm sorry. Repeat that.

24 Q. The day you had the conversation with the solicitor
25 and with Mr. Robinson, was that the day you pled guilty or

1 was it sometime before that?

2 A. I believe that's the day I pled guilty.

3 Q. And your testimony was that Mr. Robinson's
4 investigator went through Judge Hill's checklist with you
5 before you pled; is that correct?

6 A. Yes, ma'am.

7 Q. And your testimony is that he asked you to lie?

8 A. Yes, ma'am.

9 Q. So you lied on the checklist, but then you also lied
10 to the Judge when you went in to plead in front of him?

11 A. Yes, ma'am.

12 Q. Why did you do that?

13 A. He asked me to.

14 Q. So even though you were in Court to plead guilty to
15 murder and get up to life imprisonment, you thought you
16 should lie to the Judge?

17 A. He said that if I would plead, they said they had --
18 Mr. Robinson and his investigator said that they had some
19 type of leeway with the Judge and they was good friends or
20 whatever and he would be more lenient in taking a plea than
21 going to trial. So I should, you know, proceed on with
22 this this way.

23 Q. So basically to get through the plea, just to agree
24 with everything the State says?

25 A. Yes, ma'am.

1 Q. And that's why you agreed when the Judge asked you if
2 the facts were correct?

3 A. Yes, ma'am.

4 Q. And that's why you agreed when you said you had not
5 been pressured or coerced?

6 A. Yes, ma'am.

7 Q. Even now what you're saying now is -- what you're
8 saying now is your answers were all untruthful?

9 A. Yes, ma'am.

10 Q. Now, you stated that you wish you had had an appeal in
11 this case. Why is that? What did you want to appeal?

12 A. Just to have all issues properly preserved.

13 Q. Well, be more specific. What kind of errors were made
14 during your guilty plea that you wanted the Appellate Court
15 to look at?

16 A. Objections to the indictments; objections to the
17 indictments, anything that the media had slandered my
18 character could have been objected to.

19 Q. But did Mr. -- sorry. Did Judge Hill make any errors
20 that day during the guilty plea that you think that he
21 should not have ---

22 A. I was on medications as far as him asking me were my
23 medications affecting me and me saying no. I had to say
24 no. He's there to investigate the symptoms of the actual
25 medications.

1 Q. So basically you would have wanted your guilty plea
2 appeal so that they could check behind Mr. Robinson's
3 representation, is what you're saying?

4 A. (Affirmative nod.)

5 Q. Okay.

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

7 THE COURT: Any redirect?

8 MS. HORLBECK: No, Your Honor.

9 THE COURT: All right. Thank you, sir. You may
10 step down, Mr. Cox.

11 MS. HORLBECK: Judge, that's all we have.

12 THE COURT: Any witnesses?

13 MS. RATIGAN: Yes, Your Honor, we would call Mr.
14 Robinson to the stand.

15 THE COURT: All right. If you would come around
16 and be sworn, sir.

17 THE CLERK: Mr. Robinson, place your left hand on
18 the bible, raise your right hand.

19 You do solemnly swear or affirm that the testimony
20 you're about to give in this case will be the truth, the
21 whole truth and nothing but the truth, so help you God?

22 THE WITNESS: Yes.

23 THE CLERK: Thank you. You may be seated.

24 Please state your full name for the record.

25 THE WITNESS: It's Scott D. Robinson.

1 SCOTT D. ROBINSON,

2 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION

4 BY MS. RATIGAN:

5 Q. Mr. Robinson, do you recall representing Mr. Cox on
6 these charges?

7 A. I do.

8 Q. And were you appointed or were you retained?

9 A. Retained.

10 Q. And by the time you got the case, had discovery
11 already been filed?

12 A. I believe so. I think -- if he said Mr. Mauldin was
13 involved originally, Mr. Mauldin would have gotten all of
14 the discovery and shared it with me.

15 Q. Did you have full discovery in your file?

16 A. Yes. Absolutely.

17 Q. Did you have an investigator at the time?

18 A. I did. Paul Savaggio, who was originally in the
19 homicide unit at the Greenville Sheriff's department.

20 Q. And do you recall whether or not Investigator Savaggio
21 had any impact in this case? Was he working this case at
22 all?

23 A. He was.

24 Q. Can you recall whether you reviewed the discovery
25 materials with Mr. Cox?

1 A. I did. And Mr. Cox also reviewed those with me and
2 Mr. Savaggio.

3 Q. When Mr. Cox testified he had given a statement, did
4 you have the statement as part of your discovery?

5 A. I did. It's actually a recorded statement, it's an
6 audio statement by Mr. Cox, along with his waiver of rights
7 he signed off on. It's approximately fourteen pages.

8 Q. And did you have an opportunity to review that
9 statement with Mr. Cox?

10 A. I did.

11 Q. Did you review with him the impact that statement
12 would have on the defense's case?

13 A. I did.

14 Q. Were any -- was there any forensic evidence in this
15 case?

16 A. Yes.

17 Q. And what was that?

18 A. They had his gun. The bullet or the fragments matched
19 the same bullets that struck the victim. It entered the
20 left side of the head and came out the right side of the
21 head.

22 Q. And did you review this forensic evidence with your
23 client?

24 A. Yes.

25 Q. Did you review with him the impact that this would

1 have on your case?

2 A. Yes.

3 Q. Did you review with Mr. Cox his version of what had
4 happened with the victim that day?

5 A. Yes.

6 Q. In your opinion were there any plausible defenses?

7 A. We went through each and every defense, both he, my
8 investigator and myself. We looked at every defense
9 available. And the fact remains from what happened is that
10 this gentlemen, he gave a -- Mr. Cox gave a statement --
11 when the gentleman was found by the Sheriff's office, when
12 they went to inspect, he was actually holding a PlayStation
13 controller, no gun, and the bullet looked like it came from
14 the left side and exited the right side. And in his
15 statement Mr. Cox, he could not give an explanation as to
16 why he shot him. I think he said in his statement that --
17 in answer to the question as far as why he shot him, all he
18 could say was, I can't really tell you. I was like -- just
19 certain feelings, I dislike somebody. But that's all I can
20 say.

21 Q. So based on the discovery and the conversation with
22 your client did you feel you had any valid defense you
23 could have argued at a trial?

24 A. I didn't feel we had a valid argument in this case.
25 It was clearly a case of, clearly a case of murder. It

1 wasn't a voluntary manslaughter case. The defenses really
2 weren't there to argue to a jury. It didn't really make a
3 lot of sense in this case.

4 Q. And did you explain that to your client, your feeling
5 that this was a murderer and not a manslaughter type case?

6 A. I did. He would have had that discussed with him each
7 time he met with me and Mr. Savaggio, or Mr. Savaggio. And
8 we would have talked about that when he was brought up here
9 from Turbeville to see which way he wanted to go.

10 Q. Do you recall whether or not the state ever made you
11 any kind of a plea offer?

12 A. They did. I think the offer was a plea to murder and
13 they would dismiss the possession of a weapon during the
14 commission of a violent crime, I think.

15 Q. Did they ever make any kind of offer of years for the
16 sentence?

17 A. No. It was going to be an open plea. I don't think
18 Ms. Anders made a specific offer in this case. It was a
19 pretty bad case.

20 Q. Now, Mr. Cox has testified that at some time you and
21 Ms. Anders spoke to him about kind of his options. Do you
22 recall that conversation?

23 A. Yeah. I didn't know if that was -- I just wanted to
24 make sure he realized I wasn't -- there wasn't any sort of
25 interference between what I had told him or what the

1 prosecutor was telling me. And Ms. Anders and I went to
2 see him, and all she said was, I'm not going to offer you a
3 definite sentence. I'm not going to drop this to voluntary
4 manslaughter. It's going to be -- here's what it carries.
5 And that's it. There was no sort of -- I didn't see any
6 pressure in this case.

7 Q. As you know, Judge Hill has a plea checklist he has
8 you fill out before a guilty plea?

9 A. Yes.

10 Q. Is that something you would have gone over with Mr.
11 Cox or is that something your investigator would have
12 reviewed with him?

13 A. I think that -- I'm looking at the acknowledgment of
14 rights given up by entering a guilty plea that Judge Hill
15 has. I normally, in the end go. That's why my signature
16 is on here, to make sure he understands each and every
17 question, the impact, that kind of thing. But that's what
18 I remember about it.

19 Q. Did you ever instruct Mr. Cox to lie on the checklist?

20 A. No. Absolutely not. This was his choice. It was not
21 on the trial docket. He could do whatever he wanted to do.
22 He could have just left that there and we could have gone
23 to trial in this case at a later date. And we were
24 prepared to go to trial at that later date at that time.

25 Q. Did you instruct Mr. Cox to be untruthful during the

1 guilty plea?

2 A. Absolutely not.

3 Q. In your opinion were there any legal errors or
4 omissions that could have been appealed from the plea
5 hearing?

6 A. I didn't see anything that was an error in this case.
7 It was a, it was a plea, a very careful plea. He was given
8 every opportunity to change his mind if he wished to.
9 Judge Hill is very, very careful with pleas in this case.
10 This was completely Mr. Cox's decision as far as whether or
11 not he wanted to plead guilty. Do I wish that he would
12 have gotten thirty years? Of course. But it just didn't
13 work out that way, unfortunately.

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

15 THE COURT: Any cross examination?

16 MS. HORLBECK: Thank you, sir.

17 **CROSS EXAMINATION**

18 **BY MS. HORLBECK:**

19 Q. Mr. Robinson, were you -- you were retained in this
20 case?

21 A. I was.

22 Q. Was the fee paid in full, to your knowledge?

23 A. No, it wasn't.

24 Q. Okay. You've testified that you reviewed discovery
25 with Mr. Cox. Do you recall or have notes indicating when

1 that happened?

2 A. I don't know exactly when, but he would have, he would
3 have gone -- my policy is to go over it really completely,
4 every single page of discovery, every single bit of it.
5 Because in this case, we were trying to find if there was
6 anything we could hang our hat on in terms of defending
7 this case. But the problem was that Mr. Cox kind of let
8 the cat out of the bag when he just truthfully made this
9 statement that gave up everything at that point. And
10 everything matched. But the statement, the gun, everything
11 matched. And he couldn't really use self-defense because
12 the guy was sitting there with a PlayStation controller in
13 his hand and he had been shot in the side of the head. And
14 there was no explanation as to why. There was no, there
15 was no defense to this. We had a mental -- we had an
16 evaluation done just to check him out. He suffered from
17 depression, but he was competent to stand trial according
18 to that. So we didn't really have any sort of self-
19 defense, any sort of necessity, anything like that that
20 would fit in as far as the defense. We tried. We looked
21 at the evidence. Mr. Savaggio, as you're aware, was in the
22 homicide unit with Greenville County for years and years.
23 And we were very concerned that we just looked at every
24 single part of it. And unfortunately, we didn't have the
25 facts that would support a defense in this case.

1 Q. Okay. All I wanted to know was do you recall any of
2 the specific dates where you talked to Mr. Cox about
3 discovery and reviewed it with him?

4 A. I don't. Anytime he would have come up in here, we
5 would have talked about it with him. Mr. Savaggio would
6 have talked about it with him. And I'm sorry for being
7 non-responsive.

8 Q. That's okay. That's all right. Do you recall where
9 you were when you had these discussions? Do you recall the
10 discussions happening in the courthouse with Mr. Cox?

11 A. I'm not sure where they happened to be honest. They
12 would've been either -- I'm not exactly sure where it would
13 have happened. But I know we had discussions here at the
14 courthouse, but as far as where it could have been, I'm not
15 really sure.

16 Q. Would it have been in a holding cell?

17 A. If it was at the courthouse, it would have been in a
18 holding cell.

19 Q. Okay. Do you recall going to the Department of
20 Corrections to discuss the case with Mr. Cox?

21 A. I don't think we went to Turbeville. I didn't. Mr.
22 Savaggio may have, but I'm not sure.

23 Q. Okay. Do you recall Mr. Cox requesting a copy of his
24 discovery?

25 A. Yeah. We gave him -- he already had a copy of the

1 discovery, though. His first attorney, I think -- this is
2 speculation on my part.

3 Q. Okay.

4 A. But I know Mr. Mauldin and how he does things. And he
5 would have gotten a copy of it. I gave him a copy of it,
6 I'm sure. We would have went over that with him. And
7 particularly the statement that he gave, the forensics,
8 anything that he wished to go over, I would have gone over
9 any sort of defense he would've had, the facts of the case,
10 pretty much in depth in this matter.

11 Q. Do you know definitely whether or not Mr. Mauldin
12 provided Mr. Cox ---

13 A. I don't know. I'm just -- I just know Mr. Mauldin and
14 I know how he does things.

15 Q. All right. Do you recall discussing with Mr. Mauldin
16 whether discovery was provided to Mr. Cox?

17 A. I don't. No, I don't.

18 Q. And do you know what date you provided discovery to
19 Mr. Cox?

20 A. I don't. I know he requested it to my office a little
21 after the plea, again, and I sent him a copy of it, but I
22 don't know.

23 Q. Okay. So you definitely provided him a copy of
24 discovery after the plea?

25 A. I think I did, yeah.

1 Q. Okay. Do you ---

2 A. Well, let me go back here. He would have discussed
3 all the discovery with me and my investigator. As far as
4 whether I gave him a copy, I can't tell you the date. I do
5 know -- I'm pretty sure that we gave him a copy when he --
6 anytime he requested that we would have given it to him.

7 Q. All right. But you don't have specific dates ---

8 A. I don't.

9 Q. --- that the discovery was reviewed with Mr. Cox?

10 A. I can't tell you that. I know that it was -- also,
11 too, this was not a trial. This was just to determine
12 whether or not he wished to plead or not.

13 Q. All right. You explained a little bit about why you
14 involved Ms. Anders in a conversation with Mr. Cox.
15 Explain how that happened and why you felt it necessary to
16 get Ms. Anders involved to speak to your client?

17 A. Well, first of all, Ms. Anders is a very honorable,
18 very -- she's a great prosecutor, I think. She would do
19 anything she could for someone if she could. And that's
20 one thing. Secondly, I felt that it was important for Mr.
21 Cox to see that this is what the prosecutor is offering.
22 It's not just the paperwork that I was showing as far as
23 what the offer was in the case as far as the murder and
24 dismissing the possession of a gun during the commission of
25 a violent crime, but this is the prosecutor and this is

1 what she's offering in the case. It's not just me telling
2 you what the prosecutor is offering. And he would have the
3 opportunity to ask any questions that he wished to. But it
4 was just a very informal conversation. It wasn't anything
5 more. He was not -- it was just her being a very nice
6 prosecutor, just answering questions he may have had.

7 Q. Okay. So did he not believe that that was the offer?
8 Is that why you had the state come in and talk to Mr. Cox?

9 A. I don't really know what he believed. I thought it
10 was a good idea. Because sometimes people don't -- they
11 want to see the prosecutor. They want to -- I don't know,
12 it was kind of like the difference between shopping online
13 and shopping in a store. You want to kind of see it in
14 person. That's what I think.

15 Q. Okay. Do you recall whether or not Mr. Cox said that
16 he wanted to speak to the prosecutor?

17 A. I have no idea. If I had brought Ms. Anders down
18 there and he didn't want to speak to her, I'm sure he could
19 have let me know and I would have said that he doesn't want
20 to speak to you and so forth.

21 Q. Do you recall Ms. Anders saying that if he didn't take
22 the plea she was going to put him on the trial docket and
23 see to it that he got a life sentence? Do you recall that
24 being said?

25 A. Well, I know she didn't say that. She said exactly

1 what I said. Because she has no control over what a person
2 gets. I mean she's a solicitor who is going to truthfully
3 say, here's what the charge carries, and that's it.

4 Q. Uh-huh (affirmative).

5 A. That's all she would have said. But she said nothing
6 that was threatening, nothing. I mean it was just -- it
7 was very informal.

8 Q. Okay. That's all I have. Thank you.

9 THE COURT: Any redirect?

10 MS. RATIGAN: No, Your Honor.

11 THE COURT: All right. Thank you, Mr. Robinson.

12 You may step down.

13 MS. RATIGAN: Your Honor, the state would call
14 Ms. Anders.

15 THE CLERK: Ms. Anders, please place your left
16 hand on the Bible and raise your right hand.

17 You do solemnly swear or affirm that the testimony you
18 are about to give in this case will be the truth, the whole
19 truth and nothing but the truth, so help you God?

20 THE WITNESS: I do.

21 THE CLERK: Thank you. You may be seated.

22 Please state your full name for the record.

23 THE WITNESS: My name is Julie Anders.

24 JULIE ANDERS,

25 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

1

2 BY MS. RATIGAN:

3 Q. Ms. Anders, how are you associated with this case?

4 A. I was the assistant solicitor assigned to prosecute
5 this case.

6 Q. And do you recall whether or not you made any kind of
7 plea offers at any point during this case?

8 A. I did. Do you want a specific date?

9 Q. Sure.

10 A. Okay. On June 21st, 2010, I did send a plea offer and
11 that was that the Defendant would plead guilty to murder
12 and I would dismiss the charge of possession of a weapon
13 during the commission of a violent crime. And there's a
14 portion of the letter where it says the state will make the
15 following sentence recommendation/negotiation. And there I
16 wrote, no recommendation as to sentence due to details of
17 this crime and dismissal of weapons charge. Please contact
18 me about scheduling a plea date if your client wishes to
19 plead guilty. And I do have a fax confirmation.

20 Q. Did you ever at any point during the case make any
21 kind of offer as to a specific sentence?

22 A. No, ma'am.

23 Q. And how did you end up speaking to Mr. Cox before the
24 guilty plea? Do you recall?

25 A. I do. It was, I believe, November 4th, 2010, and it

1 was the second time that the defendant had been transported
2 to the courthouse for a potential plea. And Mr. Robinson
3 came up to me and said that the Defendant wants a
4 recommendation of thirty years. And I said, absolutely
5 not. Mr. Robinson, I believe, went down to talk to him
6 again. I'm not sure exactly where he went. Then Mr.
7 Robinson came back to me and he said, would you please come
8 and talk to the Defendant with me, and tell him that you
9 are not going to recommend thirty years. And I said, okay,
10 I'll do that for you.

11 Q. Was Mr. Robinson present during your conversation with
12 Mr. Cox?

13 A. Yes.

14 Q. And did Mr. Cox -- did he have any kind of specific
15 idea when he talked to you about what he wanted? Did he
16 bring up that thirty years?

17 A. I'm not -- honestly, I don't think Mr. Cox said
18 anything to me. I walked into the holding cell downstairs
19 and Mr. Robinson introduced me. And I said, good morning,
20 Mr. Cox. I just want to make it clear to you that I'm not
21 going to recommend thirty years and that you can plead
22 today without any recommendation. That's as good as it's
23 going to get. You have a perfect right to a trial under
24 the Constitution, just like everybody else. You would be
25 looking at life. And that's what I would request at that

1 point, but today I will remain silent.

2 Q. Did you ever tell Mr. Cox that if he did not plead
3 guilty that day you would take him to trial and he would
4 get a life sentence?

5 A. No. No, I did not. I'm a prosecutor. I don't
6 sentence people. I don't, I don't find them guilty. I'm
7 not a judge. I'm not a jury. It's my job just to get them
8 to that point, to the judge and the jury, and then what
9 happens beyond that, that's justice.

10 Q. And what I probably should have asked at the very
11 beginning is, do you independently recall this transaction
12 or do you have notes or ---

13 A. I do. I took notes of every time that I spoke to Mr.
14 Robinson and I have a note specifically about that
15 conversation about Mr. Robinson coming to me and then going
16 down to the holding cell. And then I have notes of my
17 impressions of the plea.

18 Q. And in your opinion were you in anyway heavy-handed
19 with Mr. Cox during this conversation or did you adopt any
20 kind of forceful tone with him?

21 A. No. It's a little bit hard to hear in the holding
22 cell, so I probably would have leaned forward and spoken
23 up. But I certainly did not yell and I didn't threaten and
24 I didn't pressure.

25 Q. That's all I have, Your Honor.

1 THE COURT: Any cross examination?

2 MS. HORLBECK: Just briefly.

3 CROSS EXAMINATION

4 BY MS. HORLBECK:

5 Q. Ms. Anders, do you recall telling Mr. Cox that he
6 certainly had the right to a trial?

7 A. Yes. That's in my notes.

8 Q. Okay. But that he would be facing life if he did go
9 to trial?

10 A. Well, he would be facing life if he pled, too.

11 Q. I understand. But you told him that; right?

12 A. Yes.

13 Q. You testified that you told him if he went to trial he
14 would be facing life?

15 A. Yes, because it's the truth.

16 Q. I understand. I'm just asking whether or not you said
17 that?

18 A. I did.

19 Q. All right. That's all I have. Thank you.

20 THE COURT: Thank you. You may step down.

21 MS. RATIGAN: That would be the state's case,
22 Your Honor.

23 THE COURT: All right. I'll review the
24 transcript and issue an order, hopefully within the next
25 week or so.

Chavis L. Cox -vs- State of South Carolina (2011-CP-23-06134)
PCR Hearing

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1

MS. RATIGAN: Thank you, Your Honor.

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[END OF REQUESTED TRANSCRIPT OF RECORD]

4

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the State
5 of South Carolina, do hereby certify that the foregoing is
6 a true, accurate, and complete transcript of record of all
7 the proceedings had and evidence introduced in the
8 trial/hearing of the captioned case, relative to appeal, in
9 the Circuit Court for Greenville County, South Carolina, on
10 the 16th of April, 2013.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

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

15

September 30, 2013

16

17

18



19

Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Chavis Laranzo Cox,)
 S.C.D.C. No. 327335,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2011-CP-23-6134

ORDER OF DISMISSAL

2013 SEP 10 PM 4:10
 GREENVILLE
 COURT CLERK

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 14, 2011. The Respondent made its return on December 30, 2011. An evidentiary hearing into the matter was convened on April 16, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were assistant solicitor Julie Anders, Esquire and the Applicant's plea counsel, Scott D. Robinson, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application and Amendment, and the return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted by the Greenville County Grand Jury at the April 2010 term of General Sessions for murder

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(2010-GS-23-2433, count 1) and possession of a weapon during the commission of a violent crime (2010-GS-23-2433, count 2). Scott D. Robinson, Esquire represented the Applicant.

On November 4, 2010, the Applicant pled guilty to murder.¹ The Honorable D. Garrison Hill sentenced the Applicant to forty years imprisonment. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. Did not explain "in depth the full meaning of trial. In which petitioner did not fully understand the meaning of a trial. Petitioner told counsel that he had not wanted trial, due to the knowledge he obtained and meaning of trial. Petitioner thought trial was only to prove innocence or guilt, however, petitioner wanted to prove that the elements of the crime were manslaughter and not murder. If not had been for counsel's ineffectiveness, petitioner would have went to trial."
 - b. Advised "to plea without disclosure of Rule 5. Counsel was ineffective for allowing solicitor to solicit a plea agreement on the defendant relinquishing petitioner's right to discovery in petitioner's criminal case."
 - c. Rendered "erroneous advice thus making plea involuntary. Counsel told petitioner to falsely answer the questions of the judge "Pretrial Inquiry" so that he wouldn't (illegible) a life sentence. Counsel advised petitioner that the questions were just court formality. If not been for counsel's ineffectiveness, Petitioner would have went to trial."
 - d. Advised "petitioner to plea after petitioner elucidated that it wasn't intentional. Petitioner told counsel that he went to scare victim not kill him. Counsel was ineffective for coercing him to plea murder. If had not been for counsel's ineffectiveness, petitioner would have went to trial."
 - e. Did not file a notice of appeal.
 - f. Did not object to indictment.
 - g. Did not object to sentencing.
2. Insufficient Indictment.
 - a. Indictment "fails to state the elements of Murder pursuant to 17-

¹ The indictment for possession of a weapon during the commission of a violent crime was subsequently not proessed.

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- 19-30. Also indictment fails to allege time and place of death.”
3. Prosecutorial Misconduct.
 - a. “Prosecutor threaten and forced petitioner to plea, thus making petitioner’s plea involuntary.”
 - b. “The Solicitor stated, ‘I can assure you of that, if you do not accept today’s offer and go in there today then you will be placed on the docket for trial and I will recommend as well as make sure that you spend the rest of your natural life in prison.’ Petitioner claims that because of Prosecutors threat and unprofessionalism it forced him to plea involuntarily.”

In an “Amended Petition for Post Conviction Relief” filed December 14, 2012, counsel for the Applicant made the following allegations:

1. Ineffective assistance of counsel:
 - a. Advised the Applicant to plead guilty without the disclosure of Rule 5.
 - b. Allowed the Solicitor to solicit a plea agreement and relinquishing the Applicant’s right to discovery.
 - c. Failed to ensure the Applicant had received the indictments.
 - d. Misadvised the Applicant about how to answer the plea judge’s questions.
 - e. Failed to adequately meet with the Applicant and prepare the case.
 - f. Failed to “explain in depth [the] meaning of [a] trial.”
 - g. Coerced the Applicant into pleading guilty.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

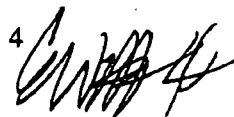
The Applicant alleges he received ineffective assistance of counsel. In a PCR action,

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"[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated he had two previous attorneys before he retained plea counsel. The Applicant stated they did not discuss the evidence in his case and only partially reviewed his version of events. The Applicant stated he did not receive discovery materials until after he pled guilty. The Applicant stated he had three meetings with plea counsel but that they mainly discussed entering a guilty plea. The Applicant stated plea counsel told him there were no defenses in this case, but that he now believed he could have argued self-defense or that he was guilty of voluntary manslaughter. The Applicant stated he asked for a certain plea agreement and plea counsel told him the State would not agree. The Applicant stated plea counsel set up a meeting with the assistant solicitor and that the solicitor said she would put this case on the trial docket and ensure he received a life sentence. The Applicant stated he felt threatened and it forced him to plead guilty. The Applicant stated he answered several of the plea judge's questions falsely because plea counsel told him to do so. The Applicant stated he did not discuss

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appellate rights with plea counsel and did not ask counsel to file an appeal.

Plea counsel confirmed he was retained in this case. Plea counsel testified the first attorney filed discovery motions, so he had full discovery when he took the case. Plea counsel testified he reviewed the discovery materials with both the Applicant and his investigator. Plea counsel testified they specifically reviewed the Applicant's audiotaped statement, that the murder weapon was found in his vehicle, and that gunshot residue was found on his clothing. Plea counsel testified he reviewed possible defenses with the Applicant but that there was no valid defense in this case. Plea counsel testified he explained this to the Applicant. Plea counsel testified the only plea offer from the State was for: the Applicant to plead guilty to murder, the weapons charge to be dismissed, and no specific offer of sentence. Plea counsel testified the Applicant wanted to be sure the Applicant understood this, so he set up a meeting with the Applicant, the assistant solicitor, and himself. Plea counsel testified this was an informal conversation and the assistant solicitor never said anything threatening (such as that she would ensure he received a life sentence at trial). Plea counsel testified he did not tell the Applicant to lie on either the plea judge's preliminary plea checklist or at the plea hearing itself. Plea counsel testified there were no appealable issues from the guilty plea hearing.

The assistant solicitor who prosecuted this case, Julie Anders, testified the only plea offer she made was to dismiss the weapons charge and have the Applicant plead guilty to murder without a sentence recommendation. Anders testified plea counsel told her the Applicant wanted a plea offer of thirty years, and she refused. Anders testified plea counsel mentioned the idea of the two of them speaking to the Applicant. Anders testified she took notes after this meeting that reflected she told the Applicant she would not recommend thirty years and that he had the right to trial but she would request a life sentence if he was found guilty. Anders testified she did not



tell the Applicant he would receive a life sentence. Anders testified she was not heavy-handed or forceful during this discussion.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true. (Plea transcript, p.4; p.11). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, p.4; pp.6-8; pp.11-12).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly meet with him and investigate and review his case. Plea counsel testified he had discovery materials in this case and reviewed them with the Applicant. Plea counsel specifically testified they reviewed the most damaging evidence and the Applicant's version of events. This Court finds plea counsel's testimony is credible. This Court finds the discovery materials were reviewed with the Applicant, which would have included copies of his indictments. This Court has reviewed the indictments. The indictments in this case were true-billed and clearly sufficient to put the Applicant on notice of the charges he was facing. See State v. Gentry, 363 S.C. 93, 103, 610 S.E.2d 494, 500 (2005); State v. Tumbleston, 376 S.C. 90, 95-96, 654 S.E.2d 849, 852 (Ct. App. 2007).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not adequately investigate a defense in this case. The Applicant argued: the killing was

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unintentional, the State had insufficient evidence to prove murder, and he could have successfully argued either self-defense or mitigation to manslaughter. Plea counsel testified he reviewed the State's evidence with the Applicant several times – along with trial strategy and possible defenses. Trial counsel testified there were no potential defenses in this case and the State had overwhelming evidence of the Applicant's guilt. This Court finds plea counsel's testimony is credible. To establish counsel failed to adequately prepare for trial, applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial). This Court finds the Applicant has failed to present any evidence to support his argument that plea counsel should have developed a self-defense argument. This Court notes the Applicant's own statements at the PCR hearing affirm the absence of any factual basis for a defense in this case. For example, the Applicant stated the victim was so obese that he was slow and struggled to get out of his chair such that – even if the victim was armed with a weapon, he would have had difficulty reaching for such because of his size. This Court finds the Applicant has failed to meet his burden of proof. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

This Court finds the Applicant failed to meet his burden of proving plea counsel should not have arranged a meeting with the assistant solicitor. The Applicant testified he felt threatened after he had a meeting with plea counsel and the assistant solicitor. Plea counsel and

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the assistant solicitor testified counsel set up this meeting so that the assistant solicitor could confirm the only plea offer she would make was to dismiss the weapons charge and not make a sentence recommendation. Plea counsel and the assistant solicitor testified there were no threats made. This Court finds the Applicant's testimony is not credible and the testimony from plea counsel and the assistant solicitor is credible. This Court finds the Applicant has failed to present any credible evidence or testimony that – as a result of plea counsel's decision to schedule this meeting – he felt pressured into pleading guilty. While the assistant solicitor may have told the Applicant she would pursue a life sentence if he were convicted at trial, this Court finds this was not a threat intended to coerce a guilty plea. Rather, this Court finds the assistant solicitor was merely being candid with the Applicant about both the nature of the plea offer and her intention to ask for the maximum sentence if he were convicted after a jury trial. Cf. Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (finding that, before a defendant can enter a guilty plea, he "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived"). Plea counsel was not ineffective in arranging this meeting between the parties.

This Court finds the Applicant failed to meet his burden of proving plea counsel told him to falsely answer the plea judge's questions. Plea counsel testified he did not tell the Applicant to lie in answering the questions in either the preliminary plea checklist or at the guilty plea hearing. This Court finds plea counsel's testimony is credible. The plea judge in this case provided a guilty plea checklist to counsel prior to the hearing, the checklist was completed, and both plea counsel and the Applicant signed it. The plea judge thoroughly questioned the Applicant about his decision to plead guilty and the consequences of such during the guilty plea hearing. The Applicant has failed to present any evidence that his answers were not truthful.



Rather, the Applicant appeared very remorseful at the guilty plea hearing in apologizing to the victim's family and seeking both the family's forgiveness and the plea judge's mercy. (Plea transcript, pp.12-14). See Butler v. State, 286 S.C. at 442, 334 S.E.2d at 814.

This Court finds the Applicant failed to meet his burden of proving plea counsel did not advise him of the right to appeal. Plea counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). In order to make this determination, "courts must take into account all the information counsel knew or should have known." Id. (citing Strickland, 466 U.S. at 690, 104 S. Ct. at 2066). Although not determinative, a highly relevant factor will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because a plea may indicate the defendant seeks an end to judicial proceedings. Id. There being nothing in the record to indicate that the Applicant reasonably demonstrated to plea counsel that he was interested in appealing, this Court finds the allegation is totally without merit and must be dismissed.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to

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render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION


Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.


This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 20 day of May, 2013.


G. Edward Weismaker
Presiding Judge
Thirteenth Judicial Circuit


South Carolina.

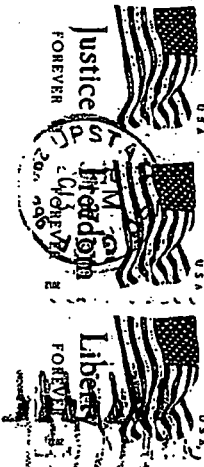
CAROLINE M. HORLBECK

Attorney At Law

101 WHITSETT ST.
GREENVILLE, SOUTH CAROLINA 29601

Via Regular Mail

Mr. Daniel E. Shearouse
Clerk, The S.C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211



WITNESSES

Eric Whaley

Greenville County Sheriff's Office

11/2/2009

ARREST WARRANT NUMBER

J914980

J891681

ACTION OF GRAND JURY
TRUE BILL
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

BOOKED IN: 2010-03-23 00:24:33

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April TERM 2010

THE STATE

v.

CHAVIS LARANZO COX

Indictment for

0116
0549

MURDER

VIOLATION § 16-03-0910
POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME;
VIOLATION § 16-23-0490

RECEIVED

MAR 28 2010

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
COUNT ONE - MURDER
COUNT TWO - POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on

APR 13 2010

the Grand Jurors of Greenville

County present upon their oath:

COUNT ONE - MURDER

That CHAVIS LARANZO COX did in Greenville County, on or about the 2nd day of November, 2009, unlawfully and with malice aforethought kill AL WAAJID HANEEF by means of shooting him, and that AL WAAJID HANEEF died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That CHAVIS LARANZO COX did in Greenville County, on or about the 2nd day of November, 2009, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Murder. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

32733101
Rok
MAY

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.

INDICTMENT/CASE#: 2010GS2102433 - Count 1

Chavis Laranzo Cox

A/W#: J991880

AKA:

Date of Offense: 11/2/2009

Race: B Sex: M Age: 21

S.C. Code §: 16-03-0010, 0020

DOB: SS#:

CDR Code #: 0116

Address:

City, State, Zip: Greer, SC 29630

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

SENTENCE SHEET

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

CONVICTED OF or PLEADS

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

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

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

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

ATTEST: Anders, Julie SC Bar# 74032 Defendant; [Signature] SC Bar# 6535 Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 40 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPPS _____

PTUP _____ days/hours Public Service Employment

Recipient: _____
*Fines:

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 payments of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

§ 14-1-206 (Assessments 107.5 %)		\$.
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (DUI Breath Test Fee)	\$50	\$
§ 56-5-2942(f) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$
TOTAL		

Clerk of Court/ Deputy Clerk Paul B. Waldman
Court Reporter: Jenkins
SCCA/217 (06/2010)

Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition
 Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge _____
Judge Code: 2178
Sentence Date: 11-4-10

INMATE RECORDS OFFICE
2011 JAN 19 PM 2:55

COX, CHAVIS - FBI # 588036HC5 SID# SC01619340 SCDC # 327335 (CONTINUED)
 6/ 5/ 8 LEE INCARCERATED GED
 4/10/ 8 WATEREE RIVER INCARCERATED ADMINISTRATIVE
 3/26/ 8 KIRKLAND INCARCERATED R&E PROCESSING
 3/26/ 8 PERRY INCARCERATED NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON
WARDKEEPER ASSISTANT	05/26/10	9/ 7/10	PLACED IN ST/SP CUSTODY
FARM WORKER	04/17/08	6/30/ 8	INSTIT TRANSFER

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
LVL 2 - FULL TIME(NO EUC)	12/11/09	1/26/10	PLACED IN ST/SP CUSTODY
LVL 3 - FULL TIME(NO EUC)	12/09/09	12/10/ 9	NI ELIGIBLE FOR LEVEL 2
LVL 2 - FULL TIME(NO EUC)	04/14/09	5/15/ 9	RELEASED/PAROLED
LVL 2 - FULL TIME(NO EUC)	11/26/08	4/13/ 9	COMPLETED EDUC PROGRAM
LVL 2 - FULL TIME(NO EUC)	09/08/08	11/25/ 8	COMPLETED EDUC PROGRAM
LVL 2 - FULL TIME(NO EUC)	07/17/08	9/ 5/ 8	INMATE REQUEST
LVL 2 - FULL TIME(NO EUC)	07/02/08	7/16/ 8	COMPLETED EDUC PROGRAM

***** END OF REPORT *****

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
RECORD SUMMARY REPORT DATED 10/24/11

COX, CHAVIS - FBI # 588036HC5 SID# SC01619340 SCDC # 327335

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION . . : LEE CORR INST

SECURITY/CUST.: 3 SECURITY DETENTION

CURR INCARC SENT...: 40 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: YES STG-VALIDATE

SOCIAL SECURITY #...: 250791995

DORM.....: ASU0047Z

RACE....: B SEX...: M

PROJ MAXOUT DATE: 10/19/205

PROJ PAROLE DATE: 00/00/000

EDUC JOB...: NO CURRENT JOB

EDUC PGM.: NO CURR EDUC PRO

EDUC LEVEL: 0 EEC LEVEL

ASSIGNMENT...: LOCKED - IIP

CURRENT PROGRAM...: ALCOHOL/DRUG COUNSELING

AGE...: 22 DATE OF BIRTH...: 5/20/89

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE		
	YRS	MOS	DYS		START	U/NU	CA
MURDER	40	0	0	GREENVILLE	10/29/2010	U	
BURGLARY-2ND DEG/NON-VIO	4	0	0	GREENVILLE	1/27/20	B	N

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

DETAINERS (HOLD, WANTED, NOTIFY):

FIREARMS PROVISION

WANTED

PENDING JUDGE

DATE

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

10/17/11	UNAUTH I/M ORGAN/PART	ST PENDING	ADMIN
3/ 8/11	UNAUTH I/M ORGAN/PART	ST CONVICTED	ADMIN
11/24/10	INCITING/CREATING A DIST	CONVICTED	MAJOR
9/ 7/10	UNAUTH I/M ORGAN/PART	ST	OTHER
6/ 2/10	USE, POSS NARC, MARIJ, UNAU	CONVICTED	MAJOR

HISTORY OF MOVEMENTS:

3/21/11	LEE	INCARCERATED	ADMINISTRATIVE
11/ 4/10	TURBEVILLE	INCARCERATED	RETURN FROM COURT
11/ 4/10	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
9/ 9/10	TURBEVILLE	INCARCERATED	RETURN FROM COURT
9/ 9/10	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
4/15/10	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
4/15/10	STATE HOSPITAL	AUTH ABSENCE (AWL)	MEDICAL
3/15/10	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
3/12/10	PERRY	INCARCERATED	RETURN FROM COURT
3/12/10	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
3/11/10	PERRY	INCARCERATED	ADMINISTRATIVE
2/25/10	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
2/24/10	PERRY	INCARCERATED	RETURN FROM COURT
2/24/10	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
2/23/10	PERRY	INCARCERATED	ADMINISTRATIVE
12/ 8/ 9	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
11/16/ 9	KIRKLAND	INCARCERATED	R&E PROCESSING
11/16/ 9	PERRY	INCARCERATED	YOA PAROLE VIOLATION
11/ 6/ 9	HORRY CO	AUTH ABSENCE (AWL)	LOCKUP-FRM EPA, SF, I
11/ 3/ 9	UNK	DEAD TIME	WARRANT ISSUED
5/15/ 9	GREENVILLE CO	YOA PAROLE - CONDITI	PAROLE BOARD ACTION
6/30/ 8	TRENTON	INCARCERATED	ADMINISTRATIVE

2011CP2306134

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 10/17/11
 OMCOMITA RELEASE DATE SCREEN C051123
 SCDC# > 00327335 LOC: LEE
 COX, CHAVIS - SCDC CLASSIFICATION...: VIOLENT
 OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: N
 SEXUAL PREDATOR...: NOT APP
 DNA STATUS...: COMPLETED
 GPS REQUIREMENT...: N
 PREA DECISION...:
 CURRENT SENTENCE: 040-00-000 CONSECUTIVE SENTENCE...: N
 040-00-000 CURRENT SENT START DATE: 10/29/2010
 PROJECTED COMPLETION DATES
 MAXOUT DATE: 10/19/2050 CURRENT EWC .: NOT CURRENTLY EARNING EWC
 YOA SIX YEAR DATE: / / CURRENT EEC .: NOT CURRENTLY EARNING EEC
 INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
 TOTAL EARNED WORK CREDITS ...: 000000 LABOR CREW DISQ REASON:
 TOTAL EDUCATION CREDITS: 000000 CATEGORY 4 OR 5 OFFENSE
 TOTAL EXTRA EARNED CREDITS ...: 000
 TOTAL SERVICE TIME EARNED ...: 000348

PFKEYS: 5: HISTORY OF DATE CHANGES
 4- 1 Sess-1 167.7.50.33 SCDC1299 3/11