

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

William Jeffrey Young, Circuit Court Judge

RECEIVED

JUL 18 2013

S.C. Supreme Court

CASIO M. RICHARDSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000872

APPENDIX

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11/11/10

ORIGINAL

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON)

State of South Carolina,)
)
PLAINTIFF,) GUILTY PLEA
) 2010-GS-32-00872
-VS-) 2010-GS-32-00874
)
Casio Richardson,)
)
DEFENDANT.)

BEFORE THE HONORABLE CLIFTON NEWMAN, JUDGE
MARCH 11, 2010
LEXINGTON, SOUTH CAROLINA

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

Shawn Graham, Esq.
For the State

Casey Cornwell, Esq.
For the Defendant

REMA K. GANTT THOMAS
CIRCUIT COURT REPORTER

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EXHIBITS

THERE WERE NO EXHIBITS SUBMITTED AT THIS HEARING.

1 CLERK OF COURT: Indictment
2 2010-GS-32-872, State versus Casio Mack Richardson,
3 indicted for assault and battery with intent to
4 kill, he is pleading as charged.

5 Indictment 2010-GS-32-874, State
6 versus Casio Mack Richardson, indicted for
7 conspiracy, he is pleading as charged. He is
8 waiving presentment to the Grand Jury on both
9 indictments and is represented by Mr. Cornwell.
10 (Whereupon, the witness was
11 sworn.)

12 THE COURT: All right, sir, you're here to
13 plead guilty to assault and battery with intent to
14 kill?

15 MR. RICHARDSON: Yes, sir.

16 THE COURT: You understand that that
17 carries up to 20 years in prison, that it's a most
18 serious offense. If you commit another most serious
19 offense, you can be sentenced to life without the
20 possibility of parole?

21 MR. RICHARDSON: Yes, sir.

22 THE COURT: This indictment indicates that
23 you, your lawyer, and the Solicitor have negotiated
24 a sentence within the range of ten to fifteen years
25 and also that you want to waive presentment of this

1 case to the Grand Jury and plead guilty here today
2 Is that right?

3 MR. RICHARDSON: Yes, sir.

4 THE COURT: When you plead guilty, you
5 give up certain constitutional rights, including
6 your presumption of innocence, your right to remain
7 silent, your right to a jury trial, and your right
8 to offer any defenses that you might have to these
9 charges. Do you understand that?

10 MR. RICHARDSON: Yes, sir.

11 THE COURT: Also, this offense, criminal
12 conspiracy, carries up to five years in prison. Do
13 you understand that?

14 MR. RICHARDSON: Yes, sir.

15 THE COURT: The negotiated sentence
16 regarding this offense is whatever sentence you get
17 will be run concurrent with each other. Is that
18 your understanding?

19 MR. RICHARDSON: Yes, sir.

20 THE COURT: Where there is a negotiated
21 sentence, either I will accept the guilty plea and
22 give you a sentence in line with the negotiated
23 sentence, or I will not accept your guilty plea. Do
24 you understand that?

25 MR. RICHARDSON: If you can run that back.

1 THE COURT: Either I will accept the
2 guilty plea and give you a sentence within the range
3 of this negotiated sentence, or I will not accept
4 your guilty plea.

5 MR. RICHARDSON: What do you mean by that?
6 I don't understand.

7 THE COURT: The negotiated sentence is
8 between ten and fifteen years.

9 MR. RICHARDSON: I've got you. I
10 understand.

11 THE COURT: And do you want me to accept
12 the guilty plea and sentence you within this
13 negotiated sentence range?

14 MR. CORNWELL: Your Honor, my client wants
15 just to stand down.

16 THE COURT: All right.

17 (Whereupon, other proceedings were
18 held during this time.)

19 CLERK OF COURT: Casio Richardson.

20 THE COURT: All right, Solicitor?

21 MR. GRAHAM: Your Honor, we were -- I
22 don't know where you want to start. This is a plea
23 that we started, and I think the defendant changed
24 his mind or at least expressed some concern to his
25 attorney in the middle of the plea.

*plea
is
halted*

1 THE COURT: All right, Mr. Cornwell?

2 MR. CORNWELL: May it please the Court,
3 Your Honor. Basically, my client just had some
4 trepidation about going forward, but I've talked to
5 him since then. He's told me that he does wish to
6 go forward today.

7 THE COURT: All right, Mr. Richardson?

8 MR. RICHARDSON: I'm ready to go forward,
9 sir.

10 THE COURT: Are you guilty or not guilty?

11 MR. RICHARDSON: Guilty, sir.

12 THE COURT: And do you want to give up
13 your right to a jury trial and plead guilty?

14 MR. RICHARDSON: Yes, sir.

15 THE COURT: You understand that if I
16 accept this guilty plea that you will receive a
17 sentence of anywhere between ten and fifteen years?

18 MR. RICHARDSON: Yes, sir.

19 THE COURT: And what did you do that makes
20 you guilty of these two crimes?

21 MR. RICHARDSON. Caused bodily harm by
22 deciding to fight and hitting the victim with a
23 projectile, sir.

24 THE COURT All right. The criminal
25 conspiracy charge, what did you do?

1 MR. RICHARDSON: Well, they said I was
2 conspiring with other inmates to escape from the
3 county jail.

4 THE COURT: Is that true?

5 MR. RICHARDSON: Yes, sir.

6 THE COURT: All right. Understanding the
7 nature of the charges and the possible punishment,
8 how do you plead to assault and battery with intent
9 to kill?

10 MR. RICHARDSON: Guilty, sir.

11 THE COURT: How do you plead to criminal
12 conspiracy?

13 MR. RICHARDSON: Guilty, sir

14 THE COURT: All right, as to the event?

15 MR. GRAHAM: Yes, sir. It occurred May 4,
16 2010, at approximately 2:10 a.m. at
17 Road in Columbia, South Carolina, at an apartment
18 complex. When officers arrived on scene, they found
19 the victim, Marcus Scheltheis -- and that's spelled
20 S-C-H-E-L-T-H-E-I-S -- near Building K in a
21 stairwell.

22 He had blood coming down both of his
23 arms and his legs. At that time, he was asked who
24 shot him. He replied Casio. He then went on to say
25 who Casio was. K-9 units were called out on-scene.

1 And there's a railroad track that's
2 near there, and the dogs began to track actually
3 from where the victim was over to the defendant's
4 home. When officers went to the house and they
5 knocked on the door, they found the defendant and a
6 co-defendant, Jamar (Inaudible), inside the house.

7 They found a 9-millimeter -- I
8 believe it was a 9-millimeter Ruger on a mantel,
9 which proved to be the gun used in this case -- at
10 that residence. Mr. Scheltheis described what
11 happened as follows.
12 He actually knew the defendant for probably a couple
13 of years' time period.

14 But he described what happened that
15 night saying that they were all headed towards the
16 railroad tracks next to River Edge Apartments.
17 There was a hill leading up. "By the time I reached
18 the top of the hill, Casio and Jamar were 23 yards
19 ahead of me. About 60 seconds later, Casio turns
20 toward me and fired. After the first bullet hit my
21 thigh, I screamed 'Stop shooting. You hit me.'

22 "He continued to fire, but I was then
23 hit in the shoulder. That was when I began to run
24 in the opposite direction. As I ran, I got hit two
25 more times, once in the left arm and once again in

1 the right arm. He emptied the entire clip, about
2 ten shots, with the 9-millimeter. Mr. --

3 THE COURT: Is that true?

4 MR. RICHARDSON: Part of it's true.

5 THE COURT: Which part is not true?

6 MR. RICHARDSON: He said I just turned
7 around and started firing shots for no reason.
8 Really, there was a reason, which, I'm saying, he
9 had a weapon also.

10 But officers never retrieved the
11 weapon because he went back to the apartment
12 complex, which his so-called homeboys took the
13 weapon from him so he wouldn't be charged with
14 anything.

15 THE COURT: Other than him also having a
16 weapon, is everything else true?

17 MR. RICHARDSON: Yes, sir.

18 THE COURT: All right.

19 MR. GRAHAM: My only concern is, Your
20 Honor, I don't know whether he's -- whether it
21 arises to the level of self-defense. I didn't think
22 we were going to be talking about self-defense in
23 this.

24 MR. CORNWELL: I don't think he is
25 asserting self-defense. I think he said that the

Self-
Defense

1 other guy had a weapon, and they didn't say anything
2 about it.

3 THE COURT: Are you claiming that the
4 person had the weapon at you or was trying to use it
5 on you?

6 MR. RICHARDSON: He was getting it out to
7 use it on me. I wasn't going to let him use it on
8 me.

9 THE COURT: All right. And do you waive
10 any claim that you might have to self-defense or to
11 raise a self-defense claim during a trial?

12 MR. RICHARDSON: Yes, sir, I give up my
13 rights, sir.

14 THE COURT: All right.

15 MR. GRAHAM: When he was interviewed by
16 police, Mr. Richardson stated the following. He
17 says, "Me and my boy Jamar Wentz (PH) started
18 walking from the railroad tracks. We got about a
19 quarter of the way down the tracks when Jamar heard
20 something.

21 And I turned around and shot about
22 three times and Jamar shot about seven or eight
23 times. That's when Marcus said, 'You shot me.'
24 Then me and Jamar got scared and ran."

25 Mr. Dubrill (PH) originally gave a

*Another
Defendant
Fired @
Victim*

Self-
Defense
Victim
was going
to attack
△

1 statement to the police that night, stating that the
2 victim, Marcus Scheltheis, was actually going to rob
3 the defendant. But later when he came in and
4 talked, he said that that was not true and that's
5 not what happened.

6 He said that they were going up the
7 hill, and for no reason that he knows of, the
8 defendant started firing. He denies that he had a
9 gun. The victim does not state that there were two
10 guns or anything like that.

11 I don't know why this happened.
12 There's no way to know why this happened. I can't
13 get a motive from either my victim or the
14 co-defendant in the case. And you heard what the
15 defendant stated. There's no other evidence that I
16 know of that there was a gun in my victim's hands
17 that night.

18 I do know that when Mr. Richardson
19 was booked down at the county jail, he was told what
20 charge -- that he had been charged with assault and
21 battery with intent to kill, that he stated, "I know
22 I should have killed the mother fucker." I think
23 that's probably the best indication of what his
24 intent was at the time.

Defendant's
Statements

25 The victim was in the hospital for a long

1 period of time. He has lasting damages from that,
2 Your Honor. He was shot in the left thigh and right
3 elbow. The bullet is still in the arm. It
4 travelled up into the forearm. The left shoulder
5 and the left upper arm, he has plates in both of his
6 arms.

7 He just, I believe, in the past not that
8 long ago had a recent surgery on his left wrist and
9 I believe there will be more surgeries in the
10 future. I know that at the appropriate time,
11 Your Honor, his grandfather and his mother wish to
12 address the Court.

13 As far as the other charge, Your Honor,
14 while he was an inmate in the county jail he was in
15 a pod with several other people, the defendant is
16 listed in the indictment, and he pushed a release
17 button on the control panel where the guards are at
18 to release the door to the attorney room where the
19 inmates can go directly from a pod to go speak to
20 their attorney.

21 And those two other inmates when in there
22 and took I believe chairs and attempted to bust
23 through the window to get out. If they would have
24 made it out there they would have actually been able
25 to get out. As my understand is there was somebody

Conspiracy
Charge

1 out in the parking lot waiting for them.

2 The correctional officers were able to
3 stop them before they were able to bust through.
4 One of those individuals is in there for murder and
5 I don't know what the other one was in there for.

6 He has a juvenile record; I honestly
7 don't know what it is, Your Honor He does not have
8 an adult record. I believe that when this happened
9 -- I believe he was 17 at that time.

10 I believe as far as the facts that's all
11 that the State has, Your Honor. And Your Honor,
12 there are some people who wish to address you.

13 THE COURT: All right. I'd be happy to
14 hear from the victim's family.

15 MR. GRAHAM: Thank you, Your Honor.

16 MOTHER OF VICTIM: My name is Amy and I'm
17 Marcus' mother. I wanted to say how devastating
18 this has been to our family: Marcus has been
19 through a lot in the past two years. The pain that
20 continues is on a daily basis. To say it will get
21 better -- but he has to deal with this the rest of
22 his life. Casio, however, will go to prison for
23 just a small portion of his. This doesn't feel
24 fair. That's why I'm asking please give give him
25 the maximum sentence.

1 There are things that have been taken away
2 from Marcus forever not just for a small portion of
3 his life. He has gone through multiple surgeries,
4 his right elbow had to be repaired and plated and
5 his left upper arm had to be repaired and plated
6 And he lost full function of his radial nerve. He
7 had to get three tendons transferred to his wrist
8 just to have some kind of function.

9 The scars all of this left will always be
10 a reminder to us and will never go away. He was
11 also shot in his spine and his shoulder which also
12 has scars. Not only does the physical aspects
13 affect him but the emotional aspects are to the
14 entire family.

15 This has also taken away some life
16 decisions that Marcus can no longer make. He can
17 never join the military He can no longer be a
18 firefighter, police officer, and he can never do
19 construction. His arms will always be this way.

20 A mother wants for her child to be able to
21 create his own destiny and not have the tragedy like
22 this pave the way. And amongst all the physical
23 damage it has also caused a financial burden. My
24 mom had to quit her job to be able to stay with
25 Marcus because he had both arms operated on at the

1 same time.

2 At times is grandfather and I have had to
3 take off to go to surgeries and doctors' visits.
4 The one thing I want for Marcus today is to get
5 justice for what happened. Casio deserves the
6 longest time possible and Marcus deserves for him to
7 serve thim.

8 Thank you, very much.

9 THE COURT: Thank you.

10 GRANDFATHER OF VICTIM: My name is Joe
11 Shultz and I am the grandfather of Marcus. I didn't
12 know what Amy was going to say but she said, mostly
13 what I was going to say. But I do know the family
14 has gone through an enormous amount of pain,
15 mentally and inside. We are here, all four of us,
16 and through the grace of God we are.

17 And with that grace we'll continue on and
18 I can't say any more. Amy said it all and I can't
19 say it any better than what she said. Thank you for
20 the Court's time.

21 THE COURT: Yes, sir.

22 MR. GRAHAM: That's all, Your Honor.

23 THE COURT: All right.

24 Mr. Cornwell?

25 MR. CORNWELL: May it please the Court,

17

1 Your Honor. Mr. Richardson, when this occurred back
2 in 2008, was 17 years old, a teenager. And as a
3 teenager he had just begun -- he had basically, as
4 far as being an adult, Your Honor, at 17, he has
5 spent the last, according to my calculations, 606
6 days in Lexington County Detention Center.

7 That's nothing to be laughed at. That's
8 nothing to be sneezed at. I don't even know if I
9 could stay six days in a detention center.

10 Your honor, Mr. Richardson is seriously,
11 seriously sorry for what happened that night. He is
12 seriously remorseful for what happened that night.

13

14 As far as any statements made in regard to
15 booking and statements talking about what he should
16 have done or should have killed somebody, he does
17 deny that and he tells me he did not say anything
18 like that. Your Honor, those statements were not
19 made.

20 Just to give you a kind of background as
21 to some context as to what was going on, when I
22 initially got this case from another attorney in our
23 office who went into private practice, Your Honor
24 Actually it was given to another attorney and then
25 given to me.

1 When I first started talking to Mr.
2 Richardson he kind of gave me the version of the
3 story and basically what happened that night was
4 they were all hanging out because they were somewhat
5 friends. I don't know how close friends they were.
6 They had known each other for sometime now but they
7 were at least acquaintances with one another.

8 And they had a prior relationship. They
9 had known each other for quite sometime. Your
10 Honor, it's a situation where this is what he tells
11 me is that the victim in the case had been acting
12 funny when they first, you know, met up that night.
13 He had been acting kind of strange and they were
14 getting kind of suspicious of him by the way he was
15 acting and to put it in his words he was acting kind
16 of tweeked out.

17 Your Honor, it came to light after a
18 while, after receiving some additional discovery,
19 that there's an explanation for this. Apparently,
20 the victim had been using crack that night. He
21 admitted to about 45 minutes earlier he smoked some
22 crack.

23 My client said the victim's behavior that
24 night and the way he was acting kind of made him
25 feel funny about what was going on and that kind of

1 led to the altercation that led to the shooting,
2 Your Honor.

3 He doesn't deny his guilt, Your Honor. He
4 does admit he shot him. There was a witness there
5 who saw the whole thing, Your Honor. He does stand
6 by the statement that at least he thought that the
7 victim may have had a weapon, Your Honor.

8 He doesn't say that the victim shot at him
9 or anything like that, Your Honor. But he thought
10 that he may have had a weapon. Does it rise to the
11 level of self defense and are we asserting that? We
12 don't believe so, Your Honor. We are not asserting
13 a self defense claim but I did want to add some
14 context as to why this was happening in the first
15 place, Your Honor.

16 It's such a sad situation. I mean, before
17 Mr. Richardson can even begin his adult life he has
18 to give the State at least ten and possible 15 years
19 of his life. He's got younger siblings out there.
20 He's got an elderly grandmother who in all actuality
21 he will not see again outside of prison walls, Your
22 Honor.

23 This thing has affected the victim and we
24 understand that, Your Honor. It's not something we
25 take lightly. It has affected them negatively and

*See If
Defense
not
asserted*

1 for the consequences of he actions he took he's
2 sorry, Your Honor.

3. But it has also affected people that he
4 had no intention of it affecting, Your Honor. A lot
5 of times you get in these situations and make these
6 decisions and you're not thinking about the
7 consequences outside of yourself.

8 And one of the things Mr. Richardson told
9 me is that, you know, doing the crime he understands
10 he has to do the time, and he has no problem with
11 the punishment that the Court will give him and he
12 accepts that he has to be punished for what he did
13 but the affect that it has on his family is what
14 hurts him the most. *

15 The affect it will have on his young
16 siblings and the affect it will have on his mother
17 and the affect it will have on his grandmother, Your
18 Honor, these are all people that initially -- Mr.
19 Richardson actually told me to get in contact with
20 them and have them be in court today. I did that.
21 Mr. Richardson upon further reflection decided, you
22 know, unbeknownst to me the next time he spoke to
23 them he told them not to come to court.

24 He just didn't want to see them go through
25 the emotional rollercoaster that would enivitably

Family
Not
In
Court

1 happen once he is sentenced, Your Honor. He didn't
2 want to see them, you know, have them see him have
3 to go to jail. And quite frankly he is naturally
4 ashamed of stuff that he has done and the fact that
5 he put his family and himself in this situation,
6 Your Honor. He is ashamed.

7 Your Honor, we would ask that you consider
8 giving this young man the minimum sentence on that
9 range, Your Honor, a ten-year sentence. This is a
10 85 percent crime. It's not like he is going to be
11 making parole. It's a most serious offense. It's
12 not like he is going to be on work release. This is
13 time that will be spent, for lack of a better work,
14 it will be hard time.

15 You know, there's no work release for him.
16 He won't be eligible for a lot of programs that a
17 lot of inmates would be eligible for. He is not
18 going to be able to make parole. He is not going to
19 get the regular credit for good time. He has to do
20 at least eight and a half years.

21 I don't think it's a situation where he's
22 going to go out and come back and be a danger to
23 society or a minice, Your Honor. The time he has
24 spent in jail has taught him a very valuable lesson
25 And the time that he will have to spend in prison

1 will serve to further that lesson, Your Honor.

2 There are two sides to crafting a sentence
3 for someone, Your Honor. That is justice and mercy,
4 Your Honor. And you also have to take into account
5 the chance for a person to rehabilitate. I think
6 given that my client is only 18 right now -- 19, I'm
7 sorry, Your Honor. He's 19 years old now.

8 Ten years, a ten year sentence would give
9 him plenty of time to think about what he has done.
10 When he gets out of jail he will almost be my age
11 And it's just a sad situation and he is going to
12 have to spend his 20's in prison. It's the time of
13 most people's lives when they are most productive or
14 most fruitful and he's going to be in prison, Your
15 Honor, doing -- spending his 20's in prison.

16 And I know they can't make up for the
17 damage that has been done to the victim in this case
18 but I think that to serve the interest of justice, I
19 think that would serve the interest of allowing him
20 an opportunity to get out into society, allow him
21 the opportunity for rehabilitation, Your Honor

22 I think a ten-year sentence is sufficient
23 in this case to serve all interest involved, Your
24 Honor. We would just request that you give him the
25 ten-year sentence.

1 THE COURT: Mr. Richardson?

2 THE DEFENDANT: I would just like to say
3 to the victims, I apologize.

4 I ain't smiling at you.

5 To the Court I apologize. As a man I am
6 ready to accept my punishment. That's all I got to
7 say.

8 THE COURT: Mr. Graham, anything further?

9 MR. GRAHAM: No, Your Honor. Just to
10 reiterate, it's my understanding that night when the
11 victim came and talked to me and I was questioning
12 him about what was going on that night, what
13 happened, he came forward and admitted that he had
14 smoked crack cocaine about 45 minutes before this
15 happened. And he also said the purpose of them
16 getting together that night was, for the three of
17 them, to buy marijuana. And that didn't happen. I
18 believe that's the same thing that Mr. Richardson
19 said as well.

20 MR. CORNWELL: That's true, Your Honor.

21 THE COURT: Okay.

22 SENTENCE OF THE COURT

23 The sentence for assault and battery with
24 intent to kill is 13 years.

25 For criminal conspiracy, five years.

*Victim
Used
Crack
Cocaine*

Sentence

1 He gets credit for time served. The
2 sentences will run concurrent.
3 MR. CORNWELL: Thank you, Your Honor.
4 --End of Transcript of Record--

5
6
7
8
9
10

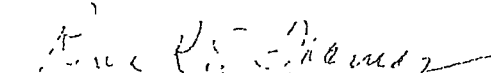
STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT, OFFICIAL COURT REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE ABOVE-CAPTIONED CASE ON MARCH 11, 2010, IN LEXINGTON, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE TWENTY-SEVENTH DAY OF NOVEMBER, 2010.


REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/21/2013

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Lexington)

2010 OCT 22 A 11:55

Casio Mack Richardson #339735)
Full name and prison number (if any) of Applicant)

A TRUE COPY

[Signature]
Lex. Co. C.C.P. G.S. & P.O.
APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

2010CP3204588

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 Facility
990 Wilsacky Highway, Bishopville SC 29010
- 2 Name and location of Court which imposed sentence Lexington County Judicial Center, 205 East Main Street, Lexington, SC, 29072
- 3 Name(s) of co-defendant(s) (if any) De'Mar Labrew
- 4 The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2010GS3200874, 2010GS3200872

(b) _____
(c) 2010CP 3204588

5. The date upon which sentence was imposed and the terms of the sentence:
(a) March 11 2010 / sentenced to 13 years
(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. _____
ii. N/A
iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:
(a) My attorney verbally stated that he would file for and appeal on my behalf.

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(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) Violation of Constitutional Rights

(c) _____

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

(a) Counsel failed to investigate and communicate

(b) Counsel failed to challenge constitutional violation.

(c) _____

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

(a) any petition in a State Court under South Carolina Law? NO

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

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

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

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

N/A

N/A

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iv _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

N/A

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

N/A

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

i. _____

ii. _____

iii. _____

iv. _____

N/A

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

NO

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

N/A

(b) the proceedings in which each ground was raised

i. _____

ii. _____

iii. _____

N/A

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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) _____
- (b) _____
- (c) _____

N/A

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? N/A

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. F. Casey D. Cornwell SC Bar # 73191
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. plea in sentence.
 - ii. _____
 - iii. _____

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

I would like for my sentence in which I pleaded guilty to to be vacated, and also would like to be represented by a counsel who takes there job series.

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

NO

2010CP3204588

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of Lee)

VERIFICATION

I, Casio Mack Richardson, 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.

Casio Mack Richardson

Casio Richardson

SWORN to and subscribed before me this 24 day of Sept, 2010.

Shirley Ann (L.S.)
Notary Public

My Commission Expires: 5-16-11

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	
)	
)	2010-CP-32-4588
)	
Casio Richardson, #339735,)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
Respondent.)	
)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed October 22, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the March 2010 term of the Lexington County Grand Jury for Assault and Battery with Intent to Kill (2010-GS-32-0872) and Conspiracy (2010-GS-32-0874). He was represented by Casey Cornwell, Esquire. On March 11, 2010, the Applicant pled guilty as charged. He was sentenced to confinement for a period of thirteen (10) years for the Assault charge, and a concurrent term of five (5) years for the conspiracy charge. The Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend and/or supplement this Return upon receipt with any relevant materials.

II.

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

1. Ineffective assistance of counsel;
 - a. "My attorney verbally stated that he would file for an appeal on my behalf (but did not)."
 - b. "Counsel failed to investigate and communicate."
 - c. "Counsel failed to challenge constitutional violation."

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness

under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. Nevertheless, the allegation of ineffective assistance of counsel probably raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

IV.

Here, in addition to making general allegations pertaining to Plea Counsel's performance, the Applicant also specifically claims that he was denied effective assistance of counsel because his attorney did not inform him of his right to appeal his guilty plea conviction. Absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Jones v. State, 677 S.E.2d 20 (2009). 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 (for example, because there are non-frivolous grounds for appeal); or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 120 S.Ct. 1029 (2000). In making this determination, courts must take into account all the information counsel knew or should have known. Id. Although not determinative, a highly relevant factor in this inquiry 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 such a plea may indicate that the defendant seeks an end to judicial proceedings Id.

There being nothing in the record to indicate that the Applicant reasonably demonstrated to Counsel that he was interested in appealing, the State submits that the allegation is totally without merit and should be dismissed. Nevertheless, the allegation probably raises a question of fact which may not be conclusively refuted by the record and therefore requires that an evidentiary hearing be convened. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

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

VI.

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

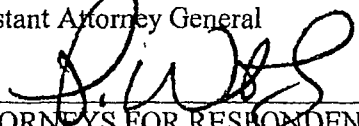
Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W ELLIOTT
Assistant Deputy Attorney General

A. WEST LEE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

December 30, 2010

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE CIVIL COURT

CASIO RICHARDSON,
Applicant,
-vs-
STATE OF SOUTH CAROLINA,
Respondent.

)
)
)
)
)
)
)

TRANSCRIPT OF RECORD
10-CP-32-04588

August 13, 2012
Lexington, South Carolina

B E F O R E:

HONORABLE W. JEFFREY YOUNG, Judge.

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

M. BROOKS BIEDIGER, Esquire
Attorney for the Applicant

KAELON E. MAY, Asst. Attorney General
Attorney for the State

L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

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(Court Reporter's Note: No exhibits were marked or received into evidence).

CASIO RICHARDSON -- DIRECT -- MR. BIEDIGER

3

1 (The following proceedings are reported on
2 August 13, 2012.)

3 MS. MAY: Your Honor, the next case is Casio
4 Richardson v. State, Case Number 2010-CP-32-4588.
5 Mr. Richardson was charged with conspiracy and assault
6 and battery with intent to kill.

7 He pled guilty to the charges on March 11,
8 2010, before Judge Newman. He was sentenced to an
9 aggregate 13 years, and there was no appeal of his
10 guilty plea. I will let Mr. Biediger take it from
11 there.

12 THE COURT: - Yes, sir.

13 MR. BIEDIGER: May it please the Court, Your
14 Honor. My name is Brooks Biediger.

15 THE COURT: How do you spell that?

16 MR. BIEDIGER: B-I-E-D-I-G-E-R.

17 THE COURT: Yes, sir.

18 MR. BIEDIGER: I am pleased to have been
19 appointed to represent Mr. Richardson here. He has
20 filed a pro se petition for post conviction relief,
21 basically asserting two main grounds: The first being
22 that he wished to appeal his guilty plea, and his
23 attorney simply did not do that.

24 The second is that his attorney did not
25 absolutely advise him of the defenses he could have

1 raised at his trial. He was eventually -- because he
2 was not aware of those defenses, he ended up pleading
3 guilty where he otherwise wouldn't have.

4 I have interviewed Mr. Richardson a few times.
5 I have reviewed the plea transcript, and I have asked
6 him what all witnesses he would like me to call. He
7 will be the only witnesses on his own behalf in this
8 matter. We are basically asking --

9 THE COURT: This was a negotiated sentence I
10 see?

11 MR. BIEDIGER: That's right, Your Honor. We
12 are essentially asking that the Court grant his petition
13 simply because his plea was not knowing. He didn't
14 knowingly plead to what he was eventually convicted of.
15 With that in mind, we are asking the Court to vacate his
16 sentence and his conviction.

17 THE COURT: All right, sir. You may call your
18 first witness.

19 MR. BIEDIGER: We call Casio Richardson.

20 CASIO RICHARDSON, being
21 first duly sworn, testifies as follows:

22 CLERK: State your name for the record,
23 please.

24 THE WITNESS: Casio Richardson, inmate number
25 339735.

1 DIRECT EXAMINATION

2 BY MR. BIEDIGER:

3 Q Casio, can you hear me?

4 A Yes, sir.

5 Q Are you a little bit nervous this afternoon?

6 A Yes, sir.

7 Q Well, if you ever don't understand me, please tell

8 me. Okay?

9 A Yes, sir.

10 Q How old are you?

11 A I'm 22 -- well, I am 21 as of now.

12 Q When do you turn 22?

13 A September.

14 Q Where did you grow up, Casio?

15 A Columbia, South Carolina.

16 Q What is your highest level of education?

17 A Tenth grade.

18 Q Do you have any family in the Columbia area?

19 A Yes, sir.

20 Q Who all is that?

21 A My mother, my siblings, my grandmother, and my

22 aunt.

23 Q Growing up, did you have any issues with mental

24 health?

25 A Yes, sir.

- 1 Q Please explain that to the Court.
- 2 A Paranoia, schizophrenia, and depression.
- 3 Q When were you diagnosed with these?
- 4 A I'd say when I was around the age of nine.
- 5 Q What all did the doctors do?
- 6 A They institutionalized me in mental institutions.
- 7 Q Now, in 2008 you were charged with a crime. What
- 8 crime was that?
- 9 A Assault and battery with intent to kill.
- 10 Q Would you briefly tell the Court what happened.
- 11 A Well, that night it was me and two other people,
- 12 the victim and the codefendant. We was all hanging
- 13 out, but the victim was acting strange. I later
- 14 came to find out that he was high on crack cocaine.
- 15 I eventually shot him because he pulled out the gun
- 16 on me.
- 17 Q Let's go back a little bit. What happened when you
- 18 left the apartment?
- 19 A I was walking down the train tracks with the
- 20 codefendant.
- 21 Q Was there anybody else with you?
- 22 A No, just me and my codefendant at that time.
- 23 Q Was there anything unusual that you noticed as you
- 24 were walking down the tracks?
- 25 A I heard some rocks. I heard somebody coming from

CASIO RICHARDSON -- DIRECT -- MR. BIEDIGER

7

- 1 behind me from the footsteps and the rocks.
- 2 Q What did you do when you noticed that?
- 3 A I turned around.
- 4 Q What did you see?
- 5 A I seen the victim Marcus.
- 6 Q What was he doing?
- 7 A He started using profane language towards me in a
8 threatening manner.
- 9 Q Did he do anything else?
- 10 A He went for a firearm.
- 11 Q What did you do when you saw him go for his
12 firearm?
- 13 A I pulled my firearm and shot him before he shot me.
- 14 Q Is that the incident that led you ultimately to
15 plead guilty?
- 16 A Yes, sir.
- 17 Q Now, when you shot at him, were you in fear of your
18 own life?
- 19 A Yes, sir.
- 20 Q And do you believe that you acted in self-defense
21 when you shot him?
- 22 A Yes, sir.
- 23 Q Do you know Casey Cornwell?
- 24 A Yes, sir.
- 25 Q When did you first meet him?

- 1 A I would say January 2010, January or February of
2 2010.
- 3 Q Who is Casey?
- 4 A He was my public defender when I was in the
5 Lexington County Detention Center.
- 6 Q Approximately how many times did you meet with
7 Casey?
- 8 A Twice.
- 9 Q Over how long a period of time?
- 10 A Twenty-two months.
- 11 Q And what did y'all talk about? The first time
12 y'all met, what did y'all talk about?
- 13 A A plea bargain.
- 14 Q Did he ask you what your side of the case was?
- 15 A No, sir.
- 16 Q Did y'all talk about self-defense at all?
- 17 A No, sir.
- 18 Q What all did y'all talk about?
- 19 A Basically pleading.
- 20 Q Did he ever advise you of anything, other than just
21 pleading?
- 22 A No, sir.
- 23 Q Now, did you ever write any letters to
24 Mr. Cornwell?
- 25 A Yes, sir.

CASIO RICHARDSON -- DIRECT -- MR. BIEDIGER

9

1 Q In these letters did you ever ask him about
2 asserting self-defense?

3 A Yes, sir.

4 Q Did he ever tell you anything about asserting
5 self-defense as a defense to your crime?

6 A No, sir.

7 Q Did he never tell you that self-defense is an
8 absolute defense to the crime you were charged
9 with?

10 A No, sir.

11 Q What did Mr. Cornwell recommend that you do?

12 A Plea as charged.

13 Q So did you feel pressured into pleading?

14 A Yes, sir.

15 Q If you had known about raising self defense as a
16 defense in this case, would you have pled guilty?

17 A No, sir.

18 Q Now, did Mr. Cornwell ever inform you of what
19 rights you would be giving up as you were pleading?

20 A No, sir.

21 Q Did he ever explain what your rights were to you?

22 A No, sir.

23 Q At the time that you pled guilty, did you
24 understand what it meant to give up your rights?

25 A No, sir.

- 1 Q At the time you pled guilty, did you believe that
2 pleading guilty was the only option you had?
- 3 A Yes, sir, at that time.
- 4 Q Do you now know what it means to claim a defense of
5 self-defense?
- 6 A Yes, sir.
- 7 Q If you had known then what you know now, would you
8 have pled guilty?
- 9 A No, sir.
- 10 Q Now, what were you ultimately sentenced to?
- 11 A Thirteen years.
- 12 Q Did you appeal your sentence?
- 13 A No, sir. I told Casey Cornwell to put the appeal
14 in for me, but it never happened.
- 15 Q So did you want to file an appeal?
- 16 A Yes, sir.
- 17 Q Was an appeal ever filed?
- 18 A No, sir.
- 19 Q And did you tell anybody that you wanted to file an
20 appeal?
- 21 A Yes, sir, I told Casey Cornwell that.
- 22 Q Now, did Mr. Cornwell, before you pled guilty, did
23 Mr. Cornwell ever give you a copy of the evidence
24 that the State was going to use against you?
- 25 A No, sir.

1 Q Okay, Mr. Richardson. Is there anything you would
2 like to tell the Court today in support of your
3 application for post conviction relief?

4 A No, sir.

5 Q Are there any other witnesses you would like for me
6 to call?

7 A No, sir.

8 Q Are you happy with the job I have done?

9 A Yes, sir.

10 Q Are you sure that there is nothing else you want
11 to tell -- have I left anything out?

12 A Everything has basically been said. I ain't -- I
13 did not voluntarily plead is basically it.

14 Q And you were acting in self-defense?

15 A Yes, sir.

16 Q Thank you very much, Casio.

17 THE COURT: Ms. May.

18 MS. MAY: May it please the Court, Your Honor.

19 CROSS EXAMINATION

20 BY MS. MAY:

21 Q Mr. Richardson, do you have copy of your guilty
22 plea transcript?

23 A Yes, ma'am. I don't have it on me though.

24 MS. MAY: Your Honor, may I approach?

25 THE COURT: You may.

1 BY MS. MAY:

2 Q Mr. Richardson, do you recall at your guilty plea
3 hearing the judge asking you if you waived any
4 claim that you might have to self defense in your
5 case?

6 A I do recall that, yes, ma'am.

7 Q That's on page 11 of your plea if you want to
8 refresh your memory. You told the judge that you
9 wanted to give up your right to assert
10 self-defense; correct?

11 A Yes, ma'am.

12 Q And was that the truth that day? That you wanted
13 to give up your right to assert self-defense?

14 A The reason why I stated that was because I felt
15 that's what I had to say in order to go ahead with
16 the plea.

17 Q And do you recall the judge informing you of your
18 right to a jury trial?

19 A Yes, ma'am.

20 Q And you indicated to the judge that you wished to
21 give up that right; correct?

22 A Yes, ma'am.

23 Q And do you recall the judge advising you as to your
24 right to remain silent?

25 A Yes, ma'am.

1 Q That's on page 5 if you don't recall. You
2 indicated to the judge that you wanted to give up
3 that right; correct?

4 A Yes, ma'am.

5 Q And now you are saying today that you did not want
6 to give up those rights?

7 A No, ma'am, I did not want to give up those rights.

8 Q Why didn't you tell the plea judge that day then,
9 that you did not want to give up your
10 constitutional rights?

11 A The reason why I didn't state that then because I
12 felt that that's what I had to do in order to
13 plead. I felt there was no other way.

14 Q And when you explained your version of this, you
15 were able to explain your version of the story --
16 is that correct -- at your plea?

17 A Yes, ma'am.

18 Q And you apologized for everything that had
19 happened; correct?

20 A Yes, ma'am.

21 Q At your guilty plea. And it's your contention
22 today that had you known about self-defense, you
23 would have not have pled, and you would have gone
24 to trial?

25 A Yes, ma'am.

1 MS. MAY: I have no further questions. Thank
2 you.

3 THE COURT: Any redirect?

4 MR. BIEDIGER: Nothing further, Your Honor.

5 THE COURT: Thank you. You may step down.
6 (Witness leaves the witness stand).

7 THE COURT: Any other witnesses, sir?

8 MR. BIEDIGER: None, Your Honor. The
9 petitioner rests.

10 THE COURT: Thank you. Ms. May.

11 MS. MAY: May it please the Court, Your Honor.
12 The State would like to call Casey Cornwell.

13 FULTON CASEY DALE CORNWELL,
14 being first duly sworn, testifies as follows:

15 CLERK: State your name for the record,
16 please.

17 THE WITNESS: My name is Fulton Casey Dale
18 Cornwell. I'm an attorney in private practice right
19 now.

20 DIRECT EXAMINATION

21 BY MS. MAY:

22 Q Mr. Cornwell, how long have you been practicing
23 law?

24 A Seven years now.

25 Q And how much of that has been in criminal law?

1 A All of it.

2 Q And do you recall when you were appointed to
3 represent Mr. Richardson?

4 A Yes. I think -- actually I think Mr. Bax was his
5 original attorney, and he represented him for a
6 while. When he left the office, I took over
7 representation.

8 Q Do you recall how many times you were able to meet
9 with Mr. Richardson?

10 A I personally spoke to Mr. Richardson at the jail at
11 least twice. I know that for a fact. I have
12 actually noted in my file at least once where I
13 talked to him a specific date. But he has been
14 seen by all his attorneys more than three or four
15 times during the course of representation.

16 Q And when you met with Mr. Richardson, did y'all
17 discuss the elements of the charges that he was
18 indicted for?

19 A Yes, we talked about all of that stuff.

20 Q And that would have been for the assault and
21 battery with intent to kill, as well as conspiracy?

22 A Yes.

23 Q And did y'all discuss what the State would be
24 required to prove at trial?

25 A Yes. We talked about the charges, the elements,

1 you know, what the burden of proof was. I have
2 kind of like a standard spiel I give all of my
3 clients when I meet them for the first time to make
4 sure they understand all the charges and rights and
5 things of that nature.

6 Q And that would include the possible sentences for
7 each offense?

8 A Exactly.

9 Q And did you discuss Mr. Richardson's version of the
10 facts?

11 A Yes. When I talked to Mr. Richardson, you know, we
12 did talk about self-defense because it came up that
13 the guy, the victim, was, in fact -- he told me he
14 was using drugs or whatever, the victim; and that
15 he was high and that's how this thing started.

16 Basically what he told me is that it started
17 off that they knew each other, you know, that they
18 had known each other for quite some time. It was a
19 friendly thing. Then he noticed that the guy, the
20 victim, started acting strange. That's how the
21 altercation escalated.

22 So just based on what he told me and based on
23 the discovery I had, I did advise him that, you
24 know, I don't know how strong a self-defense case
25 we have here because there was an allegation that

1 the victim at some point turned to run and got shot
2 in the back. So, you know, that was my main
3 problem with the self-defense.

4 Q And there was an issue whether the victim -- that
5 the victim was never discovered to have a gun; is
6 that correct?

7 A That's correct. They never found a gun that was in
8 the victim's possession.

9 Q And Mr. Richardson brought up, I believe, some past
10 issues with depression. Did you ever feel that he
11 did not understand y'all's discussions?

12 A No, he was really -- he engaged me when we talked,
13 you know; and he knew the facts of his case. He
14 was an intelligent fellow. He knew what was going
15 on. He understood what I talked to him about.

16 I don't recall these issues coming up. As you
17 know, during the course of a plea, the judge always
18 asks him about mental health and things of that
19 nature. I know he had some, you know, some other
20 issues possibly from childhood, but I didn't know
21 the details, the extent of that.

22 Q But nothing concerned you about his understanding
23 of the plea?

24 A- No, no.

25 Q And did you file any discovery motions or did you

1 receive --

2 A We received discovery. I filed for a discovery
3 motion. Usually if we send the client a copy, we
4 have a letter where we send them a copy. To be
5 honest with you, I don't have a letter to that in
6 the file.

7 I can't tell you 100 percent that we sent
8 Mr. Richardson a copy, but we talked about this
9 case. We went over discovery. When I talked with
10 him, I had discovery with me. He was well aware of
11 the contents of the discovery.

12 Q Do you recall what the discovery materials
13 consisted of, briefly?

14 A It was medical records, incident reports, of
15 course, investigative summary, and forensic stuff
16 from the gun basically identifying that as the
17 weapon that was fired, the bullet; and I think that
18 was the extent.

19 There was some medical records. I mentioned
20 that. There was some juvenile stuff from
21 Mr. Richardson, basically his criminal record, that
22 included some juvenile stuff, which we usually
23 don't get.

24 Q And you reviewed the discovery materials with
25 Mr. Richardson?

1 A I did.

2 Q And aside from self-defense, was there any possible
3 defenses y'all discussed?

4 A I can't remember if we discussed any specific
5 defenses because there was never a contention that
6 he shot him, you know. It was just a matter of,
7 you know, the circumstances.

8 Q And did Mr. Richardson give any statements or
9 confessions to the police? Do you recall?

10 A I think he did talk to them, but I think his story
11 has been consistent about what happened, you know,
12 as far as his -- what he told authorities and
13 everything.

14 Q And did Mr. Richardson provide you with any
15 potential witnesses or leads for investigation?

16 A No.

17 Q And were you able to talk -- were you ever able to
18 talk to the victim?

19 A The victim did not want to talk to me. The victim
20 in that case suffered some serious injuries and was
21 really bitter. We filed a motion to reconsider
22 after Mr. Richardson was sentenced, and we actually
23 went back in front of the judge for that. That was
24 denied. At the hearing I could tell the victim's
25 family was still really, you know, bitter about

1 what happened.

2 Q Do you feel you had sufficient time to prepare and
3 meet with Mr. Richardson?

4 A Yes, I do. As you know, any time there is an offer
5 on the table, we have to communicate that to them.
6 I wasn't trying to push it on him; but, you know, I
7 always tell my clients, Listen I am going to be
8 honest with you. You might not like what I have to
9 say. I will tell you straight up what I think.

10 I am pretty sure that is what I did with
11 Mr. Richardson. I listened to his story and told
12 him, Listen, I hear what you are saying, but this
13 is what the evidence is saying. That's kind of
14 what we base our opinion on -- or decision. I'm
15 sorry.

16 Q And aside from the final plea, were there any
17 initial plea negotiations or offers? Do you
18 recall?

19 A I think I tried to get the prosecutor to come down
20 to ten on this; and he, you know, just wouldn't
21 budge on that.

22 Q Y'all discussed the benefits and drawbacks in terms
23 of pleading guilty versus going to trial?

24 A Exactly. We discussed all that.

25 Q And I believe there was some -- not confusion --

1 but maybe some hesitance on Mr. Richardson's part
2 at the plea?

3 A Yes.

4 Q Do you recall that?

5 A Yeah, we talked about it. I mean, I told him then,
6 You do not have to go through with this. If you
7 want a trial, we can try the case. I always tell
8 people that.

9 Q And did Mr. Richardson ever ask you to file an
10 appeal on his behalf?

11 A I think he might be confusing that with the motion
12 for reconsideration. I know he asked me to file
13 that, which I immediately did. I filed the motion
14 to reconsider.

15 I did not file an appeal that I can see in my
16 file. It has been a while ago, but I don't see in
17 the file where I filed an appeal. Usually a lot of
18 times they will say, I want to appeal. I will say,
19 Are you wanting to appeal --

20 MR. BIEDIGER: Objection, Your Honor. This is
21 getting outside the scope of the question.

22 THE COURT: Sustained.

23 THE WITNESS: Sorry.

24 BY MS. MAY:

25 Q So he did not ask you to file an appeal?

1 A Not that I recall. The only thing I remember
2 discussing was the motion to reconsider.

3 Q If he had asked you to file an appeal --

4 A Yes --

5 MR. BIEDIGER: Objection, Your Honor. Now we
6 are in speculation.

7 THE COURT: I will allow it. Overruled.

8 MR. BIEDIGER: Thank you, Your Honor.

9 BY MS. MAY:

10 Q In your typical practice, when a client asks for an
11 appeal to be filed, what do you do?

12 A It's nothing for us to file. We do the paperwork.
13 The paralegal fills it out, and we send it off to
14 -- you know, do what we have to do because we don't
15 personally handle the appeal. We just file for the
16 appeal. It's not a big thing for us to do that.
17 If he would have asked me to do that, I would have
18 done it.

19 Q In reviewing the guilty plea and your review of the
20 file, do you think there was any factual legal
21 basis for an appeal?

22 A No. Based on the fact this was a guilty plea, no,
23 I just don't see that. All the T.s were crossed
24 and I.s dotted in that situation. I think even the
25 judge went over self-defense with him.

1 Q And, again, you informed Mr. Richardson that it was
2 his decision to plead guilty? He did not have to
3 go forward?

4 A That is correct.

5 MS. MAY: I have no further questions. Thank
6 you, Your Honor.

7 THE COURT: Yes, sir.

8 MR. BIEDIGER: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MR. BIEDIGER:

11 Q Mr. Cornwell, this plea didn't go off without a
12 hitch; did it?

13 A No, no.

14 Q In fact, it fell apart once?

15 A Yes, it broke down the first time.

16 Q And it appears it broke down just because he
17 doesn't understand what was going on?

18 A I'm not sure. Like I said, I can't recall exactly
19 what the details were or why we had ended up
20 standing down.

21 Q And do you have a copy of the plea in front of
22 you?

23 A I do not right now.

24 MR. BIEDIGER: Your Honor, may I approach?

25 THE COURT: You may.

1 BY MR. BIEDIGER:

2 Q If I can draw your attention to page 6, line 14.

3 Tell me when you are ready.

4 A Okay.

5 THE COURT: Which document are you referring
6 to?

7 MR. BIEDIGER: The plea, Your Honor.

8 THE COURT: The transcript?

9 MR. BIEDIGER: Yes, sir.

10 THE COURT: Oh, okay. I was looking for the
11 plea sheets.

12 BY MR. BIEDIGER:

13 Q Tell me when you are ready.

14 A Okay.

15 Q Now, on page 6, line 14, it says, "Your Honor, my
16 client wants to just stand down." Do you recall
17 why he wanted to stand down?

18 A To be honest with you, I do not recall. I think he
19 might have wanted some explanation right there, you
20 know.

21 Q It looks like he doesn't understand what is going
22 on; doesn't it?

23 A Yes. Well, I mean, usually that's why we stand
24 down for because they have -- there is some
25 confusion going on about what the judge is saying.

1 Q Now, at this point you would agree it looks like
2 Mr. Richardson does not want to plead guilty; is
3 that right?

4 A Well, you know, I am basing this on my memory and
5 the transcript. All I can say is that obviously
6 there was some kind of issue we had to talk about.
7 I don't know if he was -- I don't make it a habit
8 of, you know, trying to talk people into pleas.

9 Because at the end of the day, I don't want
10 them to be somewhere locked up thinking like, I
11 should have did the other thing, you know. So I
12 can tell you what I usually -- usually what happens
13 is they have some confusion.

14 Q That's fine. But in this particular instance, it
15 looked like Casio doesn't want to plead; is that
16 right?

17 A Based on this transcript, I can't tell that.

18 Q In fact, he says on page 6, line 6, "I don't
19 understand." And then before that, he says, "What
20 do you mean by that?" So is it fair to say from
21 what we know about the plea, that at one point he
22 didn't understand what was going on?

23 A Yes. I think he was responding to the judge's, I
24 will accept the guilty plea and give you a
25 sentence. He was talking about the negotiated

- 1 sentence.
- 2 Q If I can draw your attention to page 7, line 3
- 3 through about 6. Tell me when you are ready.
- 4 A Okay.
- 5 Q You said, "Basically my client had some trepidation
- 6 going forward." Do you see that?
- 7 A Uh-huh. (Indicating affirmative response.)
- 8 Q Now, by trepidation do you mean that he didn't want
- 9 to plead guilty?
- 10 A I am assuming he just didn't understand the
- 11 negotiated sentence.
- 12 Q What does trepidation mean to you?
- 13 A It means he was hesitant.
- 14 Q Hesitant. Hesitant about pleading guilty?
- 15 A Yes.
- 16 Q He was so hesitant about pleading guilty that the
- 17 plea actually had to be shut down?
- 18 A Yes.
- 19 Q So that means he probably didn't want to plead
- 20 guilty?
- 21 A Well, I can't really say.
- 22 Q But after he spoke with you, he did want to plead
- 23 guilty?
- 24 A Yes, he did want go forward after we spoke.
- 25 Q Now, if we could go to page 10 -- tell me when you

- 1 are ready.
- 2 A Okay.
- 3 Q I'm looking at line 6 through about 14 or so. Take
- 4 a look at that.
- 5 A Yes.
- 6 Q Are you ready?
- 7 A Yes. You said 6 through 14?
- 8 Q Right. Now, if we look at this, it looks like
- 9 Casio raised self-defense on his own; right?
- 10 A Yes, sir.
- 11 Q Is that fair to say?
- 12 A Yes, sir.
- 13 Q So when given the opportunity, he told the judge,
- 14 Well, I've got a claim for self-defense; is that
- 15 right?
- 16 A Yes.
- 17 Q But you had advised him not to do that?
- 18 A Well, he had just agreed earlier to the facts that
- 19 the solicitor had put out about shooting the guy in
- 20 the back of the arm --
- 21 Q Is that the question I asked?
- 22 A Well, I mean...
- 23 Q Did you advise him that he had a self-defense
- 24 claim?
- 25 A Oh, no, I told him straight up. I was like, Listen

1 you can make a claim of self-defense. We can argue
2 this at trial, but the shooting in the back is
3 going to kill us, you know, while he is running
4 away.

5 That's kind of our whole discussion about
6 self-defense. That's kind of -- it was a back and
7 forth between, Do we take the chance and try to
8 convince a jury that, you know, he didn't shoot him
9 while he was running away? Or do we say, Listen
10 the facts are this. I am guilty. Let's go take
11 our lumps.

12 Q Tell me this. Was it his decision to assert
13 self-defense or was it yours?

14 A No, the client always brings it up. I always bring
15 it in, you know, in these kind of situations. I
16 can't really remember who brought it up first.

17 Q But this time you told him not to?

18 A Yes, because we were doing a guilty plea. You
19 can't really assert self defense into it.

20 Q Right. You were doing a guilty plea because he
21 didn't have self-defense; is that right?

22 A We decided that it wasn't a good defense and that
23 the evidence kind of -- he would lose at a trial
24 basically.

25 Q But you can agree with me that if there was a

1 potential for self-defense, he shouldn't have pled
2 guilty; should he?

3 A Well, I mean, we discussed all that. I asked him
4 if he wanted to go forward with the plea, and he
5 decided he did.

6 Q Do you have anything in writing which said that you
7 advised him about self-defense?

8 A (Pause.) No. No, I don't.

9 Q Do you have anything in writing which shows that
10 you advised him what rights he was giving up by
11 pleading guilty?

12 A I don't but the Court does, the plea sheet.

13 Q Do you recall telling Casio that he shouldn't
14 plead -- or that he possibly could go to trial
15 instead of pleading?

16 A I did. I tell them that all the time. It's like I
17 said, I don't like badgering people into pleas. I
18 told him straight up, If you don't want to go
19 forward, we can always try it. It's your right.
20 It's a constitutional right. But at the same time,
21 I feel like I have to let them know the good and
22 the bad facts.

23 Q If I can draw your attention to page 10, line 24 of
24 the plea transcript. You say, "I don't think he is
25 asserting self-defense. I think he said the other

1 guy had a weapon, and they didn't say anything
2 about it." Now, correct me if I'm wrong, that
3 sounds a lot like self-defense, that the other guy
4 had a weapon; is that right?

5 A Well, I mean just because somebody has a weapon
6 doesn't mean it's self-defense, unless -- he never
7 in his plea said, He pulled a weapon on me or
8 attacked me or anything like that.

9 Q Right. Because he was pleading guilty; right?

10 A Exactly.

11 Q He didn't have a trial?

12 A No, sir.

13 Q So he didn't have an opportunity to assert his
14 self-defense defense; did he?

15 A Because he chose not to.

16 Q You just heard him take the stand; is that right?

17 A Yes, sir.

18 Q And he said that the reason he shot was because he
19 was in fear of his own life. Did you hear him say
20 that?

21 A I do remember him saying that.

22 Q Thank you very much for answering my questions.

23 A Thank you.

24 THE COURT: Ms. May, any redirect?

25 MS. MAY: No, Your Honor.

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

2 THE WITNESS: Thank you, Your Honor.

3 (Witness leaves the witness stand.)

4 THE COURT: Anything else from the State?

5 MS. MAY: No, Your Honor.

6 THE COURT: I will take this under advisement
7 and let you know within ten days of my ruling.

8 MR. BIEDIGER: Thank you very much, Your
9 Honor.

10 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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C E R T I F I C A T E

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2 I, the undersigned L. Coconut Pantsari, Official
3 Reporter for the Eleventh Judicial Circuit of the State
4 of South Carolina, do hereby certify that the foregoing
5 is a true, accurate, and complete Transcript of Record
6 of all the proceedings had and the evidence introduced
7 in the trial of the captioned cause, relative to appeal,
8 in the Civil Court for Lexington County, South Carolina
9 on the 13th day of August, 2012.

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

12
13
14 October 7, 2012

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17
18 *L. Coconut Pantsari*

19 Court Reporter
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<p>Q</p> <p>question [2] 21/21 27/21 questions [3] 14/1 23/5 30/22 quite [1] 16/18</p>	<p>S</p> <p>said [9] 11/12 23/18 26/5 27/7 29/6 29/17 29/25 30/7 30/18 same [1] 29/20 saw [1] 7/11 say [14] 6/4 8/1 12/15 20/9 21/18 21/18 25/5 25/20 26/21 27/11 28/9 29/24 30/1 30/19 saying [5] 13/5 20/12 20/13 24/25 30/21 says [3] 24/15 25/18 25/19 schizophrenia [1] 6/2 scope [1] 21/21 se [1] 3/20 second [1] 3/24 see [6] 4/10 7/4 21/15 21/16 22/23 26/6 seen [2] 7/5 15/14 self [31] 7/20 8/16 9/2 9/5 9/7 9/15 10/5 11/14 12/4 12/10 12/13 13/22 16/12 16/24 17/3 19/2 22/25 27/9 27/14 27/23 28/1 28/6 28/13 28/19 28/21 29/1 29/7 29/25 30/3 30/6 30/14 self-defense [28] 7/20 8/16 9/2 9/5 9/7 10/5 11/14 12/10 12/13 13/22 16/12 16/24 17/3 19/2 22/25 27/9 27/14 27/23 28/1 28/6 28/13 28/21 29/1 29/7 29/25 30/3 30/6 30/14 send [3] 18/3 18/4 22/13 sent [1] 18/7 sentence [6] 4/9 4/16 10/12 25/25 26/1 26/11 sentenced [3] 3/8 10/10 19/22 sentences [1] 16/6 September [1] 5/13 serious [1] 19/20 Seven [1] 14/24 sheet [1] 29/12</p>	<p>T</p> <p>T.s [1] 22/23 table [1] 20/5 take [6] 3/10 27/3 28/7 28/10 30/16 31/6 talk [11] 8/11 8/12 8/16 8/18 16/12 19/10 19/17 19/18 19/19 25/6 25/8 talked [9] 15/13 15/19 15/25 16/11 17/12 17/15 18/8 18/9 21/5 talking [1] 25/25 tell [21] 5/7 6/10 9/4 9/7 10/19 11/2 11/11 13/8 18/7 19/24 20/7 20/9 21/7 24/3 24/13 25/12 25/17 26/3 26/25 28/12 29/16 telling [1] 29/13 ten [2] 20/20 31/7 Tenth [1] 5/17 terms [1] 20/22 testifies [2] 4/21 14/14</p>
<p>R</p> <p>R.P.R [1] 1/23 raised [2] 4/1 27/9 raising [1] 9/15 ready [5] 24/3 24/13 26/3 27/1 27/6 really [6] 17/12 19/21 19/25 26/21 28/16 28/19 reason [3] 12/14 13/11 30/18 recall [17] 12/2 12/6 12/17 12/23 13/1 15/2 15/8 17/16 18/12 19/9 20/18 21/4 22/1 23/18 24/16 24/18 29/13 receive [1] 18/1 received [2] 2/19 18/2 recommend [1] 9/11 reconsider [3] 19/21 21/14 22/2 reconsideration [1] 21/12 record [6] 1/6 4/22 14/15 18/21 31/10 32/5 records [2] 18/14 18/19</p>		

<p>T</p>	<p>unusual [1] 6/23 up [23] 4/2 5/14 5/23 9/19 9/24 12/9 12/13 12/21 13/2 13/6 13/7 13/9 16/12 17/9 17/16 20/9 23/19 25/10 27/25 28/14 28/16 29/10 29/18 us [3] 22/12 22/16 28/3 use [1] 10/24 using [2] 7/7 16/14 usually [6] 18/3 18/22 21/17 24/23 25/12 25/12</p>	<p>19/3 20/22 y'all's [1] 17/11 Yeah [1] 21/5 years [3] 3/9 10/11 14/24 yes [53] you [209] YOUNG [1] 1/15 your [52] yours [1] 28/13</p>
<p>than [2] 8/20 15/14 Thank [12] 11/16 14/1 14/5 14/10 22/8 23/5 23/8 30/22 30/23 31/1 31/2 31/8 that's [13] 4/11 12/7 12/15 13/1 13/12 16/15 16/20 17/7 20/13 24/23 25/14 28/5 28/6 them [7] 16/3 18/4 19/10 20/5 25/10 29/16 29/21 then [6] 10/7 13/8 13/11 16/19 21/5 25/19 there [22] 3/9 3/11 6/21 6/23 11/1 11/5 11/10 13/13 16/25 17/4 18/19 18/20 19/2 19/5 20/4 20/16 20/25 22/20 24/19 24/24 25/6 28/25 these [4] 6/3 9/1 17/16 28/15 they [9] 6/6 16/4 16/17 16/17 17/7 21/18 24/24 25/13 30/1 thing [5] 16/15 16/19 22/1 22/16 25/11 things [2] 16/5 17/18 think [14] 15/4 15/4 18/17 19/10 19/10 20/9 20/19 21/11 22/20 22/24 24/18 25/23 29/24 29/25 thinking [1] 25/10 Thirteen [1] 10/11 this [23] 4/7 4/9 5/5 9/16 13/14 16/15 18/8 20/12 20/20 21/6 21/20 22/22 23/11 25/1 25/4 25/14 25/17 27/8 28/2 28/10 28/12 28/17 31/6 those [3] 4/2 13/6 13/7 though [1] 11/23 threatening [1] 7/8 three [1] 15/14 through [4] 21/6 26/3 27/3 27/7 time [14] 6/22 8/9 8/11 9/23 10/1 10/3 16/3 16/18 20/2 20/4 23/15 28/17 29/16 29/20 times [5] 4/4 8/6 15/8 15/15 21/18 to tell [1] 11/11 today [3] 11/2 13/5 13/22 told [13] 10/13 10/21 12/8 16/13 16/16 16/22 19/12 20/11 21/5 27/13 27/25 28/17 29/18 took [1] 15/6 towards [1] 7/7 tracks [2] 6/19 6/24 train [1] 6/19 transcript [9] 1/6 4/5 11/22 24/8 25/5 25/17 29/24 31/10 32/5 trepidation [3] 26/5 26/8 26/12 trial [11] 4/1 12/18 13/24 15/24 20/23 21/7 28/2 28/23 29/14 30/11 32/7 tried [1] 20/19 true [1] 32/5 truth [1] 12/12 try [3] 21/7 28/7 29/19 trying [2] 20/6 25/8 turn [1] 5/12 turned [2] 7/3 17/1 Twenty [1] 8/10 Twenty-two [1] 8/10 twice [2] 8/8 15/11 two [3] 3/21 6/11 8/10 typical [1] 22/10</p>	<p>V</p> <p>vacate [1] 4/15 version [3] 13/14 13/15 16/9 versus [1] 20/23 very [3] 11/16 30/22 31/8 victim [12] 6/12 6/13 7/5 16/13 16/14 16/20 17/1 17/4 17/5 19/18 19/19 19/19 victim's [2] 17/8 19/24 voluntarily [1] 11/13</p>	
<p>U</p> <p>Uh [1] 26/7 Uh-huh [1] 26/7 ultimately [2] 7/14 10/10 under [1] 31/6 undersigned [1] 32/2 understand [9] 5/7 9/24 16/4 17/11 23/17 24/21 25/19 25/22 26/10 understanding [1] 17/22 understood [1] 17/15 unless [1] 30/6</p>	<p>W</p> <p>waived [1] 12/3 walking [2] 6/19 6/24 want [17] 10/15 11/10 12/7 13/5 13/7 13/9 19/19 21/7 21/18 25/2 25/9 25/15 26/8 26/19 26/22 26/24 29/18 wanted [7] 10/19 12/9 12/12 13/2 24/17 24/19 29/4 wanting [1] 21/19 wants [1] 24/16 was [79] wasn't [2] 20/6 28/22 way [1] 13/13 we [46] weapon [5] 18/17 30/1 30/4 30/5 30/7 well [13] 5/7 5/11 6/11 15/21 18/10 24/23 25/4 26/21 27/14 27/18 27/22 29/3 30/5 went [4] 7/10 18/9 19/23 22/25 were [20] 2/18 6/3 6/7 6/24 7/17 9/8 9/19 9/21 10/10 11/14 13/15 15/2 15/8 19/17 19/17 20/16 22/23 23/19 28/18 28/20 what [53] whatever [1] 16/14 when [24] 5/12 6/3 6/4 6/17 7/2 7/11 7/17 7/21 7/25 8/4 13/14 15/2 15/6 15/16 16/3 16/11 17/12 18/9 22/10 24/3 24/13 26/3 26/25 27/13 where [5] 4/3 5/14 15/12 18/4 21/17 whether [1] 17/4 which [5] 18/22 21/13 24/5 29/6 29/9 while [4] 15/6 21/16 28/3 28/9 who [3] 5/20 8/3 28/16 whole [1] 28/5 why [6] 12/14 13/8 13/11 23/19 24/17 24/23 will [8] 3/10 4/7 20/9 21/18 21/18 22/7 25/24 31/6 wished [2] 3/22 12/20 within [1] 31/7 without [1] 23/11 witness [5] 4/18 14/6 14/6 31/3 31/3 witnesses [7] 2/1 2/2 4/6 4/7 11/5 14/7 19/15 would [18] 4/6 6/10 8/1 9/16 9/19 10/7 11/1 11/5 13/23 13/23 14/12 15/20 15/23 16/6 22/17 22/17 25/1 28/23 wouldn't [2] 4/3 20/20 write [1] 8/23 writing [2] 29/6 29/9 wrong [1] 30/2</p>	
	<p>Y</p> <p>y'all [9] 8/11 8/12 8/12 8/16 8/18 15/16 15/23</p>	

(2)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

Casio M. Richardson, #339735, 2013 MAR 28 A 11:47 Case No 2010-CP-32-4588

Applicant, BETH A. CARRIGG
 CLERK OF COURT
 LEXINGTON, SC

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 22, 2010. Respondent made its Return on December 30, 2010. An evidentiary hearing into the matter was convened on August 13, 2012, at the Lexington County Courthouse. M. Brooks Biediger, Esquire, represented Applicant. Kaelon E. May, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, Applicant testified on his own behalf. Casey D. Cornwell, Esquire, also testified. This Court also had before it a copy of the records of the Lexington County Clerk of Court, records from the South Carolina Department of Corrections, and the guilty plea transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the march 2010 term of the Lexington County Grand Jury for Assault and Battery with Intent to Kill (2010-GS-32-0872) and Conspiracy (2010-GS-32-0874) He was represented by Casey Cornwell, Esquire On March 11, 2010, the Applicant pled guilty as charged He was sentenced to confinement for a period of thirteen (13) years for Assault and Battery and five (5) years for

conspiracy, sentences to run concurrently Applicant did not appeal his guilty plea or sentences

At the PCR hearing, Applicant proceeded on two grounds of ineffective assistance of counsel: (1) Plea counsel failed to advise Applicant of self-defense, (2) Plea counsel failed to file an appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). 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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id Applicant must overcome this presumption to receive relief.

Cherry v. State, 300 S C 115, 386 S.E.2d 624 (1989).

First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms" Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Involuntary Guilty Plea

Applicant alleges his plea was involuntary. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed 2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed 2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v Lewis, 546 F.2d 566 (4th Cir. 1976).

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

Summary of testimony

At the PCR hearing Applicant testified. Applicant alleged plea counsel was ineffective for failing to advise him on the utility of self-defense during representation. Applicant stated that he shot the victim in self-defense. Applicant stated that plea counsel never shared discovery materials with him. Applicant testified that he met with counsel twice prior to the plea hearing, and that a guilty plea was the only option discussed by plea counsel. Applicant stated plea counsel never discussed proceeding to trial. Applicant stated that plea counsel never discussed his rights with him. Applicant further testified he pled guilty on the advice of counsel, and that he would not have pled guilty if counsel had discussed proceeding to trial and arguing self-defense. He further testified that he was diagnosed with various mental health issues as a child. On cross-examination, Applicant testified that he did remember the guilty plea judge asking if he waived any claim he might have to self-defense. He further testified that he recalled telling the judge at the plea that he wanted to give up his right to assert a self-defense claim. Applicant also acknowledged that he apologized at the guilty plea hearing for everything that had happened.

Regarding Applicant's second allegation, Applicant alleged plea counsel was ineffective for failing to file an appeal on his behalf. Applicant testified that he asked plea counsel to file an appeal and that plea counsel failed to honor his request.

At the PCR hearing, plea counsel was present and testified. Plea counsel met with Applicant twice. He further testified that Applicant's previous attorney's had already met with him three or four times. Plea counsel testified that he discussed the elements of the charges with the Applicant, as well as the burden of proof and possible sentences. Plea counsel stated that it is his general procedure upon an initial consultation with a client to review the charges and prison exposure with the client. Plea counsel stated that he makes certain the client fully comprehends the charges and their constitutional rights during the initial consultation. Plea counsel testified that he had no concerns with Applicant's mental health because he presented himself as an intelligent client. Plea counsel testified that he filed discovery motions and went over discovery materials with Applicant, but he could not recall whether he provided Applicant with copies of everything. Plea counsel stated discovery consisted of medical records, incident reports, investigative summaries, and forensic reports.

Plea counsel testified he discussed Applicant's version of the offense with him. Plea counsel testified that there was never a question whether Applicant shot the victim. Plea counsel testified that he discussed proceeding to trial on a claim of self-defense with Applicant. Plea counsel stated that he did not think a claim of self-defense would be successful because the victim was shot in the back while running away from Applicant. Plea counsel testified that he candidly advised Applicant on the inapplicability of self-defense in his case.

Plea counsel gave testimony regarding guilty plea negotiations with the solicitor. Plea counsel stated that he attempted to obtain an offer of ten years imprisonment, but the solicitor refused. Plea counsel testified that he discussed the consequences of pleading guilty with Applicant prior to entering the guilty plea hearing. Plea counsel testified that it was Petitioner's decision to plead guilty. Plea counsel stated that it is not his practice to push a guilty plea on a

client because the client alone reaps the consequences of the sentence. Plea counsel testified that if Applicant desired a jury trial, he would have proceeded accordingly.

Plea counsel testified that subsequent to the guilty plea hearing, he filed a motion to reconsider the sentence. Plea counsel testified that there were no notations in Applicant's file showing that Applicant requested an appeal. Plea counsel stated that he would have filed a notice of appeal. Last plea counsel stated that there was no factual or legal basis to appeal Applicant's guilty plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds in regards to the allegations of ineffective assistance of counsel and involuntary guilty plea that plea counsel's testimony is more credible than Applicant's testimony. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation. This Court also finds that the record in this case fully demonstrates that Applicant understood the nature of his plea, and that his plea was made freely and voluntarily. This Court finds, Applicant waived the right to present a defense when he entered his guilty plea

This Court finds plea counsel provided sound legal advice regarding the utility of self-defense. 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 Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in her representation. Plea counsel reasonably assessed that self-defense would have proved unfruitful at trial. The Record shows Applicant shot the victim from behind while victim was attempting to flee the scene. Therefore, this Court finds This Court also finds Applicant has failed to prove the second prong of Strickland – that he

was prejudiced by plea counsel's performance. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, this allegation is denied.

Regarding Applicant's second allegation, This Court further finds Applicant failed to prove plea counsel was ineffective for failing to file an appeal. This Court finds plea counsel's testimony more credible than Applicant's on this issue. "[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S.Ct. 1029 (2000).

First, plea counsel succinctly outlined his procedures on filing appeals for his clients. This Court can find no reason why plea counsel would not have filed a notice of appeal if so requested. Applicant has presented no evidence to corroborate his assertion that he asked plea counsel to file an appeal on his behalf.

Second, upon a review of the Record, this Court finds Applicant failed to present a meritorious issue that could have been appealed. Therefore, this Court finds that there was no viable issue which a rational defendant would want to appeal. Accordingly this allegation is denied.

CONCLUSION

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

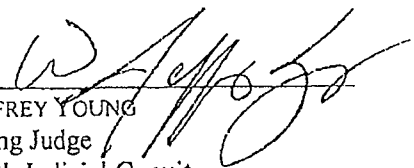
with prejudice

Except as discussed above, this Court finds that Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992) A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987) Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 13 day of March, 2013


 W. JEFFREY YOUNG
 Presiding Judge
 Eleventh Judicial Circuit

Dunbar, South Carolina

FILED
 2013 MAR 28 A 11:47
 BETTY CRITTEGG
 CLERK OF COURT
 LEXINGTON, SC

WITNESSES

Lexington County Sheriffs Department

Terry Govan

Law Enforcement Case # 08040167

DSG

ARREST WARRANT NUMBER

J846591

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date

VERDICT

Foreperson of Petit Jury

Date

DOCKET NO. 2010GS3200872

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MARCH TERM 2010

THE STATE

vs.

Casio Mack Richardson

CDR #: 0014

Indictment for

ABWIK

§ 16-03-0620

DONALD V. MYERS, SOLICITOR

- 0-20 years
- as charged
- waive presentment
- violent
- Most Serious
- No Parole
- Negotiated 10-15 years

I DO HEREBY WAIVE MY RIGHT TO GRAND JURY PRESENTMENT.

Casio Richardson
DEFENDANT

March 11 2010
DATE

D. V. Myers
WITNESS

21
/

STATE OF SOUTH CAROLINA)	INDICTMENT FOR
)	ABWIK
COUNTY OF LEXINGTON)	
)	§ 16-03-0620

At a Court of General Sessions, convened on March 2010, the Grand Jurors of Lexington County present upon their oath

That **Casio Mack Richardson** did in Lexington County, South Carolina on or about May 4, 2008, with malice aforethought, willfully and unlawfully commit a violent injury to the person of another, Marcus Schultheis, in that the defendant, Casio Mack Richardson, did shoot the victim multiple times, in violation of the 16-3-620 of the South Carolina Code of Laws, 1976, as amended.

A TRUE COPY
[Signature]
 Lex. Co. C.C.C.P., G.S. & P.O.

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

[Signature]
 DEPUTY SOLICITOR

WITNESSES

Lexington County Sheriffs Department

Stephen Gamble

Law Enforcement Case # 09049206

DSG

ARREST WARRANT NUMBER

J848873

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date

VERDICT

Foreperson of Petit Jury
Date

DOCKET NO. 2010GS3200874

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MARCH TERM 2010

THE STATE
vs.

Casio Mack Richardson

CDR #: 0049

Indictment for

Conspiracy

§ 16-17-0410

DONALD V. MYERS, SOLICITOR

- 0 ≤ 5 years

- waive presentment

- concurrent

I DO HEREBY WAIVE MY RIGHT
TO GRAND JURY PRESENTMENT

Casio Richardson
DEFENDANT

March 11 2010
DATE

Te L. B. Long
WITNESS

Lexington
Court
SI
RES

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Conspiracy
§ 16-17-0410

At a Court of General Sessions, convened on March 2010, the Grand Jurors of Lexington County present upon their oath

That **Casio Mack Richardson** did in Lexington County, South Carolina on or about June 5, 2009 knowingly and willfully unite, combine, conspire, confederate, agree and have tacit understanding with **Calvin Preston Washington** and **Adrian Branham**, for the purpose of accomplishing a criminal or unlawful object and/or an object neither criminal nor unlawful but by criminal or unlawful means, to wit Escape / Escape, Attempted escape or possess tools to escape from prison, recaptured, in violation of the common law and punishable under Section 16 -17- 410 of the South Carolina Code of Laws, 1976, as amended

A TRUE COPY
[Signature]
Lex. Co. C.C.C.P., G.S. & E.O.

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

[Signature]
DEPUTY SOLICITOR