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S.C. SUPREME COURT

3-26-2014

HELLO, MR. SHEAROUSE.

PLEASE SEND ME SOME KIND OF VERIFICATION THAT YOU RECEIVED MY PRO-SE BRIEF, SOMETHING CLOCKED, DATED STAMP. I JUST WANT TO MAKE SURE YOU GOT BRIEF IN TIME. THANK YOU IN ADVANCE FOR YOUR TIME AND ATTENTION.

RESPECTFULLY, #

MR. THOMAS G. PIERCE 201290
LEE C. I. KERSTAW SOUTH 2118B
990 WISACKY HWY.
BISHOPVILLE SC 29010

APPELLATE CASE NO: 2013-001818

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APR 02 2014

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM GREENVILLE COUNTY

S.C. SUPREME COURT^{D.} Garrison Hill, Circuit Court Judge

THOMAS GINISKI PIERCE,

Petitioner

- - VS - -

STATE OF SOUTH CAROLINA,

Respondent.

APPELLATE CASE NO: 2013-001818

PETITIONER'S PRO SE RESPONSE BRIEF

THOMAS GINISKI PIERCE

SCDC NO: 201290

Lee Correctional Institution
Kershaw Unit, Room No 2118
990 Wisacky Highway
Bishopville, South Carolina

29010

PETITIONER, PRO SE.

I N D E X

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ISSUES PRESENTED

FIRST CAUSE OF ACTION

WHETHER THE POST CONVICTION COURT ERRED IN NOT GRANTING DEFENDANT RELIEF WHEN THE RECORD FAILS TO SUPPORT A FINDING THAT NEITHER THE PLEA JUDGE OR APPOINTED COUNSEL ADVISED DEFENDANT, ... PRIOR TO HIS PLEA BEING ACCEPTED BY THE COURT, ... TO THE "MAXIMUM PUNISHMENT" THE COURT MAY IMPOSE TO A VOLUNTARY MANSLAUGHTER CHARGE.

SECOND CAUSE OF ACTION

WHETHER TRIAL COUNSEL'S STEWARDSHIP DURING DEFENDANT'S SENTENCING PHASE WAS INEFFECTIVE FOR NOT "OBJECTING" TO THE STATE'S DENIAL, THAT THERE WAS NO RECOMMENDATION AS TO SENTENCING - CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL.

THIRD CAUSE OF ACTION

WHETHER THE POST CONVICTION COURT ERRED IN NOT GRANTING DEFENDANT RELIEF, ... FOR COUNSEL'S INEFFECTIVENESS, BY NOT PETITIONING THE LOWER COURT, PRIOR TO HIS PLEA HEARING, TO SUPPRESS HIS STATEMENT, WHICH MAY HAVE BEEN MADE INVOLUNTARILY, AND IF SO, WOULD BE INADMISSIBLE AT TRIAL - CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL.

FOURTH CAUSE OF ACTION

WHETHER COUNSEL WAS INEFFECTIVE DURING DEFENDANT'S SENTENCING PHASE, BY FAILING TO INTRODUCE MITIGATING EVIDENCE OF DEFENDANT'S MENTAL HEALTH ISSUES: ... NOR DID COUNSEL FILE, AFTER SENTENCING, A MOTION FOR RECONSIDERATION BASED UPON THESE SAME FACTS - CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL.

ARGUMENT IN SUPPORT OF CAUSE

First Cause

WHETHER THE POST CONVICTION COURT ERRED IN NOT GRANTING DEFENDANT RELIEF WHEN THE RECORD FAILS TO SUPPORT A FINDING THAT NEITHER THE PLEA JUDGE OR APPOINTED COUNSEL ADVISED DEFENDANT, PRIOR TO HIS PLEA BEING ACCEPTED BY THE COURT, TO THE "MAXIMUM PUNISHMENT" THE COURT MAY IMPOSE IN A VOLUNTARY MANSLAUGHTER CHARGE. U.S.C.A. Const. Amend. 5th and 14th, DUE PROCESS.

A defendant entering a plea of guilty "MUST" be advised and the record must support, that the defendant was advised and understood, prior to the Court accepting his plea, of the "MAXIMUM PUNISHMENT" as well as, the "MANDATORY MINIMUM PUNISHMENT" the Court may impose, for a defendant's plea, to a criminal offense, to be "Voluntarily" and "Intelligently" entered into HINSON -vs- STATE, 297 S.C. 456, 377 S.E.2d 338 (1989). Also review: DOVER -vs- STATE, 405 S.E.2d 391 (S.C. 1991) the Court held; (that defendant's guilty plea was not voluntarily and understandingly made inasmuch as the defendant was never made aware that he could be sentenced to a prison term - in excess of 200 years).

A guilty plea "MUST" be an informed and intelligent decision of the defendant BOYKIN -vs- ALABAMA, 395 U.S. 238 (1969).

IN THE INSTANT CASE: ... the record will only support a finding, prior to defendant's plea being accepted by the Court, that he was only advised, to the mandatory minimum punishment the Court may impose:

THE COURT:...NOW, DO YOU UNDERSTAND THAT THE CHARGE OF VOLUNTARY MANSLAUGHTER CARRIES MORE THAN FIVE YEARS, SO YOU'D BE RESPONSIBLE FOR SUBMITTING A DNA SAMPLE IN COMPLIANCE WITH THE STATE DATA BASE REQUIREMENTS.

DEPENDANT:...YES YOUR HONOR.

SEE: PETITIONER'S APPENDIX, page 1 through 20; specifically, page 14, lines 13 - 16. Guilty Plea Hearing Transcripts (April 27, 2009).

Without the Court's on-the-record inquiry into defendant's knowledge and understanding to the mandatory "minimum" punishment, as well as, the maximum punishment the Court may impose on a Voluntary Manslaughter charge, would be insufficient to support the Court's acceptance of defendant's guilty plea as being voluntarily and intelligently entered.

Prejudice is found, ... because had defendant known he could have received a sentence of up to thirty (30) years for his plea, ... he would "NOT" have plead guilty to the charge of

Voluntary Manslaughter, but would have "insisted" - as originally planned - on going to trial upon the original charge.

ARGUMENT IN SUPPORT OF CAUSE

Second Cause

WHETHER TRIAL COUNSEL'S STEWARDSHIP DURING DEFENDANT'S SENTENCING PHASE WAS INEFFECTIVE FOR NOT "OBJECTING" TO THE STATE'S DENIAL, THAT THERE WAS NO RECOMMENDATION AS TO SENTENCING - CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL. U.S.C.A. Const. Amend 6.

Plea bargains must be kept. Validity of plea is vitiated if prosecutors' promises are not carried out. SANTOBELLO -vs- N.Y., 404 U.S. 257 (1971); JORDAN -vs- STATE, 374 S.E.2d 683 (S.C. 1988).

SOLICITOR PAOLETTI'S STATEMENT to the Court relevant to a recommendation:

MS. PAOLETTI: HOWEVER, IN EXCHANGE FOR HIS COOPERATION IN THE PROSECUTION OF THE REMAINING CO-DEFENDANTS IN THIS CASE, WHICH INCLUDES HIS TRUTHFUL TESTIMONY AT TRIAL, THE STATE HAS AGREED TO ALLOW THE DEFENDANT TO PLEAD TO VOLUNTARY MANSLAUGHTER WITH SENTENCING TO BE DEFERRED. AND ANY RECOMMENDATION AS TO SENTENCE IS TO BE CONDITIONED ON HIS FULL COOPERATION AND TRUTHFUL TESTIMONY AT THE TRIAL OF

ANY CO-DEFENDANTS. ADDITIONALLY, YOUR HONOR, OTHER CHARGES ARE BEING DISMISSED AS A PART OF THIS PLEA.

SEE: PETITIONER'S APPENDIX, page 12, lines 17-25, Guilty Plea Hearing Transcripts (April 27, 2009).

This dialogue between Solicitor Paoletti and the Court left defendant with the understanding that the sentence he would receive - is based upon his full cooperation and truthful testimony he provides at the trial of any co-defendant.

In support of this colloquy, on defendant's "sentencing sheet" the (Recommendation Box) was checked to collaborate this condition. SEE: PETITIONER'S APPENDIX, page 37, Sentencing Sheet.

However, during sentencing, Solicitor Paoletti misinformed the Sentencing Court, by stating: - the State has not recommend any condition, relevant to the sentence defendant may receive:

Petitioner would further argues that based upon his willingness to testify against his co-defendant, in exchange for a significantly reduced sentence, played a role in his decision to plea, which may have, influenced his co-defendant's defense to stop his trial and plead guilty.

SOLICITOR PAOLETTI'S STATEMENT to the Court relevant to any recommendation, during defendant's sentencing phase.

MS. PAOLETTI: HE'S STILL WILLING TO COOPERATE. HE MET WITH ME AS MANY TIMES AS I ASKED. HE WAS WILLING TO MEET WITH ME WITHOUT HIS ATTORNEY. AND MILLS, UNDERSTANDABLY, WANTED TO BE PRESENT FOR THOSE MEETINGS. AND THEY MADE THEMSELVES AVAILABLE, A LARGE PART OF THE REASON WHY I BELIEVE MR. ARNOLD PLEAD YESTERDAY.

THE COURT: IS THERE A RECOMMENDATION AS TO SENTENCING?

MS. PAOLETTI: NO SIR, YOUR HONOR

THE COURT: OKAY, ALL RIGHT, SO I NEED TO SCRATCH THROUGH THAT ON THIS SENTENCE SHEET?

MS. PAOLETTI: YES SIR, THAT'S INCORRECT IF IT SAYS A RECOMMENDATION

THE COURT: OKAY.

SEE: PETITIONER'S APPENDIX, page 26, lines 13 through 25, Defendant's Sentencing Hearing Transcripts (September 8, 2010). HOWEVER, revisit: PETITIONER'S APPENDIX, page 12, lines 17 through 25, Guilty Plea Hearing Transcripts (April 27, 2009), which contradicts Solicitor Paoletti's colloquy to the plea court, during defendant's guilty plea hearing.

The agreement defendant entered into with the State at

his Guilty Plea Hearing (April 27, 2009), as to defendant's obligation, with respects to a sentence he would receive was fulfilled when the State allowed Mr. Arnold to stop his trial and enter a plea of guilty to a lesser offense and a reduced sentence. As stated by Solicitor Paoletti, the State believes the "reason" Mr. Arnold stopped his trial was because his defense had knowledge that defendant was prepared to testify against him. However, the State chose to allow Mr. Arnold to stop his trial and enter a plea. This event prevented the defendant at sentencing, from receiving the benefit of his testimony as a condition to a reasonably low sentence.

Prejudice is found, ... because had defendant known he would not receive the benefit, of his testimony, as promised by the State, and then be sentenced by a different judge than the judge which accepted his plea, would have a reasonable probability that he did not receive the sentence, he would have, if he would have been sentence by the judge which accepted his plea,... he would not have plead guilty, but would have "insisted" as originally planned, on proceeding to trial upon the original charge.

ARGUMENT IN SUPPORT OF CAUSE

Third Cause

WHETHER THE POST CONVICTION COURT ERRED IN NOT GRANTING DEFENDANT RELIEF - FOR COUNSEL'S INEFFECTIVENESS - BY NOT PETITIONING THE LOWER COURT - PRIOR TO HIS PLEA HEARING - TO CHALLENGE THE ADMISSIBILITY OF DEFENDANT'S STATEMENT - WHICH MAY HAVE BEEN MADE INVOLUNTARILY - AND IF SO - WOULD BE INADMISSIBLE AT TRIAL - CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL. U.S.C.A. Const Amend. 6th and 14th.

An involuntary confession is a confession obtained, whereby tactics are installed, upon an accused, conveyed by another, for the purpose of obtaining a confession, by acting on the will of the confessor, as to fetter his freedom of choice, as to whether he should unwillingly confess. The Due Process Clause of the Fourteenth Amendment bars the admission of involuntary confessions.

The Fifth Amendment grants a suspect the Privilege against Self-incrimination, yet many suspect are still pressured into confessing anyway. Police interrogations of suspects have long been a controversial area, because questioning of suspects takes place behind police doors, with little empirical evidence to document what actually occurs in these interrogations.

Without some form of "documentation" to the issues arised within these interrogations, the protections afforded to a

defendant in MIRANDA -vs- ARIZONA, 384 U.S. 436, 86 S.Ct. 1602 (1966), can be illusory. A Court's supervisory power to ensure fair administration of justice; all custodial interrogations, including any information about rights; any waiver of those rights; and all questioning should be supported by "unquestionable" documentation; especially, when questioning occurs at a place of detention, in support of defendant's DUE PROCESS rights, in a criminal proceeding.

An audio and/or video taping of these interrogations would provided a more accurate record; thus, reducing the number of: disputes - verses - the validity of MARANDA WARNINGS, and the voluntariness of any purported waivers. In addition, an accurate record makes it possible for defendant to challenge misleading or false testimony, and at the same time, protectsd the state against meritless claims.

Recognizing that the trial and appellate courts consistently credit the recollection of police officers over defendants, regarding the events that took place during these uncollorbatd and undocumented interrogations, it would seem that a "fair practice of administrative justice" - the Courts must demand these reasonable and necessary safeguard, "essential" to the adequate protection of the accused's right to counsel; his right against self-incrimination, and ultimately his right to a fair trial (emphasis added).

Police officers may sometimes give the required warnings, but then engage in tactics that make a confession

involuntary. An audio and/or video tape of these interrogations would prevent misguided justice.

In BRAM -vs- UNITED STATES, 168 U.S. 532, 18 S.Ct. 183 (1879), the Court expanded the common law ruling holding that a confession obtained by "any" direct or implied tactics, or by "any" other improper influence, is not voluntary.

IN THE INSTANT CASE: ... Petitioner during a discussion with his appointed counsel, appraised counsel to the events leading up to police obtaining his confession from him - which was, - obtained while he was under the influence of the drugs known as "SEROQUEL" "RISPERDAL" "TRAZODONE" and "CELEXA" to treat a mental disorders ("Schizophrenia") - whereby defendant was placed in a small interrogation room, by law enforcement, filled with police interrogators for hours; - threaten if he did not cooperate, he may never get out of prison; denied any form of a restroom break or break from police interrogative tactics; denied food and drink until he confessed, as well as, denied access to an attorney, even after defendant, on several occasions, specifically requested one be present. **SEE: PETITIONER'S APPENDIX**, page 38, (SCDC - Medication Administration Record); page 39, (GCDC - Psychiatric Referral Form); page 40, (GCDC - Psychiatric Referral Form); page 41, (GCDC - Medical Clinic, Progress Notes); page 42, (GCDC - Medical Clinic, Physician's Orders); page 43, (SCDC - Health Services, Medical Summary); page 44, (SCDC - Health Services, Medical Summary); page 45, (SCDC - Health Services,

Medical Summary) and page 46 Dr. Kirby's hand written diagnosis of defendant (MI-2 Seriously Mental Illness).

However, in the beginning, trial counsel relayed to defendant that: - ("Because you confessed there is little to investigate that may overcome your confession." "Because of your confession there's little chance of receiving a favorable decision by a jury").

Petitioner at his PCR Evidentiary Hearing, testified that he had informed counsel of these improper tactics to obtain a confession while he was under the influence of the aforementioned mental health drugs; however, counsel still refused to file any motion to challenge the admissibility of his statement or his competency to make such statement. **REVIEW: PETITIONER'S APPENDIX**, page 78 thru page 100, Defendant's Testimony, (PCR Hearing Transcripts), June 19, 2013.

Then - by correspondence from trial counsel - to defendant, dated March 30, 2009, counsel informed defendant that: ("I have completed my research in regards to the admissibility of your statement and I believe we have a good argument to keep it out. However, I cannot guarantee you that it will be suppressed by the judge prior to your trial"). **SEE: PETITIONER'S APPENDIX**, page 146 and 147, correspondence, (March 30, 2009).

Counsel with the knowledge that his client insisted on going to trial; with the results of his investigation relevant to

defendant's statement - was ineffective for not petitioning the trial court under JACKSON -vs- DENO, 378 U.S. 368, 84 S.Ct. 1774 (1964), to challenge the admissibility of defendant's statement; as well as, counsel was ineffective for not requesting a Competency Hearing pursuant to S.C. Code Ann. § 44-23-430 after defendant's Court Ordered examination pursuant to S.C. CODE ANN. § 44-23-410 to determine his mental condition, while under the aforementioned drugs, to make said statement. BLAIR -vs- STATE, 273 S.E.2d 536 (1981).

Prejudiced found because if counsel had petitioned the lower court for a JACKSON -vs- DENO Hearing, prior to the scheduled trial date, to determine the admissibility of defendant's statement being obtained upon improper police tactics, and requesting a hearing pursuant to § 44-23-430, BLAIR -vs- STATE, supra, to determine the facts of defendant's mental competency, while under the influence of these mental health drugs, and if the Court would have granted counsel's motions, to have defendant's statement inadmissible, - defendant would not have plead guilty to a charge of Voluntary Manslaughter, but would have "insisted" - as originally planned, on going to trial under the original charge - constituted Ineffective Assistance of Counsel, U.S.C.A. Const. Amend. 6.

ARGUMENT IN SUPPORT OF CAUSE

Fourth Cause

WHETHER COUNSEL WAS INEFFECTIVE DURING DEFENDANT'S SENTENCING PHASE, BY FAILING TO INTRODUCE MITIGATING EVIDENCE OF APPLICANT'S MENTAL HEALTH ISSUES: ... NOR DID COUNSEL FILE, AFTER SENTENCING, A "MOTION FOR RECONSIDERATION" BASED UPON THESE SAME FACTS - CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL. U.S.C.A. Const Amend. 6.

Our United States Supreme Court has recognized that defense counsel "must" conduct all reasonably available investigations, relevant to mitigating evidence, to present and support a sentencing factor,... and any evidence to rebut any aggravating evidence that may be introduced by the prosecution. WIGGINS -vs- SMITH, 539 U.S. 510, 123 S.Ct. 2527.

IN THE INSTANT CASE: defendant advised counsel of the mental issues he faced throughout his life, leading up to the time of these charges:

1. Defendant as a child, entering grammar school until high school, was assigned to special education classes.
2. Defendant in his early teens, spent five (5) years as a "patient" in "MARSHALL I. PICKENS BEHAVIORAL CENTER, in

Greenville, SC.

3. As an adult defendant spent 3 to 4 months as a "patient" in the PATRICK B. HARRIS PSYCHIATRIC HOSPITAL, in Anderson, SC.
4. Defendant, through attorney Tom J. Ervin, of Greenville, SC., assisted defendant in applying and receiving compensation through the Social Security Administration, for his mental disfunctions - payee in this matter was defendant's mother, Annie M. Pierce.
5. Defendant while confined at the Greenville County Detention Center, was diagnose by Dr. Ernest C. Martin, Psychiatrist, as being "Schizophrenic." REVIEW: PETITIONER'S APPENDIX, page 39 thru 42, "GCDC - Psychiatric Referral Form" (2); "GCDC - Progress Notes" and "GCDC - Physician's Orders
6. Defendant while confined at the Kirkland Correctional Center (R&E), awaiting trial on pending charges (Indictment No: 2009-GS-23-3739A), Murder was diagnosed by institutional psychiatrist, as "schizophrenia" and was placed on "Seroquel" "Risperdal" "Trazodone" and "Celexa." SEE: PETITIONER'S APPENDIX, page 43, SCDC - HEALTH SERVICES, MEDICAL SUMMARY: page 44, SCDC - HEALTH SERVICES, MEDICAL SUMMARY; and page 45, SCDC - HEALTH SERVICES, MEDICAL SUMMARY.

7. Defendant while confined in SCDC for unrelated charges (awaiting trial on pending charges), was diagnose by Michael J. Kirby, Agency Psychiatrist, as being "MI-2 serious mental ill", "Psychosis" due to traumatic brain damage. SEE: PETITIONER'S APPENDIX, page 46, Dr. Kirby's personal hand writing, relevant to defendant's diagnosis.

Counsel failure to advise the Sentencing Court of defendant's mental health issues (mitigating evidence), for the Court's consideration, prior to sentencing, which may have had a reasonable probability in defendant receiving a lower sentence than twenty-four (24) years; nor did counsel file or consider filing a RULE 59(e) Motion, after sentencing - based upon these same facts - constituted INEFFECTIVE ASSISTANCE OF COUNSEL.

Prejudice found - because counsel's failure to introduce any mitigating evidence (defendant's mental health issues), at sentencing, to support a sentencing factor; nor did counsel consider filing a RULE 59(e) Motion, after sentencing, based upon these same facts - defendant would not have agreed to plead guilty in April of 2009, before the Honorable Eugene C. Griffith, Jr., - then sentenced a year later, September of 2010, before the Honorable Robin B. Stillwell, a judge which presided over a co-defendant's trial the previous day,... but would have "insisted" upon going to trial upon the original charge, as planned.

CONCLUSION

For the foregoing reasons, Petitioner Thomas Giniski Pierce, respectfully requests this Court grant him relief, and remand his case for a new trial.

APPLICANT FOREVER PRAYS:

Respectfully submitted,

Thomas Giniski Pierce #201290

THOMAS GINISKI PIERCE

SCDC No: 201290

Lee Correctional Institution

Kershaw Unit, Room No: 2118

990 Wisacky Highway

Bishopville, South Carolina

29010

PETITIONER, PRO SE.

This 26 day of MARCH, 2014.

As to release, discharge, and recommitment of mentally ill persons, see §§ 44-17-810 to 44-17-900.

As to Mentally Retarded Persons Act, see §§ 44-21-10 et seq.

As to committees and readjudication of mental capacity, see §§ 44-23-710 et seq.

As to commitment of tuberculosis patients, see §§ 44-31-110 to 44-31-190.

As to admission or commitment of alcoholics and drug addicts, see §§ 44-51-10 et seq.

ARTICLE 5

FITNESS TO STAND TRIAL

Sec.

44-23-410. Determination of capacity of person charged with crime to stand trial; duty of judge.

44-23-420. Designated examiners' report.

44-23-430. Hearing on fitness to stand trial; order of court.

44-23-440. Finding of unfitness to stand trial shall not preclude defense on merits.

44-23-450. Reexamination of finding of unfitness.

44-23-460. Procedure when superintendent believes person charged with crime no longer requires hospitalization.

§ 44-23-410. Determination of capacity of person charged with crime to stand trial; duty of judge.

Whenever a judge of the circuit court, county court, or family court has reason to believe that a person on trial before him, charged with the commission of a criminal offense, is not fit to stand trial because such person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity, the judge shall:

(1) Order examination of such person by two examiners designated by the Department of Mental Health or the Mental Retardation Department or both; such examination shall be made within fifteen days after the court's order, or

(2) Order such person committed for examination and observation to an appropriate facility for a period not to exceed fifteen days. If at the end of fifteen days the examiners have been unable to determine whether the person is fit to stand trial, the superintendent of the facility shall request in writing an additional period for observation not to exceed fifteen days. If such person or his counsel so requests, the person may be examined additionally by a designated examiner of his choice. The report of such examination shall be admissible as evidence in subsequent hearings pursuant to § 44-23-430. *Provided*, that the court may prescribe the time and conditions under which such independent examination is conducted.

HISTORY: 1962 Code § 32-977; 1974 (58) 2642.

Cross references—

As to pleading and trial in criminal cases, see §§ 17-23-10 et seq.

As to transfer of persons committed under this section to facility at Department of Corrections building, see § 44-11-20.

Research and Practice References—

21 Am Jur 2d, Criminal Law § 68, 69.

44 CJS, Insane Persons § 130.

8 Am Jur Proof of Facts, Mental Disorder and Incapacity Proof No. 3 (mental incompetency at time of trial).

1981 Survey: Criminal law; competency to stand trial examination and hearing. 34 SC L Rev 93, August 1982.

ALR and L Ed Annotations—

Validity and construction of statutes providing for psychiatric examination of accused to determine mental condition. 32 ALR2d 434.

Amnesia as affecting capacity to commit crime or stand trial. 46 ALR3d 544.

Necessity or propriety of bifurcated criminal trial on issue of insanity defense. 1 ALR4th 884.

Right of accused in criminal prosecution to presence of counsel at court-appointed or approved psychiatric examination. 3 ALR4th 910.

Power of court, in absence of statute, to order psychiatric examination of accused for purpose of determining mental condition at time of alleged offense. 17 ALR4th 1274.

Modern status of test of criminal responsibility—federal cases. 56 ALR Fed 326.

CASE NOTES

Judge did not abuse discretion in refusing to grant motion for mental examination based upon defendant's allegation that he did not recall anything of robbery and fact that defendant knew victims. *State v Bradshaw* (1977) 269 SC 642, 239 SE2d 652.

✓ Trial judge retains discretion to determine whether defendant should be given mental examination under statute [§ 44-23-410] providing for mental examination whenever judge has reason to believe defendant lacks certain mental capacity. *State v Bradshaw* (1977) 269 SC 642, 239 SE2d 652.

Failure of judge to direct further examination and hearing to determine defendant's competency to stand trial did not constitute violation of § 44-23-410, nor deprive defendant of due process of law, where trial judge had before him finding of previous presiding judge that defendant was fit to stand trial 2½ months earlier, the record failed to show facts to warrant further examination or hearing, and defendant's counsel clearly refused to demand further competency hearing.

State v Drayton (1978) 270 SC 582, 243 SE2d 458.

Ordering competency examination is within discretion of trial judge, and refusal to grant such order will not be set aside unless there is clear showing of abuse of such discretion. *State v Drayton* (1978) 270 SC 582, 243 SE2d 458.

A defendant's failure to request a hearing under § 44-23-430 did not constitute a waiver of his right to such a hearing following an examination under § 44-23-410 that reversed the finding of a prior examination which had found defendant incompetent to stand trial. *State v Blair* (1981) 275 SC 529, 273 SE2d 536, later op 276 SC 644, 282 SE2d 596.

Under § 44-23-410, an examination to determine a criminal defendant's competency to stand trial is discretionary with the trial judge, and is mandated only upon his finding of its necessity. *State v Adams* (1983) 279 SC 228, 306 SE2d 208, cert den (US) 78 L Ed 2d 730, 104 S Ct 558.

In a murder prosecution, the trial court's order committing defendant to the custody of the South Carolina Department of Mental Health pursuant to

§ 44-23-410 was interlocutory in nature and thus not appealable. *State v Dingle* (1983) 279 SC 278, 306 SE2d 223.

ATTORNEY GENERAL'S OPINIONS

A Court may encompass in its original observation order a provision for continued hospitalization until such time as the hearing required by Code 1962 § 32-979 [Code 1976 § 44-23-430] may be held. Op Att'y Gen., No

3993, p 66. Compulsory mental examination of criminal defendant under statutory procedure does not violate any constitutional right of the accused. 1969-70 Ops. Att'y Gen., No 2910, p 156.

§ 44-23-420. Designated examiners' report.

Within five days of examination under § 44-23-410(1) or at the conclusion of the observation period under § 44-23-410(2), the designated examiners shall make a written report to the court which shall include:

- (1) A diagnosis of the person's mental condition, and
- (2) Clinical findings bearing on the issues of whether or not the person is capable of understanding the proceedings against him and assisting in his own defense, and if there is a substantial probability that he will attain that capacity in the foreseeable future.

The report of the designated examiners shall not contain any findings nor shall the examiners testify on the question of insanity should it be raised as a defense unless further examination on the question of insanity is ordered by the court.

HISTORY: 1962 Code § 32-978; 1974 (58) 2642.

Cross references—

As to pleading and trial in criminal cases, see §§ 17-23-10 et seq.

Research and Practice References—

21 Am Jur 2d, Criminal Law §§ 68, 69.

8 Am Jur Proof of Facts, Mental Disorder and Incapacity Proof No. 3 (mental incompetency at time of trial).

ALR and L Ed Annotations—

Validity and construction of statutes providing for psychiatric examination of accused to determine mental condition. 32 ALR2d 434.

Amnesia as affecting capacity to commit crime or stand trial. 46 ALR3d 544.

§ 44-23-430. Hearing on fitness to stand trial; order of court.

Upon receiving the report of the designated examiners the court shall set a date for and notify the person and his counsel of a hearing on the issue of his fitness to stand trial. If, in the

judgment of the designated examiners or the superintendent of the facility if the person has been detained, the person is in need of hospitalization, the court with criminal jurisdiction over the person may authorize his detention in a suitable facility until the hearing. The person shall be entitled to be present at the hearings and to be represented by counsel. If upon completion of the hearing and consideration of the evidence the court finds that:

(1) The person is fit to stand trial, it shall order the criminal proceedings resumed; or

(2) The person is unfit to stand trial for the reasons set forth in § 44-23-410 and is unlikely to become fit to stand trial in the foreseeable future, the solicitor responsible for the criminal prosecution shall initiate judicial admission proceedings pursuant to §§ 44-17-510 through 44-17-610 or § 44-21-90 within sixty days during which time the court shall order him hospitalized; or

(3) The person is unfit to stand trial but likely to become fit in the foreseeable future, the court shall order him hospitalized for an additional sixty days. If the person is found to be unfit at the conclusion of the additional period the solicitor responsible for the criminal prosecution shall initiate judicial admission proceedings pursuant to §§ 44-17-510 through 44-17-610 or Article 1 of Chapter 21 of this title within fourteen days during which time the person shall remain hospitalized.

Subject to the provisions of § 44-23-460, patients against whom criminal charges are pending shall have all the rights and privileges of other involuntarily hospitalized patients.

Persons against whom criminal charges are pending but who are not ordered hospitalized following judicial admission proceedings shall be released.

HISTORY: 1962 Code § 32-979; 1974 (58) 2642; 1977 Act No. 99 § 16.

Cross references—

As to pleading and trial in criminal cases, see §§ 17-23-10 et seq.

As to transfer of persons committed under this section to facility at Department of Corrections building, see § 44-11-20.

Research and Practice References—

21 Am Jur 2d, Criminal Law §§ 70 et seq.

44 CJS, Insane Persons § 130.

ALR and L Ed Annotations—

Appealability of orders or rulings, prior to final judgment in criminal case, as to accused's mental competency. 16 ALR3d 714.

Competency to stand trial of criminal defendant diagnosed as "mentally retarded"—modern cases. 23 ALR4th 493.

Incompetency at time of offense or trial as ground for vacating or setting aside sentence under 28 USC § 2255. 7 ALR Fed 565.

Brian P. Johnson - Attorney At Law
522 North Church St.
Greenville SC 29601

August 26, 2013

HELLO, MR. JOHNSON,
I RECEIVED Judge Hill order dismissing
my P.C.R. CASE. HOWEVER, I WANT YOU TO FILE
A RULE 59 E MOTION, BECAUSE AS YOU CAN
SEE AND READ in Judge Hill ORDER he did
NOT give A RULING ON ALL OF my INEFFECTIVE
ASSISTANCE OF COUNSEL ISSUES AS YOU WILL
SEE ON his ORDER PAGE 2 AT VERY BOTTOM
OF PAGE, THE COURT DISREGARDED my "AMEND-
MENT APPLICANT'S APPLICATION FOR POST-
CONVICTION RELIEF to INCORPORATE CLAIMS FOR
RELIEF," that I told (you) MR. JOHNSON to
FILE AND I MYSELF FILED THESE SAME
DOCUMENTS WITH THE COURTS SUBMITTED
JUNE 19, 2013 P.C.R. HEARING Judge Hill
SHOULD HAVE RULED ON ALL ISSUES. ALSO I
WANT TO KNOW, WHY DID IT TAKE UNTIL
August 23, 2013, TO GET THIS ORDER TO ME,
I AM SURE your OFFICE GOT IT AROUND THE
9TH OR 10TH August 2013. * PLEASE SEND
ME A COPY OF my P.C.R. transcript held
ON 6-19-2013. ANOTHER IMPORTANT REASON
WHY I WANT your OFFICE TO FILE 59E RULE,
IS IN my PLEA transcript 4-27-2009 pg. 3
LINE 19-22, WHERE THE PLEA Judge

A)

Failed to inform me of the minimum
and maximum of sentence and the pre-
trial conference that my trial attorney
and solicitor had with Judge Griffith,
before court, should have been addressed
by P.C.R. Judge Hill and he did not.
Thank you!

Respectfully,
Mr. Thomas G. Pierce #201290
L.C.I. Kershaw South 2118
990 Wisacky Hwy.
Bishopville S.C. 29010

1
HONORABLE D. G. Hill
G'VILLE COUNTY COURTHOUSE
305 E. NORTH ST. STE 213
G'VILLE S.C. 29601

SEP 6, 2013

TO: HONORABLE D. GARRISON HILL
FROM: THOMAS G. PIERCE - APPLICANT
RE: THOMAS G. STATE V. S.C. STATE
2011-CP-23-5179 (CONCERNING APPLICANT
REQUESTED 59 (E) MOTION thru ASSIGN COUNSEL)

DEAR HONORABLE JUDGE HILL,
MY NAME IS THOMAS G. PIERCE. MY APPOINTED
COUNSEL NAME IS MR. BRIAN P. JOHNSON, ESQUIRE.
I WAS REPRESENTED BY ATTORNEY JOHNSON
AT P.C.R. HEARING ON JUNE 19, 2013, THAT
(YOU) HONORABLE JUDGE HILL PRESIDED OVER.
HOWEVER ON AUGUST 1, 2013 THE HONORABLE
JUDGE HILL ENTER HIS ANSWER DISMISSING
APPLICANT P.C.R. APPLICATION. APPLICANT RE-
CEIVED THE SIGNED ORDER FROM THE LEE
INSTITUTIONAL MAILROOM ON AUGUST 23, 2013.
ONCE APPLICANT RECEIVED THE COURT'S
ORDER, APPLICANT IMMEDIATELY WROTE TO
HIS ATTORNEY MR. JOHNSON, EXPLAINING
THAT THE COURT LEFT OUT
-CONTINUE-

2

APPLICANT (4) FOUR IMPORTANT ISSUES:

- 1). TRIAL COUNSEL WAS INEFFECTIVE FOR NOT PRESENTING EVIDENCE OF S.C. DEPT OF CORRECTIONS PSYCHIATRIST DR. MICHAEL J. KIRBY DIAGNOSIS THAT APPLICANT WAS MENTALLY ILL, HOWEVER ON JUNE 19, 2013 APPLICANT SUBMITTED IN P.C.R. HEARING A DOCUMENT THAT SHOWED IN DR. KIRBY HANDWRITING HIS DIAGNOSIS.
- 2). TRIAL COUNSEL WAS INEFFECTIVE FOR NOT PETITIONING THE COURT'S AND NOT REQUESTING FOR THE GRAND JURY IMPANELMENT DOCUMENTS, PURSUANT TO U.S.C. AMEND. 14, S.C. CODE 1976, § 14-7-1700, & 70, SCA Crim. P. RULE 5.
- 3). TRIAL COUNSEL WAS INEFFECTIVE FOR LETTING MY DUE-PROCESS b. VIOLATED FOR NOT OBJECTING TO APPLICANT PLEADING GUILTY IN FRONT OF ONE JUDGE (HONORABLE E.C. GRIFFITH,) AND BEING SENTENCE BY ANOTHER JUDGE THE (HONORABLE ROBIN STILLWELL.)
- 4). LETTER WROTE ON MARCH 30, 2009 BY TRIAL COUNSEL R. MILLS ARIAIL, JR THAT SHOWS MR. ARIAIL CONTRADICTED HIMSELF ABOUT CONFESSION BY APPLICANT BEING SUPPRESSED: ALSO SUBMITTED IN P.C.R. HEARING JUNE 19, 2013

-Continue-

3

APPLICANT POSITION AND CONCERN IS THAT
ONCE HE REALIZE ALL OF HIS ISSUES STATED
ABOVE WAS NOT IN THE ORDER. APPLICANT
IMMEDIATELY WROTE TO ATTORNEY JOHNSON
IN A TIMELY FASHION MANNER TO FILE A
RULE 59(E) TO ALTER OR AMEND JUDGEMENT
PURSUANT TO S.C.R.C.P. August 5 And 26, 2013,
WROTE ATTORNEY JOHNSON TO FILE RULE 59(E) MOTION.
AT THIS TIME, APPLICANT IS ASKING THE
HONORABLE JUDGE FOR ANY INFORMATION
CONCERNING APPLICANT'S REQUEST MOTION TO
ALTER OR AMEND. THANK YOU IN ADVANCE
FOR YOUR TIME AND ATTENTION!

RESPECTFULLY, #
MR. THOMAS C. PIERCE 201290
L.C.I. KER SOUTH 2118 B
990 WISACKY HWY.
BISHOPVILLE SC 29010-1775



ALAN WILSON
ATTORNEY GENERAL

September 28, 2013

Thomas G. Pierce, #201290
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina 29010

Re: Thomas G. Pierce v. State
2011-CP-23-5179

Dear Mr. Pierce:

Judge Hill has asked me to respond to the letter you sent him dated September 6, 2013.

Your post-conviction relief hearing was held on June 19, 2013 and Judge Hill signed an order of dismissal that was filed on August 7, 2013. Your post-conviction relief attorney filed a notice of appeal dated August 21, 2013 at the South Carolina Supreme Court. A Rule 59(e) motion was not filed in this case and Judge Hill no longer has jurisdiction in the matter because jurisdiction is now at the Supreme Court. To the best of my knowledge, the Office of Appellate Defense will be representing you on your appeal. Therefore, if you have any questions about your case, you need to direct them to your attorney at the Office of Appellate Defense.

Sincerely,

Karen C. Ratigan
Senior Assistant Deputy Attorney General

cc: Honorable D. Garrison Hill
Brian P. Johnson, Esquire
Office of Appellate Defense

RECEIVED
USDC CLERK, COLUMBIA, SC

OCT. 31, 2013

2013 NOV -4 PM 3:09

CLERK, U.S. District Court For District
of South Carolina
901 Richland St
Columbia SC 29201

RE: THOMAS G. PIERCE V. STATE 2011-CP-23-5179.
HELLO, MY NAME IS THOMAS G. PIERCE AND I
WANT YOU TO PLEASE FILE THE ENCLOSED PAPER-
WORK WITH THE DISTRICT COURTS, REASON WHY IS
THE LETTERS WILL SHOW HOW I ASK MY P.C.R.
ATTORNEY MR. BRIAN P. JOHNSON - 522 NORTH Church
ST. GREENVILLE S.C. 29601, TO FILE A RULE 59(E)
MOTION THAT HE NEVER FILE WHEN I REPEATEDLY
ASK HIM TOO, WHICH SHOWED HIS INEFFECTIVE
ASSISTANCE OF COUNSEL. YOU CAN ALSO SEE THAT
I WROTE THE P.C.R. JUDGE D. GARRISON HILL.
MR. JOHNSON WAS NOTIFIED IN A TIMELY FASHION
MANNER, TO FILE RULE 59(E). PLEASE MAKE RECORD
OF THIS. THANK YOU IN ADVANCE!

RESPECTFULLY,
MR. THOMAS G. PIERCE #201290
L. C. I. Kershaw South 2118
990 WISACKY Hwy.
BISHOPVILLE SC 29010.

I N D E X

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF GENERAL SESSIONS
2009-GS-23-3739

STATE OF SOUTH CAROLINA,

vs.

TRANSCRIPT OF RECORD

THOMAS GINISKI PIERCE,
DEFENDANT.

COPY

April 27, 2009
Greenville, South Carolina

B E F O R E:

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

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

LEIGH B. PAOLETTI, ESQ.
Assistant Solicitor

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

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

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

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

P R O C E E D I N G S

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

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

Raise your right hand, please.

WHEREUPON,

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

THE CLERK: State your full name for the record.

DEFENDANT PIERCE: Thomas Giniski Pierce.

THE CLERK: Thank you.

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

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

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

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

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

1 carries, and such as that?

2 MR. ARIAIL: He does, Your Honor.

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

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

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

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

13 MR. ARIAIL: I do, Your Honor.

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

16 DEFENDANT PIERCE: 41, sir.

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

18 DEFENDANT PIERCE: Twelfth grade.

19 THE COURT: Are you married?

20 DEFENDANT PIERCE: Separated.

21 THE COURT: How many children do you have?

22 DEFENDANT PIERCE: Five.

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

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

6 Do you understand that?

7 DEFENDANT PIERCE: Yes, Your Honor.

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

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

13 Do you understand that?

14 DEFENDANT PIERCE: Yes, Your Honor.

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

20 Do you understand that?

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

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

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

4 Do you understand that?

5 DEFENDANT PIERCE: Yes, Your Honor.

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

11 Do you understand that?

12 DEFENDANT PIERCE: Yes, Your Honor.

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

17 Do you understand that?

18 DEFENDANT PIERCE: 'Yes, Your Honor.

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

21 Do you understand that?

22 DEFENDANT PIERCE: Yes, Your Honor.

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

1 may have.

2 Do you understand that?

3 DEFENDANT PIERCE: Yes, Your Honor.

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

6 DEFENDANT PIERCE: Yes, Your Honor.

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

9 DEFENDANT PIERCE: Yes, Your Honor.

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

13 DEFENDANT PIERCE: Yes, Your Honor.

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

20 DEFENDANT PIERCE: Yes, Your Honor.

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

23 DEFENDANT PIERCE: Yes, Your Honor.

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

25 DEFENDANT PIERCE: Yes, Your Honor.

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

4 DEFENDANT PIERCE: Yes, sir.

5 MS. PAOLETTI: Thank you, Your Honor.

6 May it please the Court.

7 THE COURT: Yes, ma'am.

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

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

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

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

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

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

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

1 the vehicle.

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

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

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

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

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

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

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

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

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

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

16 THE COURT: Thank you, ma'am.

17 MS. PAOLETTI: Thank you.

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

22 MS. PAOLETTI: Yes, sir.

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

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

5 THE COURT: Thank you, ma'am.

6 MS. PAOLETTI: Yes, sir.

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

9 DEFENDANT PIERCE: Yes, Your Honor.

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

12 DEFENDANT PIERCE: Yes, Your Honor.

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

17 DEFENDANT PIERCE: Yes, Your Honor.

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

20 DEFENDANT PIERCE: Yes, Your Honor.

21 THE COURT: And you understand that --

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

24 MR. ARIAIL: Yes, Your Honor.

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

1 different than that.

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

4 DEFENDANT PIERCE: Yes, Your Honor.

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

8 Have you had an opportunity to see this report?

9 DEFENDANT PIERCE: Yes, Your Honor.

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

11 DEFENDANT PIERCE: Yes, Your Honor.

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

14 DEFENDANT PIERCE: No, sir.

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

17 DEFENDANT PIERCE: Yes, sir.

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

23 DEFENDANT PIERCE: Yes, Your Honor.

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

1 presented?

2 DEFENDANT PIERCE: Yes, Your Honor.

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

5 DEFENDANT PIERCE: No, Your Honor.

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

8 DEFENDANT PIERCE: No, Your Honor.

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

10 DEFENDANT PIERCE: No, Your Honor.

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

13 DEFENDANT PIERCE: Yes, Your Honor.

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

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

19 Just a moment, Your Honor.

20 THE COURT: That's all right.

21 MS. PAOLETTI: It's 2009 --

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

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

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

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

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

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

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

24 Do you understand that?

25 DEFENDANT PIERCE: Yes, Your Honor.

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

6 DEFENDANT PIERCE: Yes, Your Honor.

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

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

11 THE COURT: -- rather than today.

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

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

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

19 THE COURT: I accept your plea.

20 MS. PAOLETTI: Thank you, Judge.

21 MR. ARIAIL: Thank you, Your Honor.

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

24 DEFENDANT PIERCE: Could I say something?

25 THE COURT: Absolutely.

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

THE COURT: Very good.

Thank you.

*****END OF TRANSCRIPT OF RECORD*****

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

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

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

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



Greenville Police Department
Investigative Services Division



March 7, 2007

To Whom It May Concern:

This is to confirm that Thomas Pierce has been instrumental in solving numerous cases for the Greenville Police Department. He has worked with myself and Captain Ed Blackburn for over ten years, successfully taking several violent offenders off the street. Attached is a list of charges that Thomas has assisted us with over the years.

Sincerely,

Sgt. Terry Christy

4 McGee Street / Greenville, South Carolina 29601
(864)467-5342

1 stuff.

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

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

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

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

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

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

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

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

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

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

13

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

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

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

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

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

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

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

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

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

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

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

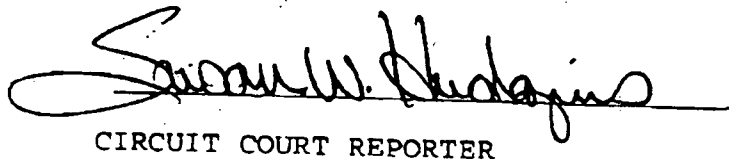
19 (END OF REQUESTED TRANSCRIPT OF RECORD)

1 CERTIFICATE OF REPORTER

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

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

12 NOVEMBER 1, 2011

13
14
15
16


CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

37

COUNTY OF Greenville

STATE

VS.

Thomas Giniski Pierce

AKA:

Race: B Sex: M Age: 41

DOB: 03-26-1968 SS#: 251-25-3094

Address: 111 Randall Street

Greenville, SC 29605

DL#: 008573230 SID#:

INDICTMENT/CASE#: 09- 3739A

A/W#: 1819819 - REF

Date of Offense: 9/27/2006

S.C. Code § : 16-03-0010.0020

CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: Voluntary Manslaughter

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. ☒ Defendant initial)The plea is: ☐ Without Negotiations or Recommendation. ☐ Negotiated Sentence. ☒ Recommendation by the State.

ATTEST:

Leigh B. Paoletti
Paoletti, Leigh B.69114
SC Bar#Thomas D. Pierce
DefendantR. Williams
Attorney for Defendant15584
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 27 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. SINCE 10/11/2006☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ Payment Terms: ☐ set by SCDPPPS Recipient: *Fine: \$ § 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 \$ § 35.13 (Public Def/Prob) \$500 \$ § 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ § 50-21-114(BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ § 90.11 TP (SCCJA Surcharge) \$5 \$ TOTAL \$ P. B. Wickens
Clerk of Court/ Deputy Clerk

Court Reporter: H Jenkins

S. Hudgins

 days/hours Public Service EmploymentObtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: Sentencing Judge: Judge Code: 2158Sentence Date: 9-8-10☐ Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.Plea
PRESIDING JUDGEJudge Code: 2514Plea Sentence Date: 4/27/09

SCCA/217 (03/2006)

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POLICE 10-11-06
QUESTIONING

R-EI

WARRANT
I-814819-010569

Medication Administration Record

Month/Year: 10-06

Prescriptions	Time	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Seroquel 200mg - po qhs	PM 1600																															
	AM 0700																															

Administration Codes: H - Hold R - Refused DC - Discontinued Order S - Self Administered NS - No Show O - Other
 HT: WT: Allergies: Diagnosis: Physician:
 In#: Pt. Name: Pierce, Thomas E Registration #: 201290

PSYCHIATRIC REFERRAL FORM

Inmate: <u>H. Prince, Thomas</u>	Jail ID #	PK# <u>81579</u>	DOB: <u>3-26-68</u>
Date Referred: <u>9-21-09</u>	By Staff Person: <u>[Signature]</u>	Reviewed by:	

PLEASE:

- ☒ Evaluate Inmate (1:1): Initial Eval - or - Re-check
- ☐ Review Current Meds for Possible Adjustment
- ☐ Non-compliance with meds/ Possible Hoarding (must add comments)

Signs & Symptoms: 2. Mute - by psychiatric

310 Mallow procedure dx - I H 55, Af. b. Act. det. bullator

Dr. Sharma requests eval - (Dr. Sharma d/c'd Elev. I

remains on medication of state Ambien for sleep want to con-

Intake - please eval. these meds.

[Signature]

Inmate's Perception of Internal Disturbance/ Sx Severity: ☐ Mild ☐ Moderate ☐ Severe

STAFF's Assessment of Inmate Disturbance/ Sx Severity: ☐ Mild ☐ Moderate ☐ Severe

Other factors: ☐ Manipulation/ Malingering ☐ Threat to self / others ☐ Non-compliance with meds

Additional Comments:

Psychiatry Response

Date Seen: 10-13-09

Action Taken:

☒ Initial Evaluation ☐ Re-check Session

☐ Medication Adjusted (see physician order): _____

☐ MH Staff to monitor S/Sx for _____ weeks/days

☐ Schedule for Re-check with psychiatrist in _____ weeks/days

☐ Other: _____

Signed:

[Signature]
Ernest C. Martin, MD, GCDC Psychiatrist

PSYCHIATRIC REFERRAL FORM

40
b7c

Inmate: <u>Pickel, Thomas</u>	Jail ID # <u>477</u>	PK# <u>81519</u>	DOB: <u>3-26-68</u>
Date Referred:	By Staff Person: <u>BMD</u>		Reviewed by:

PLEASE:

- ☐ Evaluate Inmate (1:1): Initial Eval - or - Re-check
- ☒ Review Current Meds for Possible Adjustment
- ☐ Non-compliance with meds/ Possible Hoarding (must add comments)

Signs & Symptoms:

Dr. Gorman requests - Flu - to eval Infection of
Respiratory
pleasantry from Elavil - Dr. Gorman added Ambien to
sleep - 3HP Mervon procedure / part internal detoxification (add)
for IHSS. 2 weeks Post-op

Inmate's Perception of Internal Disturbance/ Sx Severity: ☐ Mild ☐ Moderate ☐ Severe

STAFF's Assessment of Inmate Disturbance/ Sx Severity: ☐ Mild ☐ Moderate ☐ Severe

Other factors: ☐ Manipulation/ Malingering ☐ Threat to self / others ☐ Non-compliance with meds

Additional Comments:

Psychiatry Response

Date Seen: 11-3-09

Action Taken:

- ☐ Initial Evaluation
- ☒ Re-check Session
- ☐ Medication Adjusted (see physician order): _____
- ☐ MH Staff to monitor S/Sx for ____ weeks/days
- ☐ Schedule for Re-check with psychiatrist in ____ weeks/days
- ☐ Other: _____

Signed: _____

Ernest C. Martin, MD, GCDC Psychiatrist

GREENVILLE COUNTY DETENTION CENTER
MEDICAL CLINIC

PROGRESS NOTES

Date/Time	Inmate Name	ID#	DOB
	Thomas Pierce	0477	81519 3-26-68
	Re check.		
11-3-09	③ Hx seen today He reported that his auditory hallucinations and paranoid ideations are going away on present medication Mr. Pierce however continues to have depression. ④ Alert, oriented x 4, mood depressed He denied S/H ideations or plan ↓ auditory hallucinations ↓ paranoia ⑤ side effects. His sleep is poor appetite fair. ⑥ Schizophrenia ⑦ start Wellbutrin 100mg PO AM start Trazodone 100mg PO HS continue Risperidol EWS		

GREENVILLE COUNTY DETENTION CENTER
MEDICAL CLINIC

PHYSICIAN'S ORDERS

Allergies: NKA

PK# 081519

Date/Time

Inmate Name Pierce Thomas ID# 477 DOB 3/26/68

9/13/09	Elavil 12.5mg po qHS	
	~~Risperidone 1.5mg po qHS~~	} <u>Prone</u> <u>8mt</u>
	TRILIFON 4mg q po qHS	
	Ambien 5mg q po qHS	
	or mirtazapine 15mg q po qHS	
	Water 16oz	
	9/13/09 1615	

[Signature]
9/15/09

SCDC# 201290 PIERCE, THOMAS G

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P: ADD TO PSYCH. CLINIC. GIVE REFUSAL PAPERWORK TO MEDICAL (NURSE BROWN). CONT.
TO MONITOR I/M FOR MED COMPLIANCE & PROVIDE MH SERVICES ACCORDING TO TX
PLAN/SCDC POLICY. ALSO ADD I/M TO NEXT AVAILABLE MED ED. GRP. L. COX, CCCIII.
SIGNED OFF ON 11/24/10 @ 9:30 BY LIBBY A COX, HUMAN SERVICES COORD I
SO NOTED BY PHARMACY DIRECT
SIGNED OFF ON 11/24/10 @ 16:55 BY SHERI L SCOTT, LICENSED PRACTICAL NURSE

** ENCOUNTER: 110 NARRATIVE 11/10/10 9:48 LEE COMP
INMATE TRANSFERRED TO LEE CI FROM KIRKLAND R&E.
ACTIVE PROBLEMS: CCC, HTN, DEFIBULATOR.
REFER TO PF5 SCREEN FOR MEDICATIONS.
REGULAR DIET.
NO MEDICAL SUPPLIES/PROSTHETICS.
NO PENDING APPOINTMENTS.
DENIES ALLERGIES.
REFER TO INMATE CLASSIFICATION FOR RESTRICTIONS.
SIGNED OFF ON 11/10/10 @ 9:50 BY WANDA K FULTON, REGISTERED NURSE I

** ENCOUNTER: 109 DOCTOR'S CLINIC 11/01/10 6:24 KIRKLAND COMP
INR 2.0 10/20/10 ON 4.0 MG, PREVIOUS INR WAS 3.0 ALSO ON 4.0 MG WARFARIN.
CONTINUE CURRENT DOSE OF WAFARIN, PLEASE ORDER Q 2 WEEKS INR, STILL NOT SURE
WHY INMATE TAKING COUMADEN, INTAKE PHYSICAL JUST SAYS "HEART SURGERY", PLEASE
MAKE SURE WE HAVE SENT FOR MEDICAL RECORDS.
SIGNED OFF ON 11/01/10 @ 6:26 BY THOMAS A MOORE JR, PHYSICIAN II
OTR SENT FOR I/M TO SIGN A MEDICAL RECORD RELEASE FORM. LAB REQ FOR Q 2 WEEK
INR ORDERED.
SIGNED OFF ON 11/01/10 @ 11:49 BY NATALIE C MILLS, REGISTERED NURSE I

** ENCOUNTER: 108 LAB CLINIC 10/27/10 8:57 KIRKLAND COMP
PT/INR COLLECTED
SIGNED OFF ON 10/27/10 @ 8:57 BY BONITA R O'NEAL, MEDICAL ASSISTANT TECH I

** ENCOUNTER: 107 DOCTOR'S CLINIC 10/21/10 12:48 KIRKLAND COMP
PT/INR=31.5/3.0
INMATE TAKES COUMADIN 4 MG DAILY
P: RECHECK PT/INR IN 2 WEEKS
SIGNED OFF ON 10/21/10 @ 12:49 BY BARBARA J MCKELLAR, UNCLASSIFIED
NOTED LAB SLIP COMPLETED AND GIVEN TO MED TECH FOR BLOOD DRAW IN 2 WKS
NOVEMBER 4, 2010
SIGNED OFF ON 10/21/10 @ 12:53 BY MARY L MCCUNE, UNCLASSIFIED

~~ENCOUNTER:~~ 106 MENTAL HEALTH CLINIC 10/20/10 15:27 KIRKLAND COMP
42 YO BM SERVING 25 YRS FOR VOL MANSLAUGHTER. I/M WAS WITH SCDC UNTIL SEPT
07 WHEN HE WAS TRANSFERRED BACK TO G-VILLE JAIL. HE HAD BEEN ON 150MG
SEROQUEL WHEN HE LEFT. WHEN HE RETURNED HE WAS ON RISPERDAL, TRAZODONE AND
CELEXA. CURRENTLY "FAIR". C/O HEARING VOICES AND REQUESTING MORE SLEEP.
OTHERWISE DOING WELL. SOME DOWN, BUT GOOD ENERGY, -S/H AND NOT HAVING
SIDE EFFECTS
PAST PSYCH: DX WITH SCHIZO BUT NEVER TAKING A LOT OF ANTIPSYCHOTIC MEDS.
MEDICAL: CARDIAC DX - HAS PACEMAKER AND TAKING WARFARIN

SCDC# 201290 PIERCE, THOMAS G

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CCC THAT HE IS EAGER ABOUT HIS UP-COMING RELEASE ON 10/07. I/M DOES REPORT THAT HE HAS BAD DAYS AS WELL AS GOOD ONES. I/M ALSO REPORTS THAT HE DOES HEAR VOICES SOME TIME. I/M STATES THAT HE IS 100% COMPLIANT WITH TAKING HIS PRESCRIBED. I/M INFORMED CCC THAT HE UNDERSTANDS THAT HIS MEDS HELP HIM TO COPE WITH HIS ILLNESS. I/M PIERCE IS CURRENTLY INVOLVED IN SCHOOL AS WELL AS ATTENDING GROUP COUNSELING. I/M DENIES HAVING ANY MAJOR CONCERNS AT THIS TIME. CCC ENCOURAGED I/M PIERCE TO START WRITING FAMILY OR FRIENDS TO ESTABLISH RESIDENCE

A: I/M WAS COOPERATIVE. HE IS ORIENTED X5. I/M SPEECH WAS CLEAR. THOUGHTS ORGANIZED. NO PARANOIA OR DELUSIONS NOTED. I/M INTERACTS WELL WITH STAFF AND OTHER INMATES. NO SIGNS OR SYMPTOMS OF MED. NON-COMPLIANCE NOTED. HYGIENE WAS APPROPRIATE. I/M APPEARS STABLE.

P: CCC WILL START DISCHARGE PLAN FOR REENTRY INTO THE COMMUNITY.
P. DENNIS CCCIV.

SIGNED OFF ON 04/10/07 @ 10:20 BY PAUL N DENNIS, HUMAN SERVICES COORD I

** ENCOUNTER: 42 DOCTOR'S CLINIC 04/10/07 9:35 LEE COMP
IM IS DOING WELL. STILL HAS AH BUT NO WORSE WITH DOSAGE REDUCTION. DECREASED ALLEVIATED HIS EXCESSIVE SEDATION HOWEVER. FUNCTIONS PRETTY WELL BUT DOES NOT HAVE CHRONIC AWKWARDNESS AND POOR COORDINATION FOLLOWING HIS ACCIDENT. NO OTHER SEQUELAE EXCEPT LOSS OF DEPTH PERCEPTION. SLEEP AND APPETITE OK. REALITY CONTACT IS GOOD.
O CLEAR, COHERENT. NO SXS DEPRESSION OR PSYCHOSIS. NAD. WDOWN. A/A. NO PROBLEMS WITH IDEATION, BEHAVIOR.
~~X~~ A PSYCHOSIS D/T TBD. ~~Psychosis due to traumatic brain damage~~
P CONTINUE SEROQUEL AT CURRENT DOSE.
RTC 12 W.

* SIGNED OFF ON 04/10/07 @ 9:39 BY MICHAEL J KIRBY, PSYCHIATRIST *
PHARMACY DIRECT NOTIFIED
SIGNED OFF ON 04/10/07 @ 11:42 BY ROSETTE L SINGLETON, REGISTERED NURSE II

** ENCOUNTER: 41 MENTAL HEALTH CLINIC 04/09/07 15:41 LEE COMP
CCC INCIDENTAL LATE NOTE (3-30-07). I/M WAS A NO SHOW FOR HIS INDIVIDUAL COUNSELING SESSION. CCC WILL CONDUCT A FOLLOW UP.
P. DENNIS CCCIV.
SIGNED OFF ON 04/09/07 @ 15:42 BY PAUL N DENNIS, HUMAN SERVICES COORD I

** ENCOUNTER: 40 MENTAL HEALTH CLINIC 03/26/07 10:03 LEE COMP
CCC TX TEAM REVIEW NOTE: I/M WAS DISCUSSED IN TX TEAM. I/M HAS A DX OF PTSD. MEDS PRESCRIBED: SEROQUEL. TX TEAM WILL BE UPDATED. MEMBERS PRESENT: J. MITCHELL, T. YATES, G. BREON, J. MCFADDEN. FOR ANY ADDITIONAL INFORMATION SEE HARD COPY IN MEDICAL RECORDS. UPDATE: 06/07.
P. DENNIS CCCIV.
SIGNED OFF ON 03/26/07 @ 10:06 BY PAUL N DENNIS, HUMAN SERVICES COORD I

** ENCOUNTER: 39 DENTAL CLINIC 03/23/07 8:25 LEE COMP
PA #14, EXTRACT ROOT TIPS, IBU 600MG, POI BY DR. UBAH, SEE HARD COPY
IBUPROFEN 600MG
SIG: TAKE ONE TAB QID PRN (GIVEN FROM STOCK)
SIG:

SCDC# 201290 PIERCE, THOMAS G

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ENROLLED IN SCHOOL. I/M IS UNABLE TO ATTEND GROUP COUNSELING.
P. DENNIS CCCIV.

SIGNED OFF ON 01/19/07 @ 8:49 BY PAUL N DENNIS, HUMAN SERVICES COORD I

** ENCOUNTER: 19 MENTAL HEALTH CLINIC 01/17/07 12:08 LEE COMP
CCC GROUP NOTE: DEPRESSION MGT = 01/16 & 01/17 SESSIONS
D: I/M PIERCE ATTENDED BOTH SESSIONS. SESSION #1 = INTRODUCTIONS, GROUP
RULES & GOALS & ICE BREAKER EXERCISE. SESSION #2 = BEGAN DISCUSSION OF 4-
PAGE HANDOUT ON "INFORMATION ABOUT DEPRESSION"
A: I/M PIERCE WAS ATTENTIVE & PARTICIPATED APPROPRIATELY.
P: CONTINUE GROUP PROCESS. G. BREON, CCCIII
SIGNED OFF ON 01/17/07 @ 12:09 BY SUSAN V BREON, HUMAN SERVICES COORD I

** ENCOUNTER: 18 DOCTOR'S CLINIC 01/16/07 11:08 LEE COMP
IM SEEN FOR MED EVAL. IS C/O MEDS BEING 'TOO STRONG' IS GROGGY IN AMS AND F
INDS IT HARD TO ROUSE HIMSELF FROM SLEEP. WANTS LOWER DOSE. ADVISED THIS WI
LL NEED APPROVAL. IM WILLING. OTHERWISE SEEMS TO BE DOING WELL. HAS OCCASIO
NAL SXS OF PTSD BUT NONE SO SEVERE AS IN THE PAST. NO SXS OF PARANOIA AS WE
LL.
O CLEAR, COHERENT. NO SIDE EFFECTS SEEN. A/A. WDN. NAD. RELATES VERY WELL.
NO SXS ACTIVE DEPRESSION OR PSYCHOSIS.
A PTSD

~~* PSYCHOSIS D/T TBD DUE TO TRAUMATIC BRAIN DAMAGE *~~

LESS CONCERNED ABOUT MALINGERING AT THIS JUNCTURE.
P DECR SEROQUEL.

RTC 12 W.

SEROQUEL

100MG

SIG: 1 1/2 TABS PO Q HS. SPECIAL DOSE. NON-FORMULARY SU

SIG: BMITTED TO DR WOOD.

START DATE: 01/16/07 TOTAL DAYS: 90

MD: KIRBY, MICHAEL -

~~* SIGNED OFF ON 01/16/07 @ 11:14 BY MICHAEL J KIRBY, PSYCHIATRIST *~~
PHARMACY DIRECT NOTIFIED.

SIGNED OFF ON 01/16/07 @ 16:53 BY CHERYL A OWENS, LICENSED PRACTICAL NURSE

** ENCOUNTER: 17 MENTAL HEALTH CLINIC 01/05/07 15:07 LEE COMP
CCC INDIVIDUAL COUNSELING NOTE:
D: I/M THOMAS PIERCE ATTENDED THE SESSION WELL-GROOMED AND ANSWERED ALL QUES
TIONS APPROPRIATELY. I/M REPORTS EATING AND SLEEPING WITH NO DISTRESS. I/M ST
ATES THAT HE IS CURRENTLY ATTENDING SCHOOL SO THAT HE CAN OBTAIN HIS GED. I/
M REPORTS ADJUSTING WELL IN THE DARLINGTON UNIT. I/M INFORMED CCC THAT HE IS
100% COMPLIANT WITH TAKING HIS PRESCRIBED MEDICATION AND UNDERSTANDS HOW HI
S MEDS ARE BENEFICIAL WITH HIM COPING DAILY IN GENERAL POPULATION. I/M PIERC
E STATES THAT HE IS CURRENTLY EXPERIENCING SOME SIDE-EFFECTS FROM HIS MEDS
(IE LEGS AND ARMS JUMPING, FEELING DROWSY FROM MEDS). I/M STATES THAT HE CONT
INUES TO EXPERIENCE AUDIO HALLUCINATIONS (IE NOISE FROM A FOOTBALL ARENA HEA
RING HORSES). SOME PARANOIA NOTED.
A: I/M WAS COOPERATIVE. HE IS ORIENTED X5. I/M SPEECH IS CLEAR, THOUGHTS ORGANI
ZED. NO SIGNS OR SYMPTOMS OF MED. NON-COMPLIANCE. I/M INTERACTED WELL WITH CCC
. HYGIENE WAS APPROPRIATE. I/M APPEARS STABLE. HE IS NOT A DANGER TO SELF OR

(EXHIBIT
A)

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

46

DR. Kirby - psychiatrist of S.C. Dept. of Corrections
This is my diagnosis in Dr. Michael J. Kirby handwriting he gave
me at LEE C.I. 2006-07 MENTAL EVALUATION.

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

PAGE 47 through 75

INTENTIONALLY

Left

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF COMMON PLEAS
2011-CP-23-05179

THOMAS GINISKI PIERCE,
APPLICANT,

vs.

STATE OF SOUTH CAROLINA,
RESPONDENT.

TRANSCRIPT OF RECORD

ORIGINAL

June 19, 2013
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

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

BRIAN P. JOHNSON, ESQ.
Attorney for the Applicant

KAREN C. RATIGAN, ESQ.
Assistant Attorney General

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

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

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(AW) THOMAS GINISKI PIERCE:

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E X H I B I T S

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

P R O C E E D I N G S

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

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

MS. RATIGAN: Thank you, Your Honor.

May it please the Court.

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

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

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

THE COURT: Mr. Johnson.

MR. JOHNSON: Thank you, Your Honor.

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

THE COURT: Yes, sir.

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

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

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

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

7 THE CLERK: Thank you.

8 Please state your full name for the record.

9 THE WITNESS: Thomas Giniski Pierce.

10 THE CLERK: Thank you.

11 You may be seated.

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

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

15 DIRECT EXAMINATION

16 BY MR. JOHNSON:

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

19 A Yes, sir.

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

22 A Yes, sir.

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

24 A Yes, sir.

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

1 copy.

2 BY MR. JOHNSON:

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

5 A Yes, sir.

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

9 A Yes, sir.

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

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

16 A Yes, sir.

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

20 A Yes, sir, my confession.

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

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

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

4 Q Had you spoken with them before?

5 A Yes, sir.

6 Q When did you speak with them before approximately?

7 A October the 11th.

8 Q What year?

9 A 2006.

10 Q Okay.

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

13 Q Three occasions?

14 A Yes, sir.

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

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

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

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

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

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

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

9 A Yes, sir.

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

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

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

18 A On all three occasions, sir.

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

22 A Yes, sir.

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

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

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

2 Q And who is "we"?

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

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

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

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

12 A Approximately three times, maybe four.

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

15 A Yes, sir. *

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

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

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

21 A Yes, sir.

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

25 A Seroquel. It's for paranoid schizophrenia.

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

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

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

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

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

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

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

17 A Not until I confessed, sir.

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

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

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

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

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

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

4 A Would I be able to discuss it?

5 Q Did you discuss it with Mr. Ariail?

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

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

12 A He insisted.

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

15 A I didn't know no better.

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

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

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

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

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

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

7 A Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 you can submit to DNA testing.

2 Q Was a maximum sentence ever portrayed to you?

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

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

6 A No, I wasn't.

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

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

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

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

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

23 BY MR. JOHNSON:

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

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

2 A Yes, sir.

3 Q What is it?

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

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

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

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

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

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

23 A Yes, sir.

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

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

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

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

15 A Yes, sir.

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

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

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

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

1 Q And how long ago did this happen?

2 A That was in 1999.

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

5 A Yes, sir.

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

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

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

14 A Not at all.

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

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

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

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

23 Q Okay.

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

1 the dark.

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

4 A I would have wanted an appeal.

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

7 A Reconsideration of the sentence.

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

11 A Both.

12 Q You wanted both?

13 A Yes, sir.

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

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

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

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

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

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

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

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

3 A Yes.

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

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

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

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

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

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

CROSS-EXAMINATION

BY MS. RATIGAN:

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

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

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

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

Q Okay.

A -- to help convict him.

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

A Yes, ma'am.

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

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

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

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

6 A Yes, ma'am.

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

8 A Yes, ma'am.

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

12 A Yes, ma'am.

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

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

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

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

1 no evidence.

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

4 A Yes, ma'am.

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

6 A I didn't say that.

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

10 A I was pressured into confessing to a crime.

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

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

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

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

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

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

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

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

3 A No. I just went on his word.

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

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

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

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

12 Q Okay. I got you.

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

16 A (There was no response.)

17 Q I think it was at the sentencing hearing.

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

23 Q Okay.

24 A Because he thought it was a recommendation.

25 Q Got you.

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

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

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

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

10 A No, ma'am.

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

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

16 Q Okay.

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

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

21 THE COURT: Redirect?

22 MR. JOHNSON: Briefly, Your Honor.

23 THE WITNESS: You are who, Your Honor?

24 THE COURT: Sir?

25 THE WITNESS: You are who?

1 THE COURT: I'm Gary Hill.

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

3 THE COURT: That's fine, yes.

4 THE WITNESS: Thank you.

5 THE COURT: Go ahead.

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

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

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

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

12 REDIRECT EXAMINATION

13 BY MR. JOHNSON:

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

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

19 Q And is it signed by Mr. Arial?

20 A Yes, sir.

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

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

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

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

2 THE COURT: They're in evidence.

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

5 MR. JOHNSON: I have no further questions.

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

8 THE WITNESS: Thank you kindly.

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

10 THE WITNESS: Sir?

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

12 (Pause.)

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

15 THE COURT: Ms. Ratigan.

16 MS. RATIGAN: Thank you, Your Honor.

17 We call Mr. Ariail.

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

20 WHEREUPON,

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

23 THE CLERK: Thank you.

24 Please state your name for the record.

25 THE WITNESS: Mills Ariail.

DIRECT EXAMINATION

BY MS. RATIGAN:

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

A Yes.

Q And were you appointed, or were you retained?

A I was appointed.

Q And did you file Brady and Rule 5 motions?

A I did.

Q Did you receive those materials from the State?

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

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

A Yes, in depth.

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

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

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

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

8 Q Did you speak to the officers involved?

9 A I did.

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

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

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

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

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

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

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

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

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

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

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

7 A Sure, I did.

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

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

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

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

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

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

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

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

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

20 A Yes.

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

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

1 not we were going to have that.

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

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

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

20 A Oh, I, certainly, did.

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

23 A Yes, I did.

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

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

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

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

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

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

25 A I think we discussed some of that.

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

3 A No, we did not.

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

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

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

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

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

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

4 A Never.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 MR. JOHNSON: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. JOHNSON:

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

A Correct.

Q After the plea?

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

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

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

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

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

1 to do that.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 A Okay. Yeah.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the Court?

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

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

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

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

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

23 A Sure.

24 Q -- of the police officers?

25 A Right.

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

5 A Sure.

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

8 A Yeah. We discussed all of that.

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

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

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

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

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

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

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

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

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

1 be definitive on that.

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

4 THE COURT: Redirect?

5 MS. RATIGAN: No redirect, Your Honor.

6 And the State would rest.

7 THE COURT: Thank you, Mr. Ariail.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: Any further evidence?

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

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

14 MR. JOHNSON: Sure.

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

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

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

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

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

25 My client has testified that he was told how to

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

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

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

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

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

1 THE COURT: Thank you.

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

3 MS. RATIGAN: Very briefly, Your Honor.

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

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

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

23 Let's see. What else?

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

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

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

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

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

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

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

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

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

11 THE COURT: Okay. Thank you.

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

14 Thank you for your presentations.

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

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 19th day of June, 2013.

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

December 11, 2013

Hollie M. Jenkins

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

127 - 145

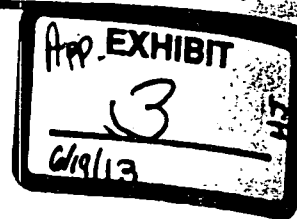
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R. MILLS ARIAIL, JR.
ATTORNEY AT LAW



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

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March 30, 2009

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

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

Dear Thomas:

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

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

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

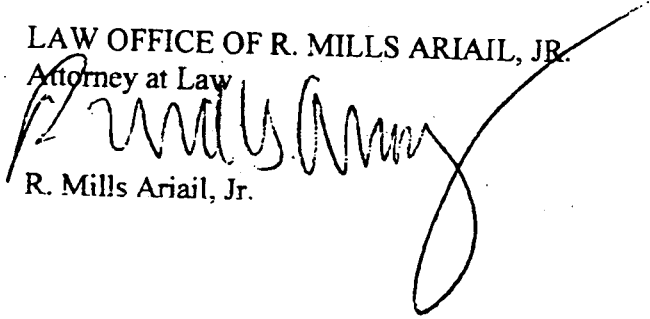
During our conversations, you have continued to tell me that you did not have anything to do with this shooting. If you were to plead guilty to voluntary manslaughter, you would have to admit to the following: (1) that you unlawfully killed; (2) a human being; (3) in a sudden heat of passion soon after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

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

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

Sincerely,

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


R. Mills Ariail, Jr.

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MR. THOMAS Giniski PIERCE #201290
LEE C. I. KERSHAW SOUTH 2118
990 WISACKY HWY.
BISHOPVILLE S.C. 29010

(IN HOUSE MAIL)

SOUTH CAROLINA SUPREME COURT
MR. DANIEL E. SHEAROUSE, CLERK OF COURT
P.O. BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

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