

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Darlington County

R. Ferrell Cothran, Jr., Circuit Court Judge

RECEIVED

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S.C. Supreme Court

TAVEIO BOSTON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001889

APPENDIX

BENJAMIN JOHN TRIPP
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....i

TRIAL TRANSCRIPT (SEPTEMBER 14, 2011).....1

APPLICATION FOR POST-CONVICTION RELIEF.....29

RETURN43

POST-CONVICTION RELIEF HEARING TRANSCRIPT (JULY 15, 2013)47

ORDER OF DISMISSAL75

INDICTMENTS84

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF DARLINGTON) 2011-GS-16-0370
) 2011-GS-16-0371
) 2011-GS-16-0372

STATE OF SOUTH CAROLINA)
)
 PLAINTIFF)
 vs.) TRANSCRIPT OF RECORD
)
 TAVEIO R. B. BOSTON)
)
DEFENDANT)

September 14, 2011
 Chesterfield, South Carolina

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE.

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

KERNARD E. REDMOND, DEPUTY SOLICITOR
 Attorney for the State

RICHARD JONES, PUBLIC DEFENDER
 Attorney for the Defendant

DAVID YOUNG, Darlington Cty. Sheriff's Office
 DEFENDANT'S FATHER

HATTIE O. GORDON
Circuit Court Reporter

I N D E X

1		
2	Colloquy	4
3	Sentence of the Court	26
4	Certificate of Reporter	28
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

COURT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Competency Evaluation	5	5

1 MR. JONES: Nor the Defense. He had competency and
2 criminal responsibility evaluations I believe the same
3 time period, and I don't know if they are both attached
4 but he had both.

5 THE COURT: Okay. I find he's competent. Can you
6 make that a Court's exhibit at the appropriate time.

7 (WHEREUPON, Court's Exhibit No. 1 was marked for
8 identification and received into evidence.)

9 THE COURT: Next issue, Mr. Jones and Mr. Boston,
10 we're in Chesterfield County. This originated in
11 Darlington County. Is everybody in agreement that we're
12 going to handle this plea here in Chesterfield County? In
13 other words, waive any venue rights?

14 MR. BOSTON: Yes, sir.

15 MR. JONES: We had discussion this morning about
16 that.

17 MR. BOSTON: Yes, sir.

18 THE COURT: No issues about presentment to the grand
19 jury. Appears everything is true billed.

20 MR. JONES: Yes, sir.

21 THE COURT: Mr. Boston, you're 27?

22 MR. BOSTON: Yes, sir.

23 THE COURT: From Lamar?

24 MR. BOSTON: Yes, sir.

25 THE COURT: And your education?

1 MR. BOSTON: In D.J.J. or outside?

2 THE COURT: Total years you completed.

3 MR. BOSTON: What grade I'm in now?

4 THE COURT: Yeah.

5 MR. BOSTON: Tenth grade.

6 THE COURT: Twelfth?

7 MR. BOSTON: Tenth grade.

8 THE COURT: Tenth. All right, you've had a chance to
9 discuss these charges with counsel?

10 MR. BOSTON: Yes, sir.

11 THE COURT: First one I come so is Indictment
12 2011-370 for assault and battery with intent to kill.
13 Occurring May the 27th 2010 in Darlington County whereby
14 the indictment alleges that on October 26th 2008 in
15 Darlington County you committed an unlawful act of violent
16 injury to the victim, Makelia Alford, with malice. Thus
17 committing the assault or crime of assault and battery
18 with intent to kill in that you did shoot your juvenile
19 sister in the neck area causing severe bodily injury in
20 violation of Section 16-3-620. I believe that at that
21 time it was a 20 year possible sentence. How do you plead
22 to that?

23 MR. BOSTON: Guilty, sir.

24 THE COURT: And 371 is for the offense of murder
25 occurring on -- let me back up, now. We got a conflict in

1 dates now. We need to get that straightened out. We've
2 got Indictment 370. On the sentencing sheet except it
3 says May 27th 2010. And then the indictment says 20 ---

4 MR. REDMOND: I don't know why that was the case. It
5 must have spit that out when we generated it. I don't
6 know why, but the day of incident is the 26th of October
7 of 2008. So I think what happened when I printed out the
8 sentencing sheet, and quite frankly, since it's already in
9 the computer I don't look at that. I look at all the
10 other stuff, but that must have been how it was put in the
11 computer by accident.

12 THE COURT: So I'm correct on my date?

13 MR. REDMOND: Yes, sir.

14 MR. JONES: Yes, sir.

15 THE COURT: All right. That same date, October the
16 26th of '08, charged in Indictment 371 with the offense of
17 murder, and it alleges that you intentionally killed the
18 victim, Sherryle Terry, with malice aforethought either
19 express or implied by shooting the victim. And that the
20 victim did die as a proximate result thereof on or about
21 October 26th 2008 in Darlington County all in violation of
22 Section 16-3-10 of our Code of Laws of 1976 as amended.
23 How do you plead on that one?

24 MR. BOSTON: Guilty.

25 THE COURT: And 372 is also an indictment for murder.

1 Darlington County. October 26th 2008 when you did
2 willfully, feloniously, and intentionally kill the victim,
3 Baby Girl Terry, with malice aforethought either express
4 or implied by means of shooting his mother, Sherryle
5 Terry, who was pregnant at 36 and 4/7th weeks. And that
6 the victim did die as a proximate result therefore on
7 October the 26th 2008 in Darlington County. Also in
8 violation of 16-3-10 of our Code of Laws. How do you
9 plead on that one?

10 MR. BOSTON: Guilty.

11 THE COURT: And, of course, you fully understand that
12 those could carry up to a life sentence? I don't think I
13 mentioned that.

14 MR. BOSTON: Yes, sir.

15 THE COURT: You're pleading guilty on all three?

16 MR. BOSTON: Yes, sir.

17 THE COURT: Now, I'm going to talk with you about
18 your jury trial rights, but first of all let me ask you
19 this. Are you satisfied with your attorney's advice and
20 services?

21 MR. BOSTON: Yes, sir.

22 THE COURT: You have discussed all these issues with
23 him, these charges?

24 MR. BOSTON: Yes, sir.

25 THE COURT: He has answered all your questions?

Colloquy

9

1 MR. BOSTON: Yes, sir.

2 THE COURT: Has he contacted everybody that you asked
3 him to contact, if any?

4 MR. BOSTON: Yes, sir.

5 THE COURT: Any problem with his representation I
6 need to hear about it now.

7 MR. BOSTON: No, sir.

8 THE COURT: You're satisfied with his help?

9 MR. BOSTON: Yes, sir.

10 THE COURT: All right. Now, you understand by
11 entering these pleas that you waive your constitutional
12 right to a jury trial?

13 MR. BOSTON: Yes, sir.

14 THE COURT: If you were to have a trial the State of
15 South Carolina would have to prove your guilt beyond a
16 reasonable doubt and convince 12 jurors unanimously of
17 your guilt. You understand?

18 MR. BOSTON: Yes, sir.

19 THE COURT: You understand that if you went to trial,
20 through your attorney, of course, you could cross-examine
21 the State's witnesses and put up your own defense and
22 witnesses. You could testify at your own defense, but you
23 would also have a constitutional right to remain silent.
24 In other words if you elected not to testify it couldn't
25 be used against you, and I would even tell the jury that.

1 That's your Fifth Amendment right under the United States
2 Constitution. You understand that?

3 MR. BOSTON: Yes, sir.

4 THE COURT: You also understand that you are presumed
5 innocent and that presumption of innocence stays with you
6 throughout any trial and would only end if a jury
7 convicted you.

8 MR. BOSTON: Yes, sir.

9 THE COURT: If a jury did convict you you would have
10 a right to appeal just as you can appeal a guilty plea as
11 long as you file a Notice of Appeal within ten days of
12 sentencing. That notice has got to be filed within ten
13 days of sentencing to preserve your appellate rights. Any
14 questions about that?

15 MR. BOSTON: No, sir.

16 THE COURT: You understand all that I've gone over?

17 MR. BOSTON: Yes, sir.

18 THE COURT: You understand your attorney?

19 MR. BOSTON: Yes, sir.

20 THE COURT: You don't have any questions?

21 MR. BOSTON: No, sir.

22 THE COURT: You don't want a trial?

23 MR. BOSTON: No, sir.

24 THE COURT: Has anybody promised you anything, held
25 out any hope of reward, threatened you in any way in order

1 to get you to plead?

2 MR. BOSTON: No, sir.

3 THE COURT: Are you under the influence of any drugs
4 or alcohol or medication?

5 MR. BOSTON: No, sir.

6 THE COURT: Do you suffer from any condition, mental
7 or physical, that could be affecting your understanding at
8 this time?

9 MR. BOSTON: No, sir.

10 THE COURT: You indeed understand what you're doing?

11 MR. BOSTON: Yes, sir.

12 THE COURT: Are you're entering this plea of your own
13 free will and accord?

14 MR. BOSTON: Yes, sir.

15 THE COURT: You have any questions at this time?

16 MR. BOSTON: No, sir.

17 THE COURT: And most importantly of all you're
18 entering this plea because you are guilty?

19 MR. BOSTON: Yes, sir.

20 THE COURT: I find that you plea is freely,
21 voluntarily and intelligently entered into and you've had
22 the services of a competent attorney with whom you say
23 you're satisfied. Pleas are accepted.

24 MR. REDMOND: Thank you, Your Honor.

25 THE COURT: Let me back up just a second. I do not

1 get into the parole eligibility, 85 Percent Rule, good
2 time or anything like that. And intentionally don't do
3 that because I can't keep up with all that with everything
4 else that I have to do. So as far as when I sentence
5 someone whatever you get, as far as the Court is the
6 concerned, you need to consider as far as what I say, you
7 could do the full amount of time.

8 Because there is no way I can predict what the
9 Department of Corrections. Everybody tried to do that
10 just giving you the best guess they can. You have any
11 questions about that?

12 MR. BOSTON: What about my time that I already did?

13 THE COURT: You will get credit for any time that you
14 did. I can tell you that. That it?

15 MR. JONES: Yes, sir.

16 MR. REDMOND: Yes, sir.

17 THE COURT: All right, Solicitor.

18 MR. REDMOND: Thank you, Your Honor. May it please
19 the Court. With me is Detective David Young from the
20 Darlington County Sheriff's Department who worked with a
21 whole bunch of other deputies in investigating this case,
22 but he was the lead investigator.

23 This incident occurred as you said on the 25th of
24 October -- 26th of October 2008, Cross Swamp Road in the
25 Lamar area of Darlington County. At that particular time

1 on that date the defendant earlier that day had gotten
2 into an argument it appears with his mother. And
3 subsequently a little bit later on, about seven o'clock
4 that evening, the defendant -- well, let me back up. His
5 sister, Cierra -- I think that is from what I've heard
6 refer to the sister as Cierra.

7 Cierra and her mom were sitting in the living room.
8 She was sitting on the couch, and I think their mom was in
9 a chair. She had gotten up to go check on some laundry.
10 She comes back around and sees the defendant standing in
11 the hallway and then shots are fired. She saw him shoot
12 her.

13 Their mother, she was shot I think at least five
14 times from what I can tell in the autopsy report, and then
15 he turned the gun on her and shot her in the neck. He
16 thought that he had killed her. He then leaves the scene.
17 He takes the car, his mother's car, Mrs. Sherryle Terry,
18 being the mother, takes his mother's car and steals I
19 think two shotguns and a rifle that belonged to his
20 stepfather. His stepfather was not home at the time,
21 Mr. Casey Terry. Goes to his biological father's house.

22 He ditches the car on Sally Hill Road in Florence
23 County just in the Timmons ville area, and then he goes --
24 proceeds to go to his father's, biological father's house.
25 At that time he told his biological father that two masked

1 men had come in and had basically shot and killed his
2 sister and mom and that they had kidnapped him in the car
3 and he had managed to escape. Law enforcement was called
4 based on what he had told them. Unbeknownst to him, the
5 defendant, his sister survived and made it over to a
6 neighbor's house. They called Darlington County
7 authorities. Darlington County authorities already knew
8 who they were looking for. They knew because of the
9 sister; that she had actually pointed him out as being the
10 shooter.

11 He was questioned by law enforcement, Detective Young
12 and others, and initially he gave a story that I explained
13 to the Court. Upon being made aware that his sister had
14 survived, initially he indicated that she was lying. But
15 then he, shortly therefore, admitted that he had in fact
16 committed this murder.

17 The reason -- well, let me back up. He -- they were
18 shot with a .40 caliber handgun. That gun was tossed out
19 on Sally Hill Road in a ditch in that area. And I didn't
20 mention this before but his father lives in that area as
21 well where the car was ditched and the car was ultimately
22 found four days later. I can say, having gone to the
23 autopsy, that fortunately none of the bullets hit the
24 unborn baby. As you saw she was eight months pregnant.
25 The cause of death from the baby's standpoint was the fact

1 that the uterus and the placenta had been severed. The
2 baby did not suffer any gunshot wounds as little
3 consolation. But when I talked to Casey Terry that little
4 fact was of relief to him that the baby had not suffered
5 any bullet wounds.

6 And based on the wounds as we saw them it is
7 fortunate that the baby didn't any gunshot wounds. That's
8 pretty much it, Your Honor. And at the appropriate time I
9 do -- Mr. Casey Terry couldn't be here, but there are
10 certain aspects that I do want to address on his behalf as
11 it relates to this case, but from a factual background
12 standpoint that would be the State's case at this time.

13 THE COURT: Okay. Anything, Sheriff?

14 MR. YOUNG: No, sir, Your Honor. I think he covered
15 it.

16 THE COURT: All right. Mr. Jones.

17 MR. JONES: Your Honor, I'm not real sure exactly how
18 to start there. I've had numerous conversations with
19 Mr. Boston. He's been a client of our office since his
20 arrest. His initial attorney was Mr. Turnblad for about a
21 year and a half, and I started talking to him early last
22 summer while he was over at D.J.J. Taveio is 17 years
23 old. He was in the 9th grade over in Timmonsville. He
24 plays football. He plays some sports.

25 He and I have had numerous conversations concerning

1 his upbringing. He's had some tragedy in his upbringing.
2 He's had some abuse at the hands of a former boyfriend of
3 his deceased mother. He came up hard. His father is
4 standing here with him. He had been in the area where Mr.
5 Boston was raised the whole time. I think they have had
6 some relationship.

7 He has family in the audience who care very much for
8 him. Taveio and I talked about what went wrong. I'm not
9 sure he knows what went wrong. He talks about having
10 rage, having anger that he does not know where -- from
11 where it came. One thing I can tell the Court is over the
12 last year and a half in my dealings with Mr. Boston he
13 is -- he's just turned 17 I think on the [REDACTED] of [REDACTED].
14 He's still a kid, but he is maturing and maturing rapidly.

15 My last few conversations with him have been most
16 productive. I think those conversations dealt with the
17 responsibility that he knows -- I think he's always known
18 that he had to bare for this situation. But my last two
19 conversations with him concern where we are right now, and
20 what is to happen to him for the rest of his life. He
21 understands that His Honor has the authority and ability
22 to put him in prison for the rest of his natural life. We
23 understand and we are grateful for the recommendation of
24 the Solicitor.

25 Taveio has dug a hole that he got himself in. He

1 knows it's a long, long way before he will be out of that
2 hole. But to be honest I think he is -- I don't know if
3 satisfied is the correct word, but he certainly is
4 understanding of not only your job today but the fact that
5 he has gotten himself in this situation that puts him in
6 front of you today.

7 Never question, I don't think in his mind or my mind,
8 once I began talking with him that he was criminally
9 responsible. As the Solicitor said he has been evaluated.
10 There is no question that Taveio is a smart young man. He
11 might not have done all that well in school, but there is
12 no question that he's got a lot of smarts. And had he
13 applied himself in the right direction we certainly
14 wouldn't be standing here.

15 He's got abilities. He's got -- he's just got a lot
16 going for him that, unfortunately, he didn't utilize and
17 its gotten him in trouble. I think he has had some past
18 experience with mental health and doctors. He, I think he
19 told me the day before this happened that he been to the
20 doctor and had been prescribed some medication. Again, he
21 calls it anger, rage, whatever it might be. He just had
22 some demons he was dealing with. Unfortunately, they came
23 out in the most terrible way that he now understands could
24 possibly happen.

25 He's expressed remorse. I think he's got something

1 he's going to tell you in just a few minutes, but he
2 understands that he's hurt everyone in the family. The
3 victim, two victims, the three victims, actually. He's
4 hurt himself. He's hurt everybody involved in this
5 situation. One thing that he did say he was somewhat -- I
6 don't know if he was surprised. Certainly was very
7 grateful that his sister has had some contact with him.
8 He tells me that they've discussed forgiveness. He is
9 extremely encouraged that she is a forgiving person, and
10 she has had some communication with him. And hopefully
11 that will give him some peace of mind.

12 I don't know if he's forgiven himself, but he's asked
13 God to forgive him. He understands that he is here today
14 to take the punishment for the actions that he committed
15 on October 26th of '08. And I do think he had something
16 he's got to tell you. I don't know if now is the right
17 time or if the Solicitor wants to talk some more.

18 MR. REDMOND: And, Your Honor, I did fail to mention
19 that at the time this occurred, I think it's clear in the
20 record, but he was 14 years of age at the time this
21 occurred. On April 27th Judge Murdock signed an order
22 waiving this to General Sessions which was filed on the
23 25th of April of 2010 waiving it to General Sessions.

24 THE COURT: Yes, sir, Mr. Boston.

25 MR. BOSTON: First I would like to say that I

1 apologize to all my family who I hurt. But I also want to
2 thank them for being by my side, showing me all the love
3 and support that I needed during this action that I
4 committed. I'd like to send my heart to them, but I
5 really want to send my love and my heart to my two sisters
6 and my mother.

7 In 2009 I was -- I can't remember the month, but I
8 wrote my stuff out in a letter apologizing to him. I
9 don't know if he get it or I didn't know if he received
10 that letter cause he -- I didn't get no response back or
11 anything. But I don't know if he received it apologizing
12 to him.

13 But when I first got to D.J.J. Detention Center in
14 '08 I was on suicide watch because I wanted to harm myself
15 for the actions that I committed, and I didn't really
16 understand what I had did to my mother and my two sisters.
17 So I was on suicide watch and eager to fight so I was in
18 physical altercations when I was in D.J.J. That's in my
19 file. That's -- well, it's in my file.

20 A lot -- whenever I was feeling down I wrote my
21 family and friends and they stayed by my side forgiving
22 me. And that motivated me to do my time and keep my mind
23 focused even though I didn't forgive myself. I didn't --
24 I'm not going to say that I didn't believe in the Lord
25 whenever I first got locked up, but I wasn't -- and I

1 wasn't in his word like I had supposed to be. They all
2 stayed by my side and I was close to a lot of them even
3 though the trouble I was getting into. And they used to
4 tell me that if God forgive me then your mother and your
5 family will forgive you. You need to ask God to forgive
6 yourself.

7 Like they kept telling me that the whole year of my
8 first year of being incarcerated, and I just told them
9 that if God really loved me and cares for me he wouldn't
10 have put me in this situation. So that night I went in my
11 room and I grabbed my bible, and my bible fell out of my
12 hand. And I picked it up and then read -- came to a verse
13 in Proverbs which said, "Some people ruin their lives
14 because of their own foolishness then are anger at the
15 Lord." And that woke me up right then and there.

16 Then somebody gave me a prayer card that had the
17 Serenity Prayer that said, "God grant me the serenity to
18 accept the things I cannot change. The courage to change
19 the things I can and the wisdom to understand the
20 difference." The things that I can't change, this is one
21 of them. No matter how much I regret it, no matter how
22 much I pray, all I'm going to get back is love and
23 forgiveness from my family and friends and everybody else
24 that cares for me and loves me.

25 The things that I can change in my life, the way that

1 I act and the things that I do, and my family is going to
2 give me the encouragement and motivation and all the love
3 that I need to change myself. But if I mix the things
4 that I can change and the things that I cannot change
5 there will be no change. So wisdom is going to help me
6 understand the difference between those two.

7 I was 14 when I first did, and I didn't realize that
8 I had a lot of pain and rage in my heart so I acted out.
9 And then when I got to know the Lord and put my head in a
10 Bible and I started praying I learned that he forgives me,
11 and I ain't fully forgive myself yet. I'm going through
12 the process of that now, Your Honor. Once, again, I'd
13 like to apologize for causing my family all the grief and
14 pain that I know, even though they're smiling and
15 laughing, they're still going to have that same pain. And
16 going to have that memory of my mother. I'm going to have
17 that same pain.

18 THE COURT: Anything you'd like to say, sir?

19 DEFENDANT'S FATHER: No, sir.

20 MR. REDMOND: And, Your Honor, I think there may have
21 been members of the family. When they came in I asked,
22 since it is one family and I think they all wanted to be
23 together, because they, obviously, support the memory of
24 Ms. Sherryle Terry. I don't know if anybody else had
25 wanted to come up and say anything at this time.

1 THE COURT: Anybody like to make a statement?

2 MR. REDMOND: And, Judge, at the appropriate time I
3 did talk -- I've been talking with Casey Terry over the
4 last three years, and he could not be here today. But he
5 did want us to go forward, and they were a few things that
6 he wanted me to convey to the Court and to the defendant
7 if I may at this time, Your Honor.

8 THE COURT: Go right ahead.

9 MR. REDMOND: First thing I want the -- he wanted to
10 make sure, and I think I had told Mr. Jones this
11 previously when I had made the 40 year offer, he had
12 indicated to me previously, quite frankly, that he would
13 have been okay with something less than that. But there
14 is a reason why, and so the 40 year offer is coming from
15 me.

16 One of the reasons I didn't get into it at the
17 factual recitation, but I'm not saying that the incident
18 was gang related regarding his mother and unborn child --
19 unborn sister and his 12 year-old sister, but -- and to
20 his credit throughout the evaluation he was up front with
21 the fact that he was very deeply involved with the Crips
22 Gang. He was involved with them from the standpoint of
23 selling drugs, dealing drugs. Basically, he was a set
24 king and had control over people under him. He was up
25 front about that.

1 The other thing that was alarming, and these are
2 factors into why the State is making the recommendation
3 that it is, despite the fact that Mr. Terry is willing to
4 have a lessor sentence.

5 Another thing that came into consideration is that at
6 the time law enforcement searched the house with his
7 father's, his natural father's permission, they found a
8 lot of gang related literature. But they also found what
9 amounts to be a hit list. People, several people that he
10 had planned on killing.

11 Now, with that said I understand that was three years
12 ago. I can't attest to how he is now. I'm looking at
13 what happened then and from the nature of this act, which
14 is unconscionable to me, I think those are things that we
15 would ask the Court to take into consideration so that it
16 will be clear that the request for the 40 years is coming
17 from the State.

18 The victim, if he were standing here, the victim's
19 father and widower would be willing, Mr. Casey Terry,
20 would be willing for a lessor sentence. But I think
21 because of those things that I know about this case and
22 the because of the heinous nature of the case and because,
23 yes, there is street gang involvement. May not be
24 directly as it relates to him killing his family, but
25 there was a seed planted because of that activity that had

1 to be involved in this in some way in my mind.

2 So I would ask the Court to take that into
3 consideration, and that's why we are asking for a 40 year
4 recommendation. He was 14 at the time. If he serves
5 every day of that 40 years he will still be middle age,
6 relatively young middle age. So he does have a chance to
7 move forward, but I think that it should be 40 years
8 before he has that opportunity based on the two lives that
9 he took and the other life that he obviously touched as
10 well.

11 MR. JONES: Might I respond to that, Judge?

12 THE COURT: Yes, sir.

13 MR. JONES: I certainly understand what Mr. Redmond
14 is saying. I would ask you to consider the remorse shown
15 by Boston. Everybody understands that the event took
16 place when he was just past his 14th birthday that he
17 turned about two and a half months before that. I think,
18 and again, this is just my personal observation of Mr.
19 Boston during the last year and a half, that he is
20 maturing; that he is receiving a benefit while he is
21 incarcerated.

22 He is going to school. He is doing -- he's doing the
23 things that the normal 14 to 17 year old should be doing
24 outside he's doing them inside but the maturing process is
25 happening in here, and I think that his statement is very

1 heartfelt. I asked him, I said, "If you have something
2 that you would like to tell the Judge write it down." I
3 have had defendants that just cannot get through it. He
4 said, "No, I've been thinking of this for a long time,"
5 and he said, "I know exactly what I'm going to say." So I
6 hope you take that into consideration and sentence less
7 than that.

8 THE COURT: Mr. Boston, I know your future is about
9 as gloomy as anything could possibly be as you see it now.
10 Sometimes I have to take into public safety factor that
11 overrides a lot of the justification for mercy in passing
12 a sentence. And I have to admit in this particular
13 instance public safety factor gives me a lot of problems.

14 But it's not going to be that, no matter what I do,
15 if I go along, if I don't exceed the recommendation, at
16 some point in time if you live long enough which we all
17 hope you will, you will be back on your own. And maybe
18 everything will go well and you will be a productive
19 citizen for the rest of your life.

20 But I want you to make a promise. Before I get into
21 what I do I want you to make a promise to your family, to
22 your father and all the rest of your family, to everybody
23 that's helped you in this matter and the Court, that
24 you're going to continue with your education. And that
25 you're going to take part in the good things that can be

1 offered to you cause there are going to be a lot of
2 temptations out there that are just going to lead to
3 further disaster.

4 You've got the capability of going down there and not
5 only taking your high school equivalency, but you've got
6 to capability of coming out in the future not only with an
7 undergraduate degree but also a post-graduate work. If
8 you will just apply yourself. You're an intelligent --
9 everybody can tell that just from what you relayed to the
10 Court today. I'm not going to sit here and preach a
11 sermon. You've had time to reflect on everything that's
12 happened.

13 But life is short, and I hope you will listen to what
14 I've said, listen to what Mr. Jones has said, and listen
15 to what your counselor has got to say.

16 SENTENCE OF THE COURT

17 All right. On the assault and battery with intent to
18 kill, the sentence is 20 years.

19 On the two murder cases the sentence is 36 years.
20 They are concurrent.

21 Of course, by case law you get credit for your jail
22 time. And because of you are still a young man at this
23 point I'm going to recommend for him that you have
24 specialized placement until you become age enough that you
25 can handle whatever comes your way down there in the

Sentence of the Court

27

1 Department. Anything else?

2 MR. REDMOND: Nothing from the State, Your Honor.

3 MR. JONES: Thank you, Your Honor.

4 THE COURT: Mr. Jones, I know this has been a
5 difficult case and I appreciate you handling it.

6 MR. JONES: I appreciate Mr. Turnblad. He worked
7 with Taveio during his first year and a half.

8 THE COURT: Is he still here? I appreciate your
9 working with him, too.

10 MR. JONES: Thank you, Your Honor.

11 END OF TRANSCRIPT OF RECORD

12

13

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TRUE CERTIFIED COPY

Scott B. Sugar

CLERK OF COURT/PROG
DARLINGTON COUNTY, SC.

FORM 5

2012 CP-16-00544
IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA)

County of Darlington)

Taveio Raul' Bilal' Bostin SCDC#347753)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

2012 JUN 12 AM 10:48
SCOTT B. SUGAR
CLERK OF COURT/PROG
DARLINGTON COUNTY, SC.

FILED

INSTRUCTIONS-READ CCAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution

2. Name and location of Court which imposed sentence Darlington County Court-house

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

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

sentence was imposed:

- (a) 16-03-0010; 16-03-0020 (Murder/Murder)
- (b) 16-03-0010; 16-03-0020 (Murder/Murder)
- (c) 16-03-0620 (ABWIK)

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

- (a) September 14, 2011 (36 years)
- (b) _____
- (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty. YES ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

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

NO

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

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

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

(c) the date of each such result:

- i. N/A
- ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

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

(a) Counsel failed to file notice of Appeal

(b) _____

(c) _____

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

On next page had this twice

(a) _____

(b) _____

(c) _____

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

On next page had this twice

(a) _____

(b) _____

(c) _____

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

On next page had this twice

any petition in a State Court under South Carolina Law? _____

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(c) _____

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

- (a) Ineffective Assistance of counsel
- (b) Prosecutor Misconduct Allegation
- (c) Failure

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

- (a) "see Attached"
- (b) _____
- (c) _____

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

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

14 and 15 on the Back

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

NO

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

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

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

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Jason Turnblad/don't know address but he represents Chesterfield, Darlington, and Dillion counties
 - ii. Rick Jones/Don't know address but he represents Chesterfield, Darlington and Dillion counties.
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Jason Turnblad represented me at my preliminary Hearing and also my Wavier Hearing.
 - ii. Rick Jones assisted me in my sentencing
 - iii. _____

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

New Trial

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

NO

STATE OF SOUTH CAROLINA)

County of Darlington)

VERIFICATION

I, Taveio Raoul' Bilal' Boston, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Taveio R. B. Boston
Taveio R. B. Boston

SWORN to and subscribed before me this 25
day of May, 2012.

Debra Jones (L.S.)
Notary Public

My Commission Expires: 11-4-2015

FILED
2012 JUN 12 AM 10:48
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

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

I, Javeio Rawol' Bilal' Boston, hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefor. In support of my
application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Javeio R. B. Boston
Applicant

SWORN or affirmed to and subscribed before me this

25 day of May, 2012.

Debra Sims
Notary Public

My Commission Expires: 11-4-2015

2012 JUN 12 AM 10:48
SCOTT B. SUEGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

FILED

Ineffective Assistance of Counsel Allegations

FILED ①
 2018 AUG 12 AM 10:48
 SCOTT B. SUGGS
 CLERK OF COURT
 DARLINGTON COUNTY, S.C.

- (1) Petitioner asserts that his plea was involuntary.
- (2) Petitioner states the material claim that counsel was clearly ineffective for not going over discovery material with Petitioner after repeated demands. The withholding of evidence by counsel denied Petitioner of his due process rights, and Petitioner can now state that his plea was not knowingly, intelligently, and voluntarily made because Applicant was without material/evidence to properly make an informed intelligent decision.
- (3) Applicant Fifth, Sixth, and Fourteenth Amendment was violated by counsel failure to give Applicant Rule 5 and failure to advise applicant on evidence in discovery.
- (4) Counsel was ineffective for not explaining in depth the full meaning of trial. In which Petitioner did not fully understand the meaning of a trial. Petitioner told counsel that he had not wanted trial, due to the knowledge he obtained and meaning of a trial. Petitioner thought trial was only to prove innocence or guilt, however Petitioner wanted to prove that the elements of the crime was manslaughter and not murder. If not been for counsel's ineffectiveness, Petitioner would have went to trial.

Next Page
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- (5) Counsel was ineffective for advising to plea without disclosure of Rule 5. Counsel was ineffective for allowing Solicitor to solicit a plea agreement on the defendant relinquishing petitioner's right to discovery in petitioner's Criminal case, Rule 3.4 R.I. DE, Rule 407 SCACR. Petitioner claims that if he would have had access or had been exposed to prosecutor's file he would of went to trial. If not had been for counsel's ineffectiveness, petitioner would have chosen to go to trial.
- (6) Counsel was ineffective by rendering erroneous advice thus making plea involuntary. Counsel told petitioner to falsely answer the questions were just court formality. If not had been for counsel's ineffectiveness, petitioner would have went to trial.
- (7) Petitioner asserts that defense counsel's erroneous advice that defendant would receive a maximum of 2 consecutive life sentences if he proceeded trial, therefore constitutes ineffective assistance and rendered guilty plea invalid. If not had been for counsel's ineffectiveness petitioner would have went to trial.
- (8) Counsel failed to investigate petitioner's medications when petitioner asked ~~for~~ numerous times.
- (9) Counsel failed to adequately prepare petitioner's case.

Next Page
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③

(10. Petitioner asked counsel "what happens if I go to trial" and counsel replied "you will get two consecutive life sentences." Petitioner really had the intentions of going to trial, but his counsel didn't ~~know~~ even know Petitioner was in the county and had just transferred to the county from the Department of Juvenile Justice (DJJ). Counsel was just visiting other ~~inmates~~ inmates and petitioner asked can he speak with him on his case of going to trial. Counsel said "you either are going to plea September 12th or go to trial November 17th." So petitioner asked "if I plea on the 12th of September can I put in for an appeal?" Counsel replied "No, you have to do the whole time you plead too, no parole or nothing." So petitioner asked for his Rule #5 and the Counsel said it would take one week, but petitioner never received it. If petitioner would have received his Rule #5 he would have went to trial.

(11. On March 9th of 2011, petitioner went up for a bond hearing, but the Judge was also doing plea bargains. This was the 2nd time Petitioner and Counsel met up. Bond was denied, so petitioner was placed in a conference room to await being transferred back to DJJ and an unfamiliar face and Petitioner's Counsel came in and said "Are you going to plea to this 40 years, because we're trying to get you out of the way, so you need to think while the Judge is on lunch break." Petitioner said "This

Next Page
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①

is my life and we're talking about 40 years of it, so I need way more than a lunch break to think about this." The unfamiliar face replied "you plea now, we count your time you already did, you'll be like in your late 50's or early 60's. When you come home, I mean look at your grandfather, he's how old?" Petitioner replied "He's 63." Unfamiliar face said "look at him he's moving good, you'll be like him when you come home." Petitioner looked at him crazy and said "I'm not pleading, so ya'll can just send me back to DJJ." Petitioner felt like he was being rushed.

(12. Counsel and Petitioner met once again and Petitioner told counsel to look through his evaluations, medical files, and his life history to see if there was some errors. Counsel said "Did you do the crime?" Petitioner replied "yes." Counsel replied "then that's all that matters and they only found something ~~with~~ on your brain that starts with a P and it's normal, so you are guilty." Counsel failed to look inside medical history, evaluation, and life history. If Counsel would have did so, Petitioner would have went to trial.

(13. Petitioner's family tried to get in touch with Petitioner's Counsel numerous times at his office by leaving messages, but Counsel never returned calls or any thing.

(14. Counsel failed to discuss case with Petitioner, everytime they met, he wanted petitioner to just plea.

Next Page
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5

C15. Counsel told Petitioner he had three choices and the choices were "an open plea 30 to life, 40 years, and a recommendation of 40 years." But ~~the~~ Counsel explained each choice and he said "I think you should plea to the recommendation of 40 years, because the judge can't give you over 40 years, he can either give you 40 years or under." But when Petitioner got in front of the judge on his sentencing day the judge said "Now you know by this recommendation of 40 years I can either give you over 40 years or under 40 years, Mr. Boston." Counsel lied to Petitioner and if Petitioner would have knew that, he would have just went to trial.

C16. Counsel also told Petitioner "your going to end up like my other 17 year-old client John Bridges, because he waited to long to plea and he got 45 years!" Petitioner was incarcerated with John Brides since they both were 14 in DJJ. Petitioner felt like Counsel was trying to use that statement to make him plea faster.

FILED
 2012 JUN 12 AM 10:49
 SCOTT B. SUGGS
 CLERK OF COURT/R.O.D.
 DARLINGTON COUNTY, S.C.

Prosecutor Misconduct Allegation

WHAT THE... OF PROSECUTOR

Q1. Petitioner asserts that prosecutor threaten and forced Petitioner to plea, thus making petitioner's plea involuntary.

Q2. The Solicitor stated "if you don't plea today, i'll give you the 180 days that the judge gave you to await another bond hearing to think bout my plea offer. But I promise I will take you to trial, if you don't plea before your 180 days is up." Petitioner's Counsel was present and so was his father and grandparents. The Solicitor said that the only reason he didn't take Petitioner to trial then was because his wife was pregnant. But ~~the~~ solicitor made sure to Petitioner that if he went to trial, he'll make sure Petitioner would spend the rest of his life in prison.

FILED
2012 JUN 12 AM 10:49
SCOTT B. SUGGS, P.D.
CLERK OF COURT
DALLAS COUNTY, TEXAS

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON)	
)	
)	2012-CP-16- 544
)	
Taveio R.B. Boston, 337753)	
)	
Applicant,)	
)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	

Respondent, making its Return to the Application for post conviction relief (PCR) filed June 12, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. Applicant was indicted by the Darlington County Grand Jury for two counts of murder (2011-GS-16-0371 and 372), assault and battery with intent to kill, (2011-GS-16-370). Rick Jones, Esquire, represented Applicant.

On September 14, 2011, the Applicant pled guilty as indicted before the Honorable Paul M. Burch, who sentenced Applicant to thirty-six years imprisonment on the first murder charge, and to forty years imprisonment on the second murder charge, and twenty years imprisonment on the assault and battery with intent to kill charge. Applicant did not appeal his sentence.

Attached herewith and incorporated herein are the records of the Darlington County Clerk of Court regarding the subject conviction, and Applicant's SCDC records, and Respondent will forward

the transcript upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "Prosecutor Misconduct Allegation"

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second,

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

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

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.


Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

August 23, 2012.

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

COURT OF COMMON PLEAS

TAVEIO R. B. BOSTON)
347753)
PETITIONER,)

TRANSCRIPT OF RECORD
12-CP-16-0544

v.)

STATE OF SOUTH CAROLINA,)
RESPONDENT.)

July 15, 2013
Darlington, South Carolina

BEFORE :

THE HONORABLE R. FERRELL COTHRAN, JR., JUDGE

APPEARANCES:

CHARLES T. BROOKS, III, ESQ.
Attorney for the Petitioner

KAREN C. RATIGAN, ESQ.
Attorney for Respondent

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

INDEX

	Page
Taveio Boston:	
Direct examination	3
Cross-examination	11
J. Richard Jones:	
Direct examination	18
Cross-examination	22

1 MS. RATIGAN: May it please the Court,
2 Your Honor this is the case of Taveio Boston v.
3 State of South Carolina. The docket number is
4 2012-CP-16-0544. Mr. Boston was indicted for one
5 count of assault and battery with intent to kill and
6 two counts of murder. He was represented on those
7 charges by Mr. Jones of the Public Defender's
8 Office. He pled guilty as indicted September 14th
9 of 2011 before Judge Burch. He received concurrent
10 sentences of 20 years for the ABWIK charge and 36
11 years for each charge of murder. He did not file an
12 appeal and the State is ready to proceed.

13 THE COURT: Okay.

14 MR. BROOKS: Hey, Judge.

15 THE COURT: Hey.

16 MR. BROOKS: Judge, we'll go ahead and
17 call Mr. Boston to the stand.

18 THE COURT: All right.

19 THE CLERK OF COURT: Place your left hand
20 on the Bible, raise your right.

21 WHEREUPON,

22 **TAVEIO BOSTON,**
23 having been duly sworn by the Clerk of Court,
24 testified as follows:

25 MR. BROOKS: Ready, Judge?

SW - T. BOSTON - DIRECT

1 THE COURT: Yes, sir.

2 **DIRECT EXAMINATION**

3 BY MR. BROOKS:

4 Q Mr. Boston.

5 A Yes, sir.

6 Q Can you state your full name for the record?

7 A Taveio Raoul Bala (ph) Boston.

8 Q Okay. Now Mr. Boston, I want to tell you it's
9 important that you speak up. You see that lady down
10 there doing all that typing?

11 A Yes, sir.

12 Q That's the court reporter and she's got to take
13 down what you say and that means you can't talk like
14 we talk in the back where you can nod your head and
15 say uh-huh and huh-uh. You got to give a clear
16 verbal response so that she can record that. You
17 understand?

18 A Yes, sir.

19 Q Okay. Now you brought this case, post-conviction
20 relief, where you're seeking to have your guilty
21 plea overturned; is that correct?

22 A Yes, sir.

23 Q And you understand that the only remedy that the
24 judge can give you is to give you a new trial?

25 A Yes, sir.

SW - T. BOSTON - DIRECT

1 Q He can't cut your time. He can't make you parole
2 eligible any sooner. He can only give you a new
3 trial. You understand that?

4 A Yes, sir.

5 Q And you understand what that means. And you
6 understand the possible risk that could come with
7 that?

8 A Yes, sir.

9 Q And as we have discussed, it is still your desire
10 to go forward with your PCR; is that correct?

11 A Yes, sir.

12 Q Okay. Now you had Mr. Jones represent you; is
13 that right?

14 A Yes, sir.

15 Q And he was court appointed to your case?

16 A Yes, sir.

17 Q And you ended up pleading guilty?

18 A Yes, sir.

19 Q Okay. Tell the Court how did that come about and
20 why you ended up pleading guilty?

21 A I pled guilty because I was scared due to the
22 fact he told me if I went to trial -- him and the
23 Solicitor Mr. Redmond, they told me if I went to
24 trial I would have got two consecutive life
25 sentences, and I looked at it like if I take the

SW - T. BOSTON - DIRECT

1 recommendation of 40 years he told me the
2 recommendation would be 40 years and under. When I
3 got in front of the judge, the judge told me it
4 could go -- I could get either way/I could get
5 higher or lesser. I didn't know it could go higher
6 than that so due to the fact I was looking at least
7 I had a release date instead of receiving two
8 consecutive life sentences.

9 Q Now you understand that if Judge Cothran pressed
10 that reset button on this, the game that we talked
11 about, video game, you know, give you a whole
12 startover, that all of what you just said goes back
13 into play. You understand?

14 A Yes, sir.

15 Q And knowing that you still want to get this new
16 trial?

17 A Yes, sir.

18 Q Okay. Now tell the Court what you think your
19 lawyer did wrong in representing you?

20 A For one, I didn't know all the evidence that was
21 being held against me. I didn't have my Rule 5
22 motion, discovery, none of that. I was lied to on
23 numerous occasions. He ---

24 Q What were you lied to about?

25 A He simply, he stated that -- he simply told me

SW - T. BOSTON - DIRECT

1 when I was there, he said if I would have, basically
2 if I would have, if I would have pleaded or either
3 went to trial, either way I couldn't appeal it or
4 anything. This is what he told me. Whenever he
5 came to me with the plea agreement, if I plead
6 September 12th that you'll plead to recommendation
7 of 40 years. He say if you don't plea on this date
8 you'll simply go to trial November 17 of 2011. This
9 is what he told me. He say if, I say -- if I go to
10 trial if be able to appeal it, he said, no, you
11 cannot appeal it or anything, you just have to do
12 mandatory sentence or whatever the judge give you,
13 no parole, no anything. This is what he stated.

14 Q Okay. So you thought that you couldn't appeal a
15 conviction from a trial?

16 A No, I thought I could. He told me I couldn't.

17 Q As a result of talking to him you thought you
18 couldn't appeal?

19 A Yeah.

20 Q Okay.

21 A That's what he say. This my lawyer, I'm gonna go
22 by what he say.

23 Q Okay. What else do you think Mr. Jones did wrong
24 other than that?

25 A Besides matter of the fact for me he didn't

SW - T. BOSTON - DIRECT

1 prepare my case. Whenever I asked him to look into
2 my medications, my history, he didn't do none of
3 that. Every time he came to me he wanted me to
4 plead. My first time meeting him he wanted me to
5 plead to 45 years.

6 Q But now you ended up pleading and you got a
7 cumulative total of 36 years; is that correct?

8 A Yeah. Well, my -- when you sent me my papers I
9 got 40 one murder, 36 for one murder and 24 for the
10 intent to kill.

11 Q Okay. So do you know what your total sentence is
12 'cause all this was run concurrent?

13 A Yeah, 36 consecutive, 36.

14 Q And your max out date is in 2044.

15 A Yes, sir, 1017.

16 Q A little over 30 years from now?

17 A Yes, sir.

18 Q Okay. And you do understand that the maximum
19 punishment for this offense is life sentence?

20 A Yes, sir.

21 Q Okay. And how old are you now?

22 A 18.

23 Q Okay. All right, what else you want to tell the
24 judge about your lawyer and his representation?

25 A I do think he was ineffective by not -- he failed

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1 to object, the solic— when the solicitor simply
2 stated that he stated to — well, he, he was clearly
3 ineffective for failing to object and challenge the
4 unconstitution coerced confession by letting this
5 dude utilize my confession, my statements which I
6 was — whenever I say this I simply saying I had
7 supposed to been, whenever I made my statements,
8 whenever my statements was given, whenever I been
9 interrogated my parents was supposed to be there
10 with me.

11 Q Okay.

12 A My parents supposed to be in there with me. He
13 violated my Fifth, Sixth and Fourteenth Amendment by
14 doing that. This dude — that confession, those
15 statements, weren't even supposed to been utilized
16 in the courtroom.

17 Q Okay. So you're saying that your lawyer should
18 have filed a motion to try to throw out the
19 confession?

20 A Yeah.

21 Q Okay, all right.

22 A And there's another thing he was ineffective on,
23 to object to the Solicitor when he mentioned crimes
24 that I wasn't even charged with. The crimes he
25 mentioned were conspiracy to commit murder and a

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1 gang charge under the RICO Act. He stated in my
2 transcript three times that this is why, this is why
3 I was sentenced. He went against my stepfather said
4 he didn't wanted me to get ---

5 Q Stepfather didn't want to do what?

6 A My stepfather didn't wanted me to get nothing
7 close to 30 or 40 years. My family, some of my
8 family members wanted me home. They didn't take
9 that in consideration. He simply stated in my
10 transcript that these are the reasons why I think he
11 should get sentenced to 30, to a recommendation of
12 40 or 40 years. This what he stated in my
13 transcript, and I could read that for you if you
14 want me to.

15 Q That's fine; we got the transcript. Do you think
16 that -- were you ever evaluated?

17 A Yes, I was evaluated when I was ---

18 Q You were?

19 A ---14. I had supposed to be evaluated every year
20 until my 17th birthday. This is what they told me.

21 Q Okay. Who told you that?

22 A Whenever I was waived up in my hearing from juv--
23 from family court to general sessions.

24 Q Okay, all right. Anything else you want to tell
25 the judge?

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1 A No, sir.

2 Q You sure?

3 A No, sir.

4 Q All right, this is the time. This is your one
5 bite at the apple. You got anything else you want
6 to tell the judge why you should get your PCR
7 granted and get you a new trial, other than what you
8 said thus far?

9 A No, sir, everything else y'all got it already.

10 Q All right.

11 A Y'all got a copy of everything else.

12 Q All right. Answer any questions that the
13 attorney general.

14 **CROSS-EXAMINATION**

15 BY MS. RATIGAN:

16 Q How many times do you say you met with Mr. Jones
17 before you went to court, do you remember?

18 A Before I met -- I first met him in 2010 --

19 Q Okay.

20 A --of December. My second time meeting him was
21 in March, and my third time was when he offered a
22 plea to me, the, this right here where we here
23 about.

24 Q So your testimony is you only met with him three
25 times before you pled guilty?

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1 A Yes, ma'am.

2 Q Okay. And when you spoke to Mr. Jones did you
3 review the State's evidence against you?

4 A He only said, he only mentioned two counts of
5 murder and intent to kill so.

6 Q But did you talk about the incident reports or
7 witness statements or autopsy, nothing like that?

8 A Every time, every time Mr. Jones came to see me
9 he didn't have nothing on my case. He came in with
10 a little tablet like that man right there writing
11 on, with nothing on it, nothing but my name.

12 Q Okay. So when you would have these meetings with
13 Mr. Jones what did you talk about?

14 A Every time he met with me he wanted me to plead.
15 When I first met him he said Mr. Jason Turnblad is
16 not your lawyer no more, I'm your new appointed
17 lawyer 'cause Mr. Turnblad has his own law firm now,
18 something like that. That's what he stated so he
19 been like, he was my new lawyer, and he would like
20 to get me in court before the year is out and that,
21 and this was the year before 2011.

22 Q Okay. Did you ever speak to Mr. Jones about the
23 confession you'd given the police?

24 A Yes, ma'am.

25 Q And what did you talk about when you talked about

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1 that with Mr. Jones?

2 A We talked about -- he basically said, he asked me
3 did you do it, and I said yeah. And he say, that's
4 all that matters, you guilty. That's what he
5 basically said.

6 Q So did Mr. Jones explain to you how damaging that
7 confession was gonna be on your case?

8 A He explained it, but he didn't explain whether it
9 was for the worse or whether it was for better.

10 Q And you're saying today you think your state,
11 your confession was coerced?

12 A Yes, ma'am.

13 Q Why?

14 A 'Cause it didn't supposed to be utilized in
15 court. I was 14 at the time. You cannot question a
16 juvenile without a parent or legal guardian or his
17 lawyer without being present.

18 THE COURT: Who told you that?

19 THE WITNESS: Say what?

20 THE COURT: Who told you that?

21 THE WITNESS: It states that in Kent
22 versus the United States and court de---

23 THE COURT: Okay.

24 BY MS. RATIGAN:

25 Q But did you ever discuss with Mr. Jones the fact

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1 you were 14 when you gave that confession? Did
2 y'all ever talk about that?

3 A Yes, ma'am, he came out and said in court
4 whenever I entered my guilty plea.

5 Q But he never talked to you about the fact that he
6 thought it was coerced or ---

7 A No, ma'am.

8 Q ---improper or anything like that?

9 A No, ma'am.

10 Q And did you talk about the fact that your sister
11 identified you as having shot both her and your
12 mother?

13 A Yes, ma'am.

14 Q And when you talked about that with Mr. Jones did
15 he tell you that was gonna be very damaging to your
16 case?

17 A He said that was the only thing; everything else
18 was good.

19 Q And when you met with Mr. Jones did you tell him
20 your version of what had happened that day at your
21 mother's house?

22 A I can't -- to tell you the truth I don't even
23 remember.

24 Q Okay.

25 A He never asked me to explain.

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1 Q So did you go through the facts, the State's
2 facts against you that you had shot your mother and
3 then shot your sister and then fled? Did y'all talk
4 about that that's what the State was going to argue
5 at trial?

6 A We -- he never done that.

7 Q Okay. And are you saying now that you wanted to
8 go to trial instead of pleading guilty?

9 A If I would have, I told -- when he came to me
10 with this plea I said, he say, you can either go to
11 on trial November 17th. I said, how long, I asked
12 about my Rule 5 evidence. I say, how long will it
13 take you to let me to receive that. He said, you
14 will receive it in one week. He said, you sure you
15 want to go to trial? I said, yeah, you send me my
16 motion, we can go to trial.

17 Q So you're wishing now that you had gone to trial
18 instead of pleading guilty?

19 A Yes, ma'am.

20 Q So even though you had a confession and your
21 sister identified you as the shooter, you still
22 think you would have been better off going to trial?

23 A Yes, ma'am.

24 Q Okay. Why did you tell the judge you were
25 satisfied with Mr. Jones when you're saying that he

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1 didn't review discovery with you and he didn't look
2 into things for you? Why did you tell the judge you
3 were satisfied with him?

4 A 'Cause the way he explained everything to me
5 whenever we went in the courtroom. He say we need
6 to go in make this quick and get this out of the way
7 so answer these questions right here so we can go
8 ahead and get it out of the way.

9 Q So Mr. Jones told you how to answer the
10 questions?

11 A He falsely told me how to answer the questions.

12 Q Did he tell you to lie?

13 A He didn't come out and say lie, but that's
14 basically what you telling me. You telling me how
15 to answer this your way and not my way.

16 Q And why did you tell the judge you were guilty
17 if, in fact, you wanted to go to trial and prove you
18 were innocent?

19 A Say that again.

20 Q Why did you tell the judge that day you were
21 guilty when today you're saying you wanted go to
22 trial and prove your innocence?

23 A I wanted to prove the innocence then. You
24 innocent until proven guilty —

25 Q Okay, well then —

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1 A If I had went to trial you would have had to
2 prove that.

3 Q Well then why did you tell the judge you were
4 guilty?

5 A I just told you. The man told me to falsely
6 answer the questions.

7 Q So Mr. Jones told you to go in there and say you
8 were guilty even though you were not guilty?

9 A He basically stated did you do it, yes, that's
10 what I said. And he said that's all that matters.

11 Q So what you're saying today is that you lied to
12 the judge when you answered these questions?

13 A Due to the fact of my ineffective assistance of
14 counsel.

15 Q Okay. So you lied to the judge back in 2011 but
16 today you're saying you're telling the truth?

17 A I didn't lie. Look, if you saying that I'm
18 lieing because this is what my lawyer told me to do,
19 it's you.

20 Q So you weren't lieing, you were just doing what
21 you were told?

22 A Yeah.

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

25 THE COURT: Thank you. Any further

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1 questioning?

2 MR. BROOKS: No other questions, Judge.

3 THE COURT: Okay, you can step down.

4 MR. BROOKS: We call Mr. Jones to the
5 stand.

6 WHEREUPON,

7 **RICHARD JONES,**

8 having been duly sworn by the Clerk of Court,
9 testified as follows:

10 MR. BROOKS: Ready, Judge?

11 THE COURT: Yes, sir.

12 **DIRECT EXAMINATION**

13 BY MR. BROOKS:

14 Q How are you doing today, Mr. Jones?

15 A Very well, thank you.

16 Q Can you give a brief summary of what the State's
17 case was against Mr. Boston?

18 A Yes. Mr. Boston was charged with shooting his
19 mother and her unborn child or causing the death of
20 his mother and unborn child and shooting his sister,
21 then stealing a car or taking the family car,
22 driving it, abandoning it, calling his father in
23 Florence, telling him that he had been kidnapped and
24 that he had escaped from the kidnappers and for his
25 father to come pick him up. Unbeknownst to

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1 Mr. Boston his sister did not die as a result of the
2 gunshot. She went either across the street or next
3 door to the neighbor's house to get help. They
4 called 9-1-1. She told the neighbors as well as the
5 police that Mr. Boston had shot their mother and
6 her; and then Mr. Boston, when confronted by the
7 police I think initially said that he didn't do it.
8 He e stuck to his story but then eventually
9 confessed to it.

10 Q How old was Mr. Boston at this time?

11 A He was 14 years old.

12 Q Was he ever evaluated?

13 A He was.

14 Q Did you ever talk to him about the admissibility
15 of the confession?

16 A I started representing Mr. Boston about a
17 year-and-a-half or so after he was arrested. Our
18 public defender in Chesterfield, Jason Turnblad,
19 represented him initially and went through the
20 waiver hearing with him. When I began talking to
21 Mr. Boston, to be honest Mr. Boston was not very
22 talkative when I would go to see him. As I recall
23 Mr. Turnblad had made — he had begun his trial
24 notebook, and mostly in that notebook were the
25 results of the evaluation that the State did as well

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1 as the second evaluation that Mr. Turnblad had
2 Doctor Schwartz-Watts — I think that was her
3 name — do of Mr. Boston in preparation for the
4 waiver hearing. But in answer to your question,
5 yeah, we talked about evidence a lot, but I did most
6 of talking; he did not talk that much.

7 Q Did you ever -- did you ever discuss going to
8 trial?

9 A I told Mr. Boston that he had basically one of
10 two decisions to make, either to go to trial or to
11 consider a plea. My initial conversations with him,
12 he never indicated to me what he wanted to do so I
13 told him that eventually the solicitor would be
14 calling the case for trial and that until I found
15 out exactly what he wanted me to do I'd be preparing
16 for trial.

17 Q And of course it ended up being a plea?

18 A It did.

19 Q How did that come about?

20 A I don't remember at what stage while Mr. Boston
21 was at the Department of Juvenile Justice that he
22 indicated he wanted me to explore the possibility of
23 a plea; but at one of my meetings with him, he did
24 indicate he wanted me to do that, which I did. I
25 began talking to the solicitor trying to determine

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1 what the solicitor's point of view was and what he
2 would be intending to ask for, or what charge he
3 would allow him to plead to. I never got a
4 definitive, I guess, word from the solicitor until
5 fairly late in the game. He was communicating with
6 the surviving husband of Mr. Boston's mother and
7 other family members. But at some point in time the
8 40 year offer was made to me which I relayed to Mr.
9 Boston.

10 Q And he ultimately got less than that?

11 A He did.

12 Q Anything else you could have done different in
13 this case?

14 A I don't think so. Between Mr. Turnblad and
15 myself I think we met with Mr. Boston enough to
16 determine his frame of mind about what he wanted to
17 do. My thoughts on Mr. Boston is that he didn't
18 want to do anything as long as he was at the
19 Department of Juvenile Justice. In fact, until his
20 17th birthday when he was transferred to the
21 Darlington Detention Center, whenever I mentioned
22 trying to schedule a plea Mr. Boston at that point
23 in time would tell me, no, he did not want to do it
24 right then.

25 MR. BROOKS: Beg the Court's indulgence.

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1 No other questions.

2 THE COURT: Okay.

3 **CROSS-EXAMINATION**

4 BY MS. RATIGAN:

5 Q Mr. Jones, by the time you came on to the case I
6 assume Mr. Turnblad had already filed Brady Rule 5?

7 A Yes.

8 Q And did you have full discovery by the time you
9 came on or was it ongoing?

10 A As I recall I think Jason, Mr. Turnblad received
11 all of the Rule 5 prior to my getting involved.

12 That was the -- that was what was in the notebook.

13 Q Okay. And Mr. Boston testified he met with you
14 about three times before the plea. Does that sound
15 accurate?

16 A Might have been one or two other times. One of
17 the interesting parts about the, Mr. Boston's stay
18 at the Department of Juvenile Justice, he had a
19 social worker Ms. Benton who frequently would call,
20 and she would arrange telephone conversations
21 between Mr. Boston and myself so seems to me like I
22 did go four or five times over at the DJJ but I
23 spoke with him numerous times because she arranged
24 the conversations.

25 Q And did you review all the discovery materials

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1 with Mr. Boston before the plea?

2 A Well, that was what I was talking about. I did
3 most of the talking. He didn't talk very much
4 whenever I would meet with him. And I don't think I
5 took that notebook every time I went. I may have
6 taken it only the first time or the second time, I
7 don't recall, but we certainly discussed what
8 evidence would be presented if there were a trial.

9 Q And did you explain to him what the State would
10 have to prove at trial to have him found guilty?

11 A Absolutely.

12 Q And did you review with him the confession that
13 he gave police?

14 A I don't remember ever in detail talking with him
15 about the confession. He told me that he had made a
16 confession. I was more concerned about the
17 eyewitness testimony of his sister than, really, the
18 confession.

19 Q In your opinion was there any basis to challenge
20 the confession?

21 A I'm not sure we ever got to that point because at
22 some -- I -- this -- Mr. Boston I believe was 17
23 when he pled guilty, or almost 17. The case had
24 been just sitting for about three years. I was
25 trying to get the solicitor to call the case so that

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1 Mr. Boston could have his day in court. As far as
2 the confession, I think I recall telling him that he
3 was a very young man not only when this happened but
4 when he confessed to it and there were probably some
5 issues that we could talk about should we be
6 preparing for trial.

7 Q Now about the identification, that was his
8 younger sister that identified him as the shooter?

9 A Yes.

10 Q And did you have a witness statement in that
11 regard from her?

12 A Yes.

13 Q And did you review that statement with Mr.
14 Boston?

15 A Yes. Again, all this was in the notebook. I
16 don't remember handing him the piece of paper and
17 saying read this, but we certainly — we discussed
18 that. And I think the notebook, as I said, I may
19 have flipped through it a time or two. He didn't
20 really want to talk too much initially. And like I
21 said, at some point in time I quit taking the
22 notebook with me when I went to visit him.

23 Q Right. Did you explain to him how damaging that
24 identification would be on your case?

25 A Absolutely.

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1 Q And did he ever tell you his version of what had
2 happened that day, do you recall?

3 A I'm not sure that he did in detail, no.

4 Q And it was mentioned both at the plea and by
5 Mr. Boston today about him being on medication.
6 Were you aware at the time he was on any kind of
7 medication at the time of the plea?

8 A I think that was a fairly major issue with the
9 evaluation that Mr. Turnblad had gotten. His
10 medication, I -- to be honest, I don't recall
11 exactly what he was on. I do recall having a
12 conversation with him because one of the interns at
13 DJJ had told him that the young man in Charleston
14 had used the Prozac defense and he wanted to talk
15 about that and we did have a conversation about
16 that.

17 Q In your opinion was he able to understand the
18 conversations that you did have with him?

19 A Mr. Boston is a very smart young man, yes.

20 Q Did he ever indicate he was confused about any of
21 your conversations or didn't understand what's going
22 on?

23 A Not at all.

24 Q When you -- right before you went into the plea
25 hearing I assume you spoke with Mr. Boston about the

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1 questions the judge would ask?

2 A Actually we had done that twice. I did that at
3 the detention center. In fact, I had told
4 Mr. Boston that he would be pleading in front of
5 Judge Burch and that Judge Burch very much liked to
6 hear from the defendant. I started to talk with him
7 about what he might want to say. He told me not to
8 worry about that, he had that under control. And if
9 ---

10 Q Did you ever instruct Mr. Boston how to answer
11 questions?

12 A Yes, I told him to answer truthfully every time
13 he was asked a question.

14 Q Once you brought him that 40 year offer do you
15 know about how long he sat on it before he decided
16 he would take it?

17 A I don't remember exactly when -- he was at the
18 Department of Juvenile when we first talked about
19 that. And then when he was transferred to the
20 Darlington Detention Center it was not too long
21 after that he said, yes, he was ready to go.

22 Q At any point during the plea hearing did he
23 waiver? Did he tell you he wanted to go to trial
24 instead, that he wanted to stand down? Did he do
25 anything like that during the plea?

1 A Not at all.

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

4 THE COURT: Okay. Anything else,
5 Mr. Brooks?

6 MR. BROOKS: Nothing else, Judge.

7 THE COURT: Thank you, sir. You may step
8 down.

9 THE WITNESS: Thank you.

10 MR. BROOKS: Judge, that's the applicant's
11 case.

12 THE COURT: Okay. Does the State have
13 anything?

14 MS. RATIGAN: Your Honor, we would just
15 rest on Mr. Jones' testimony and the record.

16 THE COURT: Okay. I'll read the record
17 and let y'all know something the next day or two.

18

19

20

21 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

22

23

24

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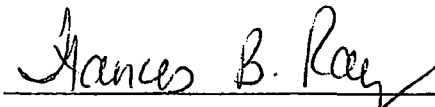
C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 13th day of December, 2013.



FRANCES BAKIS-RAY, RPR

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON)	
Taveio Raoul Bilal Boston,)	2012-CP-16-0544
S.C.D.C. No. 347753,)	
Applicant,)	ORDER OF DISMISSAL
v.)	
State of South Carolina,)	
Respondent.)	

FILED
 2013 AUG 27 PM 2:09
 SCOTT B. SUGGS, P.D.
 CLERK OF COURT
 DARLINGTON COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 12, 2012. The Respondent made its return on August 23, 2012. An evidentiary hearing into the matter was convened on July 15, 2013 at the Darlington County Courthouse. The Applicant was present at the hearing and represented by Charles T. Brooks, III, Esquire. Karen C. Rafigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, J. Richard Jones, Esquire. The Court had before it the transcript of the guilty plea hearing, the Darlington County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Darlington County Clerk of Court. The Applicant was indicted at the March 2011 term of the Darlington County Grand Jury for assault and battery with intent to kill (ABWIK) (2011-GS-16-0370) and two counts of murder (2011-GS-16-0371, -0372). He

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

was represented by J. Richard Jones, Esquire.

On September 14, 2011, the Applicant pled guilty to the charges as indicted. He was sentenced by the Honorable Paul M. Burch to concurrent terms of twenty years for ABWIK and thirty-six years for each count of murder. The Applicant did not file an appeal

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. Failed to review the discovery materials "after repeated demands."
 - b. Failed to "give Applicant Rule 5 and failure to advise applicant on evidence in discovery."
 - c. Failed to explain "in depth the full meaning of trial."
 - d. Advised the Applicant "to plea without disclosure of Rule 5."
 - e. Advised the Applicant to "falsely answer the questions."
 - f. Gave "erroneous advice that [the Applicant] would receive a maximum of 2 consecutive life sentences if he proceeded [to] trial."
 - g. Failed to "investigate [the Applicant]'s medications when . . . asked numerous times."
 - h. Failed to "adequately prepare" the Applicant's case.
 - i. Advised the Applicant he would receive two consecutive life sentences if he went to trial.
 - j. After his March 9, 2011 bond hearing, the plea counsel and another individual tried to convince him to plead guilty. The Applicant "felt like he was being rushed."
 - k. "[F]ailed to look inside medical history, evaluation, and life history."
 - l. Failed to return [phone] calls.
 - m. "Failed to discuss case with [the Applicant]."
 - n. Told the Applicant "he had three choices and the choices were 'an open plea 30 to life, 40 years, and a recommendation of 40 years . . . But when [the Applicant] got in from of the judge on his sentencing day the judge said 'now you know by this recommendation of 40 years I can either give you over 40 years or under 40 years.'"
 - o. Told the Applicant "your going to end up like my other 17 year-old client . . . because he waited to long to plea and he got 45 years."
2. Involuntary guilty plea.

3. Prosecutorial misconduct:
 - a. “[P]rosecutor threaten and forced [the Applicant] to plea.”
 - b. Prosecutor stated if the Applicant did not plead guilty that day, he would “give [him] the 180 days that the judge gave [him] to await another bond hearing to think bout [his] plea offer.” But that, if the Applicant did not plead guilty within those 180 days he “will take [him] to trial.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary and that he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not

have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Applicant stated he had three meetings with plea counsel but that they never reviewed the evidence in his case. The Applicant admitted, however, that he reviewed his confession with plea counsel – and that it was damaging to his case – but the Applicant stated the confession was coerced because he was fourteen years-old at the time. The Applicant stated plea counsel did not challenge his confession and only wanted him to plead guilty. The Applicant stated plea counsel told him he would receive two consecutive life sentences if he went to trial but that the State's recommendation was that he would receive forty years or less. The Applicant stated plea counsel should have looked into the medications he was taking. The Applicant stated he told the plea judge he was guilty of the charges and satisfied with plea counsel because that was how plea counsel told him to answer those questions. The Applicant stated that, even with the evidence against him, he wanted to go to trial.

Plea counsel testified he was the second public defender who handled the Applicant's case. Plea counsel testified they had more than three meetings and reviewed the evidence numerous times. Plea counsel testified they reviewed the Applicant's confession and that his

sister's identification and statement were damaging. Plea counsel testified they had not reached the point of challenging the confession but that he had told the Applicant they could argue that he was "very young at the time" at a trial. Plea counsel testified the first public defender on this case looked into competency issues and noted the Applicant had undergone two competency evaluations. Plea counsel testified he did not have any problems communicating with the Applicant and that the Applicant never said he did not understand their discussions. Plea counsel testified he prepared the Applicant twice for the plea hearing and told the Applicant to answer the plea judge's questions truthfully. Plea counsel testified the Applicant did not waver during the plea hearing.

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

The Applicant admitted to the plea judge that he was guilty. (Plea transcript, p.11). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.8-11). This Court finds there is no evidence in the guilty plea transcript to support the Applicant's assertion that he was pressured into entering a guilty plea; therefore the transcript has refuted this allegation. See *Stalk v. State*, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007); see also *Rayford v. State*, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him). This

Court finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712.

This Court finds the Applicant failed to meet his burden of proving plea counsel did not review the discovery materials with him. Plea counsel testified he was not the first attorney who was appointed in this case, and that the discovery materials had already been received prior to his representation. Plea counsel testified he reviewed the discovery materials with the Applicant and explained the State's case against him. This Court finds plea counsel's testimony is credible. This Court finds the Applicant has failed to present any credible evidence that counsel did not review and discuss the discovery materials with him before he pled guilty. This Court finds the Applicant also failed to articulate what materials he did not view and how not viewing those materials affected the outcome of his case. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (holding that, in a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not adequately investigate his medication. The Applicant testified plea counsel did not "look into" his medications. Plea counsel testified he did not recall any issues regarding the Applicant's medication. Plea counsel noted the Applicant was evaluated twice while he was represented by his prior attorney. Plea counsel also noted the file indicated the Applicant was interested in "the Prozac defense." This Court notes the plea transcript reflects that plea counsel was aware the Applicant was taking medication on the day of the incident. (Plea transcript, p.17). This Court finds, however, that the Applicant failed to present medical records or expert testimony about his medications and how they may have impacted either his competency or the defense case. As such, this Court cannot speculate on this matter. See, e.g., Dempsey v. State, 363 S.C. 365, 370,

610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, “any finding of prejudice is merely speculative”); Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense).

This Court finds the Applicant failed to meet his burden of proving plea counsel said he would receive two consecutive life sentences if he went to trial on these charges. This Court notes the Applicant was facing the possibility of two life sentences plus thirty years if he received consecutive maximum sentences. This Court notes the Applicant must be advised of the maximum sentence he can receive before he pleads guilty. See Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (finding that, before a defendant can enter a guilty plea, he “must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived”). Regardless, this Court notes the Applicant told the plea judge he had not been threatened in order to have him plead guilty. (Plea transcript, pp.10-11).

This Court finds the Applicant failed to meet his burden of proving plea counsel told him to falsely answer the judge’s questions during the plea colloquy. Plea counsel testified that, during guilty plea preparations, he told the Applicant to answer the judge’s questions truthfully. This Court finds plea counsel’s testimony is credible. This Court also finds the Applicant has failed to present any evidence or testimony in support of this allegation. See Butler v. State, 286 S.C. at 442, 334 S.E.2d at 814.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under

prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel’s performance. Even assuming arguendo that plea counsel committed an error or omission in his representation, the Applicant cannot prove prejudice because the State had overwhelming evidence of guilt (in the form of his statement and his sister’s eyewitness identification of him as the shooter). (Plea transcript, p.14). See, e.g., Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.¹

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not

¹ This Court notes the Applicant alleged prosecutorial misconduct as an issue in his PCR application. The Applicant, however, failed to present any evidence or testimony in support of this issue. As such, this Court finds the Applicant has abandoned this issue. See Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989) (finding that, with regard to prosecutorial misconduct, the burden is on the defendant to prove actual vindictiveness).

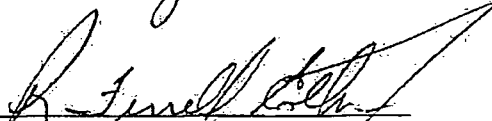
established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Furthermore, the Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 19 day of Aug, 2013.


 R. Ferrell Cothran, Jr.
 Presiding Judge

Monning, South Carolina.

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

FILED
 2013 AUG 27 PM 2:09
 SCOTT B. SUGGS
 CLERK OF COURT/R.M.C.
 DARLINGTON COUNTY, S.C.

WITNESSES

David Young

Darlington County Sheriff

Law Enforcement Case # 200810-0549

[Handwritten signature]
WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

ARREST WARRANT NUMBER
J654174

ARRESTED ON: 2010-05-27

ACTION OF GRAND JURY

[Handwritten signature]
Grand Jury Foreperson

Date APR 07 2011

VERDICT

True Bill

Petit Jury Foreperson

Date APR 07 2011

DOCKET NUMBER:
2011-GS-16-0370

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
March 2011

THE STATE

vs.

Taveio Ra'Oul Boston

INDICTMENT FOR

Assault / Assault and battery with Intent to Kill
(ABWIK) -

§16-03-0620

CDR Code: 0014

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DARLINGTON) INDICTMENT FOR
) Assault / Assault and battery with Intent to Kill
) (ABWIK) -
) §16-03-0620

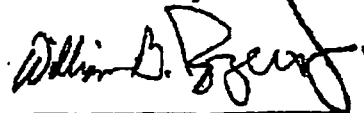
At a Court of General Sessions, convened on March 7, 2011, the Grand Jurors of Darlington County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

CDR: 0014 16-03-0620

That Taveio Ra'Oul Boston did in Darlington County on or about October 26, 2008, commit an unlawful act of violent injury to the victim, Mikealia A'Kya Cierra Alford, with malice, by Taveio Ra'Oul Boston, thus committing the crime of Assault and Battery with Intent to Kill, to wit: did shoot his juvenile sister in the neck area causing severe bodily injury, in violation of Section 16-03-0620, S. C. Code of Laws, 1976, as amended.

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



WILLIAM B. ROGERS, JR.
 SOLICITOR

WITNESSES

David Young

Darlington County Sheriff

Law Enforcement Case #: 200810-0549

[Signature]
WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

ARREST WARRANT NUMBER
J654171

ARRESTED ON: 2010-05-27

ACTION OF GRAND JURY

[Signature]
Grand Jury Foreperson

Date APR 07 2011

VERDICT

[Faint text]

Petit Jury Foreperson

Date APR 07 2011

DOCKET NUMBER:
2011-GS-16-0371

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
March 2011

THE STATE

vs.

Taveio Ra'Oul Boston

INDICTMENT FOR

Murder / Murder

§16-03-0010; 16-03-0020

CDR Code: 0116

William B. Rogers, Jr., Solicitor

WITNESSES

David Young

Darlington County Sheriff

Law Enforcement Case #: 200810-0549

WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

ARREST WARRANT NUMBER
J654172

ARRESTED ON: 2010-05-27

ACTION OF GRAND JURY

Shawn Haul
Grand Jury Foreperson

Date FEB 07 2011

VERDICT

True Bill

Petit Jury Foreperson

Date APR 07 2011

DOCKET NUMBER:
2011-GS-16-0372

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
March 2011

THE STATE

vs.

Taveio Ra'Oul Boston

INDICTMENT FOR

Murder / Murder

§16-03-0010; 16-03-0020

CDR Code: 0116

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

INDICTMENT FOR

Murder / Murder

§16-03-0010; 16-03-0020

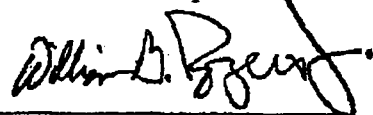
At a Court of General Sessions, convened on March 7, 2011, the Grand Jurors of Darlington County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Taveio Ra'Oul Boston did in Darlington County, on or about October 26, 2008, willfully, feloniously, and intentionally kill the victim, Baby Girl Terry, with malice aforethought, either express or implied, by means of shooting his mother, Sherryle Terry who was pregnant at 36 4/7 weeks, and the victim did die as a proximate result thereof on or about October 26, 2008 in Darlington County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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



WILLIAM B. ROGERS, JR.
SOLICITOR