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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Florence County

William H. Seals, Jr., Circuit Court Judge

JAMIE B. GREEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 201~~4~~-000026

APPENDIX

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STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE)	CASE NO. 2011-GS-21-744
)	
STATE OF SOUTH CAROLINA,)	
)	
Plaintiff,)	
)	
- vs -)	TRANSCRIPT OF RECORD
)	
JAMIE B. GREEN,)	
)	
Defendant.)	
)	

August 2, 2012
Florence, South Carolina

B E F O R E:

THE HONORABLE MICHAEL G. NETTLES, Judge

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

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HENRY M. ANDERSON, JR., Esquire
Attorney for the Defendant

KRYSTAL J. SMITH
Court Reporter

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1 AUGUST 2, 2012

2 (WHEREAS this matter was scheduled for a term of General
3 Sessions court, the defendant appeared along with his
4 counsel of record. The hearing began at 11:42 a.m.)

5 THE COURT: All right, Mr. Tucker, you're recognized.

6 MR. TUCKER: Thank you, Your Honor, may it please the
7 Court. This is Indictment 2011-GS-21-0744, State of South
8 Carolina versus James Bennett Green. This is a three count
9 indictment, Your Honor, to which Mr. Green is entering a
10 guilty plea to all three. There are two counts of felony DUI
11 with death. He's pleading guilty to those. He is also
12 pleading guilty to count three, which is DUI -- felony DUI
13 with great bodily injury.

14 For the DUI -- felony DUI involving death, he could get
15 from one year up to 25 years. For the felony DUI great bodily
16 injury, he could get from 30 days up to 15 years. There is a
17 recommendation of a concurrent sentence. Beyond that, there
18 are no other recommendations, Your Honor.

19 He does have an additional set of charges he picked up
20 after this particular set that he's pleading guilty to here
21 today. That's Indictment 2011-GS-21-1571, resisting arrest,
22 habitual traffic offender, and failure to stop for a blue
23 light. Those charges are being dismissed pursuant to this
24 plea here today.

25 THE COURT: Mr. Anderson, do you represent Mr. Green?

1 MR. ANDERSON: Yes, sir.

2 THE COURT: Have you explained to him the offense of
3 felony driving under the influence resulting in death, the
4 fact that there is a minimum mandatory one year and maximum 25
5 years, the fact that this is a violent and serious offense
6 subject to the three strike rule?

7 MR. ANDERSON: Yes, sir.

8 THE COURT: Does he also understand that this for all
9 practical purposes will be served day for day subject to the
10 85 percent rule?

11 MR. ANDERSON: Yes, sir.

12 THE COURT: He understands that?

13 MR. ANDERSON: Yes, sir.

14 THE COURT: And the fact that he's pleading to two
15 separate and distinct offenses, felony DUI resulting in death?

16 MR. ANDERSON: Yes, sir.

17 THE COURT: And felony driving under -- under the
18 influence with great bodily injury and the fact that there's a
19 minimum mandatory 30 days, maximum 15 years on that? He
20 understands the potential penalties, the elements, collateral
21 ramifications, and his constitutional rights?

22 MR. ANDERSON: Yes, sir.

23 THE COURT: And how does he wish to plead?

24 MR. ANDERSON: Your Honor, he's indicated he would like
25 to plead guilty.

1 THE COURT: Do you agree with his decision to do so?

2 MR. ANDERSON: Yes, sir, I do.

3 THE COURT: Do you feel if called upon to do so the State
4 could prove him guilty beyond a reasonable doubt?

5 MR. ANDERSON: Yes, sir.

6 THE COURT: All right. Let's place Mr. Green under oath
7 if we could.

8 THE CLERK: Please raise your right hand. Do you swear
9 to tell the truth, the whole truth, and nothing but the truth,
10 so help you God?

11 DEFENDANT: Yes, I do.

12 THE COURT: Mr. Green, are you under the influence of any
13 drugs or alcohol here today?

14 DEFENDANT: No, sir.

15 THE COURT: Are you experiencing any kind of physical or
16 mental problem that could prevent you from understanding
17 what's going on here today?

18 DEFENDANT: No, sir.

19 THE COURT: I want you to pay very close attention as Mr.
20 Tucker summarizes the facts that bring us here today.

21 MR. TUCKER: Thank you, Your Honor, may it please the
22 Court. Your Honor, before I get into the facts, I wanted to
23 bring the Court's attention to the presence of some family
24 members of one of the victims. This is William and Margaret
25 Burgess. They are the mother and father of one of the

1 victims, Melissa Harrold. They are here on behalf of their
2 daughter. Also present today is Trooper Marcus Lee. He
3 investigated this particular incident.

4 Also, Your Honor, one of the victims, the one that
5 sustained the great bodily injury, Alphonso Harrold, he is the
6 husband of Melissa Harrold. He could not be present here
7 today. He wanted me to hand up a letter which I have shown
8 Mr. Anderson already and with the Court's permission I'd like
9 to hand up to you at this time.

10 THE COURT: Very good. All right and what I -- what I'm
11 going to do probably is let's go ahead and -- and see whether
12 or not this is a plea that we can take. We're going to put
13 the facts on the record and before we hear mitigation from the
14 defense, I'll allow you to -- to allow the victims to speak
15 and we'll take a look at this letter at that time as well. If
16 you could, put the facts on the record and let's see whether
17 or not the plea is appropriate.

18 MR. TUCKER: Yes, Your Honor, may it please the Court.
19 This incident occurred on December 25th, 2010, Christmas Day at
20 around 3:20 a.m. of that morning. On that particular morning,
21 there was a one car vehicle accident that occurred on West
22 Shirley Road near Pamplico in Florence County. The vehicle
23 was traveling west-bound. It was a 2002 Chevrolet SUV.

24 Apparently, what had happened is the vehicle ran off the
25 -- the road to the right, snatched the wheel back to the left,

1 over corrected. The vehicle careened back into the right side
2 shoulder of the road, turned sideways when it collided with
3 the ditch, and then flipped over. Subsequently, all five
4 occupants were ejected out of that particular vehicle. The
5 occupants were a Catherine Fulmore, Melissa Harrold, Brett
6 McFadden, and Alphonso Harrold, as well as the driver, Mr.
7 Jamie Green.

8 When first responders first arrived on scene, they found
9 that Mr. Brett McFadden was deceased. He was face-down in one
10 of the adjacent ditches that had had a lot of water drainage
11 in it. They were unable to revive him and he was pronounced
12 dead there at the scene.

13 Melissa Harrold had sustained serious injuries. She was
14 transported to a local hospital. Mr. Alphonso Harrold
15 suffered very severe injuries. He was air-lifted to New
16 Hanover County Hospital in Wilmington, North Carolina. Both
17 Ms. Fulmore and Mr. Green were also subsequently transported
18 to local hospitals.

19 Trooper Lee was the first trooper assigned and responding
20 to that particular location. He had actually was just on his
21 way to work. I think he was getting ready when he heard the
22 call go out. When some of the other first responders got
23 there and realized the gravity and the seriousness of the
24 situation, Trooper Lee was -- was out there and encountered
25 what I just described to you initially.

1 When he arrived, he ascertained, of course, that the
2 occupants of the vehicle had all been ejected. He tracked
3 down where they were at the hospital. He went first I believe
4 to where Ms. Harrold, Melissa Harrold, had been transported
5 and I believe he got there at around six o'clock. That was at
6 Carolinas Hospital and from where Trooper Lee was at his
7 vantage point, he could actually see them actually trying to
8 resuscitate and bring all their healing powers to bear to try
9 to save Ms. Harrold's life at about 6:20 that morning. They
10 were unsuccessful and she expired there.

11 Trooper Lee went to where Mr. Green was. Once he arrived
12 there, he ascertained that Mr. Green had been under the
13 influence. He directed that a blood sample and a urine sample
14 be collected. They were subsequently sent off to SLED and the
15 results were that Mr. Green, who was the driver of the vehicle
16 -- and Mr. Green admitted as much to Trooper Lee there in the
17 hospital. The blood alcohol content was .14. He also tested
18 positive for marijuana as well.

19 In ascertaining what had happened, Trooper Lee was able
20 to determine that apparently there was a party earlier that
21 day. This would have been on Christmas Eve, which I believe
22 is Mr. Green's birthday. Apparently, they had been there and
23 that had carried over to the following morning and they were
24 on their way I believe back home when this happened. So
25 everyone in the vehicle obviously knew each other and were

1 related to some extent. I believe actually Mr. Brent
2 McFadden's family is related to Mr. Green and they are here I
3 guess in support of Mr. Green. Trooper Lee is here to provide
4 what he was able to see and was able to determine,
5 particularly with regards to victim notification and things
6 along those lines.

7 With regards to the hospital tests, Your Honor, I've told
8 you that the blood alcohol content was .148. Mr. Green did
9 positively and unequivocally tell Trooper Lee that he was, in
10 fact, driving the vehicle. The MAIT team with the Highway
11 Patrol was also summoned out. They investigated the -- the
12 particular crash and, in fact, Trooper Lee only left the
13 incident location when the MAIT team I believe arrived and
14 were able to get out and get control of the -- the scene.

15 In terms of what they were able to establish, Your Honor,
16 the vehicle was in proper working order. They determined that
17 the speed of the vehicle when it went off the side of the road
18 was about 74 miles per hour. They determined that there was
19 no -- nothing mechanically wrong with that particular vehicle
20 and it was in good working order.

21 In terms of a prior record, Your Honor, Mr. Green has a
22 couple of license suspensions due to controlled substance.
23 Beginning in '94, he was convicted of DUS third offense. In
24 '95, he was convicted of possession with intent to distribute
25 crack. In '95, he was also charged with an additional DUS

1 third offense and he also pled guilty to assault and battery
2 of a high and aggravated nature. In 2004, he was also
3 convicted of resisting arrest. 2005, he was also convicted of
4 failing to stop for a blue light. In 2005, he was also
5 convicted for an additional it looks like resisting arrest.
6 And in 2006, he was arrested for possession of cocaine and
7 convicted for second offense.

8 At this time, Your Honor, I would ask if Trooper Lee
9 could convey to the Court what he was able to -- to determine
10 and ascertain. I will tell you before I ask him to speak that
11 the toxicology report with regards to Mr. McFadden indicated
12 that he did and was drinking at the time of the accident. He
13 wasn't drinking at the time of the accident, but had alcohol
14 in his system.

15 Ms. Harrold's parents wanted me to convey to the Court
16 and I think that Mr. Lee will be able to convey that Ms.
17 Harrold, Ms. Melissa Harrold, was not drinking any alcohol and
18 didn't have any in her system and that was of great importance
19 to them and they wanted me to stress that to the Court and I
20 think that Trooper Lee can tell you how he was able to
21 ascertain that.

22 And at this time, I'd ask Trooper Lee if he would like to
23 say a few words to the Court. Trooper, if you would, just say
24 your name, first name and last name.

25 THE COURT: Yes, sir.

1 TROOPER LEE: I'm Trooper William Lee. I go by my middle
2 name, Marcus.

3 THE COURT: Very good.

4 TROOPER LEE: I appreciate you giving me the chance to
5 speak.

6 THE COURT: Yes, sir.

7 TROOPER LEE: So this was Christmas morning. It was cold
8 and I went from my house out to Pamplico that morning just
9 because of the time constraints. We had one shift getting off
10 and it was a far greater case than we could put on somebody
11 that was getting ready to get off that had already been
12 working all night.

13 I arrived on the scene. There was fire trucks and EMS
14 and all out there. I did see Mr. McFadden floating face-down
15 in the ditch. He was -- already had been pronounced by the
16 emergency technicians there on scene.

17 I was given information, very little information, but
18 some information as far as who the occupants were. I was told
19 one occupant was air-lifted to New Hanover and the other --
20 and one went to Carolinas and then the other two that were
21 still left were at McLeod and told I needed to track -- was
22 told to track all that down.

23 I arrived at Carolinas. They have a very large door to
24 the main trauma room. I stayed well out of the way of the
25 doctors and nurses that were trying to save Ms. Harrold. They

1 worked on her for probably 20 or 25 minutes while I stood
2 there. I could see into the room. They were quite frantic
3 and around 6:25 or 6:30 in the morning, they pronounced her
4 dead.

5 Within a matter of minutes after that, my phone rang.
6 They had determined that Jamie Green was at McLeod and so I
7 went to McLeod. I talked to him. He, in fact, told me about
8 a possible argument that was going on in the back seat and
9 that he had turned to -- to see what was going on and get them
10 to calm down and that -- he claims that was the reason he ran
11 off the road and he did admit to having had something to drink
12 that night and so I went ahead and did the felony DUI kit.

13 From there, I went back to Carolinas and I met up with
14 the coroner, Don Reynolds, deputy coroner. We went in and
15 spoke to the Burgess family and notified them that their
16 daughter had passed and from there he and I went down to Lake
17 City to the only address we had for Brett McFadden and we
18 found some people that knew him and there was a lady that
19 claimed to be his wife and it was probably more of a
20 girlfriend situation, but obviously they knew each other quite
21 well because she was very distraught. One thing I'll never
22 forget is while I was -- while Don and I were telling her
23 about it, I heard some sniffing from behind me and I turned
24 to look and there was a young boy about that tall and I asked
25 him if that was his father and he told me he was.

1 From then on, all I did the rest of the day was
2 paperwork. So that was the extent of what I saw. He filled
3 everything else in so I appreciate your time.

4 THE COURT: Thank you for being here.

5 MR. TUCKER: Your Honor, before we hear from the
6 Burgesses, I'd like to also add that an autopsy was done on
7 Brett McFadden. The forensic pathologist was able to
8 determine that Mr. McFadden expired from injuries he received
9 as a force of trauma to his head and cervical spine area,
10 which were directly related to the crash itself.

11 Ms. Harrold, Melissa Harrold, was taken to the hospital
12 as you heard. They were able to determine there that
13 obviously due to the trauma she sustained during the crash
14 that that was a direct and proximate result of -- of her
15 death.

16 Mr. Harrold suffered -- Aphonso Harrold suffered a broken
17 neck. I can tell you that he was on a cane for a good while
18 after this particular incident and has only recently returned
19 to work which is -- which is where he is now and why he wanted
20 me to hand up the -- the letter to you.

21 In terms of age, Melissa Harrold was 27 years old at the
22 time of her death. Brett McFadden was 48 years old at the
23 time of his death. Alphonso Harrold was 33 at the time of the
24 accident, Your Honor.

25 THE COURT: All right. I want -- I want to hear from the

1 victim's family, but before we do that, Mr. Green, you've
2 heard those facts. Are you indeed -- are those facts true?

3 DEFENDANT: Yes, sir.

4 THE COURT: Are you indeed guilty of felony DUI resulting
5 in death on two separate counts?

6 DEFENDANT: Yes, sir.

7 THE COURT: And felony driving under the influence with
8 great bodily injury?

9 DEFENDANT: Yes, sir.

10 THE COURT: You stand before me pleading guilty, but you
11 don't have to plead guilty to anything. You could exercise
12 your right to a jury trial. In that process, the jury would
13 determine whether or not the State could actually prove you
14 guilty beyond a reasonable doubt. I would charge the jury as
15 a matter of law that you're presumed to be innocent and no one
16 could require that you take the witness stand.

17 Now, if you wanted to, you could and you could subpoena
18 witnesses on your own behalf. In addition to that, you and
19 your lawyer could cross examine the State's witnesses. You'd
20 have an opportunity to eyeball them and confront them as they
21 testified against you.

22 Do you realize by pleading guilty you're giving up all
23 these rights?

24 DEFENDANT: Yes, sir.

25 THE COURT: Do you still wish to plead guilty?

1 DEFENDANT: Yes, sir.

2 THE COURT: Are you indeed guilty?

3 DEFENDANT: Yes, sir.

4 THE COURT: All right. Plea negotiations, Mr. Tucker?

5 MR. TUCKER: Just that these sentences run concurrent,
6 Your Honor.

7 THE COURT: Is that your understanding, Mr. Anderson?

8 MR. ANDERSON: Yes, sir.

9 THE COURT: Is that your understanding, Mr. Green?

10 DEFENDANT: Yes, sir.

11 THE COURT: Mr. Green, are you satisfied with your
12 lawyer?

13 DEFENDANT: Yes, sir.

14 THE COURT: Have you understood all your conversations
15 with him?

16 DEFENDANT: Yes, sir.

17 THE COURT: Have you understood all the collateral
18 consequences of these pleas?

19 DEFENDANT: Yes, sir.

20 THE COURT: Have you understood all your conversations
21 with regard to your constitutional rights?

22 DEFENDANT: Yes, sir.

23 THE COURT: All right and you understand the -- that
24 these offenses -- two of these offenses are serious offenses
25 and strikes under the three strike rule; do you understand

1 that?

2 DEFENDANT: Yes, sir.

3 THE COURT: All right and do you need any additional time
4 to confer with your lawyer?

5 DEFENDANT: No, sir.

6 THE COURT: Any complaints with your lawyer whatsoever?

7 DEFENDANT: No, sir.

8 THE COURT: All right. Has anybody promised you
9 anything, threatened you, pressured you, mistreated you in any
10 way, shape or form in an effort to get you to plead guilty
11 here today?

12 DEFENDANT: No, sir.

13 THE COURT: Has it been your decision to plead guilty?

14 DEFENDANT: Yes, sir.

15 THE COURT: Are you indeed guilty?

16 DEFENDANT: Yes, sir.

17 THE COURT: Have you understood all my questions?

18 DEFENDANT: Yes, sir.

19 THE COURT: Have your answers been truthful?

20 DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that you have 10 days to
22 appeal any decision I might render here today?

23 DEFENDANT: Yes, sir.

24 THE COURT: Based on your testimony, I find there's a
25 substantial factual basis for your plea, that your decision

1 was freely and voluntarily entered into, knowingly and
2 intelligently with the consent of competent counsel with whom
3 you say you are satisfied. I'll be glad to hear from the
4 victims at this time and then I'll be glad to hear from the
5 defense in mitigation.

6 MR. TUCKER: Mrs. Burgess, if you would, please stand and
7 identify yourself, both your first name and last name.

8 MRS. BURGESS: My name is Margaret Ann Burgess.

9 THE COURT: Ms. Burgess, thank you for being here. I'll
10 be glad to hear anything that you've got to say. Yes, ma'am?

11 MRS. BURGESS: Yes. I stand here on behalf of my
12 daughter, Melissa Ann Burgess Harrold, which is my baby girl.
13 First of all, I would like to say that I don't hold hatred in
14 my heart for no one because I know one day that I'm going to
15 leave here and when I leave, if I live right and do right,
16 that I'll be able to go to heaven. That's my journey. So
17 first of all, I don't -- I don't have hatred in my heart, but
18 I'm just going to speak a little bit about Melissa.

19 Melissa was my baby. Melissa was a joy. I love Melissa
20 with all my heart. Melissa was a -- a good person, very
21 spiritual, independent person with her mom and her family.
22 She loved her family. Melissa loved her husband. She loved
23 being a wife.

24 Melissa worked at Cooks Association. She loved her
25 patients. That was something that gave her a joy to go there

1 every day to work with those patients and she -- you know,
2 she'd bring in little things like prom for them and she'd
3 bring in movies for them and let them get the enjoyment of --
4 of living, you know, the things that she felt that would make
5 them happy. The ones that couldn't come out, she made her a
6 little rolling wheel and she would go in the rooms and sing to
7 them and do different things.

8 Melissa was a member of the church that I'm a pastor of.
9 Melissa sang on the choir. Melissa was the missionary
10 president. She was the missionary president. I mean she was
11 the secretary of the missionary conference.

12 And she was just a sweet girl and every morning I would
13 always call Melissa and tell her how much I love her and she
14 loved her mama. Melissa got married and one of the things she
15 told Alphonso was I don't want to leave and go to another city
16 because I want to stay and live by my mom. She would call me;
17 I would call her and I always would tell her how much I love
18 her.

19 The death of Melissa has been really an impact on me
20 because that's my child and if you haven't never lose a child,
21 then you don't know. When your child -- when you lose your
22 child -- and we all know that we're all going to leave her one
23 day because the Word of God tells us. He said I'm coming the
24 hour that you think not. But when you lose your child, that's
25 like something that runs from your heart down to your soul and

1 it lets you know this is where this child laid and as long as
2 I live I'm going to always miss Melissa because I'm her mom
3 and I love her, but I do want the Court to know that I don't
4 hold hatred in my heart for no one because one day when I
5 leave this world, I'm going to live with my Father.

6 But I do love my daughter and I miss her and I'm standing
7 here on behalf of Melissa. I didn't come to put nobody down,
8 but I came to let the world know, hallelujah, that that's my
9 child and I love my baby and I miss her so much. Hallelujah,
10 Jesus, I miss my baby. Nobody knows how I miss her. That's
11 my baby and I miss her, but God knows. Hallelujah. Thank
12 you, Jesus, that I don't hold hatred in my heart. Mr. Green,
13 I don't hold hatred in my heart for you and I want you to know
14 that I don't hold hatred in my heart for you and I want you to
15 know that personally and that's all I have to say.

16 THE COURT: Very good.

17 MRS. BURGESS: Thank you, thank you.

18 MR. TUCKER: Do you want to say something?

19 MR. BURGESS: Yes.

20 MR. TUCKER: If you would, just state your first name and
21 last name.

22 MR. BURGESS: My name is William Burgess, Jr. I'm the
23 daddy of Melissa Burgess. I think everybody in this courtroom
24 can listen to what I have to say and the sacrifices made by my
25 baby losing her life and everybody in here need to know if

1 you're going to drink, don't get behind a steering wheel.
2 That's why we're here now having this session. Of course, my
3 baby lost her life.

4 You know, there's nothing wrong with enjoying life, but
5 when you ain't able to take care of what's going on around
6 you, you need to step back. To the Green family, I don't hold
7 no animosity in my heart for you because there ain't nothing
8 you can do or nobody else can do can give me my baby back, but
9 I want to say to everybody I love my baby ---

10 MRS. BURGESS: Yes, Jesus.

11 MR. BURGESS: --- and I'm hurting when you see me
12 standing.

13 MRS. BURGESS: Yes, Lord Jesus, I love you.

14 MR. BURGESS: I only had two kids and that was my baby
15 and I want to say to each and every one of you teach your
16 children. You parents and some of you in here right here,
17 when you leave here today, you're going to go get something to
18 drink. Because you don't know how I feel, don't say I know
19 how you feel, Mr. Burgess, because until you lose one of the
20 best things that God can give you out of heaven, which is your
21 child, then you'll understand what I'm talking about.

22 But nothing wrong with enjoying life, but there's a way
23 you do it. You can enjoy without somebody else losing their
24 life. And I want to say to this Court not only on behalf of
25 my daughter, Your Honor, but from now on, we want you to send

1 a strong message out in our community. If you come out and
2 take somebody's life because of your negligence of drinking
3 and driving, you will answer to it.

4 And as I go to my seat, the Bible says don't take away
5 something you can't give back. When you take somebody's life,
6 you can't give it back. And again to the Green family, we
7 don't hold animosity on y'all because Jamie didn't make my
8 daughter get in that car. She got in there on her own and
9 everybody else got in there. They got in there on their own,
10 you know. Thank you.

11 MR. TUCKER: That's all the State has, Your Honor.

12 THE COURT: All right. Anything further, Mr. Tucker?

13 MR. TUCKER: No, Your Honor.

14 THE COURT: Mr. Anderson, you're recognized.

15 MR. ANDERSON: Judge, may it please the Court. Your
16 Honor, as Mr. Tucker indicated, the day that I guess these
17 motions or these events got set into motion was Jamie's
18 birthday. Your Honor, I think he was turning 33 or 34 at the
19 time and they went to either a club or somebody's house and it
20 was Christmas Eve so I think some drinking was going on not
21 only for Jamie's birthday, but because it was Christmas Eve.

22 Your Honor, the young man that was thrown out of the car
23 and died, his blood alcohol was a 21. As you've heard,
24 Jamie's was a 14. Judge, it sounds like Mrs. Melissa Harrold
25 didn't have any alcohol in her system. I don't know about

1 Alphonso and the other person that was riding in the car was
2 Jamie's wife, Catherine, who is standing beside him.

3 Judge, this -- they went to -- Jamie went home, got home
4 safely. I think some people wanted to go back out so they
5 came to Jamie's house and I think -- Alphonso Green [sic.] and
6 Melissa Green [sic.], I think they were riding together. They
7 came to Jamie's house and actually parked their car at Jamie's
8 mama's house and then the five of them went back out. I don't
9 know why they went back out, Your Honor. I'm sure it sounded
10 like a good idea at the time. In retrospect, it was the worst
11 thing in the world that anybody could have done.

12 But, Judge, they went out and Jamie indicated to me that
13 he heard some fussing in the background and he turned around
14 to tell them to be quiet. He told the same thing to the
15 trooper here, Marcus Lee, and that's when he thinks he lost
16 control of the vehicle. Your Honor, originally his wife,
17 Melissa was driving the car. I'm not -- I'm sorry. Catherine
18 was driving the car. She started throwing up. They would
19 drive about a block, a block and a half; she'd pull over and
20 throw up. She'd drive a block, a block and a half, pull over
21 and throw up. So Jamie thought he was okay to drive. He
22 said, let me drive. You're too sick to drive, I'll drive. So
23 he actually got out the car and got behind the wheel. He
24 wasn't driving originally, but he ended up driving.

25 Your Honor, he and Melissa -- I'm sorry. He and

1 Catherine have two children together. I think he has five
2 boys and three girls so he's got eight total. He's actually
3 also -- even though he's only 35, Your Honor, he's got some
4 grandchildren.

5 Judge, he spent a week in the hospital after this
6 incident happened. He went in Christmas Day and got out New
7 Year's Day. New Year's Day, he went to jail in Effingham and
8 then he stayed in Effingham for three days before he bonded
9 out.

10 Judge, since that time he's been told by several doctors
11 he needs to have work done on his hip. He's also been told
12 that the cartilage in his spine is messed up and that he needs
13 to have neck surgery to have that fixed. He's applied for
14 disability because he cannot work. That is still pending.
15 Steve Calcutt was actually handling that claim for him.
16 Judge, he's worked all his life prior to that. He's got his
17 family here with him, his wife, his mom, and other family
18 members.

19 Your Honor, as you've heard, this was a one-car accident
20 and as you've heard everybody voluntarily got in the car. As
21 you've heard, this involved a lot of family. The man that was
22 killed that was found in the ditch, he was his cousin. His
23 grandfather -- he's somehow related to Alphonso Green [sic].
24 I think his grandfather's son -- he thinks -- he refers to
25 Alphonso as his uncle and he referred to Melissa as his aunt.

1 I'm not exactly sure of the kinship here, Your Honor, but his
2 father and Alphonso's -- I mean his grandfather and Alphonso's
3 grandfather were the same man. But, Judge, every time I've
4 met with him, he's broken down crying. He's indicated to me
5 that he thinks about this every single day.

6 Judge, I've got a couple of pictures from the night that
7 this happened. I've already showed them to Mr. Tucker. This
8 is just a picture that was taken in the kitchen and that has
9 Alphonso in it, as well as my client and then the other man,
10 Mr. McFadden, that died. As I indicated to you, Your Honor,
11 it was a birthday party/Christmas Eve party so there was
12 drinking involved. Your Honor, this is another picture that
13 was taken that has my client, Mr. Alphonso, and also Mr.
14 McFadden, the gentleman that died.

15 THE COURT: Which one is Mr. McFadden?

16 MR. ANDERSON: Your Honor, Mr. McFadden is this gentleman
17 right here.

18 THE COURT: All right.

19 MR. ANDERSON: And this is Mr. Green. I mean I'm sorry,
20 not Mr. Green, Mr. Harrold.

21 THE COURT: Very good.

22 MR. ANDERSON: But, Your Honor, as I've indicated to you,
23 this was just a tragic event. My client would do anything in
24 the world to take it back. This is a picture of Ms. Melissa
25 Harrold, Your Honor, that was taken of her that night. It

1 looks like she was, you know, having a good time at the -- not
2 drinking, not a good time like that, but just enjoying
3 herself, having fun. That's her sitting down and then her
4 husband, Mr. Alphonso Harrold, beside her.

5 But, Judge, I would just ask you to -- my client has
6 never had a DUI in the past. I mean he has had some arrests.
7 He has had some trouble driving under suspension, but he's
8 never had a DUI. I would ask you to take that into
9 consideration, Your Honor. I'd also ask you to hear from him
10 and any of his family members that wish to speak.

11 THE COURT: Has he ever spent any time in the Department
12 of Corrections? He has a right significant record.

13 MR. ANDERSON: On that -- not the ---

14 THE COURT: It's not the worst of records, but he's had
15 some serious offenses.

16 MR. ANDERSON: Your Honor ---

17 THE COURT: Has he ever spent any time in the Department
18 of Corrections?

19 MR. ANDERSON: In 1995 when he got that I think drug
20 charge, he did spend some time in the Department of
21 Corrections.

22 THE COURT: All right, very good. All right, I'll be
23 glad to hear from anybody who would like to speak.

24 DEFENDANT: First, I would like to tell them that I'm
25 very sorry.

1 THE COURT: All right. One -- one thing, Mr. Green,
2 these are very difficult situations, very sensitive matters,
3 and I want to hear anything that you've got to say and any
4 expressions of sympathy and -- and -- but I'm going to ask
5 that you direct your comments directly to me.

6 DEFENDANT: Okay.

7 THE COURT: I just always think that's not a good idea
8 for the victims to talk to defendants and defendants to talk
9 to victims. These will be directed to me and I'll be glad to
10 hear anything you've got to say in that respect. Very good.

11 DEFENDANT: First of all, I would like to tell the
12 family, you know, I'm very sorry because I live with this
13 every day. Every day that goes by, I miss them people every
14 day. I wake up and it's just ain't no good no more. I can't
15 help my kids. I barely get to play with my grandkids because
16 after this incident, I didn't want to get too attached to them
17 because I didn't know what was going on and every day it
18 bothers me so bad. That's why I've been wanting to say this.
19 You know, I'm sorry about this. I never had the chance to say
20 it because of my bond, but I really wanted you to know that I
21 hope God forgives me and I hope to take that because I never
22 meant to take anybody's life and I'm very sorry. The only
23 thing I ask is y'all have mercy on me today.

24 THE COURT: All right, anybody else would like to speak?

25 MRS. GREEN: My name is Catherine Green.

1 THE COURT: Yes, ma'am.

2 MRS. GREEN: And, Your Honor, like the judge -- like the
3 attorney said, I was the one originally driving on the night
4 of -- I took sick. I tried two or three times, stopped,
5 pulled over, but to keep going, but I couldn't kept going and
6 Jamie took it upon hisself to drive. He said we got to get
7 home. That was his words. I want to get everybody home.

8 And to the families, I'm so sorry that it happened. I am
9 so very sorry. We are sorry as well.

10 THE COURT: Very good.

11 MRS. GREEN: That's all I got to say.

12 THE COURT: Thank you.

13 MS. GREEN: I'm Jamie's mother and I just wanted to say
14 that I hold myself responsible. If I hadn't have had the
15 party for Jamie, it wouldn't have never happened. It would
16 have never happened. And afterwards, Jamie did not want to go
17 to that club. He didn't want to go there. They made him go.
18 They made my baby go.

19 THE COURT: Very good. Anybody else? Yes, ma'am, your
20 full name?

21 MS. DICKEY: My name is Arlisha Dickey and I'm Jamie's
22 daughter. I know driving with a DUI is serious and it's
23 wrong, but on behalf of our family we are here to say that we
24 are sorry and like Melissa's mother said, we can't feel her
25 pain because we never lost a child of our own and I do have a

1 child of my own and I don't want to these people to think that
2 because I know it's a hard thing, but I just ask today that
3 y'all have mercy upon my father.

4 MS. BURGESS: May it please the Court, Your Honor. My
5 name is Lashawnda Burgess and I'm employed here with the
6 Department of Juvenile Justice. I'm married to Jamie's middle
7 brother. I, too, can attest to that night. I was there at my
8 mother-in-law's house and it was a party for Jamie's birthday.

9 The victim's husband, Alphonso -- Jamie did not want to
10 go. He insisted on Jamie going out for his birthday to
11 celebrate. Jamie did say I don't want to go, I'm going to go
12 ahead on home and get ready for Christmas, but Alphonso
13 insisted on taking him out for his birthday. So they left and
14 they went on to the club. My husband and I did not go. We
15 didn't go because we had a son and that was his first
16 Christmas so we -- my husband had to go home to play the Santa
17 Claus role, Your Honor, so that's why we didn't go.

18 But I stand here and I say to you on behalf of the Green
19 family and behalf of my brother-in-law we, too, are very, very
20 sorry for what took place. I know that Jamie does live with
21 this every day. Not a day goes by that he's not crying. In
22 fact, Jamie still has Melissa's and Brett's shoes out of the
23 car and that bothers him every day.

24 Mr. and Mrs. William, we cannot bring Melissa back, but
25 I'm sure that if Jamie could, he would. Melissa was a very

1 sweet girl. I went to school with Melissa as well.

2 Your Honor, I'm just asking that you please have mercy
3 and be as lenient as possible as you can on my brother-in-law.
4 The record that you see in front of you, that is not Jamie.
5 Jamie is not that type of person. There are things that
6 happened in the past. We've all done wrong in our past, but
7 Jamie is not that person that you see. Jamie has changed and
8 I, too, can stand here and say that he has made major changes
9 in his life. He has grown up. So I ask that you please not
10 judge him based upon what you see and you be as merciful and
11 lenient as possible. Thank you.

12 MR. BRIAN GREEN: My name is Brian Green and I'm Jamie's
13 grand-uncle and we grew up with the Burgesses, went to school
14 with them. There was times that I have come to Ms. Burgess in
15 the laundromat and asked her to please pray with me. Jamie --
16 really I'm -- I'm sorry these two people lost their lives, but
17 I'm glad this day has come because Jamie -- it has haunted
18 Jamie ever since it -- ever since -- ever since the thing
19 happened.

20 I once upon a time worked for the Department at SCDC and
21 I -- Jamie knows that I'm not a person for foolishness. His
22 mother knows I'm not a person for foolishness and really
23 biologically I have no children, but city-wise, Lake City, I
24 have a whole bunch of children. I'm not a person for
25 foolishness and I know. Jamie coming to me, I know it has

1 hurted him. He has -- he has confessed to me. He has
2 confessed to other -- other family members.

3 I'm the youngest of 10 children. My mother had 10
4 children, five boys, five girls. My family scheduled a
5 retreat where some of them couldn't be here, but we really
6 could go over -- you know, we really could have been more
7 populated in this building. I'm really hurting. I'm hurting
8 and, Mr. and Ms. William Burgess, sincerely in our hearts we
9 are so sorry that this happened. If it was magical or if we
10 could beg Jesus, you could have your daughter back because we
11 -- we are a family, the Green family in Lake City. We stick
12 together. We love each other.

13 Like I say, Jamie -- I'm Jamie's mother's uncle. We're
14 six months -- we're six months apart. I can remember when he
15 came into this world. He did some things, but that's one
16 thing that we try to tell our family and coach our children
17 not to do. I'm sure -- I was working that night, but I'm sure
18 -- you know, and my mother taught us Christmas Eve night is a
19 night you go home because Santa -- you better do Santa Claus,
20 that you better be there for your children. You'd better have
21 energy.

22 Deep down in our hearts, we're sorry and I'm asking you,
23 Judge Nettles, to have mercy upon us.

24 THE COURT: Anything further, Mr. Anderson?

25 MR. ANDERSON: No, sir, Your Honor.

1 (Whereupon, there is a pause in the proceedings.)

2 SENTENCE OF THE COURT

3 THE COURT: All right. You know, of all the things I'm
4 called upon to do as a judge, the most difficult is -- is
5 criminal sentencing. The crimes that I find most difficult to
6 sentence is felony DUI and the reason for that is that anybody
7 who has ever had a drink of an alcoholic beverage more than
8 likely, including just about everybody in this courtroom who
9 has ever had a drink of alcoholic beverage, has driven an
10 automobile thereafter and when you do that, you've taken a lot
11 of responsibility on and -- and it's only by the grace of God
12 that we haven't been killed as a result of that and haven't
13 killed somebody as a result of that.

14 But a lot of people say that this is not a crime of
15 intent because Mr. Green didn't mean to kill anybody, but he
16 did voluntarily drink an alcoholic beverage and smoke some
17 marijuana and get behind the wheel and drive and for that he's
18 going to have to be held accountable and anybody here in this
19 courtroom who does that is going to have to be accountable and
20 I mean it's -- it's just a tough consequence of life.

21 I do want to talk with the victims' family. Thank y'all
22 for being here. You know, forgiveness is an easy thing in the
23 abstract, in a vacuum, but to put it in practice is a very,
24 very hard thing to do and I appreciate your words and your
25 presence and the fact that you have extended forgiveness from

1 your heart to the -- to the defendant. I think that that's
2 certainly a good thing to do and it's a healthy thing to do.
3 I mean it's the right thing to do.

4 And I do want to say to Mr. Green I -- I do this day in
5 and day out and it seems like, you know, when I travel
6 throughout the state, I don't know why it seems like that I
7 must hear more felony DUIs than anybody I know. I don't know
8 why that is, but of the defendants that I have sentenced, I
9 truly believe that you are remorseful. I believe deep in your
10 heart you're sorry and that if you could bring these
11 individuals back that you -- that you would and I believe
12 that. I've taken into consideration all the facts and
13 circumstances, your prior record, and I'll just do the very
14 best I can.

15 The other thing that's my job to do is the sentencing.
16 It's not the victims' job; it's my job. I'm going to have to
17 do that and I accept responsibility for that and I also have
18 the responsibility of maintaining order in the courtroom.
19 These are very difficult times for everybody. It's difficult
20 for the victims' family, it's difficult for the defendant's
21 family, and there will be no outbursts from anybody and I'm
22 going to ask law enforcement if there are outbursts to go
23 ahead and you don't have to get the go ahead from me. If
24 there are any outbursts, I want you to take them into custody.
25 We don't want any more sorry or anymore grief here today.

1 There will be no outbursts. That's my job is to maintain
2 order in this court and I expect everybody to keep the proper
3 decorum.

4 All right, Mr. Green, on Indictment 2011-GS-21-0744,
5 felony driving under the influence, the sentence of the Court
6 is that you be committed to the State Department of
7 Corrections for a period of 12 years, sentence will run
8 concurrent.

9 With regard to Indictment 2011-GS-21-0744, felony driving
10 under the influence, the sentence of the Court is you be
11 committed to the State Department of Corrections for a period
12 of 12 years, sentence will run concurrent.

13 With regard to Indictment 2011-GS-21-0744, felony driving
14 under the influence, the sentence of the Court is you be
15 committed to the State Department of Corrections for a period
16 of 12 years, sentence to run concurrent.

17 Good luck to you.

18 MR. TUCKER: Thank you, Your Honor.

19 (Whereupon, the proceedings end at 12:23 p.m.)

20 --- END REQUESTED TRANSCRIPT ---

21

22

23

24

25

1 STATE OF SOUTH CAROLINA)

2) CERTIFICATE

3 COUNTY OF FLORENCE)

4

5 I, the undersigned, Krystal J. Smith, Official Court
6 Reporter for the Twelfth Judicial Circuit of the State of
7 South Carolina, do hereby certify that the foregoing is a
8 true, accurate, and complete Transcript of Record of all the
9 proceedings had and evidence introduced in the hearing of the
10 above captioned case, relative to appeal, in the Court of
11 General Sessions for Florence County, South Carolina, on the
12 2nd day of August, 2012.

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

15

Krystal J. Smith

17

Court Reporter

18

19 Florence, South Carolina

20 January 21, 2013

21

22

23

24

25

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Florence

IN THE COURT OF COMMON PLEAS

CERTIFIED: A TRUE COPY

Amie Rob Spivey
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

2012 CP 21 3001

FILED
2012 NOV 12 PM 12:31
FLORENCE COUNTY, S.C.

Full name and prison number (if any)

Jamie B. Green #229373

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Kirkland Correctional Institution
2. Name and location of Court which imposed sentence Florence County Court of General Session S 29501
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-21-0744
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 8-2-12
 - (b) 12 year, Violent, Serious

- (c) Concurrent
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. None
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. None
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. None
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. None
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I was told by my Attorney due to guilty plea my right to an Appeal was Waivered.
- (b) Appealing the Judge decision was definitely not a good Ideal according to my Attorney.
- (c) My Knowledge of an Appeal was unknown at that present time.
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) Defense attorney failed to properly investigate the case or call corroborating ^{with}
- (c) Misconduct by the Prosecution including failure to turn over evidence

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

- (a) Strickland v. Washington, 466 U.S. 668, 686 (1984)
- (b) Hill v. Lockhart, 474 U.S. 52 (1985) Henderson v. Morgan, 426 U.S. 637, 645, n.13 (1976). → on brief
- (c) Solicitor failed to turn over evidence in my Rule 5, Presented New Evidence against

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. None
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. None
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. None
 - ii. _____
 - iii. _____

- iv. _____
- (d) the date of each such disposition:
 - i. None
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. None
 - 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. None
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. None
 - 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) I had no way of setting forth such grounds until now.
- (b) My attorney failed to present evidence on my behalf.
- (c) Solicitor brought in evidence that was in my rule (s) after I plea against me.

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? No
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- Karren Parrott, Florence County Complex, 180 N. Irby St. Florence S.C. 29501
 - Hank Anderson Jr, 265 N. Evans St. Suite A. Florence S.C. 29501
 - _____
- (b) the proceedings at which each such attorney represented you:
- Karren Parrott, Pre Hearing, From January 2011 to June 2012 on my Case
 - Hank Anderson Jr, Plea arraignment and Plea, From June 2012 to August 2, 2012
 - Hank Anderson Jr, My Sentencing, August 2, 2012
19. State clearly the relief you seek in filing this application:
Sentence Reduction, Non Violent Sentence due to Case was accidentally, or Plea Withdrawn
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)
)
County of Florence)

VERIFICATION

I, Janie Green, 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.

Janie Green

SWORN to and subscribed before me this 15th
day of November, 2012.

[Signature] (L.S.)
Notary Public

My Commission Expires October 8, 2014

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

I, _____, 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.

Janie Green
Applicant

SWORN or affirmed to and subscribed before me this
15th day of November, 2012.

[Signature]
Notary Public, Commission Expires
October 8, 2014
My Commission Expires: _____

FILED
2012 NOV 12 PM 12:31
CLERK OF COURT
FLORENCE COUNTY, SC

Guilty Plea Withdrawal

My argument is based upon the fact that my plea was entered unknowingly as I was coerced into pleading guilty based upon a false promise regarding the potential sentence I was faced with. So I entered a plea unknowing, involuntary, and unintelligent in violation of the Fifth Amendment to the United States Constitution. As I was unaware of the actual consequences of pleading guilty as well as viable options to pleading guilty. I also feel that I was provided with ineffective assistance which is violation of the Sixth Amendment to the United States Constitution. It is counsel's duty to provide objectively reasonable advice to clients during plea negotiations.

DOMINIC R. ...
CCCP & GS
FLORENCE COUNTY, SC

2012 NOV 12 PM 12:32

FILED

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

JAMIE B. GREEN #229373

V.
STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS 43
2012-CP-21-3001
Cynthia K. Shuman
CLERK OF COURT C.R. & G.S.
FLORENCE COUNTY, S.C.

AMEND APPLICATION FOR
POST-CONVICTION RELIEF

2013 JAN -7 AM 11:39

DOUGLAS M. SHEARIN
GCCP & GS
FLORENCE COUNTY, SC

RE: AMENDED FACT IMMIGRATION

Victims Were Arguing, Fighting in the Back seat that Cause Distraction Causing Accident. Victims Wasn't Wearing Seatbelts, Which Wasn't Mentioned by Attorney on My Behalf. Attorney Never Mentioned Anything About Road Conditions, Which Fire Fighter Stated He Felt Played a Factor in Accident.

Attorney Let The Solicitor Present New Evidence Which Was A Written Statement from Victim Alphonza Harold That Wasn't in My Rule (5) Which I Ask For Several Times. Attorney Never Got Evidence I Request From Solicitor Concerning What Victim Died from, Melissa Harold Toxicology, Autopsy Report or Any Other Evidence Wasn't in Rule (5) Which I Request Several Times.

Attorney Never Got Evidence Concerning Victim Alphonza Harold Which Was Toxicology Report, Written Statement or Any Other Information Concerning My Case Wasn't in Rule (5).

Solicitor Brought Up Charges Against Me Which Was Dropped in Magistrate Court by Officer Jake Chamberlain Which He Stated He Was Dropping During My Plea Which I Felt Hurt Me By Bringing them Before the Courts When He Shouldn't Have.

Attorney Never Mentioned Victim Alphonza Lied in Civil Court About Where and How the Accident Happen. Which I Gave Him Paperwork to Prove, But He Withheld it Didn't Present it.

The Solicitor Stated Victim Melissa Harold Was the Sober One in the Automobile, How Could He State that When they Never Presented an Toxicology Report. Also They Never Ran Any Test on My Wife Which Was in the Accident as Well or Questioned He.

Attorney Didn't Meet His Criteria, He Was Calling Me and My Wife The Victims Name, He Failed to Call Corroborating Witness on My Behalf. He Only Had My Case One Month Which He Didn't Investigate My Case Properly.

Due to the fact that My Solicitor was a former employee at My Attorneys Law Firm which I feel was a Conflict of Interest in My Case. Should Have Been Removed. Refused Attorney Coerced Me into Plea by Convincing Me I Was Only Go Received 6 yrs and Base Case Towards Some Present Case. The Judge Had Trial Deal with a Female Leaving

too that which the Judge gave her 8 yrs. HE STATED THAT IN THE PREVIOUS CASE THE JUDGE WILL BE MORE LENIENT TOWARDS MY CASE BEING THAT MY CASE WAS LESS SERVE. DURING MY PLEA ARRANGEMENTS MY ATTORNEY DIDN'T EXPLAIN TO ME WHAT THE CONSEQUENCES WERE I BEEN FACING IN MAKING MY DECISION INTO MY PLEA ARRANGEMENT. I DIDN'T HAVE UNDERSTANDING THAT MY PLEA ARRANGEMENT WAS STILL OPEN FROM 12 MONTHS. I ONLY HAD KNOWLEDGE OF RECEIVING BYCS. THAT WAS MY UNDERSTANDING. I FELT THE JUDGE SHOWED PREJUDICE AGAINST ME WHEN I WAS APPEARING TO THE FAMILY, HE STATED FOR ME TO EXPRESS MY FEELINGS TO HIM AND LOOK AT HIM WHICH I FEEL WAS WRONG THEN HE STATED IT COULD HAVE BEEN A CONFLICT, HOW WHEN THE VICTIM FAMILY HAD FORGIVEN ME SEEM THE JUDGE HAD THE PROBLEM IN MY CASE. TO TOP IT OFF HE STATED HAND CUFF ME AND HE WAS TAKEN IN HIS OWN CONSIDERATION AND SENTENCE ME WHICH I FEEL WAS WRONG AFTER THE SOLICITOR GAVE HIM A STATEMENT THAT WASN'T IN MY RULE (5) MY ATTORNEY DIDN'T SAY NOTHING ON MY BEHALF KNOWING THAT WASN'T PUBLISABLE.

ATTORNEY WOULD NOT REQUEST TO APPEAL THE JUDGE DECISION WHEN I ASK HIM TO HE STATED IT WOULD NOT BE A GOOD IDEAL.

I WOULD ALSO LIKE TO ADD I WAS LED TO BELIEVE I WERE AT FAULT AS FAR AS THE ACCIDENT I HAVE FEW INFORMATION POSSIBLY CLEARING ME OF THAT FAULT, HAD MY ATTORNEY PROPERLY INVESTIGATED I WOULD HAVE HAD THIS INFORMATION SOONER THERE FOR E. PLEADING NOT GUILTY.

SWORN TO AND SUBSCRIBE BEFORE ME THIS 3rd day of January, 2013

[Signature]
Notary Public

My Commission Expires _____

My Commission Expires
October 8, 2014

[Signature]
SIGNATURE

Kirkland Rte-F32431
4344 Broad River Road
Columbia, SC 29210

9124

Clerk of Court

PERSONAL AND CONFIDENTIAL

County of Florence

LED

Page 1 of 5

2013 JAN 7 AM 11:39

CASE # 2012-CP-21-3001

JANUARY 3, 2013

WILL-SHEARIN
CCCP & OS
FLORENCE COUNTY, SC

To: the clerk of court, could you please
include this additional information to my
file to be considered in my Post Conviction Relief.
AMENDED Facts IMMERGATION, Back Ground Facts

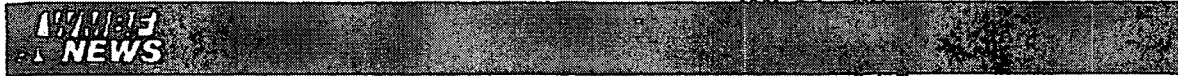
CC:

CERTIFIED: A TRUE COPY
Christa Fel. Spence
CLERK OF COURT, C.P. & OS
FLORENCE COUNTY, SC

FILED

<< Back

◆ SITE SEARCH ○ WEB SEARCH BY Google



Car crash leaves two dead on Christmas

COOP & G
FLORENCE COUNTY, SC

Recommend Sign Up to see what your friends recommend.

Posted: Dec 25, 2010 10:38 AM EST

Updated: Dec 31, 2010 9:39 AM EST

Florence County, SC - By Allsha Laventure - [bio](#) | [email](#)

FLORENCE, SC (WMBF) – Two Florence County residents are dead after the car they were riding in ran off of the road early Christmas morning.



Jamie Green, 34, was behind the wheel when his 2002 Chevrolet SUV veered off of the right side of the road around 3:25 am, as reported by Highway Patrol. He and the four passengers were headed westbound on Shirley Road, also known as Secondary 1064 Saturday morning.

Corporal Paul Brothers said the vehicle hit a ditch and turned over. "The car was torn up," Firefighter James Gaskins said. He was one of several rescue units that removed the crash victims from the wreck.

"It looks like you took a little matchbox car with a sledge hammer and turned it on its side and just hit it."

The Florence County Coroner's office identified the two victims as Brett D. McFadden, 58, of Lake City and Melissa B. Harold, 27, of Olanta. Highway Patrol said both were ejected from the vehicle.

McFadden died at the scene. Harold was taken to Carolinas Hospital, where she was later pronounced dead.

"It's Christmas. Somebody's had a tragic loss, it's very sad," Tammy said. The driver did not want to reveal her surname, but she expressed great sorrow for the families of the two victims.

"I can only share that the good Lord gets them through this tough situation," she added.

Alfonso Lorenzo Harold, 33, from Olanta was taken to the Grand Strand Regional Medical Center by air ambulance. Catherine Fullmore, 39, of Lake City was taken to McLeod Hospital.

Gaskins thinks the weather played a factor in the accident and urges drivers to be vigilant when driving.

"the roads, they will be frosted up," Gaskins noted. "When you're going down the road, at least go 5 miles below the speed limit. Take your time."

Corporal Brothers said the state Highway Patrol's Multi-Disciplinary Accident Investigation Team is investigating the accident.

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30:

2015

As to a Judge's administrative responsibilities

See: Cannon 3(B), Rule 501, SCACR. As to conduct outside the
Courtroom, see Cannon 4-7 Rule 501, SCACR. Note that judges are
exempt from requirements of the ethic, Government accountability
and campaign reform act of 1991 S.C. Code ANN. 2-17-10(18) and
8-13-700(17)

cc:

FILED
2013 JAN - 7 AM 11:39
SHEARIN
& STURTEVANT
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS

2012-CP-21-3001

Jamie B. Green, 229373

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

Respondent, making its Return to the Application for post conviction relief (PCR) filed Nov 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 Florence County Clerk of Court. Applicant was indicted at the April 2011 term of the Florence County Grand Jury for felony driving under the influence with death (two counts) and felony driving under the influence with great bodily injury (2011-GS-21-744). Karen Parrott Esquire, and Hank Anderson, Esquire, represented Applicant.

On August 2, 2012, Applicant pled guilty as indicted and was sentenced by the Honorable Michael Nettles to twelve years imprisonment on each charge, to be served concurrently. Applicant did not appeal.

Attached herewith and incorporated herein are the records of the Florence County Clerk of Court regarding the subject conviction, and Applicant's SCDC records, and if available, the guilty

plea transcript. 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. "Defense attorney failed to properly investigate the case or all corroborating witness"
3. "Misconduct by the prosecution including failure to turn over evidence."

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.

With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

2-7, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS

2012-CP-21-3001

JAMIE B. GREEN, #229373

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,
Respondent.

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

**Robert T. King, Esquire
P.O. Box 1764
Florence, SC 29503**

DATED this 7TH day of February, 2013.


Norma Bigbee, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE)	CASE NO. 2012-CP-21-3001

JAMIE B. GREEN,
 Plaintiff,

-vs-

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA,
 Defendant.

October 7, 2013
 Marion, South Carolina

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR., Judge

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

ROBERT T. KING, Esquire
 Attorney for the Plaintiff

JOSHUA THOMAS, Esquire
 Attorney for the Defendant

KRYSTAL J. SMITH
 Court Reporter

I N D E X

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7	Redirect Examination by Mr. King.....	20
8	Henry M. Anderson, Jr.	
9	Direct Examination by Mr. Thomas.....	21
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
(No Exhibits Presented)			

1 OCTOBER 7, 2013

2 (WHEREAS this matter was scheduled for a post-conviction
3 relief hearing, the plaintiff/applicant appeared along
4 with his counsel of record. The defendant appeared
5 through counsel of record. The hearing began at 1:41
6 p.m.)

7 THE COURT: I'm ready whenever you are.

8 MR. THOMAS: He's on the way.

9 (Whereupon, there is a pause in the proceedings until the
10 plaintiff/applicant enters the courtroom.)

11 THE CLERK: Mr. Green, do you swear or affirm to tell the
12 truth, the whole truth, and nothing but the truth, so help you
13 God?

14 THE PLAINTIFF: Yes, ma'am.

15 THE CLERK: Have a seat.

16 THE COURT: Thank you.

17 MR. THOMAS: May it please the Court. The next case is
18 Jamie Green versus the State of South Carolina, Case Number
19 2012-CP-21-3001. Mr. Green was indicted in March of 2011 for
20 felony DUI, death resulting, two counts, and felony DUI, great
21 bodily injury resulting. He was represented on those charges
22 by Henry M. Anderson. He pled on August 2nd, 2012, to all
23 three charges as indicted. The Honorable Michael G. Nettles
24 gave him 12 years to run concurrent on each charge.

25 This PCR was filed November 12th, 2012. Mr. Green is

JAMIE B. GREEN - DIRECT EXAMINATION BY MR. KING

1 present and he is represented by Robert T. King. The State is
2 ready.

3 THE COURT: All right. Mr. King?

4 MR. KING: Thank you very much, Your Honor. Unless the
5 Court would prefer any statements at this time, I'd just ---

6 THE COURT: Go ahead.

7 MR. KING: --- call Mr. Green at this time.

8 THE COURT: That would be fine.

9 MR. KING: Thank you very much.

10 JAMIE B. GREEN, being first duly
11 sworn, testifies as follows:

12 DIRECT EXAMINATION

13 BY MR. KING:

14 Q: Mr. Green, can you give us your full name, please?

15 A: Jamie Burnett Green.

16 Q: And what's your date of birth?

17 A: [REDACTED].

18 Q: You filed this petition or application for post-
19 conviction relief; is that correct?

20 A: Yes, sir.

21 Q: All right. And you submitted actually not only an
22 original application but an amended application as well for
23 the Court's benefit; is that right?

24 A: Yes, sir.

25 Q: All right. Let's -- let's talk about your -- your

JAMIE B. GREEN - DIRECT EXAMINATION BY MR. KING

1 application and the grounds that you're seeking relief from
2 this Court. If you would, tell us by whom were you
3 represented on these three charges that the attorney general
4 just referenced?

5 A: Hank Anderson.

6 Q: At one point, you were also represented by ---

7 A: Karen Parrott.

8 Q: But at the time of the plea, who were you represented by?

9 A: By Hank Anderson.

10 Q: Tell us, if you would -- and in one of the grounds in
11 your application, you allege that Mr. Anderson didn't
12 effectively represent you. Tell us, if you would -- let's
13 talk first about the ground that you raise in terms of
14 sentencing. What -- what's your concerns with the sentence
15 imposed by the Court and your understanding of what that
16 sentence was going to be leading up to that?

17 A: Yes. It was supposed to be lesser -- a lesser sentence.

18 Q: All right. Tell -- tell us what you mean by that?

19 A: Well, I felt that -- me and him had a conversation and I
20 took -- I gave my trust into him because of the fact that he
21 told me that he could have gotten me six years. That's why I
22 pleaded guilty.

23 Q: Okay. Tell us as much as you can recall about the
24 conversation with -- with Mr. Anderson referencing six years'
25 incarceration?

JAMIE B. GREEN - DIRECT EXAMINATION BY MR. KING

1 A: Well, basically, he was having a conversation with me and
2 my mother -- I mean me and my wife and my stepfather and he
3 was just telling me that he know he sure that he could at
4 least get me six years out of the time that I was facing
5 because it was an accident and that he knowed it wasn't
6 intentional.

7 Q: Okay. Did he talk to you about the sentencing judge and
8 the choice of judges or anything like that?

9 A: Yes, sir.

10 Q: Tell us about that?

11 A: Well, basically, he asked me which -- which judge that I
12 felt comfortable going before, would it be Judge Brown or
13 either it would have been Michael Nettles, and I told him to
14 make the decision because he was my lawyer.

15 Q: All right. And ultimately, it ended up being who?

16 A: Michael Nettles.

17 Q: And that was whose choice?

18 A: Mr. Hank Anderson's.

19 Q: In terms of the six-year sentence, did Mr. Anderson tell
20 you anything more about that? About why six years or what led
21 him to conclude that?

22 A: Well, he stated that there was a female that had a wreck
23 somewhere at Hooter's or something like that and she had
24 received eight years under the sentence being that she ran
25 into two cars and had killed like -- I think two or three

JAMIE B. GREEN - DIRECT EXAMINATION BY MR. KING

1 people got killed in the accident and besides that it was like
2 several people got ran over on the sidewalk. So he figured
3 that Mike Nettles would have been more lenient towards my case
4 being that it was a one-car accident.

5 Q: Okay. Did he mention anything about that sentence?

6 A: That same -- you talking about the female sentence?

7 Q: Yes, sir.

8 A: Yes. He said she received eight years.

9 Q: All right. What impact did -- did the six-year sentence
10 potential have on your decisions?

11 A: Say that again?

12 Q: It was a bad question. I apologize. What role did --
13 did -- Mr. Anderson telling you that he thought he could get
14 you a six sentence -- six-year sentence, what role did that
15 play in your decision to plead guilty?

16 A: In my decision?

17 Q: Yes, sir.

18 A: Well, I felt that he was my attorney and I had trust in
19 him so I was led to believe that he stated what he said. You
20 know, I was going to go with it.

21 Q: Okay. Now, if he told you a twelve-year sentence, would
22 you have pled guilty?

23 A: No, sir.

24 Q: What sentence did you ultimately receive?

25 A: Twelve years.

JAMIE B. GREEN - DIRECT EXAMINATION BY MR. KING

1 Q: Three twelve-year sentences to run concurrently; is that
2 right?

3 A: Yes, sir.

4 Q: Now, let's -- let's talk about -- let's talk about some
5 other grounds that you raised in your application. Tell us
6 about pre-trial or pre-hearing -- pre-guilty plea
7 preparations. You mentioned that in your application. Did
8 Mr. Anderson -- did Mr. Anderson fail to talk with any
9 corroborating witnesses on your behalf? Tell us about that.

10 A: Basically, he -- in my -- in my understanding, I feel
11 that he didn't have enough time in my case.

12 Q: Okay. When did he first get involved in your case?

13 A: He got in the case -- in my case in like June and I was
14 in court in August.

15 Q: Okay. At the beginning of August, August 2nd; is that
16 right?

17 A: Yes, sir.

18 Q: Okay. Did you and/or your wife to your -- to your
19 knowledge provide Mr. Anderson with any names of any witnesses
20 that might be wanting to testify ---

21 A: Yes, sir.

22 Q: --- to that? Do you recall who those individuals were?

23 A: One, Lafayette Bradford, and the other one was Ms. Robin
24 Green.

25 Q: Okay. And to your knowledge, were these individuals who

JAMIE B. GREEN - DIRECT EXAMINATION BY MR. KING

1 had seen you earlier that evening?

2 A: Yes. They was basically around.

3 Q: Okay. To your knowledge, did Mr. Anderson ever indicate
4 to you whether he had spoke with those witnesses?

5 A: No, sir.

6 Q: You also suggested that there was -- in your -- in your
7 application that -- that there was no discussion about any
8 autopsy report or any discussion about the cause of death for
9 Melissa Harrold, one of the victims. Tell us about that.

10 A: Yes, sir. He stated to me that the Solicitor's Office
11 stated that they never had an autopsy report and they didn't
12 have a death certificate, but then later in my discovery I
13 found out there was a death certificate.

14 Q: A death certificate on Ms. Harrold?

15 A: Ms. Harrold, yes. Yes, sir.

16 Q: And that was never provided to you?

17 A: No, sir.

18 Q: All right. What impact did that have in terms of your
19 decision to plead guilty?

20 A: Well, I felt like once they told me that they didn't have
21 nothing in there, they was basically saying that her death was
22 automatically came from the accident, which now I never
23 knowed. I figured that that's what -- what it was, you know.

24 Q: To your knowledge, was that issue ever investigated prior
25 to your guilty plea?

JAMIE B. GREEN - DIRECT EXAMINATION BY MR. KING

1 A: No, sir.

2 Q: You also mentioned something about Mr. Alphonso Harrold
3 and his state of intoxication. Tell us -- tell us about that.
4 That's in your application as well.

5 A: Yes, sir. One of the witnesses that I had for him to
6 have called -- Mr. Anderson to have called, she was there with
7 him because it was a fact that they was at their house and
8 that was a big fight that him and his wife had. God bless the
9 dead. That him and his wife had had before they came to my
10 mother's house and that's the reason that I had gave him, you
11 know, the name for him to get in contact with them so he could
12 have fully investigated the behavior of what they was going
13 through before they got in contact with me. So once they
14 never -- they never done that, I figured that it kind of hurt
15 me towards my case because if he would have went and talked to
16 her to find out the significance dealing with them, it
17 probably would have been better on my -- on my case and my
18 time.

19 Q: To your knowledge, that issue was not investigated?

20 A: No, sir.

21 Q: All right. You also discuss in your petition something
22 you discovered afterward about the relationship between Mr.
23 Anderson and the solicitor who was prosecuting you, Todd
24 Tucker. Tell us what you found out about that.

25 A: Yes. I found that -- I mean I found out that Mr. Tucker

JAMIE B. GREEN - DIRECT EXAMINATION BY MR. KING

1 was once working for his firm. He was employed at it so I
2 felt there was a conflict of interest.

3 Q: And were you advised of the nature of that relationship
4 before you decided to plead guilty?

5 A: No.

6 Q: What impact would that have had on your guilty plea -- on
7 your decision to plead guilty if you had known of that prior
8 relationship?

9 A: Well, me myself, I look at the circumstance and the way
10 it didn't turn out good.

11 Q: Now, in -- in your application and in the course of this
12 proceeding, you've submitted some documents for consideration
13 by the Court and you filed them with the clerk of court. One
14 was a weather chart. What -- what was the significance of
15 that?

16 MR. THOMAS: Objection. I believe those documents were
17 filed while Mr. Green was represented. So they would be
18 improperly filed under Rule 11. They would have to be filed
19 by his attorney as part of his representation.

20 THE COURT: All right. Let me hear from you.

21 MR. KING: Your Honor, that wasn't a pleading or
22 paperwork required to be signed. It was simply an exhibit
23 submitted to the clerk's office. I would be happy to hand up
24 an identical copy of it.

25 THE COURT: I'm going to overrule it. Go ahead.

JAMIE B. GREEN - DIRECT EXAMINATION BY MR. KING

1 MR. KING: Okay. Your Honor, it's a matter in the
2 clerk's file.

3 THE COURT: All right.

4 MR. KING: Thank you.

5 Q: Tell us -- tell us why you submitted that?

6 A: Because in my discovery given with the state trooper's
7 report, he stated that the weather was dry. He said the road
8 conditions was dry. Then on the same -- when I got the
9 weather report for that night, in the position off that same
10 road where my accident happened at, it was ice. I got a
11 firefighter stating that it was ice on the road. Then I got
12 the weather chart stating that it rained. So that's -- that's
13 really why I added discovery -- my own discovery because of
14 the fact of what they had against me.

15 Q: Right. You mentioned the firefighter stated that. You
16 -- you're talking about ---

17 A: Mr. Gasque.

18 Q: --- a news article that you had submitted to the Court?

19 MR. KING: Prior to my involvement in this, Your Honor.
20 So -- and that, too, is part of the Court's record, Your
21 Honor.

22 Q: In terms of investigating potential causes of the
23 accident, do you know if any accident reconstructionists or
24 whether any effort was made into looking into other potential
25 causes of this accident?

JAMIE B. GREEN - DIRECT EXAMINATION BY MR. KING

- 1 A: Say that again?
- 2 Q: Yeah, another bad question. Did Mr. Anderson ever advise
3 you that he discussed or retained any kind of accident
4 reconstructionist or ever talked with you about investigating
5 the cause -- the potential causes of this accident?
- 6 A: No, sir. I done my own research.
- 7 Q: And that was done after your plea; is that correct?
- 8 A: Yes, sir. When I was incarcerated.
- 9 Q: All right. Is there anything else that you'd like to
10 advise the Court of in relation to your application that you
11 believe should be considered?
- 12 A: No, sir. I just felt that if my case was more
13 investigated, I felt that it probably would have come out to a
14 better turnout. That's all I got to say.
- 15 Q: And had it been in your view more thoroughly investigated
16 as you allege in your application, do you believe that you
17 would have opted not to plead guilty?
- 18 A: Yes, sir.
- 19 MR. KING: Your Honor, I believe that's all I have.
- 20 THE COURT: All right. Mr. Thomas?
- 21 CROSS EXAMINATION
- 22 BY MR. THOMAS:
- 23 Q: Good afternoon, Mr. Green.
- 24 A: How you doing?
- 25 Q: How many times did you meet with Mr. Anderson before your

JAMIE B. GREEN - CROSS EXAMINATION BY MR. THOMAS

1 plea?

2 A: Probably two.

3 Q: And when you met with him, y'all went over the State's
4 discovery at that time?

5 A: Say that again?

6 Q: Did you go over the State's discovery when you met with
7 him?

8 A: You talking about motions and stuff?

9 Q: Yes, sir. The Rule 5 responses.

10 A: No, sir.

11 Q: And so did you have an opportunity with him to discuss
12 any possible defenses you might have had to this crime?

13 A: Explain that to me. Explain that again a little. I
14 didn't understand.

15 Q: When you met with him, did he explain to you any possible
16 defenses?

17 A: Yes. He stated about the six years.

18 Q: Okay. So he told you that you would get six years for
19 this?

20 A: He said he felt that he was more -- he was confident in
21 that he could have gotten me six years.

22 Q: But did he tell you that you had -- he didn't tell you
23 that he had a negotiated six-year sentence on the table
24 though?

25 A: No, sir. I'm not going to lie on him now. He never told

JAMIE B. GREEN - CROSS EXAMINATION BY MR. THOMAS

1 me that it was on the table.

2 Q: What kind of plea offer -- what did he discuss with you
3 in terms of plea offers?

4 A: Well, the same as like what I said just now. He said
5 basically that if we had went to trial, he know we wasn't
6 going to win the trial. I would get convicted. He said we
7 know we wasn't going to win trial. He said if I plead guilty
8 that he know that he probably could have got me at least six
9 years, no more than eight.

10 Q: And you said he advised you that your chances of success
11 at trial were unlikely?

12 A: Yes, sir.

13 Q: And so did he explain to you the elements to the crime
14 that you were charged with?

15 A: Basically, he stated to me like what I stated to him. He
16 told me that given with the accident and with the female from
17 Hooters, he knowed if I could plead guilty, I would have got
18 at least a lesser sentence because of the fact that my -- my
19 accident was a little severe -- less severe.

20 Q: Okay. And so ultimately, it was your decision to plead
21 guilty then; correct?

22 A: Under his understanding.

23 Q: But it was your -- you made the ultimate decision to say
24 I want to plead guilty, I don't want to go to trial?

25 A: Yes, sir, after I had a conversation with him.

JAMIE B. GREEN - CROSS EXAMINATION BY MR. THOMAS

1 Q: Right, right. And then -- and so you remember on the day
2 of the plea Judge Nettles -- you were in front of Judge
3 Nettles; is that right?

4 A: Yes, sir.

5 Q: And you remember Judge Nettles telling you that the
6 offense you were charged with carried a mandatory minimum of
7 one year and a maximum of 25 years?

8 A: Yes, sir.

9 Q: And he told you that a couple times; didn't he? At the
10 plea?

11 A: I can't recall how many times he said it.

12 Q: But it was discussed at the plea?

13 A: He said it.

14 Q: And so he never at any point during the plea told you you
15 were going to get six years?

16 A: Who? Mr. -- Judge Nettles?

17 Q: Judge Nettles.

18 A: No. He never mentioned nothing about no six years.

19 Q: Okay. And you also remember at the plea the solicitor
20 got up and basically gave basically the State's case against
21 you; do you remember that?

22 A: Are you talking about when he mentioned what had happened
23 or whatever?

24 Q: Right. Mr. Tucker stood up and he explained ---

25 A: Yes, sir. Yes, sir.

JAMIE B. GREEN - CROSS EXAMINATION BY MR. THOMAS

1 Q: And he explained that you had been drinking that evening.
2 He told Judge Nettles you had been drinking; isn't that
3 correct?

4 A: Yes, sir.

5 Q: And he told Judge Nettles that you were driving the car;
6 isn't that right?

7 A: Yes, sir.

8 Q: And he explained that your wife was injured in the
9 accident?

10 A: No. He ain't never explained nothing about my wife.
11 Nobody never had a statement about my wife.

12 Q: I'm sorry. Not your -- was she your wife or your
13 girlfriend?

14 A: Yeah, my girlfriend. Because nobody never took a
15 statement on my girlfriend.

16 Q: Okay. But she was injured in the accident; correct?

17 A: Yeah, she was injured.

18 Q: And then your two -- the two people that were riding in
19 the back seat were also injured or they were -- they ended up
20 passing away; didn't they?

21 A: Yeah. Three people in the back seat.

22 Q: Three people. I'm sorry. And you remember the solicitor
23 basically reciting all of that to the judge?

24 A: Yes, sir.

25 Q: And then you remember that you also -- the judge asked

JAMIE B. GREEN - CROSS EXAMINATION BY MR. THOMAS

1 you if you agreed with the facts that the solicitor presented;
2 do you remember that?

3 A: Yes, sir.

4 Q: And you remember agreeing with him that you were
5 drinking?

6 A: Yes, sir.

7 Q: And that you were driving?

8 A: Yes, sir.

9 Q: And that those people were injured or killed?

10 A: Yes, sir.

11 Q: Okay. Do you remember at the end of your plea the judge
12 asked you if you had anything you wanted to say?

13 A: Yes, sir.

14 Q: And do you remember looking at the family and saying I'm
15 sorry?

16 A: Yes, sir.

17 Q: In terms of Mr. Anderson's prior employment of the
18 solicitor, that was never revealed to you beforehand?

19 A: No, sir.

20 Q: And if that had been revealed to you, what would you have
21 done with that information?

22 A: I would have checked with him and tried to get another
23 solicitor towards my case.

24 MR. THOMAS: That's all I have. Thank you.

25 THE COURT: All right. Anything further?

26

JAMIE B. GREEN - REDIRECT EXAMINATION BY MR. KING

1 MR. KING: A couple things.

2 REDIRECT EXAMINATION

3 BY MR. KING:

4 Q: You were just asked about the solicitor's statement of
5 the evidence to the judge during the guilty plea. During the
6 course of that statement, do you recall the solicitor handing
7 up a handwritten statement?

8 A: Yes, sir. No. No, sir.

9 Q: Okay. Do you recall that occurring that the solicitor
10 gave the judge a ---

11 A: Oh, yes, sir. Yes, sir.

12 Q: And that was a handwritten -- or a victim's statement
13 from Alphonso Harrold?

14 A: Yes, sir.

15 Q: Were you ever given a copy of that?

16 A: No, sir.

17 Q: Have you to date been given a copy of that?

18 A: No, sir.

19 Q: Do you know what was contained in that statement?

20 A: I never seen it.

21 MR. KING: That's all I have, Your Honor. Thank you.

22 THE COURT: All right. Anything further? All right.

23 You may step down and sit next to your lawyer. Call your next
24 witness if you have one.

25 MR. KING: Your Honor, that's all we have. Thank you

HENRY ANDERSON, JR. - DIRECT EXAMINATION BY MR. THOMAS

1 very much.

2 THE COURT: Okay. Mr. Thomas?

3 MR. THOMAS: We'd call Hank Anderson to the stand.

4 THE CLERK: Mr. Anderson, do you swear to tell the truth
5 or affirm to tell the truth, the whole truth, and nothing but
6 the truth, so help you God?

7 THE WITNESS: Yes, ma'am.

8 THE CLERK: Have a seat, please.

9 HENRY M. ANDERSON, JR., being first
10 duly sworn, testifies as follows:

11 DIRECT EXAMINATION

12 BY MR. THOMAS:

13 Q: Good afternoon, Mr. Anderson.

14 A: Good afternoon.

15 Q: Just some background questions. How long have you been
16 practicing law?

17 A: Private practice 21 years. I've been an attorney for 22
18 years.

19 Q: And do you recall whether you were appointed or retained
20 on this case?

21 A: I was retained.

22 Q: Could you just give us sort of an overview of what the
23 State's evidence was against Mr. Green?

24 A: The State gave me very typical discovery. It had a MAIT
25 report in it done by the Highway Patrol. It gave me an

HENRY ANDERSON, JR. - DIRECT EXAMINATION BY MR. THOMAS

1 autopsy report on one of the people that had died. It gave me
2 blood alcohol results on the defendant, Mr. Green, and I think
3 it gave me like an incident report and some pictures and that
4 was it.

5 Q: And -- and after you -- I'm assuming you would have
6 gotten this basically as a response to the Rule 5 and Brady
7 stuff?

8 A: Yes, sir.

9 Q: And did you get a chance to go over that with Mr. Green?

10 A: Yes, sir.

11 Q: All right. And did you show him the MAIT report, the
12 autopsy report, and all that other stuff?

13 A: Yes, sir. I gave him a copy of everything.

14 Q: When you went over that with him, did you -- did he give
15 you any sort of -- what was his version of the incident? Do
16 you recall?

17 A: He told me that he didn't want to go out that night, but
18 they came over to his house or to his mom's house and since it
19 was his birthday, they went out anyway. That he wasn't
20 driving, but his girlfriend, later his wife, got sick and she
21 kept having to pull over and throw up and pull over and throw
22 up. She wasn't drunk, but she was just -- it was something
23 she ate or wasn't feeling good or something so Jamie said let
24 me drive. So he took over driving. The people in the back
25 started having an argument and he turned around to say

HENRY ANDERSON, JR. - DIRECT EXAMINATION BY MR. THOMAS

1 something and that's when he lost control of the car and had
2 the accident.

3 Q: Did you -- during those discussions, did you go over with
4 him any possible defenses he might have?

5 A: Yes, sir.

6 Q: And what were those?

7 A: I was not aware of any.

8 Q: And sort of what kind of plea discussions did you have
9 with the State?

10 A: Well, first of all, I asked them if they would agree to a
11 number and they told me no. I asked them if they would agree
12 to a cap and they said no. The gentleman that got hurt and
13 his wife died, he was the -- I guess the hold-up. He did not
14 want any type of negotiations that he didn't agree with, any
15 number or any round of numbers being discussed.

16 Q: And so what were you eventually able to get the State to
17 offer?

18 A: Just a straight up plea. They only agreed it was -- it
19 would be run concurrent.

20 Q: Where -- sort of where did this number of six years come
21 from?

22 A: I don't have any idea.

23 Q: Do you recall discussing with Mr. Green sort of some
24 other cases you may have dealt with that were similar to his?

25 A: I do.

HENRY ANDERSON, JR. - DIRECT EXAMINATION BY MR. THOMAS

1 Q: Did you advise him that his plea would be -- would be
2 straight up and that he couldn't guarantee any of those
3 numbers?

4 A: Yes, sir.

5 Q: Did you explain to him the difference between a straight
6 up plea and a negotiation or recommendation?

7 A: I don't recall if I ever discussed that because I don't
8 remember if I ever told him it would be a certain number.

9 Q: At any time during your representation of him, did he
10 indicate to you he wanted to go to trial?

11 A: No, sir, he did not.

12 Q: And so was it your -- whose decision was it to plead
13 guilty?

14 A: It was his decision, but I told him before he hired me
15 that this was a plea and a plea only, that I would not
16 represent him at trial.

17 Q: If he had asked you to take it to trial, would you have
18 been prepared for that?

19 A: I would have refunded his money and I would have
20 withdrawn from the case.

21 Q: Just briefly, what's your relationship with Assistant
22 Solicitor Todd Tucker?

23 A: Mr. Tucker used to work for me.

24 Q: How long ago was that?

25 A: He worked with me from May of 2008 until I think August

HENRY ANDERSON, JR. - DIRECT EXAMINATION BY MR. THOMAS

1 of 2011.

2 Q: And when were you retained on Mr. Green's case?

3 A: I think in June of 2012.

4 Q: And so Mr. Tucker would have never had any involvement in
5 sort of your aspect of the representation of Mr. Green and the
6 defense of Mr. Green?

7 A: No, sir.

8 MR. THOMAS: I believe that's all I have.

9 THE COURT: All right. Mr. King?

10 MR. KING: Thank you very much.

11 CROSS EXAMINATION

12 BY MR. KING:

13 Q: Mr. Anderson, you testified on direct that from the
14 moment that Mr. Green came to see you, you told him it was
15 going to be a plea and a plea case only?

16 A: Yes, sir.

17 Q: You never -- you were not aware of nor did you discuss
18 with him any potential defenses to the -- to the charges?

19 A: No, sir.

20 Q: You mentioned that during the -- during the discovery of
21 the State's Rule 5 production, you were provided with a MAIT
22 report; is that right?

23 A: Yes, sir.

24 Q: Did you ever retain an accident reconstructionist or ever
25 do any investigation to dispute MAIT's findings in that

HENRY ANDERSON, JR. - CROSS EXAMINATION BY MR. KING

1 report?

2 A: No, sir, I did not.

3 Q: You mentioned that there was an autopsy report ---

4 A: Yes, sir.

5 Q: --- done on one of the two individuals who died; is that
6 correct?

7 A: That's correct.

8 Q: And I believe that would have been Mr. McFadden?

9 A: Yes, sir.

10 Q: But there wasn't an autopsy as far as you know done on
11 Melissa Harrold; is that right?

12 A: That's correct.

13 Q: Did you ever do any independent investigation of any
14 potential other causes of death for Ms. Harrold?

15 A: No, sir. I had a conversation with Mr. Tucker about why
16 an autopsy report was not done on her. I had a -- no. He's
17 the only one I talked with about why one was not done on her.

18 Q: Right. This may be in your file. On July 26th of 2012,
19 you wrote a letter to Mr. Tucker requesting any autopsy report
20 for Ms. Harrold, as well as any possible toxicology report
21 done on Mr. Harrold; is that correct?

22 A: That's correct.

23 Q: And on that same date, you wrote a letter to Mr. Green
24 saying I want to get you pled and the case taken care of in
25 front of Judge Nettles on August 2nd; is that correct?

HENRY ANDERSON, JR. - CROSS EXAMINATION BY MR. KING

1 A: That's correct.

2 Q: There wasn't much time in-between July 26th, 2012, when
3 you wrote that letter to Mr. Tucker and the time that Mr.
4 Green ended up pleading for you to do much independent
5 investigation; was there?

6 A: No, sir.

7 Q: You never discussed with Mr. Green the possibility of
8 going to trial?

9 A: Never. I did not.

10 Q: Did Mr. Green seem to rely on your advice and statements
11 during the course of your representation of him?

12 A: He did.

13 Q: You also mentioned that one of the things that the State
14 provided was BAC results, blood alcohol results on Mr. Green;
15 is that correct?

16 A: That's correct.

17 Q: Did you ever have any discussions with Mr. Green about
18 hiring a blood specialist or anything like that?

19 A: No, sir.

20 Q: And one wasn't, in fact, hired?

21 A: No, sir.

22 Q: Do you recall discussing with Mr. Green the -- I believe
23 it was the DUI case that Judge Nettles had taken the guilty
24 plea and sentenced sometime prior to Mr. Green's plea?

25 A: Yes, sir. I discussed that case with him.

HENRY ANDERSON, JR. - CROSS EXAMINATION BY MR. KING

1 Q: Did you discuss with him the sentence that that young
2 lady received?

3 A: Yes, sir, I did.

4 Q: Was that one of the factors in deciding to try and have
5 the case heard by Judge Nettles?

6 A: Yes, sir.

7 Q: And that plea that she received to Mr. Green's
8 recollection was eight years. Is that your understanding as
9 well?

10 A: That's my understanding.

11 Q: That wasn't a case you had actually handled. You were
12 just aware of it; right?

13 A: That's correct.

14 Q: Would you have discussed that eight-year sentence with
15 Mr. Green?

16 A: I did discuss it with him.

17 Q: Do you recall having any conversation with Mr. Green
18 about your prior relationship with Mr. Tucker?

19 A: I believe we discussed it.

20 Q: What do you recall?

21 A: I'm pretty sure -- I'm not positive because that's not in
22 writing, but I am pretty sure I told him that Mr. Tucker used
23 to work for me.

24 Q: And what would the purpose of that have been?

25 A: Just so he would know.

HENRY ANDERSON, JR. - CROSS EXAMINATION BY MR. KING

1 Q: I mean were you anticipating that maybe it would be a
2 little more favorable treatment than if it had been a
3 different solicitor?

4 A: I would hope so.

5 Q: But -- but Mr. Tucker gave no recommendations; is that
6 correct?

7 A: No, sir, he did not.

8 Q: The only recommendation he gave was a concurrent
9 sentence?

10 A: Yes, sir.

11 Q: All right. And you testified that the hold-up seemed to
12 be Alphonso Harrold; is that correct?

13 A: That's correct.

14 Q: At any point, did you do any -- any looking into any
15 possible other -- let me strike that. At the time, Mr.
16 Harrold had a civil lawsuit pending against Mr. Green; did he
17 not?

18 A: Yes, sir, he did.

19 Q: Did you bring that issue up in front of the Court during
20 the plea?

21 A: I don't recall if I did or not.

22 MR. KING: One second. Thank you, Mr. Anderson. I
23 appreciate it. Thank you.

24 THE COURT: Yes, sir. Anything further?

25 MR. THOMAS: Nothing further, Your Honor.

1 THE COURT: All right. You may step down. Any other
2 witnesses?

3 MR. THOMAS: That's all from the State.

4 THE COURT: All right. Based on this trial and the
5 record before me, I'm going to deny the post-conviction
6 relief. If you would, prepare me an order.

7 MR. THOMAS: Thank you, Your Honor.

8 (Whereupon, the proceedings end at 2:11 p.m.)

9

10 --- END REQUESTED TRANSCRIPT ---

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STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF FLORENCE)

I, the undersigned, Krystal J. Smith, Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Florence County, South Carolina, held in Marion, South Carolina, on the 7th day of October, 2013.

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

Krystal J. Smith
Court Reporter

Florence, South Carolina
March 17, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Jamie B. Green, #229373,)

Case No. 2012-CP-21-3001

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

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This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed November 12, 2012. Respondent made its Return on or about February 7, 2013. The Court convened an evidentiary hearing into the matter on October 7, 2013, in Marion County. Applicant was present at the hearing and represented by Robert T. King, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, Henry M. Anderson, Jr., Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Florence County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application, and the return. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Florence County Clerk of Court. In March 2011, the Florence County Grand Jury indicted Applicant for two (2) counts of felony driving under the influence resulting in death and one (1) count of felony driving under the influence resulting in great

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Amie Reel Stearns
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

bodily injury (2011-GS-21-744). He was represented by Henry M. Anderson, Jr., Esquire ("plea counsel"). On August 2, 2012, Applicant pled guilty as indicted. The Honorable Michael G. Nettles sentenced Applicant to confinement for a period of twelve (12) years on each count, and accepted the State's recommendation that the sentences run concurrent. Applicant did not appeal his plea or sentence.

II. ALLEGATIONS

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

1. "Ineffective Assistance of Counsel"
 - a. "Strickland v. Washington, 466 U.S. 668, 686 (1984)"
2. "Defense attorney failed to properly investigate the Case or Call Corroborating [sic] Witnesses"
 - a. "Hill v. Lockhart, 474 U.S. 52 (1985) Henderson v. Morgan, 426 U.S. 637, 645, n.13 (1976) [...]"
3. "Misconduct by the Prosecution including failure to turn over evidence"
 - a. "Solicitor failed to turn over Evidence in my Rule 5, presented new evidence against me"

Applicant's application also included a statement alleging he was "coerced into pleading guilty based on a false promise regarding the potential sentence" he would receive. Applicant also filed a *pro-se* amendment alleging a conflict of interest stemming from plea counsel's former employment of the assistant solicitor handling his case. At the PCR hearing, the Applicant proceeded only on the allegations of ineffective assistance of plea counsel for failure to investigate and failure to disclose a conflict of interest.

III. SUMMARY OF TESTIMONY

Applicant testified plea counsel advised him that a six (6) year sentence was likely. Applicant alleged plea counsel discussed the nature of the accident with himself and his family, and plea counsel stated the judge would give Applicant a six (6) year sentence. Applicant also testified plea counsel advised him to plea in front of Judge Nettles because Judge Nettles had recently sentenced a similarly situated defendant to eight (8) years.

Applicant also testified plea counsel did not thoroughly investigate his case. Specifically, Applicant alleges he gave plea counsel the names of witnesses who could testify the victims (who were passengers in Applicant's car) were fighting the night of the accident. He also alleged plea counsel did not discuss with him the results of the victims' autopsies. Applicant also alleged plea counsel should have investigated other possible causes of the accident, such as weather conditions. Applicant further testified plea counsel did not advise Applicant the assistant solicitor handling the case formerly worked with plea counsel in private practice.

On cross-examination, Applicant admitted plea counsel never advised him there was an offer to plead guilty in exchange for a sentence of six (6) years. He further admitted the plea judge informed him he could receive up to twenty-five (25) years. Applicant also recalled agreeing with the State's allegation he was operating a motor vehicle while under the influence and his actions resulted in the death of two people and serious injury to a third.

Plea counsel testified he was retained by Applicant's family for the purpose of negotiating a plea to the charges. He testified he reviewed with Applicant the State's responses to Applicant's prior attorney's Rule 5/Brady motions. He further testified he gave Applicant a copy of the discovery file, which included a highway patrol report, an autopsy report, and

Applicant's blood alcohol report. Plea counsel also testified he discussed Applicant's version of events and advised Applicant there were no viable defenses to the charges. He also testified he did not further investigate the victims' autopsy reports because there was no question about the cause of death. He testified he did not investigate the cause of the accident because it would not have reduced Applicant's culpability.

Plea counsel testified he attempted to negotiate a plea offer with the State, but the State refused to commit to a negotiated or recommended sentence. Instead, the State only agreed to recommend all sentences run concurrently. Plea counsel further testified he never told Applicant he would be sentenced to six (6) years. He did recall telling Applicant about previous defendants' sentences, including one defendant who received eight (8) years. However, he did not recall telling Applicant the plea judge would agree to any specific sentence. He did recall explaining to Applicant that the plea was without recommendation or negotiation as to the length of the sentence. Plea counsel also testified he was "pretty sure" he discussed with Applicant his prior professional relationship with the assistant solicitor. Plea counsel testified that the assistant solicitor left plea counsel's firm in August 2011 and never had any involvement with Applicant's case because plea counsel was retained in June 2012.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

A. Ineffective Assistance of Plea Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). 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." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea

counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

The Court finds Applicant failed to carry his burden of proving plea counsel ineffective. Applicant's allegation counsel failed to investigate the case is without merit. Failure to conduct an independent investigation is not *per se* ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Regarding this claim, the Court finds plea counsel's testimony to be credible, and Applicant's to be not credible. Plea counsel reviewed with Applicant all of the State's evidence. A further investigation into the victims' cause of death would not have been helpful because plea counsel could not have uncovered any further evidence that would have reduced Applicant's culpability. Furthermore, the highway patrol report indicated Applicant was driving over seventy (70) miles per hour when the accident occurred. (Plea Tr. 9:16-18). Even if plea counsel had determined the victims were fighting in the back seat, Applicant was still negligent in driving too fast for conditions. This Court finds plea counsel made a strategic decision to not pursue this line of investigation. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))).

The Court also finds the allegation plea counsel misadvised Applicant of his potential sentence to be without merit. In reaching this conclusion, the Court finds plea counsel's testimony to be credible and Applicant's to be not credible. Plea counsel correctly advised

Applicant of the maximum exposure under the charges and that the plea judge had full discretion in determining the length of the sentence. Furthermore, the plea judge informed Applicant he could receive a sentence between one (1) and twenty-five (25) years. (Plea Tr. 4:2-6). Because neither the plea judge nor plea counsel ever promised Applicant a six (6) year sentence, he "cannot complain that his pleas were not voluntarily and knowingly entered." Carter v. State, 329 S.C. 355, 362, 495 S.E.2d 773, 777 (1998) (citations omitted); see also Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997) (any possible errors by counsel regarding sentencing advice cured by plea colloquy). Applicant also had an opportunity to inform the plea judge he expected a six (6) year sentence, and his failure to do so forecloses him from now challenging that sentence. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) ("[S]tatements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements." (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976))).

The Court finds Applicant's claim of a conflict of interest to be without merit as well. "An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendants." State v. Gregory, 364 S.C. 150, 152, 612 S.E.2d 449, 450 (2005) (citing Fuller v. State, 347 S.C. 630, 557 S.E.2d 664 (2001)). Plea counsel owed no duty to the assistant solicitor because the assistant solicitor left plea counsel's firm almost a year before Applicant retained plea counsel. Accordingly, the assistant solicitor also never worked on Applicant's case because he was not employed by plea counsel during that time. See also Rule 1.11(d)(2)(i), Rule 407, SCACR (government lawyer only conflicted out of matters in which he

“participated personally and substantially while in private practice”). Therefore, the Court finds plea counsel had no actual conflict of interest.

Furthermore, plea counsel provided competent representation in light of the overwhelming evidence against Applicant. Applicant’s blood alcohol level was above the legal limit and he tested positive for marijuana. (Plea Tr. 8:17-18). The highway patrol report indicated Applicant was driving over seventy (70) miles per hour when his car veered off the road. (Plea Tr. 9:16-18). Undoubtedly, these factors combined to cause the death of two victims and the serious injury of a third. Based on this overwhelming evidence, the Court finds Applicant was not prejudiced by plea counsel’s advice to plead guilty. See Stalk v. State, 375 S.C. 289, 302, 652 S.E.2d 402, 408 (Ct. App. 2007) aff’d as modified, 383 S.C. 559, 681 S.E.2d 592 (2009).

B. 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, the Court finds Applicant failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

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

The Court notes that Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on the applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

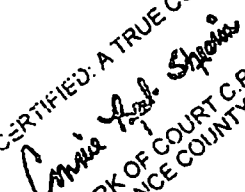
1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 25 day of Nov., 2013.


THE HONORABLE WILLIAM H. SEALS, JR.
Presiding Judge

Mani, South Carolina

FILED
2013 DEC 11 PM 4:37
CORRIE REEL-SHEPARD
CCLP & GS
LORENCE COUNTY, SC

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
LORENCE COUNTY, S.C.

WITNESSES

W M Lee S C Highway Patrol

CERTIFIED: A TRUE COPY
Clerk of Court
FLORENCE COUNTY, S.C.
M. J. [Signature]
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

H. STEVEN DEBERRY, IV

ARREST WARRANT NUMBER

M285025 M285026 M285027

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury
Date: 3-31-11

VERDICT

Foreperson of Petit Jury Date:

DOCKET NO. 2011-GS-21-0744

The State of South Carolina

County of
FLORENCE

COURT OF GENERAL SESSIONS

APRIL TERM 2011

THE STATE

vs.

JAMIE BERNETT GREEN

Indictment for

FELONY DRIVING UNDER THE INFLUENCE
WITH DEATH
(TWO COUNTS)
AND
FELONY DRIVING UNDER THE INFLUENCE
WITH GREAT BODILY INJURY

2011 MAR 31 PM 2:14

MISSOURI SHEARIN
PARRISH & GOSSETT
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

INDICTMENT FOR
 FELONY DRIVING UNDER THE INFLUENCE
 WITH DEATH (TWO COUNTS)
 AND
 FELONY DRIVING UNDER THE INFLUENCE WITH
 GREAT BODILY INJURY

At a Court of General Sessions, convened on MARCH 31, 2011 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- FELONY DRIVING UNDER THE INFLUENCE WITH DEATH

That JAMIE BERNETT GREEN did in Florence County on or about December 25, 2010 drive a motor vehicle while under the influence of alcohol, drugs, or a combination of both, and did an act forbidden by law and/or neglected a duty imposed by law in the driving of the vehicle, which act or neglect proximately caused the death of Brett McFadden in violation of Section 56-05-2945(A)(2), S. C. Code of Laws, 1976, as amended.

COUNT TWO- FELONY DRIVING UNDER THE INFLUENCE WITH DEATH

That JAMIE BERNETT GREEN did in Florence County on or about December 25, 2010 drive a motor vehicle while under the influence of alcohol, drugs, or a combination of both, and did an act forbidden by law and/or neglected a duty imposed by law in the driving of the vehicle, which act or neglect proximately caused the death of Melissa Harrold in violation of Section 56-05-2945(A)(2), S. C. Code of Laws, 1976, as amended.

**COUNT THREE - FELONY DRIVING UNDER THE INFLUENCE
 WITH GREAT BODILY INJURY**

That JAMIE BERNETT GREEN did in Florence County, on or about December 25, 2010, drive a motor vehicle while under the influence of alcohol, drugs, or a combination of both, and did an act forbidden by law and/or neglected a duty imposed by law in the driving of the vehicle, which act or neglect proximately caused great bodily injury to Alfonzo Lorenzo Harrold in violation of Section 56-05-2945(A)(1), 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.



 E.L. Clements, III
 TWELFTH CIRCUIT SOLICITOR