

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Marlboro County

R. Ferrell Cothran, Jr., Circuit Court Judge

---

**RECEIVED**

MAY 23 2014

**S.C. Supreme Court**

MARCUS TOWNSEND,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002270

---

APPENDIX

---

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSION
COUNTY OF MARLBORO	)	2010-GS-34-0448
	)	2010-GS-34-0450

STATE OF SOUTH CAROLINA	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
MARCUS TOWNSEND	)	
DEFENDANT	)	

October 31, 2011  
 Bennettsville, 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:

MARY THOMAS JOHNSON LEE, DEPUTY SOLICITOR  
 Attorney for the State

EMILY CRAYTON, PUBLIC DEFENDER  
 Attorney for the Defendant

IRA DEASE, BENNETTSVILLE POLICE DEPARTMENT  
 MELISSA TOWNSEND, DEFENDANT'S MOTHER  
 LEON TOWNSEND, DEFENDANT'S FATHER  
 KHALED ATKHATTAB, VICTIM'S COUSIN

HATTIE O. GORDON  
 Circuit Court Reporter

I N D E X

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EXHIBITS

NO EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

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COLLOQUY

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MARCUS TOWNSEND, after being duly sworn,

3

testified as follows:

4

MR. JOHNSON LEE: May it please the Court.

5

THE COURT: Yes, ma'am, you're recognized.

6

MR. JOHNSON LEE: Your Honor, this is Docket

7

2010-GS-34-450, the State v. Marcus Townsend, indictment

8

for murder. True billed on July 1st 2010. He's pleading

9

guilty to voluntary manslaughter.

10

Also 2010-GS-34-448, State v. Marcus Townsend,

11

indictment for armed robbery. True billed July 1st 2010.

12

He is pleading guilty as indicted. I've handed copies of

13

the indictments up to the Court. At this time I'd like to

14

show the sentencing sheet to Mr. Townsend. Mr. Townsend,

15

is this your sentencing sheet on the armed robbery

16

indictment?

17

MR. TOWNSEND: Yes, ma'am.

18

THE COURT: Is this your signature on the indictment

19

for murder indicating a plea to voluntary manslaughter?

20

MR. TOWNSEND: Yes, ma'am.

21

THE COURT: And is your signature indicative of your

22

wanting to plead guilty to those charges?

23

MR. TOWNSEND: Yes, ma'am.

24

MR. JOHNSON LEE: Your Honor, the recommendation is a

25

cap of 25 years in this case. Relatives of the victims

1 are present in the courtroom. Two of them are seated in  
2 the jury box to my left. One will be the spokesperson for  
3 the family. Also present for the State is Investigator  
4 Ira Dease from the Bennettsville Police Department.

5 THE COURT: Ms. Crayton, do you represent Mr.  
6 Townsend?

7 MS. CRAYTON: Yes, Your Honor, I do.

8 THE COURT: Have you explain to him the offense of  
9 armed robbery? The fact that he could receive up to 30  
10 years in prison for this? Voluntary manslaughter, the  
11 fact that he could receive 30 years for this separate and  
12 distinct offense?

13 MS. CRAYTON: Yes, Your Honor, I have.

14 THE COURT: Does he understand that each of these  
15 falls within a very special category of offenses in that  
16 it's a most serious offense subject to the two and three  
17 strike rule. And it's a violent offense meaning that this  
18 will adversely affect his custody status. Does he  
19 understand that?

20 MS. CRAYTON: Yes, Your Honor.

21 THE COURT: Does he understand that these are  
22 non-parolable offenses, and that for all practical  
23 purposes he will serve this sentence day for day, subject  
24 to the 85 Percent rule?

25 MS. CRAYTON: Yes, Your Honor.

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

2 MS. CRAYTON: Guilty, Your Honor.

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

4 MS. CRAYTON: Yes, Your Honor.

5 THE COURT: You feel if called upon the State could  
6 prove him guilty beyond a reasonable doubt?

7 MS. CRAYTON: Yes, Your Honor.

8 THE COURT: Mr. Townsend, are you under the influence  
9 of any drugs or alcohol here today?

10 MR. TOWNSEND: No, sir.

11 THE COURT: Are you experiencing any kind of physical  
12 or mental problem that could prevent you from  
13 understanding what you're doing here today?

14 MR. TOWNSEND: No, sir.

15 THE COURT: All right. I want to you pay very close  
16 attention as the State summarizes the facts that bring us  
17 here today.

18 MR. JOHNSON LEE: Your Honor, Investigator Ira Dease  
19 is going to give Your Honor the initial facts on the case.

20 THE COURT: Yes, sir.

21 MR. DEASE: Your Honor, please the Court; that on May  
22 10th 2010 Bennettsville Police Department was dispatched  
23 to respond to -- at Quick Stop at 157 Marshall Street here  
24 within the City limits of Bennettsville. Upon our arrival  
25 there we were told that a young man had gotten shot on the

1 inside. So when we went inside we saw -- we observed  
2 Mr. Sam Husan lying on the floor. And during that time

3 the squad was dispatched to come for medical attention.

4 And later throughout the day we received information  
5 about the individuals that were involved in the matter.  
6 And two of the codefendants was charged gave statements as  
7 to who were the one shot -- was the one that shot Mr.  
8 Husan. And that individual is Mr. Townsend standing to my  
9 right. He's charge with murder and robbery in this  
10 incident.

11 THE COURT: Okay.

12 MR. JOHNSON LEE: Your Honor, if I may, and the  
13 reason for the recommendation, the cap of 25 in this case,  
14 Your Honor, is we have no forensic evidence possibly tying  
15 this defendant to the murder. Two, there were four  
16 co-defendants in this case. One of them, Mr. Kadeem  
17 Ocean, drove the get away car.

18 The three individuals who went into the store were  
19 Mr. Marcus Townsend, a -- who was 17 at the time; a 15  
20 year old, Richard Jamal Davis, and another teenager,  
21 Rashawn Baskins. While the youngest teenager went to the  
22 cash register the take the cash from the draw, Rashawn  
23 Baskins went up to Mr. Husan and began patting on his  
24 pockets to see if he had any monies on his person.

25 When Mr. Husan knocked Rashawn's hands away Mr.

1 Townsend then discharged the .22 rifle into the victim.  
2 The victim did, Mr. Samear Husan, passed away at the  
3 hospital either during or immediately after surgery. The  
4 gun that Mr. Townsend initially took law enforcement to  
5 was believed all along to be the murder weapon. However,  
6 it was later determined by S.L.E.D. that was not the  
7 murder weapon.

8 And Investigator Dease and I actually went back to  
9 S.L.E.D. later on and met with the forensic examiner and  
10 firearms who stated that there is no way that gun could  
11 have been the murder weapon because even if the barrel had  
12 been tampered with the lan still would not have changed.  
13 The murder bullet had a wider lans and narrower grooves.  
14 Whereas the test bullet had a narrower lans and wider  
15 grooves.

16 He said that if the gun had been tampered with we  
17 would have had the opposite affect. So he can  
18 scientifically say after 25 years experience with both the  
19 F.B.I. and S.L.E.D. this was not the gun.

20 Also because of various issues with the case we  
21 decided to make this offer of a cap of 25 years. We do  
22 believe wholeheartedly that Mr. Townsend is the trigger  
23 man in this armed robbery and murder, Your Honor. And as  
24 I said he was 17 this occurred and he had no prior arrests  
25 as an adult.

1 THE COURT: Okay. All right. What are the -- what  
2 is the factual basis for the armed robbery?

3 MR. JOHNSON LEE: Your Honor, they did conspire  
4 together to go into to commit an armed robbery in the  
5 location, and as I said Mr. Townsend was the individual  
6 who carried the gun in. And he held the gun while Mr.  
7 Baskins went, who was one of the co-conspirators, and was  
8 trying to pat down the victim's pockets for money. And  
9 the third co-conspirator went to the cash register and  
10 actually retrieved about \$80 which they later divided  
11 between themselves. Mr. Townsend getting the majority of  
12 the \$80 because he was the actual shooter.

13 THE COURT: All right. Are those facts true and  
14 accurate, Mr. Townsend?

15 MR. TOWNSEND: Yes, sir.

16 THE COURT: Are you in fact guilty of armed robbery?

17 MR. TOWNSEND: Yes, sir.

18 THE COURT: Are you in fact guilty of voluntary  
19 manslaughter?

20 MR. TOWNSEND: Yes, sir.

21 THE COURT: You're standing before me pleading  
22 guilty, but you don't have to plead guilty to anything.

23 MR. TOWNSEND: Yes, sir.

24 THE COURT: You could exercise your right to a jury  
25 trial. In that process a jury would determine whether or

1 not the State could actually prove you guilt beyond a  
2 reasonable doubt.

3 MR. TOWNSEND: Yes, sir.

4 THE COURT: I would charge the jury as a matter of  
5 law that you're presumed to be innocent. No one could  
6 require that you take the witness stand. However, if you  
7 wanted to you could. You could subpoena witnesses on your  
8 own behalf. In addition to that you and your lawyer could  
9 cross-examine the State's witnesses. You have an  
10 opportunity to eyeball them and confront them as they  
11 testified against you. You realize by pleading guilty  
12 you're giving up all these rights? You understand that  
13 you're giving up all these rights?

14 MS. CRAYTON: Can we just have a second, Judge?

15 THE COURT: Yes. You understand that you're giving  
16 up your jury trial rights, Mr. Townsend?

17 MR. TOWNSEND: Yes, sir.

18 THE COURT: Are you indeed guilty?

19 MR. TOWNSEND: Yes, sir.

20 THE COURT: All right. Are you -- plea negotiations,  
21 I understand from the State is a recommended 25 year cap;  
22 is that correct?

23 MR. JOHNSON LEE: Correct, Your Honor.

24 MR. DEASE: Yes, sir.

25 THE COURT: Is that right, Ms. Crayton?

1 MS. CRAYTON: Yes, Your Honor. Concurrent on those  
2 charges.

3 THE COURT: Is that your understand, Mr. Townsend?

4 MR. TOWNSEND: Yes, sir.

5 THE COURT: All right. Mr. Townsend, are you  
6 satisfied with your lawyer?

7 MR. TOWNSEND: Yes, sir.

8 THE COURT: You understood all your conversations  
9 with her?

10 MR. TOWNSEND: Yes, sir.

11 THE COURT: You need any additional time to confer  
12 with her?.

13 MR. TOWNSEND: What do you mean by that?

14 THE COURT: Do you want to talk -- do you -- have you  
15 understood all of your conversations with her?

16 MR. TOWNSEND: Yes, sir.

17 THE COURT: You need any more time to talk with her?

18 MR. TOWNSEND: No, sir.

19 THE COURT: All right. Any complaints whatsoever?

20 MR. TOWNSEND: Not really, sir. I want to say that  
21 things had just went the wrong way.

22 THE COURT: Okay. Any complaints with your lawyer?  
23 You satisfied with your lawyer?

24 MR. TOWNSEND: Oh, yes, sir. I'm satisfied with her.

25 THE COURT: Very good. All right. Has anybody

1 promised you anything? Threatened you? Pressured you?  
2 Mistreated you in any way, shape or form to get you plead  
3 guilty here today?

4 MR. TOWNSEND: No, sir.

5 THE COURT: All right. It's been your decision to  
6 plead guilty?

7 MR. TOWNSEND: Me and my lawyer.

8 THE COURT: Pardon?

9 MR. TOWNSEND: Me and my lawyer.

10 THE COURT: You and your lawyer?

11 MR. TOWNSEND: Yes, sir.

12 THE COURT: All right. Well, that's your decision.  
13 And with her advice you decided to plead guilty; is that  
14 correct?

15 MR. TOWNSEND: Yes, sir.

16 THE COURT: All right. You understand that you have  
17 ten days to appeal any decision I might render here today?

18 MR. TOWNSEND: Yes, sir.

19 THE COURT: All right. Based on your testimony I  
20 find there is a substantial, factual basis for your plea;  
21 that your decision was freely and voluntarily entered  
22 into, knowingly and intelligently with the consent of  
23 competent counsel whom you say you're satisfied. I accept  
24 your plea. And be glad to hear from you and your lawyer  
25 with regard to mitigation. Before I do that I would like

1 to hear from the victim's family if they would like to  
2 speak. It's not necessary that you speak, but I'll be  
3 glad to hear anything that you've got to say.

4 And in doing so I'm going to ask you if you could to  
5 identify yourself and direct your comments directly to me  
6 and not to Mr. Townsend.

7 MR. ATKHATTAB: Your Honor, my name is Khaled  
8 Atkhattab. I'm a cousin of the victim. We just trusted  
9 your judgment and thank you very much. Thank you, all of  
10 you.

11 THE COURT: I'm sorry for your loss, and I know it's  
12 a very difficult time for you.

13 MR. ATKHATTAB: Thank you very much.

14 THE COURT: And thank you for being here.

15 MR. ATKHATTAB: Thank you.

16 THE COURT: Anything further.

17 MR. ATKHATTAB: Thanks.

18 THE COURT: All right. Very good. All right. Yes,  
19 ma'am, you're recognized.

20 MS. CRAYTON: Thank you, Judge. Mr. Townsend is 19  
21 years old today. He's been in jail for 539 days. He was  
22 17 when he was arrested on this charge, and he's already  
23 spent two birthdays in jail. He's been continually  
24 incarcerated since arrested -- since he was arrested. Mr.  
25 Townsend had had no criminal record prior to this offense,

1 and he was in school. He was in the 10th grade when he  
2 was arrested. He was living with his mom, his dad and his  
3 brother.

4 The facts are very much in dispute, Judge, I think  
5 three boys gave a statement including Mr. Townsend the  
6 fourth has still never given a statement, the one that was  
7 in the car. The three disputes the original statement  
8 from Mr. Baskins stated that Mr. Townsend was not the  
9 shooter, but that the third child was the shooter, Mr.  
10 Davis.

11 Mr. Townsend's statement was also that Mr. Davis was  
12 the shooter. I believe that the Solicitor's Office  
13 originally thought that Mr. Townsend was the shooter  
14 because although several weapons were recovered they  
15 believe that the one that Mr. Townsend gave them was  
16 actually the murder weapon in which we have found out it  
17 is not.

18 That weapon has not yet been recovered. Mr. Baskins  
19 gave a second statement in which he then accused --  
20 changed his story from Mr. Davis being the shooter to  
21 Mr. Townsend being the shooter. Judge, there are two  
22 independent eye witnesses that were in the store that say  
23 that the shorter of the boys was the shooter. I don't  
24 believe that's Mr. Townsend. So this is very much in  
25 dispute about who the shooter was.

1 All I think we really know is these three boys went  
2 in the store, they attempted to commit an armed robbery,  
3 and the fourth one sat in the car. As to what happened in  
4 the store I don't think we will ever know.

5 THE COURT: Of course, you've had a detailed  
6 discussion with Mr. Townsend about the concept of the hand  
7 of one is the hand of all, and he understands all that?

8 MS. CRAYTON: Yes, Your Honor he absolutely  
9 understands that because he was involve in the armed  
10 robbery and somebody was dead that he is guilty of that,  
11 the armed robbery and of the murder but has been pled to a  
12 voluntary manslaughter.

13 I talked to the personnel in the jail, and they had  
14 very similar situations with Mr. Townsend that I have. He  
15 has always be extremely respectful to me as he is in the  
16 jail, and I know that doesn't make a difference to the  
17 victim's family, but somebody who is incarcerated for a  
18 long period of time we always want to know how they're  
19 going to do in prison and I think Mr. Townsend will do  
20 very well.

21 I hope that you will sentence him to the least amount  
22 of time that you can so that he may have a chance to get  
23 out and actually have a successful life. His mom and his  
24 dad and several of the members of his family are here  
25 today. I know that his mom wants to say something, and we

1 would ask that you hear from her at the appropriate time.

2 We would just ask that you have mercy on Mr. Townsend.

3 I think he was a young kid with no criminal record,  
4 and he was hanging out with some boys that he shouldn't  
5 have and they got into something very dangerous. And,  
6 unfortunately, I don't think any of them are going to come  
7 out of this clean. We could just ask that you give him  
8 the minimum that you can which would be the ten years,  
9 Judge.

10 THE COURT: All right. Let me ask the State about  
11 the other three co-defendants. Have they'd pled or been  
12 tried?

13 MR. JOHNSON LEE: Mr. Ocean is awaiting trial. We're  
14 under an order to try him by the first of next year. The  
15 other two codefendants, we are holding off on doing any  
16 sort of pleas on them. That's worked out through their  
17 attorneys because they were both going to testify in a  
18 trial for either Mr. Townsend and/or Mr. Ocean.

19 And I need to address the fact that the other gun is  
20 being located. These were two other guns found during the  
21 investigation. Both we also tested, and neither one of  
22 them was the murder weapon also.

23 THE COURT: So to answer the question nobody's --  
24 he's the first one?

25 MR. JOHNSON LEE: He's the first one to plead or be

1       tried. Yes.

2               THE COURT: All right. Yes, ma'am. Be glad to hear  
3 from anybody else that would like to speak on  
4 Mr. Townsend's behalf. Yes, ma'am. If you could state  
5 your full name.

6               MRS. TOWNSEND: My name is Mrs. Townsend. And I'm  
7 Marcus Townsend's mom. And I see the way he is. And I  
8 just ask that you have mercy (undecipherable) ---

9               THE COURT: Okay. Yes, ma'am. I'm going to ask if  
10 you could come forward and stand beside your son if you  
11 could. The court reporter is having some difficulty  
12 hearing you. This is a sort of cavernous courtroom, and  
13 we have some acoustics difficulties. Your full name.

14              MRS. TOWNSEND: My name is Melissa Townsend. Marcus  
15 Townsend's mother. I'm not excusing for what he did or  
16 anything. I'm asking Your Honor to have mercy on him. He  
17 took somebody's life, and I'm sorry for that. But, you  
18 know, he also have a life of, you know, of his own, and  
19 if, you know, anything that you can do to possibly help  
20 him I wish you would consider it.

21              THE COURT: Very good. Thank you.

22              MS. CRAYTON: And his father is also here today.

23              THE COURT: Yes, sir. Be happy to -- would you like  
24 to say something?

25              MR. BYRD: Yes, sir. My name is Leon Byrd.

1 THE COURT: If you could come forward as well. Yes,  
2 sir, your full name.

3 MR. BYRD: My name is Leon Byrd. I'm Marcus  
4 Townsend's father. And first I'd like to apologize to the  
5 family over there. But I'm here today for him because  
6 that is my son. I love him dearly. I know he was young  
7 when he made that mistake which was a big mistake. And  
8 I'm asking for mercy because I love him.

9 THE COURT: Very good. Thank you.

10 MS. CRAYTON: And, Your Honor, if you would just hear  
11 from Mr. Townsend.

12 THE COURT: Mr. Townsend, be glad to hear from you.

13 MR. TOWNSEND: I'd like to ask, sir, I just look over  
14 to the family and say I apologize. Things went the wrong  
15 way. And I know that y'all feel the pain. I feel the  
16 same way for y'all because y'all lost somebody. I hope  
17 y'all have mercy on me. And I'd be willing to do justice  
18 for y'all.

19 MS. CRAYTON: Judge, we would just like for you to  
20 take into the fact that he was in jail for 539 days and  
21 give him credit for that. And we would ask for a minimum  
22 sentence.

23 THE COURT: Anything further?

24 MS. CRAYTON: No, Your Honor.

25 THE COURT: Anything further from the State?

## Sentence of the Court

19

1 MR. JOHNSON LEE: No, Your Honor.

2 SENTENCE OF THE COURT

3 THE COURT: All right. The sentence of the Court,  
4 Mr. Townsend, on things that I'm called upon to do as a  
5 Circuit Court Judge, sentencing is certainly the very most  
6 difficult thing. And you're only 19 years old. You were  
7 just a child, and you were 17 when this took place. But  
8 you have certainly done a horrific thing and you were  
9 doing an adult crime. You're going to be punished as an  
10 adult.

11 Your lawyer has done a very fine job on your behalf,  
12 and the Solicitor's Office has done a very fine job.  
13 There are a whole bunch of -- looking at it from the  
14 outside one might not understand exactly why its been done  
15 this way. But one thing you need to understand,  
16 Mr. Townsend, is that is case very well could have been a  
17 death penalty case. You could have been laid down on a  
18 gurney. The could have stuck a needle in your arm and you  
19 would have been dead.

20 MR. TOWNSEND: Yes.

21 THE COURT: The statutory aggravating circumstance of  
22 armed robbery, and based on what was said regardless of  
23 whether you were the shooter or not, you very well could  
24 have been sentenced the death. Do you understand that?

25 MR. TOWNSEND: Yes.

1 THE COURT: I can't help but to think as you're  
2 sitting there before me that you remind me so much of my  
3 very first client. I, in 1984 when I first was admitted  
4 to practice the bar, I was appointed to represent a man  
5 very similar to you who was charged with armed robbery and  
6 murder. And we tried that case, and in 1985, one year  
7 after the offense, he was convicted and sentenced to  
8 death.

9 The case was appealed to the Supreme Court, and it  
10 was reversed. It was retried again in 1989, and they  
11 failed to convict him of armed robbery and he was  
12 sentenced to life. There were a number of different  
13 post-conviction relief hearings. That went back to the  
14 Supreme Court. Then in the early 2000s it went to the  
15 Fourth Circuit Court of Appeals, and it was actually  
16 reversed. I mean it went to the District Court. They  
17 reversed the case because of some Miranda issues. And  
18 then it went to the Fourth Circuit Court of Appeals and  
19 they reversed the reversal.

20 And 21 years later, a month before I quit practicing  
21 law to become a judge, I had to testify at a  
22 post-conviction relief hearing, and one of the things  
23 everybody needs to be aware of in the family as well is  
24 that one thing this does is it does give you some closure.  
25 There is some finality to it, and he will serve this

1 sentence essentially day for day.

2 The sentence that he's going to receive I'll be on

3 old man. I won't be on the bench when you get out of  
4 prison. Very well could be dead on the amount of time  
5 that you're going to receive. But you need to, when you  
6 lay your head down on the pillow tonight, you thank the  
7 Lord that you had a lawyer that was able to work this out,  
8 and the Solicitor's Office was able to give consideration  
9 for your age. Do you understand that?

10 MR. TOWNSEND: Yes, sir.

11 THE COURT: All right. On indictment  
12 2010-GS-34-0448, on the sentence -- on the offense of  
13 armed robbery the sentence of the Court is you be  
14 committed to the State Department of Corrections for a  
15 period of 23 years. Sentences to run concurrent, and  
16 you're given credit for 539 days.

17 With regard to Indictment 2010-GS-34-0450, voluntary  
18 manslaughter, the sentence of the Court is you're  
19 committed to the State Department of Corrections for a  
20 period of 23 years. The sentence is to run concurrent.  
21 Given credit for 539 days. Good luck to you.

22 MR. JOHNSON LEE: Thank you, Your Honor.

23 END OF TRANSCRIPT OF RECORD

24

25



FORM 5

STATE OF SOUTH CAROLINA )

County of MARLBORO )

Marcus Jermain Townsend, # 348435  
Full name and prison number (if any) of Applicant )

IN THE COURT OF COMMON PLEAS

12-24-00208

v. )

State of South Carolina )

APPLICATION FOR

POST-CONVICTION RELIEF

FILED  
2012 SEP 27 PM 2 23  
MARLBORO COUNTY  
CLERK OF COURT  
WILLIAM J. ...

**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 Lee Correctional Institution, 930 Disack Highway, Bishopville, S.C. 29010
2. Name and location of Court which imposed sentence Marlboro County Court of General Sessions, Marlboro, South Carolina
3. Name(s) of co-defendant(s) (if any) Coreen Dean, Richard Davis, Nathawn Bashins
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2010-95-34-00450, Voluntary Manslaughter
  - (b) 2010-95-34-00448, Armed Robbery

(c) \_\_\_\_\_

5. The date upon which sentence was imposed and the terms of the sentence:  
 (a) October 31, 2011; Twenty-three (23) years  
 (b) October 31, 2011; Twenty-three (23) years  
 (c) \_\_\_\_\_

6. Check whether a finding of guilty was made:  
 (a) after a plea of guilty  \_\_\_\_\_  
 (b) after a plea of not guilty \_\_\_\_\_  
 (c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?  
No, I did not

8. If you answered "yes" to (7), list:  
 (a) the name of each Court to which you appealed:  
 i. N/A  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_

(b) the result in each such Court to which you appealed:  
 i. N/A  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_

(c) the date of each such result:  
 i. N/A  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_

(d) if known, citations of any written opinion or orders entered pursuant to such results:  
 i. N/A  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_

9. If you answered "no" to (7), state your reasons for not so appealing:  
 (a) Not for Appellate Review

(c) \_\_\_\_\_

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 WILLIAM S. ...  
 MAFLEBRO ...

FILED

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

(a) Denial of Effective Assistance of Counsel

(b) Voluntary Guilty Plea

(c) \_\_\_\_\_

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

(a) Failure to Investigate Case

(b) Counsel rendered Ineffective Assistance

(c) \_\_\_\_\_

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

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

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

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

(d) any other petitions, motions or applications in this or any other Court? No.

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

(a) the specific nature thereof:

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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(c) the disposition thereof:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

No, they have not

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

(a) which grounds have been presented:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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 WILLIAM J. FROST, JR.  
 CLERK OF COURT  
 HARBOR COUNTY, N.J.

FILED

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) (10)(a) First Collateral Attack
- (b) (10)(b) First Collateral Attack
- (c) \_\_\_\_\_

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

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

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

- (a) the name and address of each attorney who represented you:
  - i. Emily Clayton, Post Office Box 23, Dillon, South Carolina 29530
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Plea and Sentencing
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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 S.C.

FILED

19. State clearly the relief you seek in filing this application:  
Based on the above, Sentence Vacated,  
Modified as a Probation Department or  
Reduction.

20. Are you now under sentence from any other court that you have not challenged?  
No, I am not.

STATE OF SOUTH CAROLINA )  
County of MARLBORO )

VERIFICATION

I, Marcus Jerome Townsend, # 348435 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.

Marcus Jerome Townsend

SWORN to and subscribed before me this 29 day of Aug, 2012.

Debra Sue (L.S.)  
Notary Public

My Commission Expires: 11-4-2015

PAID SEP 27 PM 2 23  
WILLIAM J. FRY  
CLERK OF COURT  
MARLBORO COUNTY, S.C.

FILED

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

I, Marcus Jerome Townsend, #348435, 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.~~

Marcus Jerome Townsend  
Applicant

SWORN or affirmed to and subscribed before me this  
29 day of Aug., 2012.

Debra Jones  
Notary Public

My Commission Expires: 11-4-2015

FILED  
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WILLIAM & WYATT  
CLERK OF SUPERIOR  
MARLBORO COUNTY, S.C.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF MARLBORO )  
 )  
 )  
 )  
 )  
 Marcus Townsend, 348435, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

2012-CP-34-0208

**RETURN**

Respondent, making its Return to the Application for post conviction relief (PCR) filed September 27, 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 Marlboro County Clerk of Court. Applicant was indicted at the July 2010 term of the Marlboro County Grand Jury for murder (2010-GS-34-0450) and armed robbery (2010-GS-34-0448). Emily Crayton, Esquire, represented Applicant.

On October 31, 2011, Applicant pled guilty to armed robbery and voluntary manslaughter before the Honorable Michael Nettles who sentenced Applicant to twenty-three years imprisonment.

Attached herewith and incorporated herein are the records of the Clerk of Court regarding the subject conviction, Applicant's SCDC records, and if available, the 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. "Denial of Effective Assistance of Counsel" because counsel failed to investigate the case,
2. "Involuntary Guilty Plea."

## 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

March 15, 2013.



STATE OF SOUTH CAROLINA )  
COUNTY OF MARLBORO )

COURT OF COMMON PLEAS

MARCUS TOWNSEND )  
348435 )  
PETITIONER, )

v. )

TRANSCRIPT OF RECORD  
12-CP-34-0208

STATE OF SOUTH CAROLINA, )  
RESPONDENT.)

July 15, 2013  
Darlington, South Carolina

**BEFORE :**

THE HONORABLE R. FERRELL COTHRAN, JR., JUDGE

**APPEARANCES:**

TRISTAN M. SHAFFER, ESQ.  
Attorney for the Petitioner

KAREN C. RATIGAN, ESQ.  
Attorney for Respondent

FRANCES BAKIS-RAY, RPR  
Circuit Court Reporter

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(There were no exhibits submitted.)

1 MS. RATIGAN: May it please the Court,  
2 this is the case of Marcus Townsend versus the State  
3 of South Carolina. The docket number is  
4 2012-CP-34-0208. Mr. Townsend was indicted for  
5 armed robbery murder. He was represented on these  
6 charges by Ms. Crayton. He pled guilty to voluntary  
7 manslaughter and armed robbery on October 31st of  
8 2011 before Judge Nettles. The recommendation was  
9 actually for a 25 year cap, Your Honor, and he  
10 received 23 years on each charge to run  
11 concurrently. He did not file an appeal and the  
12 State's ready to proceed.

13 THE COURT: Okay. Yes, sir.

14 MR. SHAFFER: Your Honor, the Applicant  
15 actually is going to move for a continuance in this  
16 case. The Applicant has been incarcerated quite a  
17 while. This is a case out of the Bennettsville P.D.  
18 They take video depositions there. And in this  
19 particular case those are very long, and he has not  
20 actually seen all the evidence against him. He's  
21 seen a statement from himself. He has not seen the  
22 statements from any of the other co-defendants.  
23 Actually, let me check, he might have seen one of  
24 the co-defendants. I believe there are more. He  
25 has actually seen one of the co-defendant's

1 statements, Your Honor, I apologize. But he has not  
2 seen the rest of them. The case is highly based on  
3 their testimony. I think that he's in a position  
4 that — I haven't been in a position yet, I've  
5 represented him, I believe, since sometime in April,  
6 late April I got this case. And he hasn't — I  
7 haven't been in a position to bring the videos to  
8 him to the jail. I don't believe that the public  
9 defender has viewed all of the videos with him;  
10 therefore, he believes that he needs to — a chance  
11 at least review those before he can assist with his  
12 case going forward.

13 THE COURT: I mean, he pled guilty.

14 MR. SHAFFER: Yes, Your Honor.

15 THE COURT: What difference does it make  
16 about what statements were going to be made.

17 MR. SHAFFER: Well, I suppose, Your Honor,  
18 the — one large part of it is whether or not he had  
19 the ability, or whether or not he was the shooter  
20 was a large part of him pleading guilty and that is  
21 contested in some of these video tapes, Your Honor.  
22 I believe also he might have chosen, you know, not  
23 to plead guilty on this particular day if the  
24 videos — if he had seen the videos or there's a  
25 possibility out there, we really don't know, Your

1 Honor, because he hadn't seen them.

2 THE COURT: Well, I mean, he pled  
3 October 2011. How is — why hasn't he seen the  
4 videos and how is he going to see them now? How,  
5 where are they, and how can we watch them?

6 MR. SHAFFER: Your Honor, I've talked to  
7 the Solicitor's Office. I imagine the Public  
8 Defender has a copy of it as well. I talked to the  
9 Solicitor's Office about it. She, Mary Thomas  
10 Johnson Lee up in, I guess she's in Marlboro right  
11 now, but she had indicated she would get me a full  
12 complete copy of all the videos, but that would  
13 probably involve me sitting for eight hours at the  
14 jail at the prison and viewing it with him. I  
15 haven't had a chance to do that. And I hate to — I  
16 don't mean to make that about me, I just, it wasn't,  
17 it wasn't something that I would normally do is sit  
18 and watch videos in prison.

19 THE COURT: Why do you need to be present  
20 for him to watch the videos? Why didn't he just go  
21 watch them?

22 MR. SHAFFER: I don't believe they will  
23 let him watch it without me present, Your Honor. I  
24 don't believe they'll let videos in to the prison.  
25 I mean, I imagine that — I don't know exactly how

## PW - E. CRAYTON - DIRECT

1 that works, but I don't think I could ask them and  
2 leave correction and let him sit in a room and watch  
3 videos. I don't believe they'd let me.

4 MS. RATIGAN: If I may, Your Honor.

5 THE COURT: Yes, ma'am.

6 MS. RATIGAN: The co-defendants identified  
7 him as the shooter. He agreed with the facts at the  
8 guilty plea during when he pled guilty.  
9 Furthermore, the issue who had the gun and who  
10 didn't have the gun, that was brought up at the  
11 guilty plea hearing. Ms. Crayton said there was a  
12 dispute between the codefendants and the witnesses  
13 as to who had the gun, who was the shooter; however,  
14 both she and Judge Nettles insured that the concept  
15 of accomplice liability, hand of one hand of all was  
16 explained to the defendant. So the State's position  
17 is watching the videos has nothing to do with the  
18 guilty plea. He was well informed of the theory of  
19 accomplice liability at the time. He chose to waive  
20 all these rights and take advantage of a 25 year cap  
21 and the decrease in the charge from murder to  
22 manslaughter, and we'd argue a continuance is  
23 unnecessary.

24 THE COURT: Okay. I agree with the  
25 State. I can't see that a continuance would help

## PW - E. CRAYTON - DIRECT

1 anything. We'll go forward.

2 MR. SHAFFER: Thank you, Your Honor. The  
3 Applicant calls Emily Crayton to the stand.

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

6 WHEREUPON,

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

10 THE COURT: Okay.

11 **DIRECT EXAMINATION**

12 BY MR. SHAFFER:

13 Q Good afternoon, Ms. Crayton.

14 A Good afternoon.

15 Q Ms. Crayton, where do you currently work?

16 A I currently work at the Twelfth Circuit  
17 Solicitor's Office.

18 Q Okay. And you, prior to that where did you work?

19 A I worked at the Fourth Circuit Public Defender's  
20 Office.

21 Q And which county did you primarily deal with?

22 A I was in Dillon for a while at the beginning for  
23 about a year and then moved to Darlington where my  
24 home county was; but we took on cases in all four of  
25 the counties so that would have been Dillon,

## PW - E. CRAYTON - DIRECT

1 Darlington, Chesterfield, and Marlboro.

2 Q And what was your position at the Public  
3 Defender's Office.

4 A I was an assistant public defender.

5 Q Okay. And how long had you been assistant public  
6 defender?

7 A I was there for approximately two years before  
8 leaving to the Solicitor's Office in Florence.

9 Q Okay, and you graduated when, 2009?

10 A Correct. Same year you did.

11 Q Yes. You represented Mr. Townsend, correct?

12 A Yes, I did.

13 Q Okay. Tell us a little bit about the allegations  
14 against Mr. Townsend.

15 A Okay. There were four young boys. I believe  
16 that Marcus was 17 at the time, but three boys  
17 allegedly at the time had gone into a store. I  
18 think the plan was to rob that store. One of the  
19 boys sat in the car. Everybody agreed that that was  
20 Mr. Ocean, Kadeem Ocean, who was the individual who  
21 sat in the car. The three boys when into the store.  
22 They tried to rob the store and one of the  
23 individual, one of the boys ended up shooting the  
24 clerk. The — originally the statements indicated  
25 Mr. Townsend, along with one of the other boys who

PW - E. CRAYTON - DIRECT

1 were inside the store, said that the juvenile was  
2 the shooter. That was their original statement to  
3 law enforcement. The juvenile, I believe his last  
4 name was Davis. Later testimony — Mr. Davis said  
5 that Mr. Townsend was the shooter. I believe later  
6 the third boy that was in the store claimed he lied  
7 originally that Mr. Townsend was not the shooter,  
8 that — I mean, that Mr. Davis was not the shooter,  
9 Mr. Townsend was the shooter.

10           So originally three of the four — well,  
11 three of the boys were only gonna know who the  
12 shooter was because they were in the store.  
13 Mr. Ocean was outside the store. Originally two of  
14 them said the juvenile and then it turned around and  
15 two of them said that Marcus was the shooter,  
16 although I'm not sure it was a big factor in the  
17 case given the hand of one hand of all statute that  
18 was explained to Marcus.  
19 Q And you explained that to him?  
20 A I did. We talked about it on numerous occasions.  
21 Marcus was in jail for a considerable amount of time  
22 prior to his case coming up for trial and plea  
23 before then. So we met probably not as often as I  
24 met with my Dillon clients because my office was in  
25 Dillon, but I met with Marcus quite a bit and we

## PW - E. CRAYTON - DIRECT

1 went over his considerable amount of discovery and  
2 his videos, the testimony that was in that, and we  
3 talked about that at his plea as well.

4 Q Okay. And did you think the State had a strong  
5 case against Mr. Townsend?

6 A Yes, I think that the State had a very strong  
7 case given all of the boys did give video  
8 confessions. Now they — nobody claimed to be the  
9 shooter, but they all did give confessions that they  
10 robbed that store and somebody ended up dead.

11 Q Now at some point you — there was a question  
12 about his competency or criminal responsibility,  
13 correct?

14 A Correct.

15 Q All right. And tell me what you did regarding  
16 that.

17 A I had been visiting Marcus for some time, and I  
18 worried that maybe he wasn't understanding what I  
19 was saying just because he — a lot of times you'll  
20 ask him something and he'll just say uh-huh, uh-huh.  
21 It's almost like it's an automatic response and I'm  
22 not sure you're really understanding our  
23 conversations. I wanted to make sure that given the  
24 huge significance of this case and that it was a  
25 murder, it's not something simple, I wanted to make

PW - E. CRAYTON - DIRECT

1 sure that he understood exactly all of our  
2 conversations. I wanted to make sure he understood,  
3 you know, what would happen if he pled guilty, what  
4 would happen if he went to trial. So we asked Judge  
5 King to — I believe it was Judge King — to send  
6 him for evaluation. Judge King decided to send him  
7 for what he called a mini evaluation that was done  
8 locally by a facility in Florence, and they  
9 determined that he was competent and didn't need  
10 any — I think they said he might need some  
11 substance abuse counseling or something like that if  
12 I remember correctly.

13 Q Did Judge King later send him for a evaluation  
14 with the Department of Mental Health?

15 A For a full evaluation? No, not that I'm aware  
16 of.

17 Q And at some point there was a, some conversation  
18 between mental health and about whether or not he  
19 could, whether or not they could do the mini  
20 evaluation, right?

21 A Yeah, it seems like we had a little bit of  
22 trouble about that because nobody was familiar with  
23 this procedure that Judge King had set out. This  
24 is, I guess, something that he did instead of  
25 sending individuals for full evaluations. He sent

PW - E. CRAYTON - DIRECT

1 people for what he called mini evaluations to see if  
2 they really needed a full evaluation.

3 Q Okay. Did you receive a letter from Mental  
4 Health regarding the ability for these mini  
5 evaluations, whether or not had the proper tools to  
6 evaluate whether someone was competent?

7 A It seems like they did send a letter to the  
8 Public Defender's Office.

9 Q Okay. And that letter, would you agree or  
10 disagree basically it said that they can't do the  
11 evaluation, right?

12 A There was some concern about how they would do  
13 that. It seems like eventually we spoke to them and  
14 once just clarifying what the judge wanted, they  
15 understood and I believe they were able to do that  
16 after all.

17 Q Okay. Now do you -- did you -- well, what was  
18 the offer in this case to begin with?

19 A To begin with there was no offer. After  
20 significant discussion with the Solicitor's Office I  
21 think there was numerous negotiations, and it then  
22 ended up being finally a cap of 25 years if I  
23 remember properly.

24 Q And what judge was that in front of?

25 A I think it was judge -- I have to look.

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1 Q Judge Nettles.

2 A Judge Nettles, yes, that's right.

3 Q Yeah.

4 A And I think it was a recom- did I say cap or did  
5 I say recommended? I believe it was a recommended  
6 25 years.

7 Q Now you —

8 A No, a cap of 25 years, excuse me, I'm sorry.

9 Q Now you took him up for a bond hearing, correct?

10 A We actually had three different occasions that we  
11 were in court for a bond hearing.

12 Q Okay. Can you tell us about those occasions?

13 A Right after he was arrested, I mean, within days  
14 or weeks, very quickly after he was arrested he was  
15 brought to court by the Solicitor's Office for a  
16 bond hearing. At that point I had never met Marcus,  
17 didn't know anything about his case. The only thing  
18 I knew was what he was charged with and that he was  
19 there for a bond hearing. I spoke to Marcus, and we  
20 decided to waive his bond hearing at that time.

21 Later on he expressed a wish to go in front of a  
22 judge for a bond hearing. I brought him in front  
23 of — I don't remember which judge it was for a bond  
24 hearing but his bond was denied. The judge set time  
25 frame the case had to be tried. Seems like they,

PW - E. CRAYTON - DIRECT

1 the Solicitor's Office didn't make that time frame,  
2 and we went for another bond hearing subsequent to  
3 that in which his bond was denied again.

4 Q And you recall telling him that the reason that  
5 the change in circumstance for the second actual  
6 bond hearing had something to do with the  
7 Solicitor's Office finding out he was not the  
8 shooter?

9 A I might have told him that, I told them that. I  
10 don't remember. I always contended that Marcus was  
11 not the shooter given the eyewitness testimony  
12 although I did not think it really had a huge  
13 bearing on his case besides the fact that how the  
14 Solicitor's office looked at his case. But in terms  
15 of his guilt or innocence for what he was charged  
16 with, it was not a significant factor.

17 Q Okay. So your testimony is regarding guilt or  
18 innocence whether he was shooter or not is not a  
19 factor but —

20 A It's a mitigating factor.

21 Q Mitigating factor.

22 A But it's not to determine whether he's guilty or  
23 not guilty, the hand of one hand of all covers that.

24 Q But it would be — it's helpful that —

25 A It's, of course, helpful in negotiation which is

PW - E. CRAYTON - DIRECT

1 how I got his plea as low as I did for a cap of 25  
2 years. Although the Solicitor's Office, I'm not  
3 sure they ever believed that he wasn't the shooter,  
4 but it was my opinion that he wasn't the shooter. I  
5 think the most significant thing was one of the  
6 individuals inside the store said that the shorter  
7 individual was the shooter; and Marcus is, I think  
8 he's as tall as I am at least. I'm significantly  
9 tall so...

10 Q At some point you met with the prosecutor and  
11 Marcus, correct?

12 A I'm not sure if I did truthfully. I don't  
13 remember that. Can you give me a date or something  
14 to reference?

15 Q Just one moment.

16 A I might have. I just...

17 MR. SHAFFER: Your Honor, Court's  
18 indulgence just a moment.

19 THE COURT: Okay.

20 MR. SHAFFER: I'm trying to look on a  
21 list.

22 BY MR. SHAFFER:

23 Q Well let me ask you this, at some point did  
24 they -- did the Solicitor want to talk to him and  
25 get a statement from him?

PW - E. CRAYTON - DIRECT

1 A They had already received a statement from Marcus  
2 before I was involved in the case prior to any of  
3 the boys having attorneys. Except Kadeem Ocean they  
4 all gave statements. It's my understanding that Mr.  
5 Ocean never gave a statement regarding this case  
6 until after Marcus pled. Of course, everyone  
7 corroborated that he was outside of the store at the  
8 time but all the boys gave statements.

9 Q Okay. And Marcus had told somebody, told people  
10 in the statement about a gun, correct?

11 A I believe he took them or either told them where  
12 a gun was. They originally believed that to be the  
13 murder weapon, but which is one of the reasons why  
14 they believed him to be the shooter, but SLED  
15 determined that was not the gun used in the  
16 shooting. It's my understanding that gun was never  
17 recovered.

18 Q Now did Mr. Townsend say that was the gun you  
19 used in the shooting? I mean, did the State —

20 A I was not present. I don't know what he told  
21 them about it.

22 Q Did you view the video?

23 A Yes, I did.

24 THE COURT: Excuse me, what was that  
25 question?

PW - E. CRAYTON - DIRECT

1 MR. SHAFFER: Your Honor, I apologize.

2 THE COURT: I did not hear you. What'd  
3 you ask her?

4 MR. SHAFFER: Oh, I apologize. I said, I  
5 asked if she had viewed the video.

6 THE COURT: Oh, okay, go ahead.

7 BY MR. SHAFFER:

8 Q That conversation was on the video?

9 A I have not watched those videos in years at this  
10 point since Marcus has pled so I can't tell you  
11 exactly what's in those videos. It's hours and  
12 hours of videos. But in his statement I believe  
13 they talked to all the boys about those guns trying  
14 to locate where the murder weapon was. He told them  
15 about the gun and they retrieved it, but I don't  
16 remember much conversation about whether that was  
17 the murder weapon or not.

18 Q Now how long was the video?

19 A There were numerous videos.

20 Q How — can you estimate the length of them total?

21 A I could — I mean, there were hours. I could not  
22 estimate. I spent many hours sitting in the office  
23 watching those videos. I have — I would have no  
24 idea.

25 Q Would you say at least a work day?

PW - E. CRAYTON - DIRECT

1 A Yes, I would say at least eight hours.

2 Q Okay. And did Marcus view all these videos?

3 A I know he viewed most of those videos, not in one  
4 sitting obviously, but days at the jail where I  
5 would come bring a video he would watch. I can't  
6 tell you for certain that he viewed all of them. I  
7 know he has viewed his, several of the other  
8 co-defendants. There were obviously two other  
9 statements besides his. And I believe we viewed the  
10 witnesses, the independent witnesses who were in the  
11 store and outside of the store as well.

12 Q And he wanted to view the video, right?

13 A He wanted to view certain videos, yes, not  
14 necessarily all the videos.

15 Q Which videos did you show him?

16 A I know I showed him his video along with the  
17 other co-defendants'; and I remember watching at  
18 least one other witness, independent witnesses'  
19 videos as well. But I think we watched parts of all  
20 of them if I remember correctly, and I informed him  
21 of what all of them in my opinion what they all  
22 said, what they all meant, in terms of his case.

23 Q Your testimony is you do not recall which videos  
24 exactly he viewed and which ones he didn't?

25 A I can't. Unfortunately I can't remember, it's

## PW - E. CRAYTON - DIRECT

1 been so long.

2 Q Would it help to review your notes on this?

3 A I have my notes which is right here, if you'd  
4 like to point me to something. But my notes are not  
5 always detailed.

6 Q So your notes are not always detailed or not?

7 A I try to take detailed notes, but it's hard in  
8 that job. You do have a lot of cases so I wouldn't  
9 always detail everything. Are you looking at June  
10 10th? What are you looking at?

11 Q I am looking at in general, how many times  
12 throughout the course of your investigation. I  
13 mean, you took very detailed notes it seems like.  
14 You have at least, say, at least 40 entries, 50  
15 entries in here.

16 A I saw Marcus a lot.

17 Q Okay. Well, that's good.

18 A I tried.

19 Q Where in there does it say anything about viewing  
20 videos?

21 A It looks like June 10th it says something. I'm  
22 just, I just slipped and saw that it said something  
23 about a video in there so I haven't read the whole  
24 thing. But it looks like it says something about a  
25 Keyon George. He was one of the independent

PW - E. CRAYTON - DIRECT

1 witnesses if I remember, if I remember properly.  
2 And then Larry Stanton who, he is the individual who  
3 was actually inside the store that said the shorter  
4 guy shot the clerk. And I did note that — and that  
5 all the other guys were taller and Marcus is over  
6 6-feet tall I believe. I mean, I'm 6-feet tall and  
7 I would think he was taller than I am. And Bianca  
8 George corroborated the same thing, that the shorter  
9 individual shot the clerk. It's my understanding  
10 that all four boys were wearing very similar  
11 outfits, red hats and black. I think they were  
12 wearing all black so you couldn't tell who shot who  
13 from the outfits so they did it by height.  
14 Q But you believe then by height you could tell  
15 that Marcus was not the shooter?  
16 A That was always my contention, yes, that Marcus  
17 was not the shooter. That's what I argued with the  
18 Solicitor from the first day; but until they got the  
19 SLED results back showing the gun, they firmly  
20 believed that Marcus was the shooter. Once they  
21 determined that the gun that Marcus showed them was  
22 not the gun used in the shooting, I was able to  
23 negotiate down a lower sentence given the fact that  
24 he wasn't because originally she didn't want to  
25 offer him anything close to a manslaughter.

PW - E. CRAYTON - DIRECT

1 Q Okay. Now you said something about your notes  
2 are not always, not always accurate, is that — or  
3 not always complete?

4 A Well, they're not always extremely detailed as  
5 what I'd like to be. I try to take as detailed  
6 notes as I could, but we did not have access to  
7 internet always or we didn't have I-pads or  
8 something that would make it easy to take notes  
9 because we don't have a — our system is completely,  
10 or was at the Public Defender's Office, everything  
11 is online in defender data so we have no paper files  
12 whatsoever. Now what would happen was, we would —  
13 I would take notes on a note pad like Ms. Little was  
14 explaining to you earlier, and then we would have to  
15 hand type those notes at a later time into the  
16 computer system so it was a little repetitious and  
17 not always with those notes make it into the system  
18 as Ms. Little told you hers often didn't. I tried  
19 to be a little better about that.

20 Q But you would say that what did go into the  
21 system is accurate, correct?

22 A I would hope so, yes.

23 Q Okay. Would you say it was more accurate or less  
24 accurate than your memory at this point?

25 A I would think it would be more accurate but...

PW - E. CRAYTON - DIRECT

1 Q Now you previously testified that he wanted to  
2 view some of the videos but not all of them; is that  
3 correct?

4 A It seems like he wanted to view certain videos  
5 when I was with him. It seems like he, if I had all  
6 the videos with me he would pick the ones that he  
7 really wanted to see over others concerned about  
8 someone's testimony maybe over others. But I'm not  
9 sure that I didn't just play him all of them.  
10 Truthfully I don't remember.

11 Q Now on March 22nd, 2011, can you look at your  
12 note for that day?

13 A March 22nd what?

14 Q 2011?

15 A Oh, okay, yes.

16 Q Okay. Could you please tell us what that note  
17 says.

18 A It says, met with client and Moe at the jail.  
19 Moe would have been our investigator, Moe Goodman.  
20 Explained that client can have a bond hearing again  
21 on May 20th. Plea offer is voluntary 30 years.  
22 Client would like to wipe the rest of the Rule 5  
23 including the videos.

24 Q Okay, so he would like a complete copy of Rule 5  
25 and the videos?

PW - E. CRAYTON - DIRECT

1 A He would like the rest of the Rule 5. I would  
2 probably previously given him parts of Rule 5. We'd  
3 probably seen parts of videos at that point; I can't  
4 be certain. But yeah, that's what I'm assuming that  
5 means.

6 Q And could you go to May 19th, 2011. And could  
7 you read that note?

8 A There are like four notes there, but I'm assuming  
9 you met with client on 5/17/11.

10 Q That's correct.

11 A "I told client offer, about offer of negotiated  
12 25 years. Client really did not want to talk about  
13 this offer. Client wanted to talk about bond, need  
14 to take videos to jail for client to watch." See,  
15 but I know that these are not complete because I was  
16 looking over my notes. I found a handwritten note  
17 in one of my files that said that I visited him on  
18 2/17 and in that instance Marcus said that he wanted  
19 a recommended 20 years, and I don't see that in  
20 that, in that I guess entry, so they're not always  
21 exactly complete.

22 Q Well, after 5/17/2011 could you briefly look over  
23 your notes and tell us where you showed him any  
24 videos after that.

25 A Can you tell me -- 5/17?

PW - E. CRAYTON - DIRECT

1 Q Yeah.

2 A Okay.

3 Q You can go to 6/10 actually.

4 A Yeah, as I said earlier, it looks like on 6/10  
5 some videos were watched. It looks, it looks like  
6 at that point we only watched videos of people that  
7 were not Marcus and his co-defendants so it looks  
8 like we looked at the independent witness video so  
9 the people that were inside and outside of the store  
10 that gave video statements but none of the actual  
11 confessions. I'm assuming at that point we had  
12 already watched the confessions. I'm assuming I  
13 would have wanted to show him the confessions first  
14 'cause they are, I guess more damaging to his case  
15 than the other.

16 Q On 5/17/2011 he told you that he did not want to  
17 take a negotiated 25, right?

18 A I'm sorry, say the date again.

19 Q 5/17/2011 is — on 5/19, you just read it.

20 A Oh, that he didn't want to take the negotiated 25  
21 years, correct.

22 Q At what point was the cap of 25 offered to you?

23 A It looks like on March 22nd it was 30 years and  
24 then it reduced to 25 years on April 22nd — I mean,  
25 26th, 2011. At that point it was a negotiated 25 on

PW - E. CRAYTON - DIRECT

1 voluntary. And then, I'm trying to see when it  
2 became a cap. I don't see where it ended up being a  
3 cap. It was after numerous negotiations with the  
4 Solicitor's Office. If you see it let me know.

5 Q Okay. Well, do you recall any time after that,  
6 the point that the last video other than what is  
7 that, 6/10/2011, any time that you viewed any other  
8 videos with him after that point?

9 A If it's not in my notes I can't tell you if I  
10 showed him another video after that point.

11 Q Okay. Now getting back to something I asked you  
12 about earlier and couldn't find in the notes, can  
13 you look at 10/25/2011.

14 A Okay. Which entry? There are two.

15 Q The first one. The —

16 A Met with Mary T.?

17 Q Yeah?

18 A Met with Mary T. regarding case yesterday. Is  
19 that the one?

20 Q Yes.

21 A Would you like me to read it or are you asking me  
22 a question?

23 Q If you would read it.

24 A "Met with Mary T. regarding case yesterday, went  
25 through entire file to make sure that I had the

PW - E. CRAYTON - DIRECT

1 complete file. Let her know that client wanted to  
2 speak to her. She said that she would be willing to  
3 go that afternoon. Met Mary T. and Mia at MCDC to  
4 speak to client. We discussed a plea and testifying  
5 against Kadeem. Client seems unwilling to testify,  
6 did not discuss case."

7 Q Mary T. and Mia are both the prosecutors in this  
8 case, right?

9 A Mary Thomas Lee Johnson-Lee was the prosecutor.  
10 Mia was someone who was now a prosecutor but she was  
11 training. I don't think she legally had any  
12 involvement whatsoever in that case.

13 Q Okay.

14 A They were interested in the individual that sat  
15 in the car, Kadeem Ocean. They had numerous  
16 previous dealings with him and felt like it would be  
17 good to get him a significant amount of time maybe  
18 for other things, other crimes that they knew had  
19 occurred. They thought he might be the mastermind  
20 behind this whole thing so they were interested in  
21 some testimony against him but Marcus was not  
22 willing to turn on Kadeem.

23 Q Do you think that would have helped him out?

24 A Probably no in the end given the fact that I  
25 believe Mr. Ocean, Kadeem Ocean, gave some testimony

PW - E. CRAYTON - DIRECT

1 of his own that was gang related that helped his  
2 sentence so I don't think he ever went to trial so I  
3 don't think it was necessary.

4 Q But if he had offered to cooperate do you believe  
5 that that would have helped him during sentencing at  
6 all?

7 A I don't know.

8 Q Okay. In most cases whenever you offer to help  
9 out the police you —

10 A It does help.

11 Q Okay. What did you advise him regarding the,  
12 whether or not to give a statement against  
13 Mr. Ocean?

14 A If it was gonna help, I mean, I would have told  
15 him to do that. It didn't seem like he really  
16 wanted to do that though. And telling someone  
17 you're gonna give a statement and then not giving  
18 them helpful information probably makes the  
19 solicitor mad, than telling them you won't give them  
20 any information at all.

21 Q And Mr. Kadeem Ocean, you're familiar with what  
22 happened in his case, right?

23 A Only a little bit. He pled after Marcus did. I  
24 just know from speaking with his attorney what  
25 happened with his case. I don't really know

PW - E. CRAYTON - DIRECT

1 details. I just know he received a favorable  
2 sentence because he -- they allege that these boys  
3 were part of a gang, that Mr. Ocean was a higher  
4 member than Mr. Townsend was and they wanted more  
5 information on that gang. And it's my understanding  
6 he received a favorable sentence because of that.

7 Q They alleged he was the mastermind, Mr. Ocean?

8 A It seems like in the beginning they did because  
9 they had had criminal involvement with Mr. Ocean  
10 whereas Mr. Townsend did not really have a criminal  
11 record although he was 17 and all the individuals  
12 were very young at the time. They had dealt with  
13 Mr. Ocean before it seems like so I think they  
14 believed he might be the mastermind, although they  
15 also alleged that Mr. Townsend received a majority  
16 share of the money that was stolen which is another  
17 reason they indicated he was the shooter.

18 Q In their second statement, right?

19 A In whose second statement?

20 Q The co-defendant's second statement indicated he  
21 was the shooter; the first one did not.

22 A No, I'm actually saying the Solicitor's Office  
23 thought he was the shooter because the money that  
24 was taken from the armed robbery was split, and  
25 Mr. Ocean received a larger share than the other

FW - E. CRAYTON - DIRECT

1 individuals involved. That was what was alleged.  
2 Marcus never told me any different. He never  
3 confirmed it; he never told me any different. So  
4 they believed him to be the shooter because of the  
5 split up of the money. Apparently, that's a gang  
6 thing, I don't know.  
7 Q And the split up of the money, was that evidence  
8 in Marcus' video or co-defendants'?  
9 A I don't remember, sorry.  
10 Q You said that Mr. Ocean got a favorable sentence.  
11 You would say more favorable than Marcus did, right?  
12 A I do not remember. It seems like his attorney  
13 indicated that to me, but I —  
14 Q Who was his attorney?  
15 A I believe it was Will Grove.  
16 Q Okay.  
17 A I just happened to tell him that I was being PCRd  
18 today and asked him if he was being PCRd as well.  
19 Q And Mr. — do you have any evidence that any of  
20 them did not receive a better deal than Marcus?  
21 A I don't — I know that the, one of the  
22 individuals who was represented by Maisha Brown  
23 received the most favorable sentence because he was  
24 planning to testify against the other three so I  
25 know he received the most favorable. I don't know

PW - E. CRAYTON - DIRECT

1 that Marcus received anything different than the  
2 other two. It seems like that Mr. Ocean received  
3 some help given the fact that he did give  
4 significant evidence against the gang. I don't know  
5 that the third individual received at all and was  
6 not involved in the case at all and don't know who  
7 his attorney was.

8 Q Now you had told Marcus from the beginning or  
9 essentially from when you viewed the video that his  
10 best case was for plea, right, is that fair to say?

11 A I wouldn't say it exactly like that. I don't  
12 remember what exactly I told him. I'm sure I told  
13 him that given the fact that there were people that  
14 he obviously confessed to the involvement in the  
15 armed robbery and his involvement in the murder  
16 whether that's just being involved in the armed  
17 robbery, that I thought it was not likely that he  
18 would win at trial. I definitely would say that.

19 Q And since apparently a lot of other people had  
20 gotten favorable sentence by giving statements, what  
21 efforts did you do, give to get Marcus to give a  
22 statement about beneficial ---

23 A Marcus had already given a statement at that  
24 point.

25 Q I mean, what evidence --- essentially you met with

FW - E. CRAYTON - DIRECT

1 the prosecutor and him?

2 A I met with the prosecutor numerous times about  
3 this case, yes.

4 Q Well, the prosecutor and Marcus at the same time  
5 at the jail?

6 A I did that one time. I believe that was the only  
7 time I met with both of them, yes.

8 Q And you said your client seemed unwilling to  
9 testify. Did you ever talk to him about it after  
10 that?

11 A I'm sure I did. I'm sure I talked to him without  
12 the Solicitor present. I think that they left first  
13 and then I continued talking to Marcus. They didn't  
14 want testimony about the shooting. They wanted  
15 testimony about Kadeem Ocean.

16 Q Okay. And did Marcus tell you anything that  
17 would be beneficial about Kadeem Ocean?

18 A No, Marcus was unwilling to talk to me about  
19 Kadeem Ocean as well.

20 MR. SHAFFER: Beg the Court's indulgence.

21 No further questions.

22 THE COURT: Okay.

23 MS. RATIGAN: Thank you.

24 **CROSS-EXAMINATION**

25 BY MS. RATIGAN:

## PW - E. CRAYTON - CROSS

1 Q A couple of quick questions. So did you file the  
2 Brady Rule 5 or was there another attorney on the  
3 case before you?

4 A There was not another attorney on the case, but I  
5 did not personally file it. Brook Hatkins in our  
6 office is the office staff files those motions with  
7 the chief public defender's name. Michael Stevens  
8 is the chief public defender and was at that time,  
9 and his name would be attached to it so the office  
10 filed that motion for us.

11 Q Okay. And did you receive it all in one kind of  
12 big chunk or was it an ongoing kind of rolling  
13 discovery?

14 A It was a rolling discovery unfortunately. It  
15 took them a while to get us the videos; I remember  
16 that.

17 Q And would it be fair to say you reviewed the  
18 evidence both independently and then also with your  
19 client later?

20 A Yes.

21 Q Okay. And did you discuss with Mr. Townsend his  
22 version of what had happened that day at the store?

23 A Yes, to the extent that he would talk to me about  
24 it. He was not very talkative.

25 Q Okay. And you discussed with him that the other

## PW - E. CRAYTON - CROSS

1 co-defendants would say that they all went there  
2 with the intent to rob the store?

3 A Yes, we talked about that and Marcus admitted  
4 that as well. He always admitted that he intended  
5 to rob but not shoot anybody, which is often the  
6 case with hand of one hand of all cases.

7 Q When you explained hand of one hand of all to him  
8 did he appear to understand the principle behind it?

9 A I think he did. We had numerous conversations  
10 about that. It wasn't a one time sitting down. I  
11 explained it over and over again to make sure he  
12 understood it; and I think that was a big hang up  
13 for Marcus is, you know, and I think that's a hangup  
14 for a lot of people that are not necessarily the  
15 shooter but are unfortunately guilty of murder  
16 because of that accomplice liability.

17 Q Did you explain to Mr. Townsend that you thought  
18 that the State had a strong case against him in part  
19 because of hand of one?

20 A Yes, I did.

21 Q And while Mr. Townsend may not have watched every  
22 minute of the videos did you watch all of those  
23 videos?

24 A Yes, I did.

25 Q Did you describe to him, I mean, just kind of

## PW - E. CRAYTON - CROSS

1 summarize for him what you had seen on the videos?

2 A Yes, I did.

3 Q When the State made the offer, the 25 year cap,  
4 did you explain to Mr. Townsend what that would  
5 mean?

6 A Yes, I did.

7 Q How long did he have to make a decision on that?  
8 Do you remember is it something he immediately took  
9 or did he sit on it for a while?

10 A I don't remember. I can tell you that, you know,  
11 we had numerous negotiations, the solicitor and I  
12 did, about this case. Originally where they didn't  
13 even want to give me an offer and it was going to be  
14 a trial situation, then they started to kind of  
15 slack off a little bit, but they got the evidence  
16 back that that weapon was not the gun used in the  
17 armed robbery. I can tell you in February of 2011  
18 Marcus said that he wanted 20 years recommended, and  
19 I tried to get as close to that as possible. When  
20 it came down finally to a cap of 25, before that it  
21 was a negotiated 25. When it came down to a cap of  
22 25 I believed that was as close as we were going to  
23 get to a recommended 25, and I did advise him to  
24 take that and I did not think it was going to get  
25 any better.

## PW - E. CRAYTON - REDIRECT

1 Q Once y'all actually got to the plea hearing did  
2 he ever waiver at all, or did he tug on you and say,  
3 I want to stop, I don't want to go forward? Did he  
4 ever waiver in any way?

5 A About pleading, no. It was like we did have  
6 small conversations in there, but it wasn't ever  
7 that he didn't want to plead.

8 Q Okay.

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

11 THE COURT: Okay.

12 **REDIRECT EXAMINATION**

13 BY MR. SHAFFER:

14 Q Now you said that you viewed every single one of  
15 the videos?

16 A Yes, I did.

17 Q Okay. But outside of the ones that you  
18 specifically noted in your file as viewing, do you  
19 know for a fact that you viewed -- that he had a  
20 chance to view any of the other ones?

21 A So I just want to clarify to make sure I answer

22 —

23 Q I apologize, it's confusing.

24 A So you're saying outside of the ones that I  
25 showed him on June 10th, did I show him any other

## PW - E. CRAYTON - REDIRECT

1 videos?

2 Q Are you — yes, can you testify for sure that you  
3 showed him any of those videos?

4 A Yes, I am positive that he watched his video  
5 along with the co-defendants' videos. These videos  
6 are, that I mentioned on June 10th, are subsequent  
7 videos we showed him that are independent witnesses.  
8 So I obviously felt like the most, the most damaging  
9 evidence to his case was his confession along with  
10 his co-defendants' confession with his involvement.  
11 So those are the videos I would have shown him first  
12 because I felt like it was the strongest evidence  
13 because the independent witnesses nobody said Marcus  
14 Townsend was there. They said three individuals all  
15 wearing all black and red hats or something to that  
16 accord, came into the store, robbed it, shot the guy  
17 and left. The only thing that was really helpful to  
18 Marcus in that was that they said the shorter  
19 individual was the shooter. So that's why those  
20 were shown later and not at the beginning because  
21 that's not what I thought was the best strongest, or  
22 the strongest piece of evidence for the State.

23 Q But you can't say for a fact that you'd shown,  
24 he'd seen every single video, correct?

25 A Can you repeat the question.

## PW - E. CRAYTON - REDIRECT

1 Q Can you say for a fact that he's seen every video  
2 that was provided to you in discovery?

3 A I can't remember all the videos; but looking at  
4 what this says on June 10th, it does appear that I  
5 showed him almost every video. I don't remember  
6 there being that many more independent witnesses  
7 than the ones that were listed on June 10th. So in  
8 fact, I probably could look back and see if there  
9 were any other statements, but I believe that those  
10 are all of the videos.

11 MR. SHAFFER: No further questions.

12 MS. RATIGAN: Nothing further.

13 THE COURT: In your viewing of those  
14 videos did you find any exculpatory evidence that  
15 you did not convey to him?

16 THE WITNESS: No, sir.

17 THE COURT: Thank you.

18 MS. RATIGAN: May Ms. Crayton be released  
19 from her subpoena?

20 THE COURT: Any problem with her being  
21 released?

22 MR. SHAFFER: None, Your Honor.

23 THE COURT: Thank you.

24 THE WITNESS: Thank you, Judge.

25 MR. SHAFFER: Applicant calls Marcus

## PW - M. TOWNSEND - DIRECT

1 Townsend.

2 THE CLERK OF COURT: Place your left hand  
3 on the Bible and raise your right.

4 WHEREUPON,

5 **MARCUS TOWNSEND,**

6 having been duly sworn by the Clerk of Court,  
7 testified as follows:

8 THE CLERK OF COURT: Have a seat.

9 **DIRECT EXAMINATION**

10 BY MR. SHAFFER:

11 Q Mr. Townsend, you're currently doing 23 years for  
12 voluntary manslaughter; is that correct?

13 A Yeah.

14 Q How old were you whenever this incident occurred?

15 A Seventeen.

16 Q You've been locked up since you were 17?

17 A Yeah.

18 Q How old are you now?

19 A Twenty.

20 Q Twenty?

21 A Uh-huh.

22 Q And do you know your projected max-out date?

23 A I think November 21st of 2029.

24 Q Okay. Now before we begin I explained to you  
25 that if you're successful here today in PCR you

## PW - M. TOWNSEND - DIRECT

- 1 might end up or more than likely you'd go back and  
2 have to, have to go back and face a murder charge  
3 again; is that correct?
- 4 A Yeah.
- 5 Q You understand that, right?
- 6 A Yeah.
- 7 Q Okay. And I told you, did I tell you you could  
8 get more time?
- 9 A Yeah.
- 10 Q Did I tell you you could get less time?
- 11 A Yeah.
- 12 Q I said it will be up to the solicitor, right?
- 13 A Yeah, you said it's up to the solicitor.
- 14 Q Okay. Do you want to go forward today?
- 15 A Yeah.
- 16 Q Even if it means you could possibly get more  
17 time, right?
- 18 A Yeah.
- 19 Q Okay. I also explained to you that me and your  
20 trial counsel were friends, correct?
- 21 A Uh-huh.
- 22 Q Okay. Are you okay with me going forward  
23 representing you or did you want a different  
24 attorney?
- 25 A Different attorney.

PW - M. TOWNSEND - DIRECT

1 Q Now you told me the other day whenever I told you  
2 this that you were okay with me going forward with  
3 you, right?

4 A Yeah.

5 Q Okay. When did you make your mind up that you  
6 wanted a different attorney?

7 A When you left from Lee County.

8 Q Okay.

9 MR. SHAFFER: Your Honor —

10 THE COURT: You appointed or retained?

11 MS. RATIGAN: I'm appointed, Your Honor.

12 I'm not -- I haven't gotten into this situation yet.

13 I've never been in this situation before. I guess I  
14 move to relieve myself.

15 THE COURT: Why do you think you need a  
16 different attorney?

17 THE WITNESS: Because, like when he came  
18 to county jail or to the institution to talk to me,  
19 they had me, telling me they been friends. If y'all  
20 been friends, y'all discussing my case, it's a  
21 possibility that he may be, he ain't gonna fight for  
22 me.

23 THE COURT: Do you have any specific  
24 problems or anything that he hadn't done everything  
25 you've asked him to do?

1 THE WITNESS: Yes, sir, he did everything  
2 I asked.

3 THE COURT: Do you know any information he  
4 hadn't told you?

5 THE WITNESS: No, sir.

6 THE COURT: Okay. Did he make any  
7 indication to you that the fact he knew your trial  
8 counsel or friends with her that he would not do his  
9 job?

10 THE WITNESS: No, sir.

11 THE COURT: Okay. What did he tell you  
12 about them being friends?

13 THE WITNESS: Our first time meeting he  
14 came to prison.

15 THE COURT: And he said that he knew her,  
16 they were just friends, or did he say anything  
17 different than that?

18 THE WITNESS: He was just like, he just  
19 friends.

20 THE COURT: Okay. And what was your  
21 response then?

22 THE WITNESS: Basically just kept on, just  
23 stuck with him.

24 THE COURT: Okay. From —

25 MR. SHAFFER: Your Honor, to clarify one

1 thing I have not done for him is that he did ask me  
2 to do is view, show the videos to him. That's the  
3 only thing.

4 THE COURT: Okay.

5 MR. SHAFFER: And the nature of our  
6 friendship were classmates in law school. We were  
7 just — Emily sat beside me, so did Julie for  
8 sitting behind her. Sat behind me for most of our  
9 first year. I think we studied together some. It  
10 wasn't anything above that.

11 THE COURT: Okay.

12 THE WITNESS: And we've been in contact  
13 since then.

14 THE COURT: Okay, all right, I need a  
15 break anyway. We'll take a break a second. Let  
16 me — I'll see y'all in chambers, and we'll talk  
17 about it.

18 (WHEREUPON, a recess was taken from the  
19 proceedings.)

20 THE COURT: Yes, sir.

21 MR. SHAFFER: I apologize, you —

22 THE COURT: Mr. Townsend, we had a brief  
23 recess. I met with counsel in chambers. We had a  
24 conversation about their friendship. I'm satisfied  
25 that there's nothing — that everything concerning

PW - M. TOWNSEND -- DIRECT

1 their friendship is on the record. It was conveyed  
2 to you, that I see no reason whatsoever that your  
3 attorney can't represent you and any prior classmate  
4 relationship that he may have had with your trial  
5 counsel does not conflict his ability to represent  
6 you today so I'm going to leave him as your  
7 attorney, okay?

8 All right, sir.

9 BY MR. SHAFFER:

10 Q Mr. Townsend, now getting into the allegations,  
11 you were alleged to have been part of a robbery,  
12 right, that's what the plea said you did, right?

13 A Yeah.

14 Q Okay. And someone had gotten killed in that  
15 robbery?

16 A Yes, sir.

17 Q And you had given a statement that it was, that  
18 it was the juvenile that had done the shooting,  
19 correct?

20 A Yes, sir.

21 Q How tall is the juvenile?

22 A About like five something, 5'8", something like  
23 that.

24 Q Good bit shorter than you?

25 A Yeah.

## FW - M. TOWNSEND - DIRECT

1 Q Okay. How tall are you?

2 A I'm 6'1" now.

3 Q How tall were you then?

4 A Almost 5'11", 6, 6-feet.

5 Q Now do you recall going to the Department of  
6 Mental Health in Columbia?

7 A No, sir.

8 Q Okay. Do you recall speaking with someone with  
9 Tri-County Mental Health?

10 A Yes, sir.

11 Q Okay. But they never sent you to the Department  
12 of Mental Health?

13 A No, sir.

14 Q Now I'm gonna go and get to something we had  
15 talked about earlier. You ended up pleading to 25,  
16 a cap of 25, correct?

17 A Yes, sir.

18 Q And as part of that what did your attorney tell  
19 you in regard to that? What did she tell you a cap  
20 of 25 meant?

21 A That they could only give me less, but couldn't  
22 give me higher than 25.

23 Q Did she tell you she was going to argue for less?

24 A Yes, sir.

25 Q Okay. Did she tell you how she was going to

PW - M. TOWNSEND - DIRECT

- 1 argue for less?
- 2 A No, sir.
- 3 Q But you didn't want to get sentenced to 25 years;
- 4 didn't you?
- 5 A No, sir.
- 6 Q In fact, you had an option to guarantee get 25
- 7 previously, right?
- 8 A Yes, sir.
- 9 Q Did you turn that down?
- 10 A Yes, sir.
- 11 Q So you wanted her to argue for something less
- 12 than 25?
- 13 A Yes, sir.
- 14 Q Okay. Now do you believe that she did everything
- 15 she could to argue for less than 25?
- 16 A No, sir.
- 17 Q And in your PCR application you mentioned that
- 18 you wanted a sentence reduction, right?
- 19 A Yes, sir.
- 20 Q And essentially are you trying to say that you
- 21 wanted — well, are you trying to say that you want
- 22 less time, right?
- 23 A Yes, sir.
- 24 Q You understand that PCR generally you don't get
- 25 just a straight reduction, that they send you back,

## PW - M. TOWNSEND - DIRECT

1 right?

2 A Yes, sir.

3 Q And I've explained that to you?

4 A Yes, sir.

5 Q So you by putting sentence reduction on are you  
6 saying that you want to be sent back and hope to get  
7 less time on a plea offer?

8 A Yes, sir.

9 Q Okay. And if you would have known how your trial  
10 attorney was going to argue or what she was gonna  
11 argue for in front of the judge on your plea, would  
12 you have pled guilty at that time to the cap?

13 A No, sir.

14 Q Would you have waited and tried to get either a  
15 better deal or go to trial?

16 A Yes, sir.

17 Q Okay. Do you recall seeing every video?

18 A No, sir.

19 Q Do you know that — do you know if there were  
20 videos you did not see?

21 A Yes, sir.

22 Q What videos didn't you see?

23 A I ain't seen Richard Davis on video, neither the  
24 other two videos of Rashad Basket.

25 Q What — who are they?

PW - M. TOWNSEND - DIRECT

- 1 A Those were my co-defendants.
- 2 Q Those were your co-defendants. That was the  
3 juvenile Davis?
- 4 A And Rashad Basket.
- 5 Q Okay. And you said Rashad Baxley?
- 6 A Basket.
- 7 Q Basket?
- 8 A Yeah.
- 9 Q And he was the other co-defendant that originally  
10 said that the — Davis did it and then said you did  
11 it, right?
- 12 A Yeah, yes, sir.
- 13 Q So you never saw the second video from Basket —
- 14 A No, sir.
- 15 Q —the one that says you did it?
- 16 A No, sir.
- 17 Q But Emily told you about it, right?
- 18 A Yes, sir.
- 19 Q Okay. Did you ask her to see that?
- 20 A Yes, sir.
- 21 Q But you're saying that she never showed that to  
22 you?
- 23 A No, sir.
- 24 Q Now you met with the prosecutor on this case,  
25 right?

PW - M. TOWNSEND - CROSS

1 A Yes, sir.

2 Q What did the prosecutor tell you, or what did the  
3 prosecutor want from you, I mean?

4 A Basically they just wanted me to testify on  
5 Kadeem Ocean.

6 Q And you weren't initially okay with doing that,  
7 right?

8 A No, sir.

9 Q Did — what did Ms. — what did Emily or  
10 Ms. Crayton tell you about whether or not you should  
11 testify or give statements regarding Mr. Ocean?

12 A She basically ain't said nothing about it. She  
13 just said they want to get a statement from you,  
14 testify against him for this right here.

15 MR. SHAFFER: No further questions.

16 THE COURT: Okay.

17 MS. RATIGAN: Very briefly, Your Honor.

18 **CROSS-EXAMINATION**

19 BY MS. RATIGAN:

20 Q So would you say you had several meetings with  
21 Ms. Crayton before you went to plead guilty?

22 A Yes, ma'am.

23 Q And did you review most of the evidence against  
24 you, not the videos but the, like, police reports,  
25 things like that?

## FW - M. TOWNSEND - CROSS

- 1 A Yes, ma'am.
- 2 Q Okay. And did you watch your own video statement  
3 with Ms. Crayton?
- 4 A Parts of it.
- 5 Q Okay. But you're saying today you never saw any  
6 of your co-defendants' videos?
- 7 A No, ma'am.
- 8 Q Okay. Did you ever see any of the witnesses that  
9 gave videos?
- 10 A Some of them.
- 11 Q Okay. And did you tell Ms. Crayton your version  
12 of what happened at the store that day?
- 13 A Yes, ma'am.
- 14 Q And did she explain to you the idea that the hand  
15 of one is the hand of all?
- 16 A At some parts, yeah, she did.
- 17 Q And did she tell you that she had seen all the  
18 videos in your case?
- 19 A No, ma'am.
- 20 Q Okay. Did she tell you that she thought the  
21 State had a strong case against you?
- 22 A Yes, ma'am.
- 23 Q And when you went in to court that day you  
24 admitted you were guilty, right?
- 25 A Yes, ma'am.

## FW - M. TOWNSEND - REDIRECT

1 Q Are you saying now that you're not guilty?

2 A Yes, ma'am.

3 Q Okay. So you're admitting that you lied to the  
4 plea judge when you told him you were guilty?

5 A Yes, ma'am, basically my own.

6 Q But that you're telling the truth today?

7 A Yes, ma'am.

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

10 THE COURT: Okay. Anything further?

11 MR. SHAFFER: Very briefly.

12 **REDIRECT EXAMINATION**

13 BY MR. SHAFFER:

14 Q You're saying you're telling the truth today,  
15 correct?

16 A Yes, sir.

17 Q Now whenever you said you were guilty why did you  
18 say you were guilty?

19 A Basically her and the solicitors came and talked  
20 to me. They said about two statements that was made  
21 against me stating I was the shooter, that they was  
22 99 percent sure that I was the shooter and they were  
23 like, either own take this plea, or go ahead and  
24 proceed with trial so that's why I plead to it.

25 Q What did they say you'd get if you proceeded to

## PW - M. TOWNSEND - REDIRECT

1 trial?

2 A Thirty to life.

3 Q Thirty to life? You were afraid of a life  
4 sentence?

5 A Yes, sir.

6 Q You were 17 years old at the time this crime  
7 happened?

8 A Yes, sir.

9 MR. SHAFFER: No further questions.

10 THE COURT: Okay. You can step down.

11 THE WITNESS: You say step down?

12 THE COURT: Yes, sir.

13 Okay, anything further?

14 MR. SHAFFER: Your Honor, there's no  
15 further witnesses. There is one, I guess, three  
16 arguments sort of that we're here about today.

17 THE COURT: Okay.

18 MR. SHAFFER: First, that Mr. Townsend was  
19 not afforded the opportunity to view all the videos.  
20 Even if he was afforded the opportunity most was not  
21 afforded the opportunity to view them all. He  
22 requested that. I think that that constitutes  
23 ineffective assistance of counsel and possibly,  
24 possibly a constitutional violation regarding his  
25 right to participate in his own defense, he's not

1 afforded all the information. Secondly, the, I  
2 believe that there — they could have — perhaps  
3 there were more mitigating factors that could have  
4 been presented in front of the judge. And third,  
5 the, I guess part of the reason he pled guilty was  
6 that — well, I guess that's four actually. Part of  
7 the reason he pled guilty was that any he was afraid  
8 of a life sentence, Your Honor. That's — later he  
9 was 17 at the time; I don't think he's eligible for  
10 a life sentence at this point. Third — the last  
11 one, that came out after, Your Honor, at least not  
12 life without parole the way that South Carolina  
13 currently does it. I'm not sure how they sort it  
14 out at that point.

15 THE COURT: Okay.

16 MR. SHAFFER: The final one is that I  
17 guess trial counsel was ineffective in failing to  
18 send him to DMH or file a motion to reconsider the  
19 same thing and send him to DMH whenever Tri-County  
20 was not fully equipped to do so, to give the  
21 evaluation. That's all, Your Honor, I apologize.

22 THE COURT: Okay. State want to respond  
23 in any way?

24 MS. RATIGAN: Just briefly, Your Honor.  
25 We have no witnesses to call. We'd argue

1 Mr. Townsend has not met his burden of proving  
2 relief, that he's entitled to relief under  
3 Strickland versus Washington. In order to meet that  
4 you have to prove error and prejudice. I'll take  
5 these in reverse order. The issue about failing to  
6 send him to DMH, instead of Tri-County for  
7 evaluation, it's speculative to argue whether or not  
8 that would have made any difference in the case as  
9 there's been no evaluation presented for Your  
10 Honor's attention today. Issue three, he pled  
11 guilty because he was afraid of a life sentence. It  
12 can't be ineffective or coercive to advise someone  
13 of the charges they're facing, the possible penalty.  
14 He was originally indicted for murder. That  
15 obviously would carry a life sentence. The issue  
16 about presenting more in mitigation, it's very  
17 unclear today what exactly Mr. Schaeffer means by  
18 that. I'm unsure what else Ms. Crayton was supposed  
19 to argue in terms of mitigating his sentence. That  
20 was not argued. As to 25 year cap, Judge Nettles  
21 departed from that down to 23. And the issue about  
22 not being afforded the opportunity to view all the  
23 videos that are requested, there's been no showing  
24 that there's any videos that would have been  
25 exculpatory or was not anything he was unaware of.

1 Mr. Townsend knew his codefendants implicated him.  
2 They all implicated each other. He was advised hand  
3 of one is hand of all. There's been no showing  
4 today that watching those videos would have changed  
5 either his decision making or the overall outcome of  
6 the case so we'd argued that he hasn't met his  
7 burden and the application should be denied.

8 THE COURT: Okay. I'll finish reading  
9 this record and let y'all know.

10

11 \* \* \* END OF REQUESTED TRANSCRIPT OF RECORD \* \* \*

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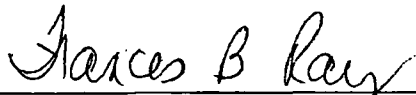
**C E R T I F I C A T E   O F   R E P O R T E R**

STATE OF SOUTH CAROLINA )  
COUNTY OF FLORENCE        )

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

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

Witness my hand at Florence, South Carolina, this 30th day of December, 2013.

  
\_\_\_\_\_  
FRANCES BAKIS-RAY, RPR

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF MARLBORO )  
 )  
 Marcus Jermale Townsend, )  
 S.C.D.C. No. 348435, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

2012-CP-34-0208

**ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 27, 2012. The Respondent made its return on March 15, 2013. An evidentiary hearing into the matter was convened on July 15, 2013 at the Darlington County Courthouse. The Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

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

**PROCEDURAL HISTORY**

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Marlboro County Clerk of Court. The Applicant was indicted at the July 2010 term of the Marlboro County Grand Jury for armed robbery (2010-GS-34-0448) and murder (2010-GS-34-0450). He was represented by Emily M. Crayton, Esquire.

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 CLERK OF COURT  
 MARLBORO COUNTY, S.C.  
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On October 31, 2011, the Applicant pled guilty to armed robbery and the lesser-included offense of voluntary manslaughter. He was sentenced by the Honorable Michael G. Nettles to concurrent terms of twenty-three years for armed robbery and twenty-three years for voluntary manslaughter. The Applicant did not file an appeal.

**ALLEGATIONS**

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

- 1. Ineffective assistance of counsel:
  - a. "[F]ailure to investigate case."
  - b. "[R]endered ineffective assistance."
- 2. Involuntary guilty plea.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

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

**Ineffective Assistance of Counsel/Involuntary Guilty Plea**

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

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he

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

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

The Applicant stated he had several meetings with plea counsel and that they reviewed the evidence in his case. The Applicant stated they reviewed "parts" of the videotape statements - both his own and some witnesses' statements - but that he never saw his co-defendants' statements. The Applicant stated he told plea counsel his version of events and that counsel explained the concept of "the hand of one is the hand of all" and told him the State had strong case. The Applicant stated the recommendation was for a twenty-five year sentence and that plea counsel said she would argue for less time. The Applicant stated, however, that plea counsel did not argue strongly enough for a lesser sentence. The Applicant stated he lied to the

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plea judge when he said he was guilty.

Plea counsel testified she received discovery on a rolling basis and reviewed those materials with the Applicant. Plea counsel testified they also discussed the Applicant's version of events. Plea counsel testified she watched all of the videotaped statements in the case and - while the Applicant watched most of these videos - she informed him of the contents of those he did not see. Plea counsel testified she explained to the Applicant that the State had a "very strong" case against him because all of the co-defendants gave videotaped statements. Plea counsel testified she explained the concept of "the hand of one is the hand of all" to the Applicant multiple times and that he was aware the plea recommendation in this case was for a twenty-five year cap. Plea counsel testified Judge King ordered a "mini evaluation" by the county instead of the South Carolina Department of Mental Health and that the Applicant was found competent.

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

The Applicant admitted to the plea judge that he was guilty. (Plea transcript, p.10). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.9-12). This Court finds there is no evidence in the guilty plea transcript to support the Applicant's assertion that he was pressured into entering a guilty plea; therefore the transcript has refuted this allegation. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App.

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2007); see also Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him). This Court finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712.

This Court finds the Applicant failed to meet his burden of proving plea counsel did not show him all of the videotaped statements in his case. Plea counsel testified the Applicant viewed his videotaped statement, as well as those of his co-defendants and some of the witnesses. Plea counsel testified there were notes in the file that corroborated her recollection. Plea counsel testified she would have told the Applicant about the content of any videos he did not view. This Court finds plea counsel's testimony is credible. Regardless, as the Applicant failed to introduce any of these videotaped statements at the PCR hearing, this Court cannot speculate as to whether the contents of any of these videos would have had some impact upon the defense case. Cf. Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense).

This Court finds the Applicant failed to meet his burden of proving plea counsel failed to properly investigate the case and present a mitigation case at the plea hearing. At the guilty plea hearing, plea counsel noted: the Applicant's age and lack of a prior record, the conflicting statements about who was the shooter, the Applicant's respectful nature, and the Applicant's familial support. Plea counsel then asked the plea judge to impose the minimum sentence. (Plea transcript, pp.13-16). Regardless, the Applicant failed to present any evidence or testimony at

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the PCR hearing about what plea counsel should have argued in mitigation at his guilty plea hearing. As such, this Court cannot speculate as to what impact a different mitigation argument might have had upon the Applicant's plea hearing. See, e.g., Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have asked for him to be evaluated by the South Carolina Department of Mental Health. Plea counsel testified Judge King ordered a "mini evaluation" to be performed by the county and that the Applicant was found competent. "In a PCR action, the petitioner bears the burden of proof and is required to show by a preponderance of the evidence he was incompetent at the time of his plea." Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 596 (1992). To sustain a claim that plea counsel was ineffective for failing to request competency hearing, the petitioner must show reasonable probability that he would have been found incompetent. Id. at 233, 417 S.E.2d at 596. This Court finds the Applicant has failed to present either evidence or testimony indicating there was a "reasonable probability" that a competency evaluation by the South Carolina Department of Mental Health would have yielded a different result than the one performed by the county. As such, this allegation must be denied. See id.; cf. Dempsey, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, "any finding of prejudice is merely speculative").

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence

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 MURKIN COUNTY, SC

that plea counsel committed either errors or omissions in her representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

#### All Other Allegations

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

#### CONCLUSION

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

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

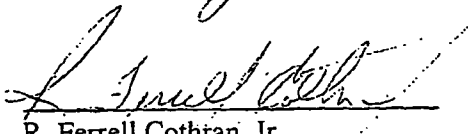
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 WILLIAM B. FURDENBURK  
 CLERK OF COURT  
 HANCOCK COUNTY, S.C.

FILED

**IT IS THEREFORE ORDERED:**

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

**AND IT IS SO ORDERED** this 26 day of Aug, 2013.



R. Ferrell Cothran, Jr.  
Presiding Judge

Mann, South Carolina.

**FILED**

2013 SEP 6 AM 11 11

WILLIAM B. FUNDERBURK  
CLERK OF COURT  
MARLBORO COUNTY, S.C.

ARREST WARRANT

1-079560

STATE OF SOUTH CAROLINA  
 County/  Municipality of  
BENNETTSVILLE

THE STATE  
against

MARCUS TOWNSEND

Address: BENNETTSVILLE SC 29512

Phone: SSN: DL#:

Sex: M Race: B Height: 5-0 Weight: 95

DOB: Agency ORI#: SC0350100

Prosecuting Agency: CITY OF BENNETTSVILLE

Prosecuting Officer: DET. IRA DEASE, III

Offense: ARMED ROBBERY

Offense Code: 0139

Code/Ordinance Sec. 16-11-0330 (A)

This warrant is CERTIFIED FOR SERVICE in the  
 County/  Municipality of

is to be arrested and brought before me to be  
dealt with according to law. The accused

Signature of Judge  
Date: 5-10-2010 (t-s)

RETURN

A copy of this arrest warrant was delivered to  
defendant MARCUS TOWNSEND

on 5-10-10

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

MUNICIPAL COURT  
103 E. MARKET STREET  
BENNETTSVILLE, SC 29512

STATE OF SOUTH CAROLINA  
 County/  Municipality of  
BENNETTSVILLE

AFFIDAVIT

Personally appeared before me the affiant DET. IRA DEASE, III

being duly sworn deposes and says that defendant MARCUS TOWNSEND  
did within this county and state on 05/10/2010 to 05/10/2010

State of South Carolina (or ordinance of  County/  Municipality of BENNETTSVILLE

violate the criminal laws of  
DESCRIPTION OF OFFENSE: 16-11-0330 (A) / ARMED ROBBERY

I further state that there is probable cause to believe that the defendant named above did commit  
the crime set forth and that probable cause is based on the following facts:

THAT ON 05-10-2010 ONE MARCUS TOWNSEND, ALONG WITH CO-DEFENDANTS, DID COMMIT THE OFFENSE OF ARMED  
ROBBERY BY ROBBING THE D & A QUICK STOP LOCATED AT 167 MARSHALL STREET, BENNETTSVILLE, SC. THE  
DEFENDANT HAD IN HIS POSSESSION A .22 CALIBER RIFLE. PROBABLE CAUSE IS BASED ON INVESTIGATION BY THE  
BENNETTSVILLE POLICE DEPARTMENT AND CONFESSION BY A CO-DEFENDANT.

Signature of Affiant

STATE OF SOUTH CAROLINA  
 County/  Municipality of  
BENNETTSVILLE

Affiant's Address 243 EAST MAIN STREET  
BENNETTSVILLE SC 29512

Affiant's Telephone 843-479-3620

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that  
on 05/10/2010 defendant MARCUS TOWNSEND

did violate the criminal laws of the State of South Carolina (or ordinance of  County/  Municipality of BENNETTSVILLE

DESCRIPTION OF OFFENSE: ROBBERY / ARMED ROBBERY, ROBBERY WHILE ARMED OR ALLEGEDLY  
ARMED WITH A DEADLY WEAPON

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said  
defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be deliver  
to the defendant at the time of its execution, or as soon thereafter as is practicable.  
Sworn to and subscribed before me )  
on 05/10/2010 )  
Signature of Judge )  
Date: 05/10/2010 (t-s)

Judge's Address 103 MARKET STREET  
BENNETTSVILLE SC 29512

Judge's Telephone 843-479-1582  
Issuing Court:  Magistrate  Municipal  Circuit

ORIGINAL

Form Approved by  
S.C. Attorney General  
SCCA 518

2010 MAR 13  
MARCUS TOWNSEND  
GLEN B  
WILLIAM B  
MARLBOROUGH  
OFFICE

WITNESSES

Ira Dease

Bennettsville Police Department

Law Enforcement Case #: 4632-10

*Ira Dease*

347

WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

ARREST WARRANT NUMBER  
I079560

ARRESTED ON: 2010-05-10

ACTION OF GRAND JURY

*True Bill*

*William B. Talbot*

Grand Jury Foreperson

Date

*July 1, 2010*

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:  
2010-GS-34-0448

The State of South Carolina

County of Marlboro

COURT OF GENERAL SESSIONS

Term:  
July 2010

THE STATE

vs.

Marcus Townsend

INDICTMENT FOR

Armed Robbery

§16-11-0330(A)

CDR Code: 0139

FILED  
2010 JUL 1 PM 3 37  
WILLIAM B. FUNDERBURK  
CLERK OF COURT, S.C.  
MARLBORO COUNTY, S.C.

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF MARLBORO )

INDICTMENT FOR  
Armed Robbery  
§16-11-0330(A)

At a Court of General Sessions, convened on July 1, 2010, the Grand Jurors of Marlboro County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Marcus Townsend did in Marlboro County on or about May 10, 2010, while armed with a deadly weapon, to wit: took and carried away the personal property of Samer Ata Hussein from or in the immediate presence of Samer Ata Hussein with intent to deprive Samer Ata Hussein of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), 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.

HYBSTERIO CORPIL' 2'0  
CIT' 132 CORN  
SOLD 7/17 J 11 3 3J  
EIGED

*William B. Rogers, Jr.*  
WILLIAM B. ROGERS, JR.  
SOLICITOR

STATE OF SOUTH CAROLINA  
 COUNTY OF Marlboro  
 STATE VS.  
Marcus Townsend  
 AKA: \_\_\_\_\_  
 Race: \_\_\_\_\_ Sex: M Age: 19  
 DOB: \_\_\_\_\_ SS#: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City, State, Zip: Bennettsville, SC 29512  
 DL#: \_\_\_\_\_ SID#: \_\_\_\_\_

IN THE COURT OF GENERAL SESSIONS ✓ 101  
 INDICTMENT/CASE#: 2010-GS-34-0448  
 A/W#: 1079560  
 Date of Offense: 5/10/2010  
 S.C. Code § : 16-11-0330(A)  
 CDR Code #: 0139

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
 In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS  
 TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC w/minor 1st or Lewd Act)  §17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentation to Grand Jury. (defendant's initials)  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State. <sup>25</sup>  
 ATTEST: Mary Lee 65347 Marcus Townsend Emily M. G... 70236 com  
 Johnson-Lee, Mary T SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
 for a determinate term of 23 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
 of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
 probation, which are incorporated by reference.  
 CONCURRENT or  CONSECUTIVE to sentence on: Oct 31, 2011  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
 by the State Department of Corrections. 539 days  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-23 (Criminal  
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Recipient: \_\_\_\_\_

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

PTUP \_\_\_\_\_ days/hours Public Service Employment  
 Obtain GED   
 Attend Voc. Rehab. or Job Corp.   
 May serve W/E beginning \_\_\_\_\_  
 Substance Abuse Counseling   
 Random Drug/Alcohol testing   
 Fine may be pd. in equal, consecutive weekly/monthly  
 pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
 \$ \_\_\_\_\_ paid to Public Defender Fund  
 Other: \_\_\_\_\_

Appointed PD or appointed other counsel,  
 § 47.12 requires \$500 be paid to Clerk  
 during probation.

Clerk of Court (Deputy Clerk) Cecilia M. Williams  
 Court Reporter: Hattie Gordon

Presiding Judge Michael Pitts  
 Judge Code: 60140  
 Sentence Date: 10-31-11

FILED  
 2011 NOV 2 AM 9 45  
 WILLIAM H. FUNDENBURK  
 CLERK OF COURT  
 MARLBORO COUNTY, S.C.

ARREST WARRANT  
1-079556

STATE OF SOUTH CAROLINA  
 County/  Municipality of  
BENNETTSVILLE

THE STATE  
against

MARCUS TOWNSEND

Address: BENNETTSVILLE SC 29512

Phone: SN: \_\_\_\_\_

Sex: M Race: B Height: 5-0 Weight: 95

DL State: \_\_\_\_\_

DOB: \_\_\_\_\_ Agency OR#: SC0350100

Prosecuting Agency: CITY OF BENNETTSVILLE

Prosecuting Officer: DET. IRA DEASE, III

Offense: MURDER

Offense Code: 0116

Code/Ordinance Sec. 16-03-0010, 16-03-0020

This warrant is CERTIFIED FOR SERVICE in the  
 County/  Municipality of

is to be arrested and brought before me to be  
dealt with according to law. The accused

Date: 5-10-2010  
Signature of Judge  
(L.S.)

RETURN

A copy of this arrest warrant was delivered to  
defendant MARCUS TOWNSEND

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:  
MUNICIPAL COURT  
103 E. MARKET STREET  
BENNETTSVILLE, SC 29512

102

STATE OF SOUTH CAROLINA  
 County/  Municipality of  
BENNETTSVILLE

AFFIDAVIT

Personally appeared before me the affiant DET. IRA DEASE, III

being duly sworn deposes and says that defendant MARCUS TOWNSEND  
did within this county and state on 05/10/2010 to 05/10/2010

State of South Carolina (or ordinance of  County/  Municipality of BENNETTSVILLE

DESCRIPTION OF OFFENSE: 16-03-0010, 16-03-0020 / MURDER

I further state that there is probable cause to believe that the defendant named above did commit  
the crime set forth and that probable cause is based on the following facts:

THAT ON 05-10-2010, ONE MARCUS TOWNSEND DID COMMIT THE OFFENSE OF MURDER BY SHOOTING THE VICTIM, ONE  
SAMER ATA HUSEIN, ON THE LEFT SIDE OF THE ABDOMEN CAUSING HIS DEATH. THE INCIDENT OCCURRED AT D & A  
QUICK STOP LOCATED AT 157 MARSHALL STREET, BENNETTSVILLE, SC. PROBABLE CAUSE BASED ON INVESTIGATION BY  
THE BENNETTSVILLE POLICE DEPARTMENT AND CONFESSION BY A CO-DEFENDANT.

Signature of Affiant

STATE OF SOUTH CAROLINA  
 County/  Municipality of  
BENNETTSVILLE

Affiant's Address 243 EAST MAIN STREET  
BENNETTSVILLE, SC 29512

Affiant's Telephone 843-479-3620

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that  
on 05/10/2010 defendant MARCUS TOWNSEND

did violate the criminal laws of the State of South Carolina (or ordinance of  
 County/  Municipality of BENNETTSVILLE ) as set forth below:  
DESCRIPTION OF OFFENSE: MURDER / MURDER

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said  
defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered  
to the defendant at the time of its execution, or as soon thereafter as is practicable.  
Sworn to and subscribed before me )  
)

on 05/10/2010  
Signature of Judge  
(L.S.)  
JUDGES ADDRESS 103 MARKET STREET  
BENNETTSVILLE SC 29512

Judge Code: JUDGE2  
Judges Telephone 843-479-1582  
Issuing Court:  Magistrate  Municipal  Circuit

ORIGINAL

Case: 432-10

WITNESSES

Ira Dease

Bennettsville Police Department

Law Enforcement Case #: 4032-10

*Ira Dease RL*

347

WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

ARREST WARRANT NUMBER  
I079556

ARRESTED ON: 2010-05-10

ACTION OF GRAND JURY

*True Bill*

*William B. Tate*

Grand Jury Foreperson

Date

*July 1, 2010*

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:  
2010-GS-34-0450

The State of South Carolina

County of Marlboro

COURT OF GENERAL SESSIONS

Term:  
July 2010

THE STATE

vs.

Marcus Townsend

INDICTMENT FOR

Murder

§16-03-0010; 16-03-0020

CDR Code: 0116

MARLBORO COUNTY, S.C.  
WILLIAM B. FUNDERBURK  
CLERK OF COURT  
FILED  
2010 JUL 1 PM 3 37

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF MARLBORO )

INDICTMENT FOR

Murder

§16-03-0010; 16-03-0020

At a Court of General Sessions, convened on July 1, 2010, the Grand Jurors of Marlboro County present upon their oath:

MURDER

CDR: 0116; 16-03-0010, 16-03-0020

That Marcus Townsend did in Marlboro County, on or about May 10, 2010, willfully, feloniously, and intentionally kill the victim, Samer Ata Hussein, with malice afterthought, either express or implied, by means of gun shot to the abdomen, and the victim did die as a proximate result thereof on or about May 10, 2010 in Marlboro County, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

MARLBORO COUNTY, S.C.  
COURT OF GENERAL SESSIONS  
JUL 1 2010  
FILED

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

*William B. Rogers, Jr.*  
WILLIAM B. ROGERS, JR.  
SOLICITOR

STATE VS. Marcus Townsend  
 AKA: \_\_\_\_\_  
 Race: \_\_\_\_\_ Sex: M Age: 19  
 DOB: \_\_\_\_\_ SS#: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City, State, Zip: Bennettsville, SC 29512  
 DL#: \_\_\_\_\_ SID#: \_\_\_\_\_

INDICTMENT/CASE#: 2010-GS-34-0450 105  
 A/W#: 1079556  
 Date of Offense: 5/10/2010  
 S.C. Code § : 16-03-0010; 16-03-0020  
 CDR Code #: 0116

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
 In disposition of the said indictment comes now the Defendant who was  
 TO: Manslaughter / Voluntary manslaughter

CONVICTED OF or  PLEADS

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC w/minor 1st or Lewd Act)  §17-25-45

The charge is:  As Indicted,  Lesser Included Offense;  Defendant Waives Presentation to Grand Jury. (defendant's initials)  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence;  Recommendation by the State.  
 ATTEST: Mary Lee Johnson 65347 SC Bar# Marcus Townsend Defendant Wm M H Attorney for Defendant 78236 SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
 for a determinate term of 23 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
 of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

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

CONCURRENT or  CONSECUTIVE to sentence on: Oct 31, 2011  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 539 days  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP \_\_\_\_\_  
 \_\_\_\_\_ days/hours Public Service/Community Employment  
 Obtain GED   
 Attend Voc. Rehab. or Job Co.   
 May serve W/E beginning \_\_\_\_\_  
 Substance Abuse Counseling \_\_\_\_\_  
 Random Drug/Alcohol testing \_\_\_\_\_  
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
 \$ \_\_\_\_\_ paid to Public Defender Fund  
 Other: \_\_\_\_\_

Recipient: \_\_\_\_\_

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk: Quinn M. Williams  
 Court Reporter: Hattie Gordon  
 SCCA/217 (03/2011)

Presiding Judge: Michael H. Williams  
 Judge Code: 0140  
 Sentence Date: 10-31-11

2011 NOV 1 PM 8:56  
 FILED  
 WILLIAM B. FURBER, JR.  
 CLERK OF COURT  
 HANCOCK COUNTY, SC