

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Lancaster County

Clifton Newman, Circuit Court Judge

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**RECEIVED**

JUN 20 2014

**S.C. Supreme Court**

MORRIS C. HARRIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002757

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APPENDIX

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA  
COURT OF GENERAL SESSIONS  
COUNTY OF LANCASTER  
2009-GS-29-00891

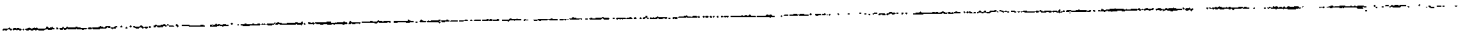
State of South Carolina  
vs.  
Morris Calvin Harris

Lancaster, South Carolina  
March 30, 2009

Before the Honorable Kenneth Goode

APPEARANCES

For the State: Douglas Barfield  
For the Defendant: William Frick  
Reported by: Michael C. Watkins  
Official Court Reporter



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1 MR. BARFIELD: Your Honor, again, Mr. Harris has  
2 indicated he wants to change his plea on all indictments,  
3 but he's pleading to the lesser-included offense of  
4 voluntary manslaughter straight-up without recommendations  
5 or negotiations. I am dismissing the two related charges.  
6 You've heard a good bit about this case, I'll tell you much  
7 more about it before we conclude here this afternoon. The  
8 victim was Tammy Whitley, she's got a whole row of folks  
9 back here on the back side some of whom will probably want  
10 to speak. And I will give you a pretty detailed accounting  
11 of the facts and recognize them at the appropriate time, and  
12 we are ready to go forward.

13 THE COURT: Thank you. Mr. Frick, are you ready also?

14 MR. FRICK: Yes, sir.

15 THE COURT: And you represent the defendant, Mr.  
16 Harris?

17 MR. FRICK: Yes, sir.

18 THE COURT: And have you explained to Mr. Harris the  
19 charge contained in his indictment, the possible punishment  
20 including his constitutional right to a jury trial?

21 MR. FRICK: Yes, sir, he was prepared to exercise that.  
22 I have explained to him what he is charged with, what he is  
23 pleading to, what Alford means, I think over the lunch break  
24 he was doing a little bit of research himself so I think he  
25 understands, yes, sir.

1 THE COURT: And are we going forward on the murder  
2 indictment amended or is this going to be not submitted to  
3 the grand jury? It's going to be a waiver?

4 MR. BARFIELD: I contend that voluntary manslaughter is  
5 a lesser-included offense of murder. He does need to sign  
6 the sentence sheets, though. I don't think there's any  
7 necessity for a waiver when he's pleading to voluntary  
8 manslaughter.

9 THE COURT: Mr. Frick, back to you. In your opinion  
10 does Mr. Harris understand the charge, the punishment and  
11 his rights?

12 MR. FRICK: Yes, sir.

13 THE COURT: And how does he indicate that he wishes to  
14 plead, guilty, not guilty or guilty under Alford versus  
15 North Carolina?

16 MR. FRICK: Guilty under Alford and North Carolina,  
17 Your Honor.

18 THE COURT: And have you explained to Mr. Harris and  
19 have the two of you discussed that he may consent  
20 voluntarily, knowingly and intelligently to the imposition  
21 of a prison sentence although he is unwilling to admit his  
22 culpability, and even though his guilty plea may contain a  
23 protestation of his innocence that he has intelligently  
24 concluded that his interests require a guilty plea and the  
25 evidence strongly supports his guilt of the offense charged?

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1 MR. FRICK: Your Honor, our discussion was that he is  
2 pleading under this, maintaining his innocence and I will go  
3 into that later in mitigation and it is without  
4 recommendation, so I believe we are looking at zero to 30  
5 and that it is a violent and no-parole offense.

6 THE COURT: And do you agree with his decision to plead  
7 guilty under Alford versus North Carolina?

8 MR. FRICK: Yes, sir.

9 THE COURT: From your investigation of the facts of  
10 this case, do you feel the State can produce sufficient  
11 evidence to convince a jury of the defendant's guilt beyond  
12 a reasonable doubt, and that if the defendant were to stand  
13 trial his conviction would be probable?

14 MR. FRICK: Your Honor, given the circumstances that  
15 the State was likely going to defeat my motions and get in  
16 the evidence of the bullets from both shootings and his  
17 confession, which I think is really the lynchpin in this, I  
18 do with the State getting their evidence in, yes, sir.

19 THE COURT: And there was a Blair hearing and he was  
20 found to be competent to stand trial. And you are Morris  
21 Calvin Harris?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Is he under oath, Mr. Clerk?

24 THE CLERK: Yes, sir, Your Honor.

25 THE COURT: Mr. Harris, before I can accept your plea

6  
1 it is necessary that I insure that it is freely and  
2 voluntarily given. I'm going to ask you some questions, if  
3 at any time you do not understand me or any of the words  
4 that I use I want you to let me know and I'll attempt to  
5 clarify myself. If you need to speak with your attorney,  
6 Mr. Frick, at any time during this plea all you have to do  
7 is let me know, do you understand?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: How old are you, please, sir?

10 THE DEFENDANT: Thirty-six, Your Honor.

11 THE COURT: How far did you go in school?

12 THE DEFENDANT: Eleventh grade. Well, I went to the  
13 12th but I didn't graduate and I got my GED in Wateree in  
14 '95.

15 THE COURT: What type work do you do?

16 THE DEFENDANT: I've done warehouse work, brick mason,  
17 and a truck driver.

18 THE COURT: Have you ever been treated for the abuse of  
19 alcohol or drugs or for mental illness?

20 THE DEFENDANT: No, Your Honor. I have attended a AA  
21 meeting before on my own.

22 THE COURT: Have you taken any medication, drugs or  
23 alcohol in the last 24 hours?

24 THE DEFENDANT: No, sir.

25 THE COURT: Are you today aware of any physical,

1 emotional or nervous problem that might keep you from  
2 understanding what you are doing?

3 THE DEFENDANT: No, sir.

4 THE COURT: And Mr. Frick, do you agree?

5 MR. FRICK: Yes, sir, I do.

6 THE COURT: Mr. Harris, you heard your attorney tell me  
7 that he had explained the charges against you, the possible  
8 punishment and your constitutional rights and that you  
9 understood these things; is that correct?

10 MR. FRICK: Yes, sir.

11 THE COURT: You're pleading guilty under Alford versus  
12 North Carolina to the offense of voluntarily manslaughter, a  
13 lesser-included offense of murder. The State charges you  
14 with having in Lancaster County on or about April 18th of  
15 2007 near Heath Springs, South Carolina, feloniously  
16 willfully kill Tammy Whitley by shooting her in the head,  
17 cutting her throat and severely beating her about her  
18 person, and that she died as the proximate cause thereof,  
19 and for this I could sentence you up to 30 years. Do you  
20 understand the charge and the possible punishment?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Are you on probation or parole at this  
23 time?

24 THE DEFENDANT: No, sir, Your Honor.

25 THE COURT: And you heard your attorney, Mr. Frick,

1 indicate that he had explained to you about the strikes and  
2 the serious and most serious and parole eligibility of this  
3 case.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Harris, when you plead guilty under  
8 Alford versus North Carolina you give up certain important  
9 constitutional rights. First, you give up the right to  
10 remain silent, that is your right against  
11 self-incrimination, your right to say nothing at all. You  
12 cannot be compelled to testify or to provide evidence  
13 against yourself. Second, you give up the right to have a  
14 trial, that is your right to have a jury decide whether or  
15 not you are guilty beyond a reasonable doubt. They would  
16 base their decision upon evidence which the State presents  
17 and on any evidence you might wish to introduce. In a trial  
18 you would be presumed innocent and the State would have to  
19 produce evidence that would convince all 12 members of the  
20 jury that you were guilty beyond a reasonable doubt. Third  
21 you give up the right to confront and be confronted by the  
22 witnesses against you, that is the right to see, hear and  
23 cross examine any witnesses that may be called against you  
24 during the trial and the right to subpoena and call  
25 witnesses in your own behalf. Do you understand these

1 rights?

2 THE DEFENDANT: Yes, sir, Your Honor.

3 THE COURT: And do you freely and voluntarily give up  
4 each and every one of these rights?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you understand that when you enter this  
7 plea under Alford versus North Carolina that you do, in  
8 fact, give up each of these rights?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And understanding this you wish to give up  
11 your right to a jury trial and enter the guilty plea to the  
12 lesser-included offense of manslaughter -- voluntary  
13 manslaughter under Alford versus North Carolina.

14 THE DEFENDANT: Yes, sir, Your Honor.

15 THE COURT: Mr. Harris, you may have defenses to the  
16 charge against you, I don't know whether you do or not, do  
17 you understand that if you enter this plea you will waive or  
18 give up any defenses to this charge?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You may have given incriminating statements  
21 in this case. If you enter this plea do you understand that  
22 you waive or give up the right to contest and challenge  
23 whether such a statement was freely and voluntarily given in  
24 accordance with your constitutional rights?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And the negotiations as are were stated on  
2 the record earlier and none as to sentence.

3 MR. BARFIELD: That is correct.

4 THE COURT: And that is your understanding, Mr. Frick?

5 MR. FRICK: Yes, sir.

6 THE COURT: Has anyone promised you anything or held  
7 out any hope of reward to get you to plead guilty under  
8 Alford versus North Carolina?

9 THE DEFENDANT: No, sir, Your Honor.

10 THE COURT: Has anyone threatened you or used force to  
11 get you to plead guilty under Alford?

12 THE DEFENDANT: No, sir.

13 THE COURT: Has anyone used any pressure or  
14 intimidation to cause you to enter this plea?

15 THE DEFENDANT: No, sir.

16 THE COURT: Have you had enough time to make up your  
17 mind as to whether or not you want to enter this plea?

18 THE DEFENDANT: Yes, sir, Your Honor.

19 THE COURT: Are you entering this plea of your own free  
20 will and accord?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Are you satisfied with the manner in which  
23 Mr. Frick has advised and represented you?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Have you spoken with Mr. Frick for as often

1 and for as long as you feel necessary for him to properly  
2 represent you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you at this time need more time to speak  
5 to Mr. Frick?

6 THE DEFENDANT: No, sir.

7 THE COURT: Have you understood your talks with  
8 Mr. Frick?

9 THE DEFENDANT: Yes, sir, Your Honor.

10 THE COURT: Has he done everything for you that you  
11 feel that he could have or should have done?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You're totally and completely satisfied  
14 with Mr. Frick's services as your attorney?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you understood my questions?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Is there anything that you would like to  
19 ask me about what we've just been over?

20 THE DEFENDANT: No, sir.

21 THE COURT: Do you understand that you have a right to  
22 appeal the guilty plea and the sentence of the Court and  
23 that you and your attorney must do this within ten days?

24 THE DEFENDANT: Yes, sir, Your Honor.

25 THE COURT: Solicitor, if I could have a factual basis

1 for the plea.

2 MR. BARFIELD: Your Honor, you've heard bits and  
3 pieces, I will give you some facts and I will want to come  
4 back and address you as to sentencing after awhile, I will  
5 try to kind of tie this altogether for you a little bit. On  
6 April 20th of 2007 a young man named Bill Wright and his  
7 three year old son were going to their pond which is on land  
8 they own down near lake Wateree in Kershaw County off Hilton  
9 Road, a man and his three year old son walk down into their  
10 place, or drive down into their place on the dirt road and  
11 find a body. I will show you some photographs of the body  
12 later and describe the injuries to the body later, but a  
13 female -- appearing to be a female just lying on her back,  
14 hands out, arms out by her side, feet stretched out, pretty  
15 much fully clothed but very much deceased. Mr. Wright went  
16 to adjoining property owners and told them there was a  
17 problem, the sheriff's office got called and Kershaw County  
18 came into the picture. They went to the scene, processed  
19 the scene. Frankly I don't know exactly how it got  
20 discovered, but also off Hilton Road, which is in some  
21 places paved and in some places dirt, about two miles from  
22 where the body is found find a Ford Thunderbird, it's burned  
23 up, gutted by fire. Through investigation they get a bill  
24 of sale and find out that in fact it is Tammy Whitley's Ford  
25 Thunderbird that's burned located about two miles from the

1 car (sic). Of course, they have to go through fingerprint  
2 identification process as a result of an autopsy of  
3 Ms. Whitley to get a true identity of who she was, they  
4 found out she's a Lancaster County resident. Kershaw calls  
5 Lancaster County and the two sheriff's offices work for the  
6 next couple of weeks actually to try to tie this thing up.  
7 Eventually -- and I'm sure I'll skip some things -- but  
8 eventually -- of course they're trying to track people who  
9 are acquaintances of Ms. Whitley. In the meantime Willie  
10 Michael Moore who is I think a cousin by marriage or a  
11 second cousin of Mr. Harris, two days before the actual  
12 killing of Ms. Whitley on April 15th of 2007 reports to the  
13 Lancaster Sheriff's Office, he hops up to somebody's door  
14 out in the county and says, "I've been shot." Sheriff's  
15 office gets called and sure enough, Willie Michael Moore has  
16 got a bullet in his lower left leg and he says, "Harris did  
17 it." So Harris has a warrant outstanding for him for  
18 assault and battery with intent to kill. He becomes a  
19 suspect in the killing of Ms. Whitley after witnesses put  
20 Whitley and Harris together close to the time of the  
21 disappearance. Witnesses come forward who give written  
22 statements after being interviewed, one in particular, a  
23 young female who knows Mr. Harris and knows Ms. Whitley, did  
24 not know that the two of them knew each other, but this  
25 particular witness, Ms. Samantha Morris, indicated in a

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1 written statement and to me in an interview that on the  
2 night of Tuesday, April 17th into the early morning of  
3 Wednesday, April 18, she says -- actually it's about 8:30,  
4 she's in Heath Springs at her boyfriend's house and Tammy  
5 Whitley drives up to the apartments and Morris Calvin Harris  
6 is a passenger in the car and there's some conversation  
7 between the parties there, there appear to be no  
8 difficulties among any of the parties there. She did report  
9 that Mr. Harris and Ms. Whitley both appeared to be messed  
10 up. Ms. Morris, the witness, says that Harris had her  
11 cellphone --

12 THE COURT: Excuse me. When you use that term you're  
13 talking about --

14 MR. BARFIELD: Under the influence of some substance.

15 THE COURT: Under the influence of some substance.

16 Okay.

17 MR. BARFIELD: And, Your Honor, I will say this, and  
18 Ms. Whitley's family is back here, they know that there's a  
19 lot of bad in this, but I'll say it, this is the drug  
20 business, these people were all into drugs and they all get  
21 together and smoke, whatever. Harris has witness Morris'  
22 cellphone. She says when they come up to the apartments in  
23 Heath Springs, "When are you going to bring my phone back?"  
24 And he says, "I can't get it back to you right now, I'll  
25 bring it later." So she's expecting him to bring her the

1 phone later on that night. She frankly stays up smoking  
2 crack with her boyfriend all night and by about 4:30 in the  
3 morning, I guess she's hacked off enough and she wants her  
4 cellphone, she calls Harris on the phone that she knows is  
5 Harris' cellphone and she says, "When are you going to bring  
6 my cellphone back?" And he says, "I can't right now, I'm  
7 taking care of business." She doesn't hear anything from  
8 him until daylight hours she says about 8:00, I think the  
9 phone records indicate it's something between 7:00 or 7:30,  
10 she gets a phone call from him, I believe, indicating that  
11 he couldn't get rid of that bitch I think is what he said.  
12 She didn't think a whole lot of it at that time, actually  
13 did think about it but was scared and did not come forward.  
14 In the meantime Kershaw County has gotten some cellphone  
15 records, they do what they call triangulate based on  
16 cellphone tower coverage and they basically put Mr. Harris'  
17 cellphone down in the area between Heath Springs and where  
18 the body is found, so we've kind of got him in the area at  
19 that point. Once this information comes out about  
20 Mr. Harris then the push is on to find him and he is, in  
21 fact, arrested on April 24th of 2007 on the ABWIK warrant  
22 for his cousin and a family court bench warrant as he told  
23 and I think a magistrate's court simple assault and battery.  
24 Of course, you've heard all of the information about the  
25 statements, you have not heard any detail from the statement

1 and I'm going to publish parts of it to you and invite you  
2 to read the copy that I've put into evidence which I think I  
3 will get back.

4 THE COURT: And I'm happy for you to present it any way  
5 you would like, at this time we just want a factual basis  
6 for the plea and this might be more appropriate at the --

7 MR. BARFIELD: April 24th he didn't admit to anything,  
8 April 26th we allege he confessed to the crime and in great  
9 detail which was corroborated by what was found on the  
10 ground in the various places in Kershaw County and through  
11 Lancaster County to get there, and also in the ride around  
12 that was done on May 1st. Victim died -- and I'm going to  
13 give you some more detail on that a little bit later about  
14 sentencing, -- but victim died of skull fractures from being  
15 beat in the head. She had also been shot in the right ear  
16 which was a potentially fatal contact penetrating gunshot  
17 round. She also had the throat cut, did not cut the  
18 corroded artery but it was a very bad cut on her throat.  
19 And her body, the lower portion of her body was also set on  
20 fire which I'll talk more about later, so that was the cause  
21 of death.

22 THE COURT: Thank you. And Mr. Harris, you heard the  
23 solicitor state the facts that led to your arrest in this  
24 matter, do you agree that if the State went to trial that  
25 they could produce evidence sufficient to convince a jury of

1 the material facts as stated by the solicitor? Not that you  
2 admit those but that they could produce evidence to convince  
3 a jury?

4 MR. FRICK: Your Honor, if I may and as a caveat, my  
5 discussions with Mr. Harris would be that if the State were  
6 able to get this evidence in -- obviously we were in the  
7 middle of a Denno hearing and if the Court had ruled that  
8 that statement would come in I think he would be in trouble,  
9 if the Lyle evidence were to come in I think that would be  
10 trouble, that was the nature of the conversation. So I  
11 think his understanding is if the State were able to get the  
12 evidence that the solicitor spoke about in that it's likely  
13 that a jury could convict him.

14 THE COURT: Do you agree with the comments of your  
15 attorney?

16 THE DEFENDANT: I will say it ain't as simple as  
17 Mr. Barfield make it out to be but it's a pretty good chance  
18 that I could be convicted of it.

19 THE COURT: I find that there's a substantial factual  
20 basis for the plea and I find that the defendant's decision  
21 to enter this plea under Alford versus North Carolina is  
22 freely, voluntarily, knowingly and intelligently made, and  
23 he has had the advice and counsel of a very competent  
24 attorney with whom he indicates he's totally satisfied. The  
25 plea of guilty of voluntary manslaughter pursuant to Alford

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1 versus North Carolina is accepted. Mr. Solicitor, I will be  
2 happy to hear additionally from you at this time prior to  
3 sentencing.

4 MR. BARFIELD: Your Honor, I'm going to -- Mr. Frick  
5 has not seen these and if he wants to see them before I hand  
6 them up to you I will be happy to show them. These are  
7 pictures of the victim and her car which were found about  
8 two miles from each other. And I will tell you, Your Honor,  
9 there is some what is described in the autopsy as  
10 post-mortem animal damage. Not all of what you see was  
11 caused by -- at the time of her death but some of it  
12 occurred after her death. While you're looking at the  
13 pictures I'll tell you what the autopsy said. Description  
14 of injuries: Head reveals multiple fractures of the skull,  
15 a laceration of each eyebrow, contusion as well as  
16 laceration on the lower portion of the left eyelid and the  
17 upper left eyelid is what may be consistent with a stab  
18 wound on the left cheek just below the left eye lid.  
19 Abrasions across the left side of the cheek down onto the  
20 chin, just multiple lacerations around the head and face.  
21 The maxilla, jaw bone, fractured in the midline. Abrasions  
22 around the ears. There was a contact gunshot wound on the  
23 right ear just behind the ear canal, a bullet passed  
24 downward slightly to the front, to the left and it was found  
25 in the soft tissue in the left side of her neck, the bullet

1 was recovered. Before I forget to tie all of this stuff up  
2 from the Jackson v. Denno hearing, the bullet out of Willie  
3 Michael Moore's leg and the bullet out of Tammy Whitley's  
4 neck were fired by the same firearm according to SLED, we  
5 simply never found the firearm. I was prepared with all of  
6 the witnesses for all of these issues to go forward with the  
7 trial and all of that was lined up.

8 THE COURT: And I know that you covered this but  
9 refresh my memory, please, how long was it before the date  
10 of death before she was discovered?

11 MR. BARFIELD: We believe -- of course, this was in  
12 April, it's warm, she was last seen alive by the witness in  
13 Heath Springs about 1:30 in the morning on April 18th, which  
14 was Wednesday morning, early morning Wednesday. Her body  
15 was found at about 9:30 Friday morning, two days later, a  
16 lot of damage occurred in those two days. Your Honor, in  
17 addition to the gunshot wound and the fractures of the skull  
18 fairly deep inside the wound of the neck was shallow wounds  
19 on the right side of the neck. It was a very bad neck  
20 laceration but it was -- in fact, it did not get the  
21 corroded artery apparently. In addition to that, Your  
22 Honor -- bear with me just a minute.

23 THE COURT: Yes, sir.

24 MR. BARFIELD: The body was described -- before the  
25 autopsy actually began the body was described, obvious

1 trauma to the head, obvious wounds to the throat. The body  
2 has burns on the feet and duct tape attached to each pant  
3 leg but not holding the legs together. At some point duct  
4 tape was placed on her lower limbs, it's a mystery but it  
5 was there. The cause of death, Your Honor, according to  
6 Doctors Sexton and Ross, subarachnoid hemorrhage due to  
7 basilar skull fracture due to blunt head trauma due to  
8 beating. It should be mentioned that the incised wound of  
9 the throat and the gunshot wound to the right ear were  
10 probably contributory to the death. The beating in the head  
11 is what killed her. Your Honor, Mr. Harris gave a  
12 statement, which we contend is at least part of the truth  
13 and I'll just public portions of it for you. His basic  
14 scenario is that the two of them were together, she was  
15 supposed to be taking him home, she didn't want to take him  
16 home, she wanted him to go with her to get more dope and he  
17 didn't want to play that game, and this is how he described  
18 it. "We were in Lancaster and went to Heath Springs, she  
19 wouldn't drop me off, I just wanted to get out of the car.  
20 Then what happened? I think that's when I shot her. Where  
21 were you in Heath Springs? Not far from my grandma's house.  
22 What happened after that? She thought I had hit her in the  
23 head, I ain't never seen anybody act like that," he's  
24 talking about her reaction after he shot her. "She started  
25 driving crazy. I put my foot on the brake and stopped the

1 car and put it in park. What happened after that? I got  
2 out and she asked me where I was going and I told her I was  
3 going home. She got in the car and tried to run over me, I  
4 shot her again in the head." I don't believe she was shot  
5 twice but that's what he says. "Where did the first shot  
6 hit her? Near the ear. I was in the passenger seat and  
7 shot her the first time." That's consistent with her  
8 driving and taking a bullet to the right ear. "Where did  
9 this happen at? Heath Springs. What happened then? She  
10 was coming to her senses and knows that I shot her and we  
11 started talking. I kind of blanked out, only bits and  
12 pieces come to me. How did you get to Hilton Road?" Which  
13 is where the body and car were found. "She drove and was  
14 still wanting dope. What happened next? She was still  
15 wanting dope. I knew I was a long way from home, hoped that  
16 I could find a ride so I started leaving but that didn't  
17 work. I kept trying to tell her I couldn't help her get  
18 high but she wouldn't let me leave. What happened after  
19 that? After that it pretty much was a waiting process." It  
20 goes on. "But where were you at when you realized that she  
21 was not going to make it? In Heath Springs because she said  
22 she was getting weak and cold. What happened with the  
23 knife? The incident with the knife happened in Heath  
24 Springs when she tried to run over me, I was standing in the  
25 road and jumped out of the way, she got out of the car, came

1 up to me and I cut her with the knife. Not the knife y'all  
2 found, my other knife." We found a knife, it wasn't the  
3 right knife. "Where did you cut her at? I cut her throat.  
4 Was there a lot of blood? Not much. She wrapped her throat  
5 up with a shirt. What happened next? Well, she kind of sat  
6 down on the ground and said, 'I'm going to die.' I wanted to  
7 get her some help but I panicked and freaked. She wanted to  
8 get back in the car so I told her to get in the trunk."  
9 It's her car. "I drove out back, I drove out back out  
10 Stonesboro Road to Hilton Road." This is out of Lancaster  
11 County into Kershaw County. "I opened the trunk and she  
12 jump out in a rage, I kicked her in the chest and she fell.  
13 I poked her in the throat with a stick, she was still moving  
14 so I picked up a rock and hit her in the head. What did you  
15 do with the car? I burnt it up, I sat it on fire with a  
16 cigarette lighter." He says in the statement that she was  
17 in the car when he set it on fire, I just don't think that  
18 could be because the car didn't get driven after it got  
19 burned and she's found burned two miles away and I don't  
20 imagine that he carried her. "When you lit the fire on  
21 Tammy did you put it out? Yes, because she was not dead.  
22 She was making noises and I couldn't do that." Of course,  
23 Your Honor, I've gotten the worst of the statement. There  
24 are certainly better things in there that Mr. Frick might  
25 want to talk about. You've heard the autopsy report, you've

1 heard what he said he did which I submit are consistent, he  
2 couldn't have known all of that. You've seen the  
3 photographs, she died a terrible death and her family knows  
4 it, they've heard probably about it more today than ever  
5 before and some of them are going to want to talk to you in  
6 a little bit. He's getting a pretty good break here, he's  
7 got two years in the bank because he has been in jail two  
8 years, he's not facing a life sentence because we've taken  
9 murder off of the table. I think it's appropriate for a 30  
10 year sentence, Mr. Frick, I'm sure, is going to argue less,  
11 I think it's appropriate for a 30 year sentence. I would  
12 ask you at the appropriate time to let those who want to  
13 talk from the family members to talk.

14 THE COURT: I will hear from the family members in just  
15 a few moments, but I do at this point in the proceedings  
16 want to thank each of you for taking the time to be here  
17 today. As I typically say in these situations, I don't know  
18 where you would rather be but I know it's some place other  
19 than here and certainly under these circumstances, but I do  
20 appreciate your coming and I look forward to hearing from  
21 you very soon. Mr. Frick?

22 MR. FRICK: Thank you, Your Honor. Your Honor,  
23 obviously this is a difficult task, and I do want the Court  
24 to know that Mr. Harris has expressed a long time ago he has  
25 wanted to get this resolved but legally I felt he had issues

1 that needed to be explored, and of course we have been  
2 exploring those today. I expressed those to him and he  
3 agreed that those were issues that I needed to explore and  
4 that included the 404B evidence, the bullet that seems to  
5 matchup at least according to SLED. His statement, which I  
6 maintain that there are some voluntariness issues, however I  
7 understand how the Court was maybe leaning, I'm not saying I  
8 know how you're going to rule but I have an indication that  
9 we would probably -- and I thought prior to making that  
10 argument we were probably not going to be successful in  
11 that. And there's also a jurisdictional issue that we felt  
12 we needed to explore. But in speaking with Mr. Harris today  
13 he wants to put this matter behind him so he can have some  
14 peace and I think he would like to bring the victim's family  
15 some peace too. This is something that he has thought about  
16 everyday sitting in the Lancaster County Detention Center  
17 since his arrest on the 24th of April of 2007. Now, Your  
18 Honor, that memory is somewhat foggy. In all of my  
19 conversations with him there was some period of time where  
20 he just simply blacks out as the solicitor correctly  
21 indicated, both parties in this action were under the  
22 influence of something. I think my client's drug of choice  
23 truly is marijuana and I think the victim's drug of choice  
24 was crack, it was indicated in the statement. They had  
25 gotten together, he was trying to go home and it went awry.

1 I want to go to his statement first, then I will give you a  
2 little more on his mental health that I have. Your Honor, I  
3 do want to point out that in his statement Mr. Harris did  
4 show remorse, I think the key point in that is at the very  
5 end of the statement, and I don't know if you've got a copy  
6 of it or not, but the last question he is asked is there  
7 anything that you would like to add to this statement, and  
8 bear in mind, he's told them what he could recall, there's a  
9 lot of stuff that happened that only the two of them  
10 remember and unfortunately it is wretched out of his mind  
11 for whatever reason and there are some medical reasons that  
12 I will get into in a second. But his last statement about  
13 this, Your Honor, is, "I hate this happened. It was not my  
14 intention to harm her, it just happened. I hope God will  
15 forgive me for what I did and the Judge will have mercy on  
16 me." Your Honor, I think this is truly one of those  
17 situations where I don't think he got in that car with any  
18 intent to cause harm. Now, it happened and we are here  
19 today because something happened. I think the State could  
20 prove that he likely was the cause of that harm, and  
21 certainly the pictures you have don't help out my attempt to  
22 try to mitigate this, but I do ask you to bear in mind that  
23 he has been remorseful since the day all of this happened.  
24 It was fueled by drugs, probably some alcohol on both sides.  
25 There was some point where the victim, by my client's

1 statement, tried to run over him. Now, I'm not saying that  
2 I could have made a self-defense argument but I think I had  
3 issues that I could have raised. Your Honor, there were --

4 THE COURT: Wasn't this after he was alleged to have  
5 shot her in the ear?

6 MR. FRICK: I understand that, Your Honor, I do, I do.  
7 Your Honor, there's also one other point in his statement  
8 where he expressed his regret in saying he wished this had  
9 never happened, I think he truly feels that way, Your Honor.  
10 I'm not saying that simply just trying to engender some kind  
11 of sympathy, but Mr. Morris hasn't had an easy life. You  
12 have the evaluation with DMH where they talk a little bit  
13 about it. According to Dr. Patrick Goldsmith, a licensed  
14 psychologist here in Lancaster who spent a great deal of  
15 time talking with Morris in our preparation for a request  
16 for a mental evaluation, determined that he had an abusive  
17 childhood, I think it was the father figure in his home who  
18 was abusive toward him. At some point it's even recognized  
19 in the DMH report by Dr. Frierson that somewhere around the  
20 age of seven or eight Mr. Harris was recalled having black  
21 eyes, he had been physically abused. I recall in that  
22 interview at some point Mr. Harris said that he was made to  
23 eat a bowl of vomit. This was not a healthy environment for  
24 this young man to grow up in, although he did well at the  
25 time, he goes all the way through school, did well in

1 school, he participated in extracurricular activities,  
2 football, basketball, the like. I think by some accounts he  
3 was pretty good, maybe had a future there. But something  
4 happened at the age of 16 right as he's at the peak of  
5 graduating high school he gets in trouble, I think he got  
6 charged with disturbing schools or something like that, at  
7 that point he basically drops out of school, he quits. I  
8 don't know what the triggering point was, Mr. Harris has  
9 never told me what that was but there was there's some issue  
10 there that just completely changed his life. Admittedly he  
11 does have some priors on his record, there's some drug  
12 offenses, I think there might have been an accessory charge  
13 relating to some burglary back in the nineties. But Your  
14 Honor, there's nothing on there that indicates he is the  
15 violent type of person that is reflected in the facts that  
16 you see here. Whatever happened I think is an isolated  
17 incident, we truly are never going to know what happened  
18 during that evening. Your Honor, there is just a lot of  
19 stuff that goes along with that that I just don't think that  
20 I can truly, truly do justice to. I do ask you to take the  
21 findings of two doctors saying that -- well, Dr. Goldsmith  
22 says he's suffering from post-traumatic stress disorder but  
23 nothing arose to the level where I don't think he can  
24 distinguish right from wrong and I think that was reflected  
25 in the DMH report and we weren't prepared to offer that type

1 of defense, I just don't think it rose to that, but there's  
2 issues. When confronted with whatever happened that evening  
3 I think he fell back into that pattern that he grew up in  
4 and that's why he reacted like he did whatever that reaction  
5 may have been. Your Honor, he is remorseful and as the old  
6 adage goes we're just asking you for some mercy here today.

7 THE COURT: Thank you, Mr. Frick. Mr. Harris, anything  
8 you would like to add to the comments of your attorney?

9 THE DEFENDANT: Yes, sir, Your Honor. I know I'm  
10 standing before you today with serious charges, and I ain't  
11 never been a troublemaker, Your Honor, never went out of my  
12 way to do nobody no harm and I have got family members of my  
13 own that sometimes mistakes happen.

14 MR. FRICK: Your Honor, I wanted to point out his  
15 mother is in the courtroom. I didn't have a chance to  
16 inquire as to whether she wanted to address the Court or not  
17 but I did want you to know that she was present in the  
18 courtroom.

19 THE COURT: And thank you ma'am for coming. Would you  
20 like to address the Court?

21 SPEAKER: I would just -- my name is Anna Harris and  
22 Morris is my oldest son, my first born. And I'm sorry to  
23 say he did go through some abuse as a child and I did, too.  
24 And I'm not there now but I wish that I had left before he  
25 went through what he went through with his father, because

1 he was beaten unrecognizable and that hurt me and it hurt  
2 him even worse. But I want to say I thank God that we got  
3 out because I have two other children, but I thank God that  
4 we got out of the situation before some of my other children  
5 were beaten the way that he was. But I give my sympathy to  
6 the family that lost their child and their daughter and I  
7 pray that they will find the strength in their heart to  
8 forgive him for what happened to their child, because I had  
9 to forgive my ex-husband for what he done to me and my  
10 children and once I done that I was able to breath a little  
11 bit better and go on with my life. And I pray that they'll  
12 find it in their heart to forgive him also.

13 THE COURT: Thank you, ma'am. Anything additional,  
14 Mr. Frick?

15 MR. FRICK: No, Your Honor. Thank you.

16 THE COURT: I will be happy to hear from the family of  
17 the victim that wishes to address the Court.

18 MR. BARFIELD: Your Honor, before I do that I neglected  
19 to tell you about his record, I think I do want to put that  
20 on the record. '91 accessory after the fact of grand  
21 larceny. '93 and 94 he had an assault and battery and two  
22 trespassings. '94 he had either distribution or possession  
23 with intent to distribute crack and it looks like he got an  
24 active sentence on that, it says six years. '97 couple of  
25 more magistrates offenses. Apparently '97 after he had been

1 paroled on the crack charge he got a parole revocation.  
2 2002 he had a disorderly conduct and possession of crack  
3 cocaine second offense, he got a five year sentence on that  
4 one with credit for almost a year he had been in jail. And  
5 then 2006 driving under suspension and a couple of  
6 miscellaneous charges it says from Virginia, I'm not sure  
7 about that. Your Honor, there are family members of Tammy  
8 Whitley here, I have talked to a bunch of them over a long  
9 period of time, I'm not sure who wants to speak. I'm just  
10 going to simply ask them whatever order they want to do it  
11 to step up to the microphone and in a loud voice identify  
12 yourself, say how you are related then say whatever you want  
13 to say.

14 SPEAKER: I am Margie Wallace, Tammy's mother. And I  
15 just -- I don't know what to say. I just can't understand.  
16 I know my daughter wasn't no angel but I can't understand  
17 why this man killed my daughter like that. Thank you.

18 THE COURT: No ma'am, thank you.

19 SPEAKER: My name is Angie Melton, I'm Tammy's sister.  
20 When I was six years old I was adopted because I didn't have  
21 a stable home and my sister never did either. When we got  
22 older we were getting to know each other, but now I will  
23 never know my sister and her son is not going to have a  
24 mother to be there when he grows up. And I ask the Lord to  
25 forgive me because I promise you I could never forgive you

1 for what you've done to my sister.

2 THE COURT: Thank you, ma'am.

3 MR. BARFIELD: She does have a ten year old son, Austin  
4 Taylor, who I think stays with his daddy now.

5 SPEAKER: I'm Molly Robertson, I was Tammy's aunt. I  
6 was a part-time mother too, Margie let her stay with us when  
7 she wanted to. And this girl out here on drugs and rock and  
8 crack and all of that, this child had a home paid for. She  
9 had an eight year old son. She had a husband that had been  
10 there with her for ten years. She had two sisters. She had  
11 a brother. She had a daddy, and her daddy was bent over  
12 dead, my brother fell over dead two and a half months after  
13 they slaughtered my Tammy, my precious little old Tammy. I  
14 don't understand it. I pray and pray God help me understand  
15 it. And I've got to forgive him, I have got to forgive him  
16 so Jesus will forgive me but it's so hard and it's so hard  
17 to do. I just want to ask him one thing, what did you do  
18 with my Tammy's eyeballs? Tammy didn't have no eyes. God  
19 sent an angel to take her soul, she's in heaven now with  
20 beautiful blue eyes. She come in hour house and she didn't  
21 steal nothing from nobody. And I could give her my  
22 checkbook and she would go to the store and sign my name,  
23 bring back my checkbook and never took a penny from none of  
24 us, never asked us for nothing. I'm so sorry for -- I'm so  
25 sorry for Harris' mother and his family, I'm so sorry for my

1 poor little old Tammy. I know she's in heaven and pray for  
2 her little son.

3 SPEAKER: I'm Tammy's cousin and I have a shirt on  
4 today praying for justice. Nobody deserved what he did to  
5 her, nobody did, not even him and he don't deserve it  
6 either. But I do ask that you will think about the stiffest  
7 that you can give him because I don't want it to happen to  
8 anybody else. And maybe when he gets older or whatever just  
9 think about that, please.

10 THE COURT: Ma'am, could you state your full name  
11 please? I'm sorry.

12 SPEAKER: I'm Donna Henderson, I was a cousin to Tammy.

13 THE COURT: Thank you so much.

14 SPEAKER: Your Honor, my name is Tina Gardner, I'm  
15 standing here today on behalf of my youngest cousin, Tammy  
16 Whitley. This is her at Christmastime, this was 2006, her  
17 and her son Austin, she was taken away four months later  
18 when he was eight years old. He will never have another  
19 memory of his mother, he will never have another holiday, he  
20 will never have a parental guidance by his mama and he will  
21 never have that. Instead he have will have a memory of how  
22 she was slaughtered but this man who killed her what I  
23 consider overkill, over and over and over. This DA says  
24 that he wasn't violent but yet they say he shot his cousin  
25 two days before. When he was out of that car after shooting

1 her in the ear why didn't he leave? Why didn't he just  
2 leave? It couldn't have been self-defense. He could have  
3 got away before he cut her throat and bludgeoned her with a  
4 rock, set her on fire. I mean over and over and over and he  
5 tried to kill her, so I'm asking -- I am praying for justice  
6 for Tammy today. But Morris, I do forgive you because I'm a  
7 christian and in order to be forgiven I have to forgive you  
8 so Jesus will forgive me. But I pray your family will never  
9 have to endure what we have endured for two years for what  
10 you have done to Tammy and this family and this little boy,  
11 Austin, by taking his mama.

12 THE COURT: Thank you so much for coming.

13 SPEAKER: We had two funerals in three months, buried  
14 my Tammy, it was like my daughter, I half raised her and my  
15 brother, I raised him because his mother died when he was  
16 eight and I was 18.

17 THE COURT: Thank you, ma'am.

18 SPEAKER: I lost my brother and daughter in three  
19 months time together. It's hard, so hard.

20 MR. FRICK: Your Honor, permission to speak?

21 THE COURT: Yes, sir.

22 MR. FRICK: Mr. Harris had something he wanted to  
23 address, Your Honor.

24 THE DEFENDANT: I really hate to bring it up like this,  
25 but me and Tammy did have a conversation on that night and

1 she did let me know that her and her family wasn't on the  
2 best terms. And I was trying to explain to her that I have  
3 a family and I was trying to explain to her that she needed  
4 to make amends with her family and she said she hadn't been  
5 with her family for like over 35 days and I was trying to  
6 explain to her it's more to life than is out here in these  
7 streets and getting high. And at the same time the  
8 situation occurred, something happened and their family is  
9 maybe closer together because of that, because before that  
10 incident that family didn't have that bond. And I think --  
11 like I say, I hate to mention it like this but they're  
12 trying to make me look like an animal or beast or something.  
13 Even on Mr. Barfield when I went up on my bond hearing they  
14 saying that I didn't even know that that was her family but  
15 I know because I have been to her store plenty of times.  
16 When they set my bond they tried to make it sound like I  
17 wanted to do the family harm, I didn't know that was the  
18 same family, Your Honor.

19 THE COURT: Well, Mr. Harris, as nice as I can say it,  
20 nicely as I can say it, your final comment really reamed  
21 hollow. It is contrary to the feelings of remorse that your  
22 attorney attempted to convince the Court that you were  
23 feeling and now you want me to look at it as a way that you  
24 have caused this family to come together as a unit, that  
25 your actions, one of the most brutal killings that I've

1 encountered during my ten years on the bench, somehow I  
2 don't think that you had helping this family in mind when  
3 you did that. What you did to this person was horrific and  
4 it was certainly not undertaken by you with the spirit  
5 toward bringing the family together, and for you to come  
6 into court today and to attempt to capitalize on that, I  
7 must tell you that that's pretty incredible to me that you  
8 would even suggest something along those lines. Anything  
9 additionally, Mr. Frick?

10 MR. FRICK: No, sir.

11 THE COURT: Mr. Solicitor?

12 MR. BARFIELD: No, sir.

13 THE COURT: In a plea situation I seldom give the  
14 maximum sentence but you received mercy by having this plea  
15 made available to you. The murder charge was reduced, the  
16 kidnapping, use of a violent weapon, so I think that the  
17 mercy that I might would normally extend to some degree in a  
18 plea that you have received in huge portions. I hope the  
19 family can bring some closure to the suffering that you've  
20 experienced and I can only imagine how painful and hurtful  
21 that this entire experience has been for you. Sentence of  
22 the Court is 30 years. Good luck.

23 (End of the hearing.)

24

25

1 I, the undersigned, Michael C. Watkins, Official Court  
2 Reporter for the Sixth Judicial Circuit of the State of South  
3 Carolina, do hereby certify that the foregoing is a true,  
4 accurate and complete transcript of record of the proceedings  
5 had and evidence introduced in the trial of the captioned  
6 case, relative to appeal, in the Court of General Sessions  
7 for Lancaster County, South Carolina, on the 30th day of  
8 March, 2009.

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


11

12

July 25, 2013

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14

  
Michael C. Watkins  
Court Reporter

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IN THE STATE OF SOUTH CAROLINA  
in The Supreme Court

APPEAL FROM LANCASTER  
Court Of General Session

Circuit Court Judge  
Kenneth Grodz

Case No.  
1124613

STATE OF SOUTH CAROLINA  
VS  
Morris Calvin Harris # 9920410

NOTICE OF APPEAL

Morris Harris appeals his conviction and sentence in this case. The sentence was imposed by the (Honorable) Kenneth Grodz on Date 3-30-09

S/ Morris C. Harris

Sworn to and Subscribed before me  
This 9 day of April 2009

[Signature]  
Notary Public for South Carolina  
My Commission Expire on: My Commission Expires November 8, 2012

IN THE STATE OF South Carolina  
In The Supreme Court

APPEAL FROM Lower Court  
Court of General Session

Circuit Court Judge

Kenneth Coates

Case No.

K 134613

STATE of South Carolina

vs

Morris Deane #071040

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Henny  
McDowell 4-09-09, Attorney General, by depositing a copy of it  
in the United States mail, postage prepaid, on (date), addressed  
to him at P. O. Box 11549, Columbia, SC 29211

s/ Notary Public

Sworn to and Subscribed before me

this 9 day of April 2009

Heath D. [Signature]

Notary Public for South Carolina Commission Expires November 3, 2017

My Commission Expires on: \_\_\_\_\_

The South Carolina Court of Appeals

RECEIVED

MAY 27 2009

ATTORNEY GENERALS OFFICE

The State,

Respondent,

v.

Morris Calvin Harris,

Appellant.

The Honorable Kenneth G. Goode  
Lancaster County  
Trial Court Case No. 2007-GS-29-00891

ORDER of DISMISSAL

The above entitled case is pending on appeal in this Court. Due to the failure of Appellant to timely order the transcript in the above matter, as provided for in Rule 207 of the South Carolina Appellate Court Rules, and /or failure to serve and file Appellant's Initial Brief and Designation of Matter as provided for in Rules 208 and 209.

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in this case will be sent to the Clerk of Court for Lancaster County after fifteen (15) days, exclusive of the date of filing this Order.

*J. F. Barber*  
Clerk

Columbia, South Carolina

5/26/2009

cc: Chief Appellate Defender Joseph L. Savitz, III  
Morris Calvin Harris # 292040  
Assistant Deputy Attorney General Salley W. Elliott  
The Honorable Jeff L. Hammond

# The South Carolina Court of Appeals

The State,

Respondent,

v.

Morris Calvin Harris,

Appellant.

The Honorable Kenneth G. Goode  
Lancaster County  
Trial Court Case No. 2007-GS-29-00891

REMITTITUR

CLERK OF COURT  
LANCASTER, SC

2009 JUN 16 A. 11: 58

FILED  
OFFICE OF CLERK  
OF COURT

No Petition for Reinstatement having been filed in the above matter since issuance of this Court's Order dated May 26, 2009,

IT IS SO ORDERED that the above appeal be and hereby is remitted to the Clerk of Court for Lancaster County.

*Jennette F. Barber*, Clerk

Columbia, South Carolina

6/12/2009

Original to: The Honorable Jeff L. Hammond

cc: Chief Appellate Defender Joseph L. Savitz, III  
Morris Calvin Harris # 292040  
Assistant Deputy Attorney General Salley W. Elliott  
The Honorable Jeff L. Hammond  
The Honorable Kenneth G. Goode

FORM 5

STATE OF SOUTH CAROLINA

FILED  
OFFICE OF CLERK  
OF COURT

IN THE COURT OF COMMON PLEAS

County of LANCASTER

2012 OCT 26 PM 2:04

MORRIS Calvin HARRIS

Full name and prison number (last) of Applicant

CLERK OF COURT  
LANCASTER, SC

2012 CP-29-1534

APPLICATION FOR

POST-CONVICTION RELIEF

State of South Carolina

INSTRUCTIONS B READ CAREFULLY

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

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

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

1 Place of detention: ~~Lancaster County Correctional Center~~  
McGORMICK CORRECTIONAL INSTITUTION

2 Name and location of Court which imposed sentence: LANCASTER COUNTY  
COURT OF GENERAL SESSION

3 Name(s) of co-defendant(s) (if any): None

4 The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

①: K124613 - Voluntary manslaughter

(b) 2007-GS-29-891

(c) DDER

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

(a) 30-years

(b) MARCH 30, 2009

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

6 Check whether a finding of guilty was made

(a) after a plea of guilty \_\_\_\_\_

(b) after a plea of not guilty \_\_\_\_\_

(c)  after a plea of nolo contendere \_\_\_\_\_

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

No.

8 If you answered Yes to (7), list:

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

i. \_\_\_\_\_

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

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

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

i. \_\_\_\_\_

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

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

(c) the date of each such result:

i. \_\_\_\_\_

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

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

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

i. \_\_\_\_\_

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

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

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

(a) Counsel Failed To File notice of appeal

(b) \_\_\_\_\_

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

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

(a) ineffective assistance of Trial Counsel

(b) \_\_\_\_\_

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

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

(a) Counsel Failed To File appeal after I Requested him

(b) To and I did not waive That Right.

(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. \_\_\_\_\_

\_\_\_\_\_

(c) the disposition thereof:

N/A

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(d) the date of each such disposition:

N/A

\_\_\_\_\_

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

N/A

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\_\_\_\_\_

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

No

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

(a) which grounds have been presented.

N/A

\_\_\_\_\_

\_\_\_\_\_

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

N/A

\_\_\_\_\_

\_\_\_\_\_

16. If any ground set forth in (11) 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) Denial of Due Process and equal protection
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? Yes.
- (b) your trial, if any? Yes.
- (c) your sentencing? Yes.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No.
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No.

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

- (a) the name and address of each attorney who represented you.
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Plea
  - ii. TRIAL
  - iii. \_\_\_\_\_

19 State clearly the relief you seek in filing this application

Appeal

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

No.

Revised 3 2003

STATE OF SOUTH CAROLINA

VERIFICATION

County of hancaster

I, \_\_\_\_\_, 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.

Mr. Morris O'Harris

SWORN to and subscribed before me this 3 day of October 2012

Jay L Young (L.S.)  
Notary Public

My Commission Expires: 10 11 2021

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

I, Mr. Morris C. Harris, 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.

Mr. Morris C. Harris  
Applicant

SWORN or affirmed to and subscribed before me this

3 day of October, 2012.

Joyce L. Young  
Notary Public

My Commission Expires: 10 11 2021

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LANCASTER )  
 )  
 Morris Calvin Harris, #292040, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 SIXTH JUDICIAL CIRCUIT

2012-CP-29-1534

RETURN

FILED  
 OFFICE OF CLERK  
 OF COURT  
 JUL - 9 AM  
 CLERK OF COURT  
 LANCASTER, SC

The Respondent (the State), making its Return to the application for Post-Conviction Relief (PCR) filed October 26, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lancaster County. The Applicant was indicted at the December 2008 term of the Grand Jury for Lancaster County for murder (07-GS-29-0891). He was represented by William P. Frick, Esquire. On March 30, 2009, the Applicant pled pursuant to N.C. v. Alford to the lesser included offense of voluntary manslaughter. He was sentenced by the Honorable Kenneth G. Goode to confinement for a period of thirty years.

Upon information and belief, the Applicant filed a *pro se* notice of appeal. However, the South Carolina Court of Appeals dismissed the Applicant's appeal for failure to timely order the transcript by Order dated May 26, 2009. The Remittitur was returned on June 12, 2009.

Attached herewith and incorporated herein by reference are the records of the Lancaster County Clerk of Court regarding the subject conviction(s) and the Applicant's records from the South Carolina Department of Corrections.

II.

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

1. Ineffective assistance of trial counsel, in that;
  - a. Counsel failed to file direct appeal as instructed by Applicant.

III.

Respondent submits that any claims other than the claim for belated direct appeal are barred by the statute of limitations. The Applicant has alleged that he is entitled to a review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). The Respondent submits that the Applicant cannot satisfy the requirements set forth in the Roe test. However, the allegation of counsel's failure to advise the Applicant regarding the possibility of an appeal probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue.

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.

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

V.

WHEREFORE, having made its Return, the State requests that a hearing be held solely on the right to a direct appeal.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOT  
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE  
Assistant Attorney General

By:

  
Attorneys for the Respondents

Office of the Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211  
(803) 734-3737

July 5<sup>th</sup>, 2013.

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STATE OF SOUTH CAROLINA  
COURT OF GENERAL SESSIONS  
COUNTY OF LANCASTER  
2012-CP-29-01534

Morris Harris  
vs.  
State of South Carolina

Lancaster, South Carolina  
August 5, 2013  
Before the Honorable Clifton Newman

APPEARANCES

For the State: Suzanne White  
For the Applicant: Charles Brooks  
  
Reported by: Michael C. Watkins  
Official Court Reporter

1	Steve McFarland:	5
2	William Frick:	15
3	Certificate:	25
4		
5	NO EXHIBITS	
6		
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1 MS. WHITE: This is the case of Morris Calvin Harris  
2 versus the State, case number 2012-CP-29-1534. He is  
3 represented today by Mr. Charles Brooks. Mr. Harris was  
4 originally indicted December of '08 for murder charges for a  
5 charge of murder -- excuse me, pled pursuant to North  
6 Carolina V. Alford on March 30, 2009 to a charge of  
7 voluntary manslaughter, he did receive a sentence of 30  
8 years. There was no appeal filed. He filed this action on  
9 October 26, 2012 alleging that counsel failed to file a  
10 notice of appeal. Your Honor, the State has moved to  
11 dismiss any and all claims other than a request for a review  
12 of his direct appeal issues, a belated review of that,  
13 because he filed it more than a year and a half, or almost  
14 two years after the statute of limitations had expired, and  
15 so we submitted that in turn with our motion to dismiss.  
16 But at this point I can turn it over to Mr. Brooks.

17 THE COURT: All right. Mr. Brooks?

18 MR. BROOKS: If it please the Court, Judge? We  
19 understand the State's motion but bearing in mind that this  
20 gentleman is serving a 30 year sentence and obviously is not  
21 knowledgeable about the law, we would ask the Court to allow  
22 him to go forward on this PCR. Judge, it is a relatively  
23 short PCR in terms of the transcript, there's only 35 pages  
24 and it was a plea. And obviously I told him he would be  
25 granted his right to have an appeal of that, so --

1 THE COURT: As far as the law is concerned the  
2 prevailing cases, if you don't file the PCR within the  
3 period of time of the statute of limitations -- has this  
4 issue been addressed by the appellate courts as to whether  
5 you can nevertheless proceed with a PCR anyway because you  
6 didn't have a lawyer or know the law, or is he limited to  
7 the -- did you say direct appeal issue?

8 MS. WHITE: Yes, Your Honor. I believe the case law is  
9 pretty straight-forward that says that ignorance of the law  
10 in this case is not a defense, and that statute of  
11 limitations must be followed whether or not they were  
12 represented by an attorney or advised -- an attorney does  
13 not even need to advise him of the right to PCR so this is  
14 something that's purely --

15 THE COURT: And at this point he's limited to what as  
16 far as the cases are concerned?

17 MS. WHITE: At this point he would be limited to the  
18 determination of whether or not he has the right to a  
19 belated review of his direct appeal issues.

20 THE COURT: Belated review of his direct appeal issues.

21 MS. WHITE: A White v. State appeal, Your Honor, which  
22 is essentially in this case because it was a guilty plea  
23 looking at the case law you look at whether or not he asked  
24 counsel to appeal or in the alternative whether or not the  
25 case, there was such a substantial factor that would cause

1 counsel to think that he would want to appeal.

2 THE COURT: Mr. Brooks, what's your position on all  
3 that?

4 MR. BROOKS: Judge, my position is that I understand  
5 the case law that Ms. White is talking about. Bear in mind  
6 I'm just trying my best to advocate for my client. He has a  
7 plea for which he received a 30 year sentence and he does  
8 want to have -- he does want to challenge that plea. I  
9 understand that he filed it, he pled in March of 2009 in  
10 front of Judge Goode and he did file the application October  
11 of 2012, he did file it October of 2012.

12 THE COURT: And the plea was under North Carolina  
13 versus Alford so it wasn't a matter of admitting guilt or  
14 not, he opted to, according to what you just said, plead  
15 under North Carolina versus Alford. All right. We'll  
16 proceed and see where it goes.

17 MR. BROOKS: Appreciate it. We call Mr. Harris to the  
18 stand.

19 The witness, MORRIS HARRIS, was first duly  
20 sworn and testified as follows, on:

21 DIRECT EXAMINATION

22 BY MR. BROOKS:

23 Q. Mr. Harris, how are you doing today?

24 A. Been a little bit better, sir.

25 Q. Now, you filed this post conviction relief application.

## TESTIMONY OF MORRIS HARRIS

1 A. Yes, sir.

2 Q. And you and I talked on the phone about it. And you  
3 understand the only relief that Judge Newman can grant you,  
4 do you understand that?

5 A. Yes, sir.

6 Q. If the sun, moon and stars all line up the only thing  
7 we can do is give you a new trial and start back over. I  
8 talked to you about the computer game, press the reset  
9 buttons and start all back over, you understand that?

10 A. Yes, sir.

11 Q. And you understand that you got a plea to 30 years and  
12 if you ended up starting back over you could get life.  
13 You've got to speak up now.

14 A. Yes, sir, I understand that.

15 Q. Let me tell you this, the gentleman sitting right here,  
16 he can't take down nodding of the head and nuh-uh's so you  
17 have got to speak up.

18 A. Yes, sir.

19 Q. Knowing that you still want to go forward and ask the  
20 judge to set aside this plea; is that right?

21 A. Yes, sir.

22 Q. Now, you had Mr. Frick as your lawyer.

23 A. Yes, sir.

24 Q. Now, why do you want this thing set aside?

25 A. Well, when I came up for a trial I had asked him --

## TESTIMONY OF MORRIS HARRIS

1 THE COURT: Just one moment, sir. Yes, ma'am?

2 MS. WHITE: I'm sorry, Your Honor. Just for the record  
3 I do want to object to any issues -- I know we filed our  
4 motion to dismiss -- to any issues other than the review of  
5 his direct appeal issue and whether or not he's entitled to  
6 that, the State would just place an objection on the record.

7 THE COURT: All right. The objection is noted and I  
8 guess we're for the most part in background now at this  
9 point, so you may proceed.

10 Q. So why do you want this set aside, Mr. Harris?

11 A. Well, up under ineffective assistance of trial counsel,  
12 I don't feel like he did all he could at the time the trial  
13 was going on.

14 Q. Okay. What do you think he should have done?

15 A. For one I think he should have had the witnesses come  
16 that the State had received statements from and should have  
17 cross examined the witnesses.

18 Q. Well, why did you plead?

19 A. Because when I asked him -- well, the solicitor said  
20 that the witnesses didn't show up so I asked him to make a  
21 note of that and he didn't seem that it really mattered  
22 whether the witness came or not. And I feel like that was a  
23 major issue because that's what the State built their case  
24 around.

25 Q. Well, Mr. Harris, them sound like good reasons for

## TESTIMONY OF MORRIS HARRIS

- 1 going to trial.
- 2 A. Yes, sir.
- 3 Q. Why did you plea?
- 4 A. Because I didn't feel like I was being represented to
- 5 the fullest of his potential according to the law.
- 6 Q. Did you ask to get another lawyer?
- 7 A. No, sir.
- 8 Q. Did you understand when Judge Goode was asking you
- 9 these questions, did you understand his questions?
- 10 A. Not at the time because he didn't really explain -- he
- 11 didn't really explain to me the rights that I had, he didn't
- 12 explain to me the rights that he was facing.
- 13 Q. When you say he, are you talking about Mr. Frick or
- 14 Judge Goode?
- 15 A. Judge Goode.
- 16 Q. So you didn't understand his question to you about
- 17 taking this deal under North Carolina versus Alford, you
- 18 didn't understand that?
- 19 A. No, sir.
- 20 Q. How far did you go in school?
- 21 A. I completed the 11th grade but I got my GED later.
- 22 Q. And what did you do for a living?
- 23 A. Brick mason.
- 24 Q. Brick mason?
- 25 A. Yeah.

## TESTIMONY OF MORRIS HARRIS

1 Q. Okay. All right. And what other reason do you want  
2 this plea set aside?

3 A. Well, for one I wasn't the actual person that committed  
4 the crime.

5 Q. Okay. All right. And is that why you want the plea  
6 set aside?

7 A. Yes, sir.

8 Q. You told your lawyer that?

9 A. Yes, sir. I made a note of it during the trial.

10 Q. And you're saying you took the deal because you felt  
11 like your lawyer wasn't going to fight for you?

12 A. Yes, sir.

13 Q. Now, if you win and convince Judge Newman to open this  
14 case up and you went back around, what has changed? Why  
15 would you go to trial this time if you had that opportunity?

16 A. For one I could have a different attorney. And then I  
17 know a lot more about the case now than I did when I  
18 actually went to court.

19 Q. What do you know now that you didn't know then?

20 A. Well, for one the people that was involved in it. I  
21 actually found out that somebody was arrested for the  
22 charge.

23 Q. You found out that somebody else was arrested for the  
24 charge?

25 A. Yes, sir.

## TESTIMONY OF MORRIS HARRIS

1 Q. Did you find that out after you pled guilty?

2 A. Yes, sir.

3 Q. How did you find that out?

4 A. Because the person that was originally arrested for the  
5 charges came to the courtroom to see who I was when the  
6 trial was going on, like at the end of the trial, that's  
7 when I found out that they was actually outside in the  
8 lobby.

9 Q. Is that something like your family told you about or  
10 something like that?

11 A. It wasn't a family member but it was someone that knew  
12 my family.

13 Q. How long were you in jail -- well, let me ask you this,  
14 were you out on bond?

15 A. I never -- I got a bond but I never got out.

16 Q. Okay. How long were you in -- how long were you in  
17 jail before your case came up and you pled, do you remember?

18 A. Almost two years.

19 Q. Okay. And did Mr. Frick represent you the whole time?

20 A. Well, as far as I can remember he did. I don't  
21 think -- I don't think he showed up for the preliminary  
22 hearing, they was telling me that the lawyer didn't have to  
23 be present. But I found out that due to the evidence that's  
24 being presented at the preliminary hearing and seeing as  
25 though the crime I was charged with I should have had a

## TESTIMONY OF MORRIS HARRIS

1 lawyer representing me at the preliminary hearing.

2 Q. And I asked you before, it's your desire to have this  
3 plea overturned and start over; is that right?

4 A. Yes, sir.

5 Q. Is there anything else you want to tell the Judge on  
6 your behalf that we haven't covered?

7 A. Well, when I asked him what was I facing Mr. Frick was  
8 telling me at the time the most that I was facing was 40  
9 years, and I found out later I was facing more than 40 years  
10 and. I was trying to figure out why was he telling me I was  
11 facing 40 years on the charge and I was facing more than  
12 that.

13 Q. Well, let me tell you this, if you win your PCR you go  
14 back and face murder.

15 A. I understand that, sir.

16 Q. And you understand that's 30 to life.

17 A. I understand that, sir.

18 Q. So you're clear about that now.

19 A. Yes, sir.

20 Q. And you want to go back and face that.

21 A. Yes, sir. Because it's different ways I can actually  
22 be charged. I'm more knowledgeable now under the crime and  
23 what it carried, when the crime was going and I was trying  
24 to get statutes on what I was and all of that and nobody  
25 wouldn't give me nothing.

## TESTIMONY OF MORRIS HARRIS

1 Q. Is there anything else you want to say about your case  
2 that I haven't covered?

3 A. I think that's pretty much it. That's pretty much the  
4 only thing I can speak on right now.

5 MR. BROOKS: All right. Answer any questions of the  
6 attorney general.

## 7 CROSS EXAMINATION

8 BY MS. WHITE:

9 Q. Mr. Harris, this did start off as a trial, didn't it?

10 A. Yes, ma'am.

11 Q. And y'all had started a Jackson v. Denno, or a hearing  
12 about whether or not the statement you had given the police  
13 was voluntary; is that right? Do you recall?

14 A. I think they did have that hearing.

15 Q. Okay. Did you not tell your attorney at that time in  
16 the middle of the hearing that you wanted to not have a  
17 trial and you wanted to plead guilty?

18 A. No, ma'am. That was not when I told him that I wanted  
19 to take a plea. I actually asked him permission for me to  
20 take the stand and he advising me not to take the stand, and  
21 I told him I wanted to take the stand because I felt like  
22 some things needed to be put on the record.

23 Q. Now, the evidence -- they had your statement in which  
24 you confessed to the crime; is that right?

25 A. None of that was never presented or spoke on during the

## TESTIMONY OF MORRIS HARRIS

1 trial, before the trial, two days that it went on.

2 Q. If you had gone to trial the State intended to try and  
3 present a statement that you had given in which you  
4 confessed to the crime; is that right?

5 A. If they did I don't have no knowledge of that, ma'am.

6 Q. Did you give a statement to the police confessing the  
7 crime?

8 A. They -- I assisted them during the investigation. I  
9 don't remember giving them a statement, no.

10 Q. Okay. Do you recall the solicitor during your plea  
11 reading out the statement that you had given police?

12 A. He never did.

13 Q. If the transcript reflects that he read the entire  
14 statement out during your plea, would you agree that that  
15 probably occurred?

16 A. Like I said, I don't recall that and I never did -- I  
17 asked for a request of my transcript in '09 when I actually  
18 filed for my appeal on my own and they turned in, and I've  
19 got a memorandum where they sent to the court reporter that  
20 I just got back the cost for the transcript like two weeks  
21 ago.

22 Q. Okay.

23 A. So I don't know what's on the transcript because I  
24 never got the transcript.

25 Q. Okay. At the time, though, you talked with your

## TESTIMONY OF MORRIS HARRIS

1 attorney about the potential of what you were facing and  
2 decided that pleading guilty to an offer of voluntary was in  
3 your best interest.

4 A. I never pled guilty, I pled North Carolina versus  
5 Alford.

6 Q. I'm sorry, pled no contest essentially. But you  
7 decided that was in your best interest after talking with  
8 your attorney and starting a trial; is that right?

9 A. After taking the stand and getting certain things on  
10 record, yes, ma'am, I felt like that was in my best  
11 interest.

12 Q. Okay.

13 MS. WHITE: I think that's all I have, Your Honor.

14 THE COURT: All right.

15 MR. BROOKS: No other questions, Judge.

16 THE COURT: You may step down, sir.

17 MR. BROOKS: That's all of the witnesses we have,  
18 Judge.

19 THE COURT: All right. Anything by the State?

20 MS. WHITE: Your Honor, the State would call

21 Mr. William Frick to the stand.

22 THE COURT: All right.

23 The witness, WILLIAM FRICK, was first duly  
24 sworn and testified as follows, on:

25 DIRECT EXAMINATION

## TESTIMONY OF WILLIAM FRICK

1 BY MS. WHITE:

2 Q. If you would, state your name for the record.

3 A. William Patrick Frick.

4 Q. Mr. Frick, how had you become involved in this case?

5 A. I was, I think at the time this occurred, a contract  
6 attorney with the public defender's office here in Lancaster  
7 County and was assigned it that way.

8 Q. And did you have a chance to meet with Mr. Harris and  
9 talk with him about the facts and his -- any possible  
10 defenses?

11 A. I know I did. I know we met over at the detention  
12 center, I think he was incarcerated the whole time before  
13 the case went to trial. I cannot specifically remember how  
14 many times we spoke.

15 Q. And were you aware of the evidence that the State had  
16 and intended to use against him at a trial?

17 A. Yes.

18 Q. And can you explain a little bit about what they had?

19 A. It was a pretty severe charge. The victim in the case  
20 had been shot, cut, hit, burned and left on a rural road in  
21 Kershaw County. We were going to argue about jurisdictional  
22 issues, I don't think we would have necessarily been  
23 successful with it but we didn't get to that point in the  
24 time. The event began in Lancaster County and I think the  
25 solicitor was relying on cellphone records to show that

## TESTIMONY OF WILLIAM FRICK

1 Mr. Harris' cellphone was last used in the area through  
2 whatever that magical triangulation thing they do. And  
3 Mr. Harris gave a statement, a pretty detailed statement,  
4 and, of course, we were in the process of doing a Denno  
5 hearing on that. There was a lot of issues -- and I think  
6 what they wanted to do and I think what the State was doing  
7 was they had removed a bullet from the victim, or a  
8 fragment, they had a bullet or a fragment from another case  
9 where either Mr. Harris was charged with shooting the victim  
10 in that case or was alleged to have shot the victim in that  
11 case and they were going to attempt to say it was the same  
12 bullet or could have been fired by the same gun. I don't  
13 think they had the gun, I can't remember. But there was  
14 going to be a Lyle issue, the Denno issue and, of course, we  
15 were going to attempt to argue something on jurisdiction.

16 Q. And, in fact, the other case where you said there was a  
17 bullet was a relative of his that he was alleged to have  
18 shot; is that correct?

19 A. I recall that being the case, yes.

20 Q. So that person identified him as shooting them?

21 A. I think so. I don't remember too much about that case,  
22 I just know they were going to rely on it.

23 Q. And in addition to his statement where he confessed to  
24 the crime, was there other witness testimony of seeing him  
25 and the victim previously together?

## TESTIMONY OF WILLIAM FRICK

1 A. I can't specifically recall, but I think there were  
2 folks who put them together and the last time the victim had  
3 been seen she was with him, I can't recall who those were.

4 Q. And in your conversations you said you had started the  
5 Jackson v. Denno hearing, at what point did it turn into  
6 this could be a plea?

7 A. Mr. Harris looked at me in the middle of somebody's  
8 testimony and indicated very strongly that he did not desire  
9 to proceed with the trial.

10 Q. And at that point did you have an offer from the State?

11 A. I didn't know whether there was an offer on the table  
12 or not. We had previously been given an offer of voluntary  
13 manslaughter. When Mr. Harris told me that he no longer  
14 wanted to proceed with the trial I walked over to the  
15 solicitor who I think might have still be examining a  
16 witness and asked him was voluntary still on the table, he  
17 indicated it was. So we took a break and had a conversation  
18 with Mr. Harris and entered this plea.

19 Q. And when you discussed with him the options to plead to  
20 voluntary, did you have a chance to talk with him about the  
21 time that he faced if he -- when he pled to voluntary?

22 A. Well, on the voluntary it was going to be a straight-up  
23 plea so it was going to be zero to 30. I had in my mind  
24 that we were probably looking at 20 or 25, which is my guess  
25 and I'm sure I probably indicated to him that that's what my

## TESTIMONY OF WILLIAM FRICK

1 guess was, because that's what I try to do whether that's  
2 what I'm supposed to do or not. I'm sure we had a  
3 conversation about what he was facing on the murder charge,  
4 and if I told him 40 years that was probably the same thing,  
5 my guess of what I thought the Judge would do at a  
6 sentencing.

7 Q. Did you also share with him the difference between  
8 murder being day for day and voluntary being --

9 A. I would imagine so but I don't specifically recall that  
10 conversation.

11 Q. At the time he obviously pled pursuant to North  
12 Carolina v. Alford. Was there anything that caused you to  
13 question the freely and voluntary nature of this plea for  
14 him?

15 A. He made it quite clear that he wanted to plead guilty,  
16 or pursuant to North Carolina versus Alford rather. As I  
17 indicated in the transcript, there were issues that we were  
18 trying to go forward on with the 404B stuff, the statement  
19 and the jurisdiction, and I think I made it clear in that  
20 transcript that I wanted to explore those issues. Mr.  
21 Harris, at least according to what I said in the plea  
22 colloquy, had indicated before that he wanted to just  
23 resolve this matter without necessarily going to trial.

24 Q. Did he ask you to file an appeal following the plea?

25 A. He did not. And since it's a plea and understanding

## TESTIMONY OF WILLIAM FRICK

1 the rules have been eviscerated so that it's really not of  
2 much good for folks to do that particularly if they think  
3 they've got PCR issues, on a plea unless you tell me I'm not  
4 going to file it.

5 Q. So there was no particular issue that you saw that  
6 would have been something causing you to think you would  
7 have won?

8 A. No. I didn't think we had any grounds and, if I would  
9 have filed an appeal if I did that would have been my  
10 statement of the appeal.

11 MS. WHITE: Thank you. Your Honor, that's all I have.

12 THE COURT: Mr. Brooks?

13 CROSS EXAMINATION

14 BY MR. BROOKS:

15 Q. Mr. Frick, is it fair to say that you were on this case  
16 for about two years?

17 A. That sounds right, yes, sir.

18 Q. And you don't know how many times you talked to him but  
19 you do know you talked to him in preparation of this case.

20 A. Yes, sir.

21 Q. And the case actually started off in the posture of a  
22 trial.

23 A. Correct.

24 Q. And you're saying that it was Mr. Harris that indicated  
25 to you that he wanted to not go forward with the trial.

## TESTIMONY OF WILLIAM FRICK

1 A. I remember very specifically Mr. Harris looked at me  
2 and said he didn't want no God damn trial.

3 Q. Okay. Did he tell you why?

4 A. No, sir. I thought he made the right decision with  
5 that, though, given what evidence that we believed the State  
6 was going to get in. As I said, we didn't have the  
7 evidentiary hearings but I didn't think we would be  
8 successful on that. I felt this was more of a case where I  
9 was building more of an appellate record for him rather than  
10 really having issues that we were going to be successful on.

11 Q. And the 30 years, that was not a negotiated sentence or  
12 recommended, that was purely from Judge Goode.

13 A. It was a straight-up plea.

14 Q. Mr. Frick, this is a straight-up plea as you're saying;  
15 is that right?

16 A. To voluntary.

17 Q. But Mr. Barfield, the solicitor, he got on the record  
18 and he said, "We want 30 years."

19 A. He did, that's correct.

20 Q. And to your knowledge that's still considered a  
21 straight-up plea.

22 A. Yes, sir. The way I view a straight-up plea is the  
23 solicitor is going to ask for what he wants and many times  
24 I'll ask for exactly what I want.

25 Q. And that's a straight-up plea.

## TESTIMONY OF WILLIAM FRICK

1 A. That's straight-up. There was not a recommendation of  
2 the maximum sentence, it wasn't a negotiated 30 years. We  
3 were going in there arguing trying to get less than 30, and,  
4 of course, I fully expected because of the allegations in  
5 the case that the solicitor was going to ask for 30.

6 Q. All right.

7 MR. BROOKS: Beg the Court's indulgence, Your Honor.

8 (Break in proceedings.)

9 MR. BROOKS: No other questions, Judge.

10 MS. WHITE: Nothing further, Your Honor. And the State  
11 has no other witnesses, Your Honor.

12 THE COURT: All right. Mr. Brooks?

13 MR. BROOKS: Judge, obviously that's our case. We  
14 would respectfully ask the Court to grant Mr. Harris' post  
15 conviction relief application and give him a new trial.

16 THE COURT: All right. Ms. White?

17 MS. WHITE: And Your Honor, obviously the State  
18 disagrees. And I think the applicant himself said that he  
19 chose to make the decision to plead at the time when they  
20 started the trial because he thought it was in his best  
21 interest to plead pursuant to Alford once it started, and I  
22 think that in and of itself would deny his application  
23 stating that he did think he wanted to plead and there was  
24 nothing that had led him to that decision, it was made  
25 freely and voluntarily.

1 THE COURT: And regarding this belated appeal issue,  
2 what is the State's position?

3 MS. WHITE: Your Honor, the Roe v. Flores-Ortega case I  
4 think is on point with the issue of a direct appeal from a  
5 guilty plea if in the absence of the applicant requesting  
6 for counsel to appeal, counsel has to see a significant  
7 issue or an issue substantially that would cause him to  
8 think that the applicant would want to appeal. And I think  
9 in this case it's clear that that did not occur and  
10 therefore I think that that as well should be denied.

11 THE COURT: All right. And the test for that is, as I  
12 referenced in the return here, whether a rational defendant  
13 would want to appeal or that this defendant reasonably  
14 demonstrated that he was interested in appealing.

15 MS. WHITE: Yes, Your Honor. And I think that's about  
16 the duty to consult. So in the absence of actually being  
17 told he wanted to appeal that's what has to be determined as  
18 to whether or not counsel should have talked to someone  
19 during a guilty plea about the possibility of an appeal.

20 THE COURT: And in this case how does it factor in this  
21 matter?

22 MS. WHITE: I think, Your Honor, in this case he pled  
23 straight-up. He was, not, you know, thinking that there was  
24 going to be any other additional negotiated sentence or  
25 anything. He received the benefit of the plea, which was

1 voluntary rather than murder. So I think as indicated by  
2 Mr. Frick there was no issue that he thought would need to  
3 be appealed or that a rational defendant -- that in this  
4 case he would want to appeal the decision of the Court  
5 because of what he wanted, which was to plead to the lesser  
6 charge.

7 THE COURT: So it's the State's position that the Court  
8 should deny his request to file a direct appeal as well?

9 MS. WHITE: Yes, Your Honor.

10 THE COURT: And the defense's position regarding that?

11 MR. BROOKS: Is that he should be granted his appeal as  
12 well as his PCR that he has testified to, Judge.

13 THE COURT: From reviewing the transcript and listening  
14 to the testimony it appears that the defendant was well  
15 represented during the trial, that Mr. Frick was on top of  
16 everything in relation to this matter, that the defendant  
17 freely and voluntarily pled guilty under North Carolina  
18 versus Alford. This was a heinous and brutal crime in which  
19 any expectation of less than the maximum sentence would have  
20 been wishful thinking by the defendant which is probably why  
21 he decided that he wanted to plead guilty. Mr. Frick said  
22 in the transcript that, "Your Honor, our discussion was that  
23 he is pleading under this, maintaining his innocence and I  
24 will go into that later in mitigation and it is without  
25 recommendation so I believe we are looking at zero to 30,

1 and that that's a violent and a no-parole offense." So  
2 while the Court was undergoing the colloquy with the  
3 defendant, also reviewing the Blair hearing, that he was  
4 found to be competent to stand trial, and having all of that  
5 discussion with the defendant, the defendant clearly  
6 indicated that he wanted to plead guilty to the charge. And  
7 based on the nature of the crime committed, the admissions  
8 of the defendant in the record it does not appear to me that  
9 any rational defendant would want to appeal or that this --  
10 this defendant, Mr. Harris, demonstrated any interest in  
11 wanting to appeal. So therefore I deny the PCR and the  
12 appeal.

13 (End of the hearing.)

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1 I, the undersigned, Michael C. Watkins, Official Court  
2 Reporter for the Sixth Judicial Circuit of the State of South  
3 Carolina, do hereby certify that the foregoing is a true,  
4 accurate and complete transcript of the proceedings had and  
5 evidence introduced in the trial of the captioned case,  
6 relative to appeal, in the Court of Common Pleas for  
7 Lancaster County, South Carolina, on the 5th day of August,  
8 2013.

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


11

12

February 7, 2014

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14

  
Michael C. Watkins  
Court Reporter

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(Reported by Margaret A. Woods, edited by

17

Michael Watkins)

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LANCASTER )  
 )  
 Morris Calvin Harris, #292040, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 SIXTH JUDICIAL CIRCUIT

2012-CP-29-1534

**ORDER OF DISMISSAL**

FILED  
 OFFICE OF CLERK  
 OF COURT  
 LANCASTER, SC  
 2012 DEC 16 AM 11:51

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 26, 2012. The Respondent made its Return on or about June 25, 2012. An evidentiary hearing into the matter was convened on August 5, 2013, at the Lancaster County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks III, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. William P. Frick, Esquire, also testified. This Court also had before it a copy of the records of the Lancaster County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the Appellate Court records, and the plea transcript.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. The Applicant was indicted at the December 2008 term of the Lancaster County Grand Jury for murder (2007-GS-29-0891). The Applicant was represented by William P. Frick, Esquire. On March 30, 2009, the

Applicant pled guilty pursuant to N.C. v. Alford to the lesser included offense of voluntary manslaughter. The Applicant was sentenced by the Honorable Kenneth G. Goode to confinement for a period of thirty years.

Upon information and belief, the Applicant filed a *pro se* notice of appeal. The South Carolina Court of Appeals dismissed the appeal for failure to timely order the transcript by Order dated May 26, 2009. The Remittitur was returned on June 12, 2009.

### ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
  - a. Counsel failed to file a notice of appeal.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony 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

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v.

Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

The Applicant testified that he began with a trial on the charge, but did not think he was being represented well. Applicant testified that he did not understand what Judge Goode was saying during the guilty plea and wants to have the plea set aside because he is innocent. However, Applicant testified that he thinks it was in his best interest to plead pursuant to Alford once the trial started because Counsel told him he could potentially receive forty years.

Counsel testified that he represented the Applicant on this charge for two years. Counsel testified that the charge was serious because the victim was cut, shot, beaten, and then burned. Counsel testified that there was evidence that linked the Applicant based on a bullet from another

case. Counsel testified that the Applicant gave police a statement and during the Jackson v. Denno hearing, the Applicant informed Counsel that he did not want to go through with a trial. Counsel testified that he discussed with the Applicant the fact that voluntary manslaughter carried from zero to thirty years and the fact that the plea was straight up with no recommendations or negotiations. Counsel testified that he believes Applicant made the right decision to plead guilty based upon the evidence and lack of possible success on pre-trial issues.

Counsel also testified that the Applicant did not ask him to file a notice of appeal and Counsel saw no issues that could be brought up on appeal.

This Court finds that Counsel's testimony is most credible. This Court finds that the Applicant was well-represented at trial and ultimately the plea. This Court also finds that the Applicant pled pursuant to Alford freely and voluntarily. This was a brutal crime and any possibility of less than the maximum sentence for voluntary manslaughter was purely wishful thinking. The record is clear that there were no recommendations or negotiations for a particular sentence. Further, the record is clear that the Applicant had made certain admissions in his statement, that had it not been suppressed, would have made a conviction almost guaranteed.

The Applicant has alleged that he is entitled to a review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). This Court does not find any indication that the Applicant or any rational defendant would want to appeal the plea.

This Court cannot find any deficiency on Counsel's behalf in his representation of the

Applicant. Therefore, this Court finds that the Applicant failed to meet his burden of proof as to these claims and they are denied and dismissed.

#### *Summary*

This Court finds in regards to the allegation of ineffective assistance of counsel, the Applicant's testimony is not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

#### **CONCLUSION**

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

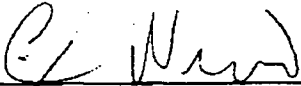
This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the

appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 12<sup>th</sup> day of December, 2013.

  
 \_\_\_\_\_  
 Clifton Newman  
 Presiding Judge

WITNESSES

Bowers - LCSO #07-9445

§ 52B

DOCKET NO. 2007-GS-29-891

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

DECEMBER TERM 2008

ARREST WARRANT NUMBER/DOA

K124613 (DOA-6-7-07)

OFFICE OF GRAND JURY  
**TRIPLED**

*J. Hammond*

Foreperson of Grand Jury DEC 4 2008

Date:

VERDICT

Foreperson of Petit Jury  
Date:

CLERK OF COURT  
LANCASTER, SC

2008 DEC - 8 A 9 22

FILED  
OFFICE OF CLERK  
OF COURT

THE STATE  
VS.

Morris Calvin Harris  
891.93

Indictment for

Murder

SC Code: §16-3-10  
CDR Code: 0116  
Class: Felony, EXM

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LANCASTER )

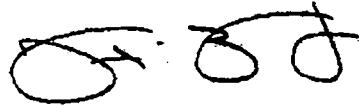
INDICTMENT

At a Court of General Sessions, convened on December 4, 2008, the Grand Jurors of Lancaster County present upon their oath:

**MURDER**

That Morris Calvin Harris did at Heatherstone Road, Heath Springs, S. C. , in Lancaster County on or about April 18, 2007, feloniously, willfully, and of his malice aforethought kill and murder Tammy Whitley by shooting her in the head, cutting her throat and severely beating her about her person and the victim did die as the proximate cause thereof then and there, in violation of Section 16-3-10 of the *Code of Laws of South Carolina*.

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

  
\_\_\_\_\_  
Douglas A. Barfield, Jr., SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LANCASTER STATE

INDICTMENT/CASE#: 2007-GS-29-291

VS. Morris Calvin Harris

AW#: K 24613

AKA: Race: B Sex: M Age: 36

Date of Offense: 4/18/07

DOB: SS#: Address: City, State, Zip: DL# SID#

S.C. Code §: 16-3-10

CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS NC v. Alford.

TO: Voluntary Manslaughter

in violation of § 16-3-50 of the S.C. Code of Laws, bearing CDR Code # 217

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45 (CSC w/minor 1st or Lowd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Solicitor SC Bar # 514 x Morris Harris Defendant Attorney for Defendant SC Bar # 69739

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms: Obtain GED

set by SCDPPPS Attend Voc. Rehab. or Job Corp.

Recipient: May serve W/E beginning Substance Abuse Counseling

\*Fine: Random Drug/Alcohol Testing

\$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 \$

\$56-1-288 (DUI Breath Test) \$25 \$

\$35.13 (Public Def/Prob) \$500 \$

\$73.3, 1B TP (Law Enforc. Funding) \$25 \$

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$

\$50-21-114(BUI Breath Test Fee) \$50 \$

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$

\$90.11 TP (SCCJA Surcharge) \$5 \$

3% to County (if paid in installments) \$

TOTAL \$

Clerk of Court/ Deputy Clerk Mike Watkins

Court Reporter: Sentence Date: 3-30-09