

VOL. II OF II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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JUN 23 2014

S.C. Supreme Court

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

WILLIAM JERMAINE HENRY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002762

APPENDIX

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1 MS. RATIGAN: May it please the Court, Your Honor.

2 THE COURT: Yeah.

3 MS. RATIGAN: This is the case of William Jermaine Henry
4 vs. the State of South Carolina, Docket Number is
5 2012-CP-23-4209. Mr. Henry was indicted for kidnapping,
6 assault and battery with intent to kill, murder and armed
7 robbery, he was represented on these charges by Mr. Creech.
8 Case was brought to trial in February of 2009 before Judge
9 Welmaker, the jury found, uh, Mr. Henry guilty of murder and
10 not guilty of the other three charges. On February 4th of
11 2009 Judge Welmaker sentenced him to 50 years imprisonment,
12 case was appealed, uh, Appellate Defense perfected the appeal,
13 however the Court of Appeal -- Appeals affirmed his conviction
14 and sentence June 27th of 2011, application, uh, was timely
15 filed and the State's ready to proceed.

16 THE COURT: Okay, yeah.

17 MS. HORLBECK: Judge, that's correct and, uh, we would
18 call Mr. Henry to, Mr. Henry to the stand.

19 THE COURT: Okay, c'mon around.

20 (Whereupon, the applicant came forward.)

21 THE CLERK: Mr. Henry, place your left hand on the Bible
22 and raise your right hand, please best you can.

23 WILLIAM JERMAINE HENRY, having
24 been first duly sworn, testified as follows:

25 THE CLERK: Thank you. Please state your full name for

WILLIAM JERMAINE HENRY - DIRECT EXAMINATION BY MS. HORLBECK

1 the record.

2 THE APPLICANT: William Jermaine Henry.

3 THE COURT: Thank you, you may be seated.

4 DIRECT EXAMINATION BY MS. HORLBECK:

5 Q. Mr. Henry, who represented you at your trial?

6 A. Uh, Mr. Thomas Creech.

7 Q. Okay. As a result of that trial, you were convicted of
8 murder, is that correct?

9 A. Yes, ma'am.

10 Q. And did you file a petition for post-conviction relief?

11 A. Yes, ma'am.

12 Q. Alright. Okay, uh, let's first start off with your
13 indictments. You alleged in your petition that that, uh,
14 there was a Rule 3 South Carolina Rules of Criminal procedure
15 violation?

16 A. Yes, ma'am.

17 Q. Okay, uh, what was the date of your arrest?

18 A. Uh, March 21st 2006.

19 Q. Okay. Do you recall what the date of your true bill was
20 or the date, the date your indictment was handed down?

21 A. Uh, the date my indictment was handed down was ---

22 Q. Um-hum.

23 A. --- November November 2006.

24 Q. Okay. Alright, and, uh, did the, to your knowledge do
25 you know if the State filed for an extension of time?

1 A. Not to my knowledge.

2 Q. Alright. Is it your position that the untimelimit --
3 untimeliness of your indictment is that a violation of
4 Rule 3(c)?

5 A. Yes, ma'am.

6 Q. Okay. Now during the trial did your attorney make any
7 motion, uh, or objection regarding the timeliness of the
8 indictment?

9 A. No, ma'am.

10 Q. Alright. Uh, since there was no objection was that issue
11 preserved for appeal?

12 A. It wasn't preserved but ----

13 Q. So ---

14 A. --- it should have been.

15 Q. Okay, but but your attorney didn't object or file a
16 motion regarding the timeliness of the indictment, did he?

17 A. No, ma'am.

18 Q. Alright, so that issue was not preserved, was it?

19 A. No, ma'am.

20 Q. Okay. Alright, you also, uh, alleged in your petition
21 there was a violation of your right to privileges and
22 immunities?

23 A. Yes, ma'am.

24 Q. Okay, uh, and you said that that has that allegation has
25 to do with the detective's testimony before the grand jury?

WILLIAM JERMAINE HENRY - DIRECT EXAMINATION BY MS. HORLBECK

1 A. Uh, yes, ma'am.

2 Q. Is that what that's -- is that what that allegation is
3 about?

4 A. Yes, ma'am.

5 Q. Okay, explain that to the Court a little bit further.

6 A. Uh, let me look.

7 THE COURT: What are you lookin' at?

8 MS. HORLBECK: Who?

9 THE COURT: You.

10 MS. HORLBECK: What do ya mean?

11 THE COURT: The application, is that what you're lookin'
12 at?

13 MS. HORLBECK: Um, I've got my questions.

14 THE COURT: Oh, I'm tryin' to find in his application
15 where he says all these things.

16 MS. HORLBECK: We may have filed an amended ---

17 THE COURT: Okay.

18 MS. HORLBECK: --- petition or maybe we didn't. Judge,
19 we filed a a a giant, uh, ---

20 THE COURT: Handwritten?

21 MS. HORLBECK: Yes, sir, I believe that's, ---

22 THE COURT: Okay.

23 MS. HORLBECK: --- I've got, I've got it attached to my
24 petition.

25 THE COURT: Alright.

WILLIAM JERMAINE HENRY - DIRECT EXAMINATION BY MS. HORLBECK

1 MS. HORLBECK: I don't know if you were referring to me
2 or not.

3 BY MS. HORLBECK:

4 Q. Alright, uh, let let's get back to the question. Is it
5 your position that the detective, what what is your petition
6 about the truthfulness of detect -- detective's testimony in
7 fronta the grand jury?

8 A. Well I thought, I thought we withdraw that on the, uh,
9 amended, uh, when we amended the petition ---

10 Q. Alright, are you not ---

11 A. --- but I don't, I don't have that ---

12 Q. --- so you're not proceeding on that.

13 A. No, ma'am.

14 Q. Alright, we will, we will not go any further on that
15 today. Alright, uh, did you and your attorney discuss the
16 potential penalty that you faced on the murder charge, on all
17 the charges?

18 A. No, ma'am.

19 Q. Okay. How many times do you think you and Mr. Creech met
20 to talk about the case?

21 A. Uh, probly four at the max.

22 Q. Alright, were you incarcerated the entire time that
23 Mr. Creech represented you?

24 A. Yes, ma'am.

25 Q. Did -- so you and, you and Mr. Creech would have met at

WILLIAM JERMAINE HENRY - DIRECT EXAMINATION BY MS. HORLBECK

1 the jail, is that correct?

2 A. Yes, ma'am.

3 Q. All four times?

4 A. Yes, ma'am.

5 Q. Did you and Mr. Creech meet in the holding cell in the
6 courthouse?

7 A. Yes, ma'am.

8 Q. How many times do you think you and he met at at the
9 holding cell in the courthouse?

10 A. Maybe twice.

11 Q. Alright, and during those meetings with Mr. Creech did
12 you and he discuss the the fact that you faced a possibility
13 of life without parole if you were convicted at trial?

14 A. No, ma'am, he never informed me a that.

15 Q. Alright. What was your understanding of the potential
16 sentence you faced?

17 A. Uh, he told me 40 years to the max for all the charges, I
18 could face up to 40 years in prison.

19 Q. Four -- you -- let me make sure I'm understanding.
20 You're saying that that Mr. Creech told you that 40 years was
21 the maximum you faced at trial, is that -- yes or no on
22 that?

23 A. Yes, ma'am.

24 Q. Okay. Uh, if you had known that that was not correct and
25 that you actually faced life without parole if you went to

1 trial, would you have done anything differently or would you
2 have still gone to trial?

3 A. I might not have went to trial.

4 Q. Okay. Alright. You also allege that there was a Brady
5 violation in this case, do you remember that allegation?

6 A. Yes, ma'am.

7 Q. Okay. Uh, and does that violation have to do with
8 Mr. Mr., uh, one a the witnesses in the case ---

9 A. Yes, ma'am, Mr. ---

10 Q. --- mar ---

11 A. --- Andre Andre Brooks.

12 Q. Okay, uh, and tell us a little bit about that allegation.

13 A. Uh, the prosecutor withheld information of the witness
14 stating that appellant shot the descendant [sic] so I argued
15 this information was not in my discovery papers pertainin' to
16 the witness Andre Brooks ---

17 Q. Okay.

18 A. --- and that he testified that he never mentioned, he
19 never mentioned me shootin' the victim but he came to trial
20 and testified that I shot the victim and he had three written
21 statements. In his first written statement, he never mention
22 he never mention that I shot the deceased, the third, in the
23 third written statement he never say anything about me
24 shootin' the victim so I had no way of knowin' that if I was
25 goin' to court that he was gonna testify that I shot, ---

WILLIAM JERMAINE HENRY - DIRECT EXAMINATION BY MS. HORLBECK

1 Q. Alright.

2 A. --- that I shot the decedent.

3 Q. Alright, let me make sure I'm understanding this, so and
4 and the wit -- the witness's name is Andre Brooks, is that ---

5 A. Yes, ---

6 Q. --- correct?

7 A. --- yes, ma'am.

8 Q. Alright, and Mr. Brooks wrote, is it correct that
9 Mr. Broo -- Brooks wrote several statements, is it?

10 A. Three different statements.

11 Q. Okay. Uh, and in his statements is it correct that he
12 never mentioned seeing you shoot anybody?

13 A. Yes, ma'am.

14 Q. Alright, but at trial Mr. Brooks testified differently
15 than so -- to something different than what he wrote in his
16 statements?

17 A. Yes, ma'am.

18 Q. Okay. Uh, and your position is is Mr. Brooks testi -- or
19 Mr. Brooks or evidence that Mr. Brooks saw you shoot anybody
20 was not included in your discovery is that, ---

21 A. Yes, ---

22 Q. --- correct?

23 A. --- yes, ma'am.

24 Q. Okay. Did, uh, Mr. Creech object to that testimony and
25 say it wasn't part of discovery?

1 A. No, he never objected.

2 Q. Alright. Did Mr. Creech make a pre-trial motion to
3 suppress Mr. Brooks' testimony on that basis?

4 A. He never made a motion to suppress either.

5 Q. Okay. And after the jury read their verdict did
6 Mr. Creech make a or move for a new trial on the basis that
7 Mr. Brooks' testimony had not been disclosed by the State?

8 A. No, ma'am.

9 Q. Okay, and ultimately is it your argument today that
10 Mr. Creech's failure to make those motions and those
11 objections deprived you of due process?

12 A. Yes, ma'am.

13 Q. Okay. Alright, you also had an allegation regarding the
14 jury instruction on accomplice liability, is that correct?

15 A. Uh, I don't have it on the petition.

16 Q. Okay. I mean, you don't have to go forward on that
17 allegation, I just had it in my notes, you don't, but you
18 don't, if you don't wanna pursue that issue, we don't have to,
19 you tell, you just give me some indication soon.

20 A. Okay, no, ma'am, we don't have to proceed with that.

21 Q. Okay. Alright, do you recall your allegation 'bout the
22 malice jury instruction?

23 A. Yes, ma'am.

24 Q. Okay. Alright, uh, does your attorney object to that?

25 A. No, ma'am, he never object to that.

WILLIAM JERMAINE HENRY - DIRECT EXAMINATION BY MS. HORLBECK

1 Q. Alright, is it your position that your attorney should
2 have objected?

3 A. Yes, ma'am.

4 Q. And what's what's the basis for your position?

5 A. Uh, I feel like my lawyer was ineffective assince [sic]
6 of counsel because he was being held unlawful because the
7 trial judge gave a burden shift in malice instruction and my
8 trial counsel failed to object to improper malice instruction
9 that shifted the burden a proof towards me.

10 Q. Alright, so your argument is that that instruction to the
11 jury shifted the burden?

12 A. Yes, ma'am.

13 Q. Alright, and your attorney did not object on that
14 basis, ---

15 A. He never ---

16 Q. --- did he?

17 A. --- objected.

18 Q. Alright, and that issue was not preserved for appeal, is
19 that correct?

20 A. Yes, ma'am.

21 Q. Okay. Alright, uh, now your co-defendants originally had
22 the same charges as you, is that correct?

23 A. Yes, ma'am.

24 Q. Alright, and what did they, do you recall if they pled
25 that the the same charges as you or did they get a different

1 deal, it ---

2 A. Uh, ---

3 Q. --- I don't know whether you know or not?

4 A. --- they all, they all made deals with the State, they
5 all had deals. Uh, Mark Cureton he made a deal, he made a
6 deal in 2007, I think I had his transcript, 2007 he pled
7 guilty to voluntary manslaughter and he had several other
8 charges that were dismissed, the followin', he pled guilty in
9 August of 2007, he had like nine charges dismissed in August
10 of '08 he, uh, he had pendin' charges, he was out on bond ---

11 Q. Um-hum.

12 A. --- for charges, he had pendin' charges that was also
13 dropped besides the charges that he was charged with.

14 Q. Alright. Did anybody else receive a deal?

15 A. Yes, ma'am, Frederick Irby he entered a plea deal, uh,
16 transcript Page 282, uh, "You have now since entered a plea of
17 a lesser offense of voluntary manslaughter, is that correct?"

18 "That's correct."

19 He also had, uh, pending charges that were also dropped
20 and, uh, John Garrett on transcript Line Page 3, uh, 333, "Now
21 you have entered plea guilty to voluntary manslaughter, is
22 that correct?"

23 "Yes."

24 Q. Okay. Was that ever, was that same plea deal offered to
25 you?

WILLIAM JERMAINE HENRY - CROSS-EXAMINATION BY MS. RATIGAN

1 A. No, ma'am.

2 Q. Alright, and what's your argument that you're making
3 today concerning the differences in the way you and your
4 co-defendants were treated?

5 A. Uh, abuse a discretion.

6 Q. Alright. Did your attorney make any objection or motion
7 regarding abuse of discretion?

8 A. No, ma'am.

9 Q. Okay. Alright, and, uh, do you have any other
10 allegations that you want to argue today or are there any
11 other mistakes you believe your attorney made?

12 A. I think we 'bout covered it.

13 Q. Okay. Alright, please answer any questions that
14 Ms. Ratigan may have for you.

15 CROSS-EXAMINATION BY MS. RATIGAN:

16 Q. Mr. Henry, I believe you said you met with Mr. Creech
17 four times?

18 A. Yes, ma'am.

19 Q. Alright, and did you review with him the State's evidence
20 against you ---

21 A. Uh, ---

22 Q. --- like the discovery materials your Rule 5?

23 A. No, ma'am. We we went over through things, a a lotta
24 things that we went over wasn't in the motion.

25 Q. Okay. Did you discuss with him any kind of defenses you

1 might have?

2 A. Yes, we we had discuss.

3 Q. Okay, and did you tell Mr. Creech your version of what
4 happened that day?

5 A. Yes.

6 Q. Okay, and did you discuss with him that your three
7 co-defendants would identify you at trial as being the one who
8 shot the victim?

9 A. Yes, ma'am.

10 Q. And you say that there was a Brady violation because the
11 State didn't give Mr. Creech any information that Mr. Brooks
12 had actually seen the shooting, is that what you're saying?

13 A. No, Mr. uh, Creech didn't give me the information ---

14 Q. Okay, ---

15 A. --- that.

16 Q. --- so you're saying that Mr. Creech had this information
17 but the State just didn't give it to you?

18 A. Yes, ma'am.

19 Q. Okay. And the jury found you were not guilty of the
20 assault charge, the armed robbery and the kidnapping, that's
21 correct?

22 A. Yes, ma'am.

23 Q. Okay, but you still feel that Mr. Creech was not an
24 effective attorney for you?

25 A. Yes, ma'am.

THOMAS M. CREECH, JR. - DIRECT EXAMINATION BY MS. RATIGAN

1 Q. Okay.

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

3 MS. HORLBECK: Nothing further.

4 THE COURT: Alright, thanks, you can step down. Thank
5 you.

6 (Whereupon the applicant left the stand.)

7 THE COURT: Call your next witness.

8 MS. HORLBECK: Judge, that's all I have.

9 THE COURT: Alright.

10 MS. RATIGAN: Your Honor, the State would call
11 Mr. Creech.

12 (Whereupon, the witness came forward.)

13 THE CLERK: Mr. Creech, please place your left hand on
14 the Bible, raise your right hand.

15 THOMAS M. CREECH, JR., having been
16 first duly sworn, testified as follows:

17 THE CLERK: Thank you, you may be seated and please state
18 your full name for the record.

19 THE WITNESS: Thank you, Thomas M. Creech, Jr.

20 DIRECT EXAMINATION BY MS. RATIGAN:

21 Q. Mr. Creech, do you recall representing Mr. Henry on these
22 charges?

23 A. I do, yes.

24 Q. And were you appointed or were you retained?

25 A. I was appointed by the Court.

1 Q. Did you file the usual Brady and Rule 5 motions?

2 A. I did, yes.

3 Q. Did you receive those, uh, materials from the State?

4 A. Yes, I did.

5 Q. Did you review the evidence with your client?

6 A. Yes, I did.

7 Q. Did you review with him, uh, his version of what had
8 happened?

9 A. Yes, I did.

10 Q. Did you explain to him the elements of the charges?

11 A. I did.

12 Q. Did you explain to him the penalties that these charges
13 carried?

14 A. I did and I went at our meeting, one of our meetings yes,
15 I went over all the charges and explained to him all the
16 possible penalties he was facing.

17 Q. Did you ever tell Mr. Henry that on all these charges he
18 would face a maximum of 40 years?

19 A. No, no.

20 Q. Okay. And you recall how many times you would have met
21 with Mr. Henry prior to trial?

22 A. Um, I was appointed in August I believe a of 2008, uh,
23 and we probably met I wanna say between eight and ten times
24 between August and his case went to trial February.

25 Q. Did you consider making a motion to quash the indictments

THOMAS M. CREECH, JR. - DIRECT EXAMINATION BY MS. RATIGAN

1 based on violation of Rule 3?

2 A. Uh, no, I did not, I didn't see that as being effective
3 or that the Court would have even granted it.

4 Q. Did you perceive there was any prejudice to your case in
5 the fact that, uh, it was indicted outside of the Rule 3
6 time?

7 A. No.

8 Q. Okay. Mr. Henry has alleged that you had information
9 that Mr. Brooks the ABWIK victim, ---

10 A. Um-hum.

11 Q. --- uh, would end up testifying at trial that he saw the
12 shooting, do you recall any evidence in the discovery that
13 Mr. Brooks stated that he saw, uh, your client shoot the
14 murder victim?

15 A. I just had the three statements from Mr. Brooks and I had
16 the, I had the discovery. I had what, you know, that's what
17 we had was in the discovery. I didn't, uh, have any kinda
18 special information from the solicitor's office that I'd been
19 told, uh, what Mr. Brooks gonna testify, I had his statements,
20 that's what I had.

21 Q. Was it a surprise then at trial when he said that he had
22 seen your client, uh, shoot Mr. Perez?

23 A. I don't, I don't recall if I was surprised. We had those
24 statements and the like, in the event that he did say that we
25 were gonna have the statements to indicate he had left it out

1 in his original statements but the the, uh, and I think we
2 touched upon that in the trial testimony but that the the key
3 Mr. Brooks's testimony is he'd given three different versions
4 and three different statements and basically or and he did
5 admit lying in those statements and we were able to bring that
6 out in a jury, in fronta the jury.

7 Q. Regardless, uh, his, uh, Mr. Henry's co-defendants you
8 knew that they were going to come and talk to trial point the
9 finger at him?

10 A. Yes.

11 Q. As the co-defendants pled guilty to the lesser charge of
12 voluntary, did you have any reason to argue unfair treatment
13 of any kind?

14 A. Uh, no.

15 Q. Had the State ever, uh, offered your client a plea
16 offer?

17 A. Uh, yes, the best -- we went to S -- the State and
18 offered a plea to voluntary for 20 years, the State would not
19 take that. We went back and forth with the State initially,
20 State would not, was not gonna let Mr. Henry plead to anything
21 but murder but then once we got closer to trial the best deal
22 that we could get from the solicitor's office was a plea to
23 voluntary manslaughter with a recommendation of 30 and I took
24 that to Mr. Henry, he declined to accept that reco -- accept
25 that plea.

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

2 THE COURT: Alright, cross?

3 MS. HORLBECK: I don't have any questions.

4 THE COURT: Alright, me either. Thanks.

5 (Whereupon, the witness left the stand.)

6 MS. RATIGAN: We'd ask Mr. Creech be excused and the
7 State would rest at this time, Your Honor.

8 THE COURT: Any objection to releasing him from subpoena?

9 MS. HORLBECK: No objection.

10 THE COURT: Alright, anything else?

11 MS. RATIGAN: No, sir.

12 THE COURT: Okay, anything ya'll wanna tell me?

13 MS. HORLBECK: I I think I'll just rest on the testimony.

14 MS. RATIGAN: State would just rest on the record, Your
15 Honor.

16 THE COURT: Alright, well, Mr. Henry, uh, I'm I'm, uh,
17 I'm gonna decline to grant your application, I don't find that
18 Mr. Creech what he did representing you fell below an
19 objective standard of reasonableness and I don't find that
20 anything he did, uh, prejudiced you in your defense, uh, so
21 I'm, with all due respect, I'll deny your application, okay.

22 MS. RATIGAN: Thank Your Honor.

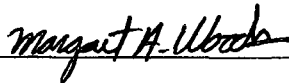
23 THE COURT: Alright.
24
25

CERTIFICATE OF REPORTER

1
2
3 I, Margaret A. Woods, Court Reporter in and for the State
4 of South Carolina at Large, hereby certify that I reported the
5 preceding case on October 22, 2013 at the time and place
6 heretofore set forth; and that the foregoing pages numbered
7 from 3 through 20, inclusive, constitute a true and accurate
8 transcription of my stenographic notes of the said proceeding.

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

13 February 18, 2014

14
15 

16 Margaret A. Woods, Court Reporter
17 in and for the State of South Carolina at Large.
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STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 William Jermaine Henry,)
 S.C.D.C. No. 276767,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2012-CP-23-4209

ORDER OF DISMISSAL

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMMER
 2013 NOV 26 PM 2 36

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 29, 2012. The Respondent made its return and partial motion to dismiss on November 30, 2012. An evidentiary hearing into the matter was convened on October 22, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Thomas M. Creech, Jr., Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return and partial motion to dismiss, and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the November 2006 term of the Greenville County Grand Jury for kidnapping (2006-GS-23-

9698), assault and battery with intent to kill (2006-GS-23-9699), murder (2006-GS-23-9700), and armed robbery (2006-GS-23-9701). He was represented by Thomas M. Creech, Jr., Esquire.

After the State took the case to trial, the Applicant was found guilty of murder and not guilty of all other charges. On February 4, 2009, the Honorable G. Edward Welmaker sentenced the Applicant to fifty years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Henry, Op. No. 2011-UP-333 (S.C. Ct. App. filed June 27, 2011).

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. "My lawyer failed to object to perjury testimony."
 2. "The State failed to produce competent reliable evidence."
 3. "The State must prove every element of the charge of Murder."
 4. Subject matter jurisdiction.

In an "Amended Petition for Post Conviction Relief" filed by counsel on August 27, 2013, the Applicant made the following additional allegations:

1. Ineffective assistance of trial counsel:
 - a. Failed to object to the jury charge regarding aiding and abetting.
 - b. Failed to object to the State's failure to present an indictment to the Grand Jury within 90 days after receipt of the arrest warrant.
 - c. Failed to object to the State's failure to petition the court for an order delaying action on the warrant for a successive 90 day period.
 - d. Failed to timely object to:
 - i. Testimony regarding the Applicant's attendance of a school for children with behavior problems.
 - ii. Testimony regarding cell phone and tower information.
 - iii. Testimony regarding victim statements.

- e. Failed to inform the Applicant of the potential penalty he faced on all charges.
 - f. Failed to object to the State's Brady violation and failure to provide counsel with copies of Brooks' statements.
 - g. Failed to move to suppress Brooks' testimony.
 - h. Failed to have the Applicant evaluated for competency and criminal responsibility.
 - i. Failed to argue the court's charge on malice shifted the burden of proof.
 - j. Failed to object to the court's abuse of discretion in sentencing the Applicant more harshly than his co-defendants.
2. Ineffective assistance of appellate counsel:
- a. Failed to raise trial counsel's failure to object to the State's non-compliance with Rule 3(c), SCRCrimP.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe the witnesses 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).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant

must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "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 v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he had four meetings with trial counsel and that they only discussed a few pieces of evidence. The Applicant stated they did not review potential penalties but did discuss his version of events, possible defenses, and that the State had three witnesses who identified him as the shooter. The Applicant stated trial counsel did not object when the State violated Rule 3, SCRCrimP and indicted him more than 90 days after his arrest. The Applicant stated trial counsel should have objected to a Brady¹ violation because the fact that Brooks saw the shooting was not contained in the discovery materials. The Applicant stated trial counsel failed to move to suppress Brooks' statement. The Applicant stated trial counsel should have objected to the jury charge on malice because it was burden-shifting. The Applicant stated trial counsel should have argued there was an abuse of discretion because his co-defendants made deals with the State to plead guilty to voluntary manslaughter and have other charges dismissed.

Trial counsel testified he met with the Applicant 8-10 times between August 2008 and February 2009. Trial counsel testified he filed discovery motions, received those materials, and reviewed them with the Applicant. Trial counsel testified they discussed the Applicants version of events, the elements of the charges, and the possible penalties. Trial counsel testified he did not believe a motion to quash the indictments would have been granted and that the late indictments did not prejudice the case. Trial counsel testified he had three statements from

¹ Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

Brooks in the discovery materials. Trial counsel testified he did not recall being surprised by Brooks' trial testimony that he saw the shooting because Brooks basically admitted to lying. Trial counsel testified there was no reason to argue the Applicant was treated unfairly in sentencing (relative to his co-defendants). Trial counsel testified the State offered a thirty-year recommendation for voluntary manslaughter and the Applicant rejected it.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court finds trial counsel met with the Applicant numerous times before trial and that they discussed the facts, evidence, elements of the charges, and potential penalties. This Court finds trial counsel's thorough competence is reflected in the jury's decision to acquit the Applicant of three out of the four original charges.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the indictment under Rule 3(c), SCRCrimP. This Court finds the late indictments in this case did not nullify the Applicant's prosecution. See State v. Culbreath, 282 S.C. 38, 40, 316 S.E.2d 681, 681 (1984) ("[T]he failure of the solicitor to act upon a warrant within ninety (90) days . . . does not within itself invalidate a warrant or prevent subsequent prosecution."). Further, this Court finds the Applicant failed to provide evidence of any prejudice that resulted from the delay. See, e.g., State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007) (noting one must prove prejudice in order to prevail on an allegation that one's speedy trial rights were violated).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have argued there was a Brady violation. The Applicant argues that Brooks' trial testimony differed from that in his statements and that the State failed to disclose this information. "A Brady claim is based upon the requirement of due process. Such a claim is complete if the

accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment.” Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999) (emphasis added). This Court finds the Applicant has failed to demonstrate the existence of an actual Brady violation. Further, this Court finds the Applicant has failed to demonstrate that trial counsel should have moved to suppress Brooks’ trial testimony. Trial counsel testified Brooks was clearly not credible. This Court agrees and notes trial counsel impeached Brooks with his prior statements to police. Regardless, the Applicant cannot prove he was prejudiced by Brooks’ testimony, as the State presented overwhelming evidence of guilt.² See Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the malice jury charge. The trial judge charged the jury on murder and malice. (Trial transcript, pp.428-30). This Court finds the Supreme Court’s ruling in Belcher v. State, 385 S.C. 597, 685 S.E.2d 802 (2009) is inapplicable. In Belcher, the Supreme Court held “the ‘use of a deadly weapon’ implied malice instruction had no place in a murder (or assault and battery with intent to kill) prosecution where evidence is presented that would reduce, mitigate, excuse or justify the killing.” Id. at 610, 685 S.E.2d at 809. The Court found this ruling was effective in “all cases which are pending on direct review or not yet final where the issue is preserved.” Id. The Court held further that “our ruling, however, will not apply to convictions

² Brooks (the victim of the assault and battery with intent to kill charge) identified the Applicant as the shooter. The Applicant’s co-defendants – Frederick Irby, Mark Cureton, and John Michael Garrett – also witnessed the Applicant shoot the murder victim. Weston Booker saw the Applicant leave the murder victim’s apartment that night and Katrina Hayes testified the Applicant and the murder victim had a strained relationship.

challenged on post-conviction relief.” Id. Belcher was decided several months after the Applicant’s trial. Belcher was not retroactive because the issue was not preserved for appeal. Further, Belcher specifically prohibits the Applicant from asserting this claim in a PCR action.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have argued there was an abuse of discretion because the co-defendants received lesser sentences. This Court finds trial counsel did not have a valid basis to make such an argument. The Applicant’s assertion that he received an unfair sentence is not a basis for relief. The Applicant was sentenced within the statutory range for the offense. A judge has discretion in sentencing within statutory limits and a disparate sentence between co-defendants is not an abuse of discretion. See State v. Sidell, 262 S.C. 397, 205 S.E.2d 2 (1974).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial 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 trial counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

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

CONCLUSION


Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

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


 Edward W. Miller
 Presiding Judge
 Thirteenth Judicial Circuit

, South Carolina.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM JERMAINE HENRY,

APPELLANT

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

Whether the court abused its discretion by allowing the solicitor in his opening statement to argue that appellant was a drug dealer and that this case was about a “drug dealer’s revenge” since this impermissibly put appellant’s character at issue, it also violated Rule 404(a), SCRE, and was not necessary to a fair presentation of the case as the solicitor alleged?

2.

Whether the court abused its discretion by refusing to grant a mistrial where the solicitor in his opening statement told the jury that appellant was a drug dealer and that this case was about a “drug dealer’s revenge” since this impermissibly put appellant’s character at issue, it also violated Rule 404(a), SCRE, and was not necessary to a fair presentation of the case as the solicitor alleged?

3.

Whether the court erred by allowing Katrina Haynes to testify that appellant “was a drug dealer,” and that’s what he “did for a living,” since this impermissibly put appellant’s character at issue, and also violated Rule 404 (a), SCRE?

4.

Whether the court erred by overruling appellant’s objection to Katrina Haynes testifying appellant was a drug dealer, and thereby implicitly denying his motion for a mistrial, since Haynes’ testimony impermissibly placed appellant’s character at issue where appellant had not made it an issue?

4

STATEMENT OF THE CASE

Appellant was indicted by the Greenville County Grand Jury for the offenses of murder, armed robbery, kidnapping, assault and battery with intent to kill (ABIK), and assault and battery of a high and aggravated nature (ABHAN). R. 370. His case was called to trial on February 2, 2009 before the Honorable G. Edward Welmaker and a jury. Tom Creech represented appellant. Jeff Weston was the assistant solicitor. R. 1.

On February 4, 2009, the jury found the appellant not guilty of armed robbery, not guilty of ABIK, not guilty of ABHAN, not guilty of kidnapping, but guilty of murder. R. 368, ll. 11-23. Judge Welmaker sentenced appellant to fifty years imprisonment. R. 369, ll. 8-10.

This appeal follows.

STATEMENT OF FACTS

In the solicitor's opening statement the solicitor told the jurors:

Mr. Weston: This is a case simply about [a] drug dealer's revenge. The kind of stuff you see on TV. On the 9th of August -- excuse me -- of March 21st, 2006, that man, William Jermaine Henry, went to the home of Francisco Perez, another drug dealer. Mr. Henry had been robbed or assaulted by Mr. Perez some week or two before that. And he simply was going there to get revenge.

Mr. Creech: Your Honor, I object. I have a motion.

The Court: All right. Ladies and gentlemen, we'll take a short break and let you go back to your jury room. We've got a matter of law we need to take care of now. . . .

R. 5, ll. 13-25.

Defense Counsel Creech then moved for a mistrial noting that the solicitor twice referred to appellant as a drug dealer in his opening statement which impermissibly put appellant's character at issue. R. 6, ll. 6 - 7, l. 5; r. 7, l. 14 - 8, l. 2.

The solicitor responded "his client is a drug dealer and we allege he's a murderer. And we're going to show that." R. 7, ll. 6-13. The judge overruled the objection and denied the mistrial motion. Defense counsel added that he also objected that this violated Rule 404(a), SCRE. The judge denied a mistrial on that ground also. R. 7, l. 14 - 8, l. 2.

During the testimony of the state's first witness, Katrina Haynes testified that she lived with her decedent boyfriend, "Paco." R. 19, l. 25 - 50, l. 12. Haynes testified the decedent made a living by selling marijuana. R. 22, ll. 6-13. She also said "I met Paco through William Jermaine Henry." R. 23, ll. 20-22. The following exchange then occurred between the solicitor and Haynes:

Q: All right. And did you know William Jermaine Henry pretty well?

A: Yes.

Q: Did you know what he did for a living?

A: Yes.

Q: Would you tell the jury?

A: He was a drug dealer.

MR. CREECH: Objection, Your Honor. I moved for a mistrial.

THE COURT: I overrule your objection. Your objection is noted.

MR. CREECH: Same grounds. Thank you, Your Honor.

R. 24, ll. 9-21.

As will be seen infra, the references to appellant being a drug dealer were gratuitous since the state could have presented its theory that the decedent attempted to rob appellant at one point and that appellant's motive for killing the decedent was retaliation for the robbery or attempted robbery. As argued infra, there was no need to assassinate appellant's character in the solicitor's opening statement and during the testimony of the state's first witness.

ARGUMENT

1.

The court abused its discretion by allowing the solicitor in his opening statement to argue that appellant was a drug dealer and that this case was about a “drug dealer’s revenge” since this impermissibly put appellant’s character at issue, it also violated Rule 404(a), SCRE, and was not necessary to a fair presentation of the case as the solicitor alleged.

In a criminal case, the state can not attack the character of the defendant unless the defendant himself first places his character in issue. Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989); State v. McElveen, 280 S.C. 325, 313 S.E.2d 298 (1984); State v. Swords, 279 S.C. 554, 309 S.E.2d 750 (1984). Here, the solicitor in his opening statement to the jury said that appellant was a drug dealer. He then had his first witness, Katrina Haynes, testify that appellant was a drug dealer.

Thus, the state from the beginning of its case painted appellant as one of the most hated members of society – a drug dealer. The Supreme Court has noted the “indisputable nexus between drugs and guns.” See, State v. Banda, 271 S.C. 245, 639 S.E.2d 36 (2006). Defense counsel therefore also correctly argued evidence and argument that appellant was a drug dealer was not admissible pursuant to Rule 404(a), SCRE to prove he was acting in conformity with his character or a trait of his character.

Further, as the Court held in State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987), excessive details of another crime can deny a defendant a fair trial and therefore be reversible error. Here, even if the mention of drugs and drug use was necessary, evidence and argument was appellant was a drug dealer was not. A drug dealer is a criminal, and he is also a criminal because he does not pay taxes on his drug income.

The error was not harmless. The witnesses against appellant Brooks, Booker, Irby and Cureton, who conveniently named appellant as the shooter, all sought favor with the state in return for their testimony naming appellant as the shooter. R. 79, l. 9 – 86, l. 14; r. 207, l. 18 – 214; R. 232, l. 5 – 237, l. 24. Irby at one point was deemed incompetent, and Booker was not sure of his identification of appellant as one of the men involved. R. 205, l. 3 – 214, l. 2.

The error of allowing argument and evidence that appellant was a drug dealer was an egregious error. In State v. Pickens, 320 S.C. 528, 466 S.E.2d 364 (1996), the Court held that a single reference to the defendant's right to silence was not harmless error because the evidence of the defendant's guilt was not overwhelming. Given that the state gave great concessions to the accomplices who claimed appellant was the triggerman, and that the witnesses did not tell the truth when first questioned, the error in this case cannot be harmless.

2.

The court abused its discretion by refusing to grant a mistrial where the solicitor in his opening statement told the jury that appellant was a drug dealer and that this case was about a “drug dealer’s revenge” since this impermissibly put appellant’s character at issue, it also violated Rule 404(a), SCRE, and was not necessary to a fair presentation of the case as the solicitor alleged.

Appellant should be granted a new trial since the court erred by refusing to grant a mistrial based on the solicitor’s opening statement that appellant was a drug dealer. The trial had just begun and a mistrial should have been granted since the prejudice could not be cured. Again, drug dealers are generally despised by the general public and therefore jurors. Defense counsel correctly repeated his Rule 404(a), SCRE objection --“same grounds”—to testimony that appellant was a drug dealer. Rule 404 (a), SCRE providing evidence is inadmissible to prove a person was acting in conformity with his character or a trait of his character. Drugs and guns are connected in the public’s mind and through experience. State v. Banda, supra.

In State v. Crawley, 49 S.C. 459, 562 S.E.2d 683 (Ct. App. 2002), the Court held that a mistrial was not required because a vague remark regarding the “jailhouse” could have been understood by the jury to mean Crawley was visiting the jail. Similarly, in State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999) the Court held a mistrial was not required where evidence the defendant was fingerprinted in the past did not necessarily implicate past criminal conduct. The Court apparently reasoned that people are fingerprinted and undergo background checks for a variety of jobs.

Here, however, the references to appellant being a drug dealer was direct, and unlike State v. Crawley and State v. Council, it is clear the jury received the message that appellant was a drug dealer and a bad person. There was no ambiguity. Appellant's trial was hopelessly compromised by the solicitor at that point and a mistrial should have been granted. Appellant should be granted a new trial.

3.

The court erred by allowing Katrina Haynes to testify that appellant “was a drug dealer,” and that’s what he “did for a living,” since this impermissibly put appellant’s character at issue, and also violated Rule 404 (a), SCRE.

As seen above, Katrina Haynes testified appellant was a drug dealer and that’s what he did for a living. Haynes was the solicitor’s first witness and it was apparent the solicitor was intent from the beginning on trying appellant based on his character.

As seen, in Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989), the Supreme Court held that the state cannot make the defendant’s character an issue where the defendant himself has not made his character an issue. Drug dealers are among the most despised people in society and appellant could not get a fair trial where he was labeled a drug dealer. Further, the reference and evidence appellant was a drug dealer was unnecessary to the jury’s understanding of the case. The state’s theory of the case was that appellant killed the decedent in retaliation for the decedent robbing him or attempting to rob him. Even if a reference to appellant and drugs was necessary, which appellant certainly does not concede, evidence that appellant was a drug dealer was gratuitous and unnecessary.

As also stated above, testimony appellant was a drug dealer violated Rule 404(a), SCRE because the state was planting in the jury’s mind that appellant, as a drug dealer, was likely to react violently with a weapon if his drug dominion was tampered with in any manner. Appellant should be granted a new trial.

4.

The court erred by overruling appellant's objection to Katrina Haynes testifying appellant was a drug dealer, and thereby implicitly denying his motion for a mistrial, since Haynes' testimony impermissibly placed appellant's character at issue where appellant had not made it an issue.

As argued above, the court improperly allowed argument and evidence about appellant being a drug dealer. The judge should have sustained defense counsel's objection to Haynes' testimony and ordered a mistrial. Haynes' testimony impermissibly placed appellant's character at issue. See State v. Mitchell, supra. While repetition does not further the argument, many jurors would surely admit they can not give a drug dealer a fair trial.

The court erred by refusing to grant a mistrial since the damage could not be undone from the solicitor's opening statement and the testimony of the state's first witness. Since this evidence *unequivocally* informed the jury that appellant was a criminal at the beginning of the trial the judge erred by apparently reasoning appellant could still get a fair trial. Cf. State v. Crawley, 49 S.C. 459, 562 S.E.2d 683 (Ct. App. 2002); State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999). The jury could impermissibly reason that even if it had a reasonable doubt about appellant being the murderer there could be no harm in taking a drug dealer "off the streets." A mistrial should have been ordered and appellant should be granted a new trial.

CONCLUSION

By reason of the foregoing arguments appellant's convictions should be reversed and this case remanded to the Greenville County Court of General Sessions for a new trial.

Respectfully submitted,

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 25th day of October, 2010

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 25, 2010

Robert M. Dudek
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

William Jermaine Henry, Appellant.

Appeal From Greenville County
G. Edward Welmaker, Circuit Court Judge

Unpublished Opinion No. 2011-UP-333
Submitted June 1, 2011 – Filed June 27, 2011

AFFIRMED

Chief Appellate Defender Robert M. Dudek, of
Columbia, for Appellant.

Attorney General Alan M. Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Donald J. Zelenka, and
Assistant Attorney General Melody J. Brown, all
of Columbia; and Solicitor W. Walter Wilkins, III of
Greenville, for Respondent.

PER CURIAM: William Jermaine Henry appeals his conviction for the murder of Francisco Perez. He argues the trial court erred in two respects: (1) overruling his objection to and denying his mistrial motion based upon the testimony of a State witness and (2) overruling his objection to and denying his mistrial motion based upon the State's opening argument. We affirm^[1] pursuant to Rule 220(b)(1), SCACR, and the following authorities:

1. As to the first issue: State v. Keenon, 356 S.C. 457, 459, 590 S.E.2d 34, 35 (2003) (holding that the trial court's error was harmless because of "the overwhelming evidence" of the appellant's guilt) (per curiam).
2. As to the second issue: State v. Primus, 349 S.C. 576, 587, 564 S.E.2d 103, 109 (2002)

(holding the State's improper argument was harmless error where evidence of guilt was overwhelming), overruled on other grounds by State v. Gentry, 363 S.C. 93, 106, 610 S.E.2d 494, 501 (2005).

AFFIRMED.

HUFF, WILLIAMS, and THOMAS, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

WITNESSES

C. Flavel

Barrett's

Greenville Police Department

3/25/2008

ARREST WARRANT NUMBER

1817519

ACTION OF GRAND JURY

TRUE BILL

Judy D. Reynolds

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2006-GS-23-

WJW

039700

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2008

THE STATE

VS.

WILLIAM JERMAINE HENRY

0116

Indictment for

MURDER

VIOLATION § 16-03-0010

269

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(33)

UP

(55)

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

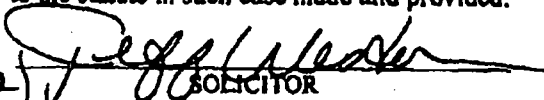
INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on November 14, 2006 the Grand Jurors of Greenville

County present upon their oath:

That WILLIAM JERMAINE HENRY did in Greenville County, on or about the 21st day of March 2006, unlawfully and with malice aforethought kill FRANCISCO PEREZ by means of gunshots, and that FRANCISCO PEREZ died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

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

Page ~~(34)~~ of ~~(35)~~ 
(34) (35) SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF Greenville)
 STATE VS.)
William Henry)
 AKA: _____)
 Race: B Sex: M Age: 28)
 DOB: _____ cc#: _____)
 Address: _____ 65)
Greenville, SC)
 DL#: 999999999 SID#: _____)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2006GS2309700
 A/W#: 1817519
 Date of Offense: 3/21/2006
 S.C. Code § : 16-03-0010.0020
 CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: MURDER

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

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

ATTEST: _____ Jeff Weston Defendant William Henry Attorney for Defendant 13797 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 50 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 the 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/bours Public Service Employment
 Payment Terms: _____ Obtain GED _____
 set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling _____

Recipient: _____ Random Drug/Alcohol testing _____

*Fine: \$ _____ Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 § 14-1-206 (Assessments 107.5 %) \$ _____ \$ _____ paid to Public Defender Fund
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 § 56-5-2995 (DUI Assessment) \$12 \$ _____
 § 35.13 (Public Def/Prob) \$500 \$ _____
 § 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
 § 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
 § 50-21-114(BUI Breath Test Fee) \$50 \$ _____
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 3% to County (if paid in installments) \$ _____
 § 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00

TOTAL \$ _____
 Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

Paul B. Wickensimer
 Clerk of Court/ Deputy Clerk
 Court Reporter: D. Hankis

PRESIDING JUDGE [Signature]
 Judge Code: _____
 Sentence Date: 2/4/08
 SCCA/217 (07/2008)

