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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Williamsburg County

R. Knox McMahon, Circuit Court Judge

STUFON NIXON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002671

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,) TRANSCRIPT
PLAINTIFF,) OF
VS.) RECORD
STUFON D. NIXON,) 2009-GS-45-00272
DEFENDANT.)

July 19th, 2010
Kingstree, South Carolina

B E F O R E:

THE HONORABLE CLIFTON NEWMAN, Judge.

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

DAVID PASCOE
ASSISTANT SOLICITOR
Attorney for the State

LEGRAND CARROWAY
ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

PRISCILLA NAY
Circuit Court Reporter

Transcribed by Pamela E. Green, Circuit Court Reporter

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INDEX OF WITNESSES

(There were no exhibits marked during this hearing.)

1 PROCEEDINGS

2
3 SOLICITOR PASCOE: Thank you for your patience, Your
4 Honor. Good afternoon.

5 We're here in the interest of Stufon Nixon. Mr. Nixon
6 is present in the courtroom today with his attorney, LeGrand
7 Carroway. The defendant, Mr. Nixon, is pleading guilty to
8 one count of murder, attempted armed robbery, and possession
9 of a weapon during the commission of a violent crime under,
10 under Number 09-GS-45-272. There are no negotiations with
11 regards to sentence in this case, Your Honor.

12 A couple of other things for the record. My name is
13 David Pascoe. I am the solicitor for a different judicial
14 circuit, and I was asked to prosecute this case on the
15 potential, due to a conflict of interest, and the other
16 thing I want to put on the record, the victim is 24-year old
17 Kenia Scott, and a number of them are here and want to be
18 heard when the time is right. Obviously want to point out
19 who some of them are.

20 Ms. Pamela Fulmer, Mr. Scott's mother is here,
21 Mr. Fulmer's step-father, and Mr. Singletary, the victim's
22 father, is here on the second row, and when the time is
23 right I ask they be heard. I have the sentencing sheet that
24 I can send up now once they are signed with the Court's
25 permission.

1 THE COURT: All right.

2 (WHEREUPON, the defendant was placed under oath at this
3 time.)

4 SOLICITOR PASCOE: Could I add one more thing, Your
5 Honor?

6 THE COURT: Yes, sir.

7 SOLICITOR PASCOE: I apologize. Even though there is
8 no negotiations with regard to sentence, I forgot to mention
9 Mr. Nixon also has a burglary first which carries 15 to life
10 nonviolent, and I have told his attorney I will dismiss the
11 burglary in the first charge as a result of this plea.

12 THE COURT: Your name is Stufon Nixon?

13 DEFENDANT: Yes, sir.

14 THE COURT: Are you here to plead guilty to murder,
15 attempted armed robbery, possession of a weapon during the
16 commission of a violent crime?

17 DEFENDANT: Yes, sir.

18 THE COURT: Are you guilty of those three things?

19 DEFENDANT: Yes, sir.

20 THE COURT: Mr. Carroway, you represent him?

21 MR. CARROWAY: I do, Your Honor.

22 THE COURT: Have you reviewed the facts in each of
23 these indictments and discussed with him the possible
24 penalty, which for murder includes 30 years to life,
25 attempted armed robbery, which includes up to 20 years, and

1 possession of a weapon during a violent crime, which carries
2 up to five years?

3 MR. CARROWAY: I have, Your Honor.

4 THE COURT: Mr. Nixon, you understand that that's the
5 possible penalty for these three crimes?

6 DEFENDANT: Yes, sir.

7 THE COURT: And, Mr. Carroway, do you believe he
8 understands his Constitutional rights including the right to
9 have a jury decide whether or not he's guilty or not?

10 MR. CARROWAY: I do, Your Honor.

11 THE COURT: And you agree with his decision to plead
12 guilty?

13 MR. CARROWAY: I do, Your Honor.

14 THE COURT: Mr. Nixon, before I can accept the guilty
15 plea I need to review with you the Constitutional rights
16 that Mr. Carroway has already explained to you including
17 some others. Also discuss with you whether or not your
18 decision to plead guilty is free and voluntary, and,
19 thirdly, whether or not you are, in fact, guilty.

20 As you stand before me at this time you're presumed to
21 be not guilty of this offense, and you have the right to a
22 jury trial. And if you were to have a jury trial, the State
23 would have to prove, beyond a reasonable doubt, to each and
24 every juror that you are guilty. Otherwise the jury must
25 find you not guilty.

1 You understand that, sir?

2 DEFENDANT: Yes, sir.

3 THE COURT: You also would have the right to remain
4 silent during that jury trial meaning you can not be
5 required to testify, and the jury would be instructed that
6 they can not hold that against you in any form or fashion if
7 you exercise your Constitutional right to remain silent.

8 You understand that, sir?

9 DEFENDANT: Yes, sir.

10 THE COURT: You also have the right to challenge any
11 incriminating statements you may have made and any
12 incriminating evidence the State may have offered against
13 you, to have Mr. Carroway cross-examine any witnesses who
14 may appear to testify against you. You'd have the right to
15 present any defense that you may have to these charges and
16 offer any witnesses that you might have and to testify on
17 your own behalf.

18 You understand each and every one of those rights?

19 DEFENDANT: Yes, sir.

20 THE COURT: Do you wish to waive each and every one of
21 those rights and plead guilty to this charge --

22 DEFENDANT: Yes.

23 THE COURT: -- these charges?

24 DEFENDANT: Yes, sir.

25 THE COURT: Have you had enough time to make up your

1 mind about that?

2 DEFENDANT: Yes, sir.

3 THE COURT: Have you had enough time to discuss the
4 case with your lawyer?

5 DEFENDANT: Yes, sir.

6 THE COURT: And has he done everything you think he
7 could or should have done to assist you?

8 DEFENDANT: Yes, sir.

9 THE COURT: Are you on probation or parole at this
10 time?

11 DEFENDANT: No, sir.

12 THE COURT: From your understanding of the facts and
13 circumstances of this case, do you believe that the State
14 would produce sufficient evidence to convince a jury to find
15 you guilty beyond a reasonable doubt --

16 DEFENDANT: Yes, sir.

17 THE COURT: -- and that if you were to stand trial you
18 most likely would be found guilty?

19 DEFENDANT: Yes, sir.

20 THE COURT: Are you today under the influence of any
21 drugs, medication, or any other mental disability or defense
22 that would prevent you from understanding what you're doing?

23 DEFENDANT: No, sir.

24 THE COURT: Are you satisfied with the help of your
25 lawyer, Mr. Carroway?

1 DEFENDANT: Yes, sir.

2 THE COURT: Are you pleading guilty of your own free
3 will?

4 DEFENDANT: Yes, sir.

5 THE COURT: And do you understand, sir, that now this
6 offense of murder, I have the authority to sentence you to
7 life imprisonment?

8 DEFENDANT: Yes, sir.

9 THE COURT: And for the minimum sentence for that
10 offense is 30 years.

11 You understand?

12 DEFENDANT: Yes, sir.

13 THE COURT: And for attempted armed robbery you are
14 facing up to 20 years in prison?

15 DEFENDANT: Yes, sir.

16 THE COURT: Possession of a weapon during a violent
17 crime, you're facing five years in prison?

18 DEFENDANT: Yes, sir.

19 THE COURT: Do you understand that these offenses,
20 attempted armed robbery and murder, are violent offenses and
21 most serious offenses?

22 DEFENDANT: Yes, sir.

23 THE COURT: Have you understood all of the questions
24 that I have asked you?

25 DEFENDANT: Yes, sir.

1 THE COURT: Do you have any questions that you want to
2 ask me concerning this guilty plea?

3 DEFENDANT: No, sir.

4 THE COURT: Do you understand that you have a right to
5 appeal any, this guilty plea and sentence, but to do so you
6 must do so within ten days?

7 DEFENDANT: Yes, sir.

8 THE COURT: And, Mr. Nixon, understanding the nature of
9 the charge, charges and the possible punishment, how do you
10 plead to murder?

11 DEFENDANT: Guilty.

12 THE COURT: How do you plead to attempted armed
13 robbery?

14 DEFENDANT: Guilty.

15 THE COURT: And how do you plead to possession of a
16 weapon during a violent crime?

17 DEFENDANT: Guilty.

18 THE COURT: What did you do that makes you guilty of
19 these three crimes?

20 DEFENDANT: I did the crime, sir.

21 THE COURT: What did you do that makes you guilty of
22 these crimes?

23 DEFENDANT: Well, I did shoot the victim, Kenia Scott.

24 THE COURT: And what did you do that makes you guilty
25 of attempted armed robbery?

1 DEFENDANT: I tried to rob him.

2 THE COURT: Solicitor.

3 SOLICITOR PASCÖE: May it please the Court, Your Honor.

4 The victim, 24-year old Kenia Scott, was driving his
5 vehicle on Promise Land Road and toward Eastland Avenue here
6 in Kingstree, Williamsburg County, the night of Sunday,
7 September 13th, 2009. His vehicle veered off the road, went
8 through a fence, and struck a tree. Three people who are
9 passer-bys thought it was just a car accident. So, they
10 went and pulled Kenia out of his vehicle before the car
11 became engulfed in flames, but after they pulled him out
12 police arrived immediately, EMS arrived, and they saw he
13 wasn't really the victim of a car accident, but a shooting
14 because they could see bullet wounds, and he was dead before
15 they even pulled him out of the vehicle.

16 The autopsy revealed he had one gunshot wound to his
17 left thigh and a fatal gunshot wound which was fairly close
18 range to his mouth which resulted in the perforation of his
19 jugular vein. It had been caused by a 9-millimeter pistol.

20 The County Sheriff's Office did a good job that night.
21 About 7:15 that night they backtracked from the accident,
22 found broken glass, four shell casings from a 9-millimeter,
23 and that was at about Young and Promise Hill Road near the
24 Cedarville Subdivision area, and they had witnesses that
25 came forward and one witness in particular they spoke to had

1 a lot of information.

2 That witness told police, Your Honor, that he knew both
3 Kenia and the defendant by name and sight. He had actually
4 seen the shooting. He said that earlier that morning that
5 the defendant had a conversation with him, the witness, and
6 the defendant said that he was going to rob somebody that
7 day. The witness also told the police that he saw Kenia
8 driving his red Oldsmobile Cutlass down Promise Land. The
9 witness had actually waved the victim down because he was
10 going to talk with him, but the defendant also waved him
11 down.

12 The victim stopped his vehicle to talk to the
13 defendant. The witness said he couldn't hear what was being
14 said between the defendant and Kenia until he saw the
15 defendant lift a handgun up and he could hear the defendant,
16 Mr. Nixon, yelling give it up, give it up. The witness then
17 heard several gunshots and ducked himself and that's when
18 the victim drove his vehicle off and went off the road like
19 I had talked about earlier.

20 Again, there were four shell casings at the scene. As
21 a result of the police talking to that eye witness they were
22 looking for Stufon Nixon. They found Stufon Nixon within
23 three hours of this murder. The defendant initially
24 wouldn't give a statement, but later that night told police
25 he would give a statement. He admitted to them, like he did

1 in this courtroom today, to murdering Kenia Scott because
2 they wanted to try to rob him of some money. The defendant
3 also cooperated in telling the police where he had hid the
4 gun, that he hid it at his grandmother's house. Police went
5 and retrieved the gun that night and sent it to SLED, and
6 indeed that gun matches the shell casings that night that
7 were fired from the scene that night they killed Kenia.

8 The defendant does have a prior record, Your Honor. In
9 2002 he was convicted of burglary in the second degree and
10 sentenced under the Youthful Offender Act. In 2006 his
11 parole was revoked. In 2007 he was convicted of petit
12 larceny, and then his parole was revoked again on that
13 burglary in 2008.

14 It is the State's position, Your Honor, that, you know,
15 the defendant receive a substantial sentence because of his
16 prior record, because he was out to rob somebody that, that
17 day. That's premeditated and the fact really that this is a
18 senseless, senseless killing, and with the Court's
19 permission, whenever you'd like to hear, I know at least one
20 of the family members, Shanquanta Brockington, she is the
21 niece of the victim's mother, Pamela Fuller. Ms. Fuller
22 obviously is very upset, she's here today, very nervous,
23 and upset. She asks that Shanquanta be the spokesperson for
24 the family.

25 THE COURT: Mr. Nixon, are all those facts true as

1 stated by the solicitor?

2 DEFENDANT: Yes, sir.

3 THE COURT: I will accept the guilty plea as to each
4 charge, and I will hear from whomever would like to speak.

5 SOLICITOR PASCOE: Thank you, Your Honor.

6 Shanquanta.

7 This is Shanquanta Brockington, Your Honor.

8 WITNESS: My name is Shanquanta Brockington, and I'm
9 speaking on behalf of Kenia Scott's family. We are a small
10 family and have always been very close. Kenia's death has
11 had a devastating impact on our family. Losing Kenia has
12 caused indescribable fear, grief, and pain. Kenia was the
13 glue in our family. Wherever he was, everyone else always
14 wanted to be, and on September 19, 2009, Stufon not only
15 broke apart our family, he also broke our hearts.

16 He set out to rob Kenia that day, but ended up stealing
17 an irreplaceable part of our family to have someone so
18 young, kind, and so full of life taken away so suddenly was
19 heart wrenching, and to know that his life was taken over
20 something as petty as a car or money, I'm sorry, seems
21 unbearable.

22 During his life Kenia was a respectful son, a caring
23 brother, and loving nephew and cousin and a devoted father.
24 Stufon robbed us of sharing another moment with him, of
25 seeing him grow old, and of getting to say good-bye. He has

1 caused parents to bury their child which no one should have
2 to do, and he has taken a father from his, from his
3 children. Kenia's daughter was only two years old when he
4 died, and his son was born seven months after his death.
5 Kenia will never see his children grow up and they will
6 never have their father by their sides.

7 Kenia's life was taken without any regard, and we ask
8 that you please show no mercy when sentencing Stufon for
9 this crime. We know that this murder charge carries 30
10 years to life, but to know that a killer could serve 30
11 years and get out and become married, have children, and
12 enjoy life is unbearable. We ask that you please have mercy
13 on our family and consider sentencing Stufon to life for the
14 life that he has stolen.

15 No punishment will bring Kenia back or take away our
16 grief or pain, but to know he will never enjoy the freedoms
17 of life will be a small comfort and bring some small peace
18 to our family.

19 SOLICITOR PASCOE: Thank you, Your Honor. That's all
20 we have.

21 THE COURT: Mr. Carroway.

22 MR. CARROWAY: Your Honor, Mr. Nixon is 25 years old.
23 He will be 26 years old July 30th. He went, he went through
24 the tenth grade at Kingstree Senior High School. He worked
25 at the beach at various times. He would ride the bus or

1 whatever down there to work at various hotels down there.

2 His mother is with him here today. I have been here
3 for 19 years. I knew him, met him only one time. He had
4 some little problem as a juvenile or whatever, but I never
5 came in contact with him at any other time.

6 I've talked to law enforcement about him or whatever
7 and all of them have had good things to say about him. His
8 mom is with him here today, Ms. Self. She says that Stufon
9 was living with her at this particular time, and, you know,
10 she was just, she just could not believe that this had
11 happened or whatever, and what he told me was he had got
12 himself screwed up on -- been drinking for three or four
13 days, took a variety of drugs or whatever, and he says he
14 also took some Ectasy tablets or whatever or pills at this
15 particular time, and he said that -- he said he -- this is
16 not -- he said I almost couldn't believe -- he said this guy
17 was a good guy. He said we had -- he said we had had a
18 dispute before or whatever, but he said this guy was a good
19 guy.

20 He said there was no reason for any of this. He said
21 it was completely senseless. He says I don't hardly even --
22 he says I was hardly even conscious of what I was doing at
23 this particular time, and I've heard nothing from anybody,
24 from his mother or law enforcement or anybody to ever
25 suggest -- I know he was armed. Here jobs are not

1 plentiful, but I never heard anybody -- he's a good size
2 guy, a strong guy, never heard anybody tell anything at
3 anybody saying he was mean out there, robbing anybody,
4 bullying anybody, or fooling around, doing anything like
5 bullying or even that he was heavily involved in selling
6 drugs or doing, or doing any of those things.

7 He was -- you know, I don't think that's in his nature.
8 I've known him -- I've represented plenty of guys over the
9 years or whatever who had a tendency to be mean or could be
10 mean or, or just down right mean, but I don't think that's
11 him or whatever here. He has told me many, many times -- he
12 said I'm not sorry for myself, I'm sorry for that boy and
13 for what I've done here and for what I've done to his family
14 here or whatever. He said that's who I'm sorry about.

15 He said I know I'm going to have to pay for this, but
16 he said this guy -- he said this guy didn't deserve this.
17 This guy -- even our exchange out this, that day -- he said
18 this guy did nothing, did not make me mad, did not get
19 belligerent with me or whatever to I should be mad at him.
20 He did nothing to cause any of this, and he said I just can
21 not believe that, that even in the state of mind I was in
22 and under the influence of these drugs that I could have
23 possibly done this.

24 This is not me, not me, not me at all. I don't even
25 know who that person was or whatever, and I understand I'm

1 going to get punished, and I deserve to be punished or
2 whatever. If there was anything I could do, not to save
3 myself, but to bring this boy back or whatever and still let
4 me go off and do this time I would do that.

5 He may have something further to say, but I would ask
6 that you consider everything else that he has done here, and
7 consider -- don't consider solely this five minutes here,
8 and this guy's car here, and, you know, I know this family's
9 grieving, and when you think about it -- and Stufon and his
10 mother said how completely senseless, and apparently no
11 reason at all, and I know this is difficult for him to, to
12 handle and it is difficult for his mom, and to everyone I
13 think -- and that's all his mom has thought about is this
14 family or this boy or whatever that he is done for good, for
15 nothing, for no reason, but I ask you believe it as you
16 possibly can with him under the circumstances not only did
17 he say I deserve to be punished, but want to amount -- do
18 not want to go away for -- I understand the minimum is 30
19 years and I understand I am, very least, going to have to do
20 this or whatever, but I would like to not do any more than
21 that.

22 I think that is what he's going to say. He may have
23 something to say to you. He would like to read to the court
24 and the family and his mom may have something to say also.

25 THE COURT: Yes, sir.

1 DEFENDANT: want to say, first of all, I want to let
2 the Scott family know I really apologize for what I did.
3 You know, I wish that Kenia Scott still was here today, and
4 then I wouldn't be going through this, but I wrote something
5 for them, and all I ask for them to forgive me. Even if
6 they don't forgive me, I want to let them know I apologize
7 for what I done, for their loss and their family.

8 First let me start off by saying how truly sorry I am
9 for what I've done as well as what happened to Kenia Scott.
10 Since I have been incarcerated I've done a whole lot of soul
11 searching about the incident on the 11/13/09. I truly
12 understand clearly there's nothing I can say or do that's
13 going to be bring Kenia back. Since that day I never
14 forgived that incident at all. As y'all should know that
15 yes, it does bother me and will until the day I pass away
16 myself.

17 I can't go back and edit the past. I can only try to
18 use this incident to help me and someone else so that they
19 don't and make the same mistake I and others made because,
20 as you look at life, ain't no need to present yourself from
21 society or something that can always be prevented. This
22 incident is something we, as people, do not need to wish
23 upon no one. See, we, as people, sometimes overreact in our
24 situation.

25 I would like to let everyone know that violence is not

1 the answer to any question that needs to be asked or
2 answered in our life. I can apologize a million times for
3 the rest of my life for the loss of Kenia, but ever since
4 that day I pray for God for y'all's loss of Kenia and pain
5 and suffering. I really can't say I know how y'all are
6 feeling or what the family is going through because I truly
7 don't know, but what I can say is that if I could do it all
8 over again Kenia would be here with y'all.

9 I made a whole lot of mistakes in my lifetime, but I
10 never had none like this incident to happen to me. I will
11 always regret this incident because I will never regret -- I
12 hadn't set in my mind for this incident to happen like this.
13 I mean everyday -- I pray to God everyday and night to
14 y'all's pain and suffering I engaged. I continue to do so
15 until the day y'all find it in y'all's heart to forgive me,
16 and once you continue to forgive me, I continue to pray for
17 your pain and suffering.

18 I don't expect you to clear know, know and understand
19 how sorry I am. So right now at this very moment I would
20 like to let the whole Scott family know I truly am sorry for
21 what I have done to Kenia. I really am sorry. I wish this
22 could have been handled better. Once again, I'm truly truly
23 sorry. I continue to pray that all this will be forgiven,
24 but I continue to pray for the best and I just want the
25 Court to know what I done was real stupidity and I'm sorry.

1 Could never have done intentionally to take in my mind
2 someone's life intentionally like that. But I done wrong
3 and I know I'm supposed to be punished for what I done
4 wrong, and only thing I ask is you, as the judge, have mercy
5 upon me.

6 THE COURT: Yes, ma'am.

7 MRS. SELF: I just want to give my condolences also to
8 the Scott family. I know it was a tragic day and nothing we
9 can do to bring him back, but I just deeply hope that the
10 family find it in their hearts to forgive my son, and I will
11 continue to pray for their family as well as if they would
12 continue to pray for mines as well.

13 I know it is nothing -- I can't bring their son back,
14 but I can deeply say that my son is deeply sorry for what he
15 did, and I never ever thought upon this day this -- that I
16 would be standing in front of this courtroom, but in my
17 heart and in my son's heart I know and God know one day I
18 hope the family will forgive what this day have brung to
19 them.

20 THE COURT: Your name?

21 MRS. SELF: Shere'll.

22 THE COURT: Last name?

23 MRS. SELF: Self.

24 THE COURT: Shere'll Self?

25 MRS. SELF: Yes.

1 THE COURT: Any story -- what happened that night?

2 DEFENDANT: I wasn't in my right mind, but I'm not
3 using that as an excuse for what I did, but I took it upon
4 myself to take somebody else's stuff when I could have done
5 just as well as he did and went and got it.

6 It started in the morning. I got up in the morning,
7 walked to the Cedarhill Community, you know. I chilled with
8 a couple of fellows out there. We got to drinking, smoking,
9 you know, pop Ecstasy pill, and then later on when I see
10 Kenia, you know, me and the witness waved Kenia down, and as
11 he was approaching the vehicle to talk to Kenia, I made it
12 to the vehicle first and me and Kenia had a few words that I
13 had before, before I presented the firearm in this matter.

14 THE COURT: Did you know him?

15 DEFENDANT: Not like that.

16 THE COURT: Did you know him?

17 DEFENDANT: No, sir, not like that.

18 THE COURT: Did he know you?

19 DEFENDANT: We seen each other a couple of times
20 before, but---

21 THE COURT: Because he was a stranger to you?

22 DEFENDANT: Not really because I seen him before, but
23 heard his name, but as far as hanging together as friends or
24 whatnot, no.

25 THE COURT: I didn't ask if you were friends. I asked

1 if you knew him.

2 Did you know him?

3 DEFENDANT: Yes, sir.

4 THE COURT: He knew you?

5 DEFENDANT: Yes, sir.

6 THE COURT: What time of day or night was this?

7 DEFENDANT: Around about 7:00.

8 THE COURT: Dark?

9 DEFENDANT: No, sir, still daylight.

10 THE COURT: still daylight?

11 DEFENDANT: Yes, sir.

12 THE COURT: Go ahead.

13 DEFENDANT: Me and Kenia both locked up on the same
14 yard, prison. Both at Turbeyville, but in separate dorms,
15 but as you said I did know him.

16 THE COURT: Y'all were locked up together in
17 Turbeyville?

18 DEFENDANT: Yes, sir.

19 THE COURT: When was that?

20 DEFENDANT: Around about '07, '08, somewhere.

21 THE COURT: What were you in prison in '07 or '08 for?

22 DEFENDANT: Parole violation.

23 THE COURT: What were you on parole for?

24 DEFENDANT: Burglary nonviolent.

25 THE COURT: When did you get out of prison?

1 DEFENDANT: I just came out last year in '09,
2 January 30 of '09.

3 THE COURT: Came home January 30, '09, and committed
4 this murder nine months later, less than nine months later?
5 Were you on parole at the time?

6 DEFENDANT: No, sir.

7 THE COURT: How long had you been in prison?

8 DEFENDANT: I had like seven, nine months left since I
9 finished out my sentence.

10 THE COURT: How many times have you been to prison?

11 DEFENDANT: Three.

12 THE COURT: How old were you when you went to prison
13 the first time?

14 DEFENDANT: Eighteen.

15 THE COURT: What did you go the first time for?

16 DEFENDANT: Same thing, second degree burglary
17 nonviolent.

18 THE COURT: You pled guilty to second degree burglary
19 facing 15 years at that time at age 18.

20 How many years did you get?

21 DEFENDANT: One to six, but I ended up doing seven.

22 THE COURT: Seven years?

23 DEFENDANT: Yes, sir.

24 THE COURT: Got out what year?

25 DEFENDANT: '09.

1 THE COURT: You been in prison since 18?

2 DEFENDANT: I did about ten months and come home and
3 did a parole violation.

4 THE COURT: How long were you home before you went
5 back?

6 DEFENDANT: Two years.

7 THE COURT: what---

8 DEFENDANT: went back the first time, home two years.

9 THE COURT: You were here the first time.
10 what did you do?

11 DEFENDANT: Came home, went to get hotel work at the
12 beach.

13 THE COURT: How long was it before you got in trouble?

14 DEFENDANT: I didn't get in no more trouble. I had
15 violated by not reporting and failure to pay supervision
16 fee.

17 THE COURT: while you were in prison the second time,
18 you said you had met the victim here?

19 DEFENDANT: Yes, sir.

20 THE COURT: You were telling me what happened that
21 night. I think you were.

22 DEFENDANT: Yes, sir.

23 THE COURT: I asked you what, what happened that night.

24 DEFENDANT: I started off early that day, me and the
25 fellows I was drinking, smoking, popping Ecstasy pill.

1 THE COURT: Smoking what?

2 DEFENDANT: Marijuana, popping Ecstasy pills. Then
3 later on I'd say around about 7:00 or so we, we went to see
4 the defendant, Kenia Scott. Brother waved him down, and as
5 he was going to the car I made it to the car before him and
6 me and Kenia had a few words before I presented the firearm
7 to him.

8 THE COURT: What kind of few words did you have with---

9 DEFENDANT: We was having a discussion with -- we was
10 arguing and arguing turned into me telling him to give it
11 up.

12 THE COURT: Arguing about what?

13 DEFENDANT: Well --.

14 THE COURT: About what?

15 DEFENDANT: Over drugs.

16 THE COURT: Say it again.

17 DEFENDANT: Arguing over drugs..

18 THE COURT: Over drugs?

19 DEFENDANT: Yes, sir.

20 THE COURT: What kind of argument were you having with
21 him over drugs?

22 DEFENDANT: I purchased some drugs from him one time
23 before and he skimmed me on the drugs. So, a -- that's what
24 we was having the altercation about, and then it leads to me
25 telling him to give it up.

1 THE COURT: To give up what?

2 DEFENDANT: To give up the money.

3 THE COURT: What?

4 What money?

5 DEFENDANT: The money he had.

6 THE COURT: How much money did he have?

7 DEFENDANT: To be honest I don't know because he never
8 gave me no money.

9 THE COURT: You told him to give it up and you had a
10 gun pulled on him?

11 DEFENDANT: Yes, sir.

12 THE COURT: Then what happened?

13 DEFENDANT: We were still going back and forth and he
14 was steady telling me to get in the car and I told him no.

15 THE COURT: Telling you to get in the car?

16 DEFENDANT: Yes, sir.

17 THE COURT: His car?

18 DEFENDANT: Yes, sir.

19 THE COURT: You were saying no.

20 why did you say no?

21 DEFENDANT: Didn't know what he was going to try to do,
22 sir.

23 THE COURT: Then what happened?

24 DEFENDANT: I fire off.

25 THE COURT: He was sitting in his car driving -- I mean

1 in the driver's seat?

2 DEFENDANT: Yes, sir.

3 THE COURT: How many times you shot him?

4 DEFENDANT: Once.

5 THE COURT: what happened then?

6 DEFENDANT: He backed up. He put the car in reverse
7 and drove off.

8 THE COURT: Then what happened?

9 DEFENDANT: I went myself away.

10 THE COURT: where did you go?

11 DEFENDANT: My grandmother's house.

12 THE COURT: where did his car go?

13 DEFENDANT: After he backed out and left I didn't know
14 which way his car went, sir. He went his way and I went
15 mine.

16 THE COURT: You walked on off?

17 DEFENDANT: Yes, sir.

18 THE COURT: Your grandmother's house is within walking
19 distance?

20 DEFENDANT: Yes, sir.

21 THE COURT: what did you do there?

22 DEFENDANT: Nothing.

23 THE COURT: when did the police get you?

24 DEFENDANT: Around nine o'clock.

25 THE COURT: where did they get you from?

1 DEFENDANT: My grandmother's house.

2 THE COURT: why did you kill him?

3 DEFENDANT: To be honest, I ain't had no intentions of
4 really killing him.

5 THE COURT: why did you have a gun?

6 DEFENDANT: To keep protection over myself. I used the
7 gun in the wrong use.

8 THE COURT: You're a convicted felon. You knew a
9 person who had been convicted like you could not have a gun.
10 You knew that, didn't you?

11 DEFENDANT: Yes, sir.

12 THE COURT: what do you mean you had it for your
13 protection?

14 From, from who?

15 For what?

16 DEFENDANT: I have also been in a couple drive-by
17 shootings, sir. So, that's why I had me a gun.

18 THE COURT: You have been in some drive-by shootings?

19 DEFENDANT: Yes, sir.

20 THE COURT: Where?

21 DEFENDANT: At the track.

22 THE COURT: Were you shooting at people?

23 DEFENDANT: No, sir.

24 THE COURT: People were shooting at you?

25 DEFENDANT: People were shooting at me.

1 THE COURT: For what?

2 DEFENDANT: The area I was in, people shooting at the
3 area.

4 THE COURT: Why is that?

5 DEFENDANT: To be honest I don't know. I don't even
6 know the people. So, that's when I got myself a gun.

7 THE COURT: What else you think I need to know about
8 you?

9 DEFENDANT: That's pretty much it. I'm not a troubled
10 person.

11 THE COURT: Say what?

12 DEFENDANT: That's pretty much about it. I'm not a
13 troubled person. I don't know, go around making trouble or
14 nothing. I made---

15 THE COURT: You're 25 years old. Since age 18 you have
16 been in prison all except about two years, is that right?

17 DEFENDANT: Yes, sir.

18 THE COURT: You're not a trouble maker. Now, you are
19 here for murder, attempted armed robbery, possession of a
20 weapon during a violent crime.

21 That's not trouble?

22 You've been locked up in chains, orange jumpsuit,
23 prison outfit for most of your adult life, and you're not a
24 trouble-maker?

25 You went how far in school?

1 DEFENDANT: Tenth.

2 THE COURT: Why did you get out, get kicked out of
3 school?

4 DEFENDANT: Because I got locked up, sir.

5 THE COURT: You have trouble as a juvenile as well?

6 DEFENDANT: Yes, sir.

7 THE COURT: How old were you when you got in trouble as
8 a juvenile?

9 DEFENDANT: Thirteen.

10 THE COURT: For doing what?

11 DEFENDANT: I can't remember. I forgot what it was
12 for.

13 THE COURT: Where did you get that gun from?

14 DEFENDANT: I bought it from out the streets.

15 THE COURT: From where?

16 DEFENDANT: A person in the streets. They sold it to
17 me.

18 THE COURT: From who?

19 DEFENDANT: A person named Twan.

20 THE COURT: Twan?

21 DEFENDANT: Yes, sir.

22 THE COURT: Where was that at?

23 DEFENDANT: Up the track.

24 THE COURT: You say up the track, what are you talking
25 about?

1 DEFENDANT: Up on Thorn Avenue.

2 THE COURT: That's where you go to use drugs?

3 DEFENDANT: At times, sir.

4 THE COURT: What other reason do you go there?

5 DEFENDANT: To purchase drugs.

6 THE COURT: You go there to buy drugs?

7 DEFENDANT: Yes, sir.

8 THE COURT: You realize many people who live there are
9 good people, but you go there to buy drugs, and that's where
10 you went for the drive-by shootings?

11 Is that what you're talking about where that happened?

12 DEFENDANT: Yes, sir. Well, I got caught in one of
13 them.

14 THE COURT: How much did you pay for this gun?

15 DEFENDANT: Sixty.

16 THE COURT: Stolen gun?

17 DEFENDANT: To be honest I didn't know.

18 THE COURT: Didn't care?

19 What else you want me to know, Mr. Nixon?

20 DEFENDANT: The only thing I want you, you to know, I
21 apologize. I'm sorry. I know that really don't matter, but
22 I am though.

23 THE COURT: I guess it matters to you that you're
24 sorry, but as far as the consequences of you killing
25 someone, they're still there.

1 DEFENDANT: Yes, sir.

2 THE COURT: Anything else, Mr. Carroway?

3 MR. CARROWAY: Nothing, Your Honor.

4 THE COURT: Solicitor?

5 SOLICITOR PASCOE: No, sir.

6 THE COURT: Anything any other family members want to
7 say?

8 SOLICITOR PASCOE: Mr. Singletary would like to say
9 something if that's okay, the victim's father.

10 I will point out, while we're waiting, the gun was
11 stolen and that's the burglary charge I'm dismissing, and
12 the only other evidence the victim was involved in that
13 burglary that took place was the co-defendant participated
14 in the burglary, but that was a stolen gun, yes, sir.

15 THE COURT: Stolen gun. Stolen gun.

16 SOLICITOR PASCOE: Mr. Singletary, the victim's father.

17 THE COURT: Yes, sir, Mr. Singletary.

18 MR. SINGLETARY: It is not easy standing before this
19 young man. I would like to thank the Court for giving me
20 this opportunity to say a few words here. I drove all the
21 way from Massachusetts where I have been living for the last
22 25 years and---

23 THE COURT: What place you stay at, you were saying?

24 MR. SINGLETARY: Massachusetts and I always stayed in
25 contact with my son. All during the week I would call him

1 and check on him to see how he's doing, but also speaking as
2 the family, I mean for the family that Scott is all very --
3 I mean Mr. Scott, they will never be able erase dad and mom
4 thinking about how wonderful this young man was and full of
5 life and couldn't get a sense of understanding of how this
6 could be, you know, done and taken, his life taken so
7 shortly from him at a young age, which nothing said, nothing
8 we can do but put life back in him.

9 We take life to the fullest, full of fun and enjoyment.
10 I wonder about his little kids, just had a little born baby
11 about seven months ago, two year old daughter, but just to
12 walk-in court and look at you and say to myself, what was
13 going through this young man's mind, you know, what, what
14 was, what was going through this young man's mind to create
15 such a terrible scenery like this because I try to react it
16 within my own several, judgment, walk up to a car and --
17 after reading police reports, take a pee, and just stuck
18 into the mouth, pull the trigger, and walk off.

19 What kind of conscious can one have when doing such a
20 thing?

21 The family, been Scott, I guess there's no more tears
22 to drop behind us because they has already dropped, but as a
23 father, no one knows the pain that one has to bear up until
24 they face a test like this. I don't hold no grudge against
25 you because I'm not the one to judge you. We aren't here as

1 a person, as a people, and God got to judge him.

2 So, all I can say to the court is if it's in your
3 heart, Your Honor, life is precious. We're all living, at
4 this very moment, the blood is running warm in our veins,
5 stands before you with his heart pumping, full of life like
6 my son was, and I feel that if there's a life sentence it
7 would be warranted.

8 Thank you.

9 SOLICITOR PASCOE: This is Ms. Fuller, Your Honor. The
10 victim's mother would like to say something very briefly.

11 Thank you.

12 MS. FULLER: Your Honor, I want the defendant to know I
13 do forgive you for killing my son. I forgive you because
14 I'm trying to go to heaven. I forgive you. I want you to
15 know when you go to prison that me, myself, as a mother, I
16 do forgive you, but I still want you to serve time, but I do
17 forgive you and your family, your mother. I want you to
18 know that when you go to prison I forgive you. That's all I
19 want to say.

20 SOLICITOR PASCOE: Thank you, Your Honor.

21 THE COURT: Mr. Nixon, you continually created and
22 recreated this scene, came before the Court for a sentence.
23 Court had mercy on you, didn't comply with the music, went
24 back in, back out.

25 Now you've committed the most serious crime known to

1 man, which is murder, and at age 25, whether you get a
2 sentence of 30 years, 40 years, 50 years, 60 years, or life,
3 you're dealing with a very uncertain future, a future that
4 most of us probably will not follow. There is no magic wand
5 to determine what is the best sentence for someone who
6 commits murder, and certainly it's easy to issue a life
7 sentence, and -- which for a person of age 25, the life
8 expectancy now entering into the seventies, that would mean
9 you'd probably spend 50, 60, or more years in prison unless
10 you die of something else before that time.

11 The sentence being a most serious offense, this is a no
12 parole offense, considering everything that I've heard, it
13 is the sentence of the Court, for the offense of murder,
14 that you be committed to the State Department of Corrections
15 for a period of 50 years, for attempted armed robbery,
16 sentence is 20 years, for possession of a weapon during the
17 commission of a violent crime, the sentence is five years.

18 That's the sentence of the Court.

19 SOLICITOR PASCOE: Thank you, Judge Newman.

20 MR. CARROWAY: Are those concurrent sentences, Your
21 Honor?

22 THE COURT: Yes.

23

24 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

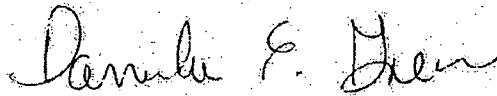
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Williamsburg County, South Carolina, on the 19th day of July, 2010, as reported by Priscilla Nay and transcribed by myself to the best of my ability.

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

February 29th, 2012



PAMELA E. GREEN, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Williamsburg)

Stefon Nixon # 288195)

Full name and prison number (if any) of Applicant)

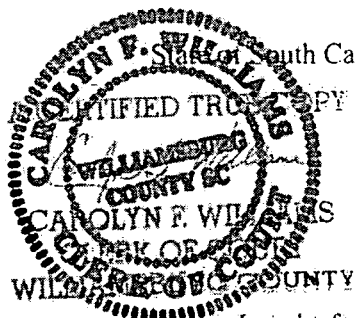
v.)

10 CP45 404

APPLICATION FOR
POST-CONVICTION RELIEF

CLERK OF COURT
WILLIAMSBURG COUNTY
10 OCT -8 PM 1:55

FILED



INSTRUCTIONS - READ CAREFULLY

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

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

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

- Place of detention Lieber Correctional Inst P.O. Box 205
Ridgville South Carolina, 29472
- Name and location of Court which imposed sentence General Session
Williamsburg County Courthouse
- Name(s) of co-defendant(s) (if any) _____
- The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - # 2009-65-45-272
 - Murder/Attempted Armed Robbery/ Poss of a Weapon
During a Violent Crime.

(c) _____

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

(a) July 19, 2010

(b) 50 years

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Guilty Plea

(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. N/A
iii. _____

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

i. _____
ii. N/A
iii. _____

(c) the date of each such result:

i. _____
ii. N/A
iii. _____

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

i. _____
ii. N/A
iii. _____

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

(a) Guilty Plea

(b) Just beginning My Remedy.

10 OCT 18 PM 11:55
CLERK OF COURT
KIP HALL S.C.

FILED

10 CP45 404

FILED

OCT - 9 PM 1:55

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

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) DUE PROCESS VIOLATION
- (c) _____

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

- (a) Counsel Talked me into pleading guilty
- (b) Counsel failed to investigate the evidence
- (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? _____

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. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

FILED
10 OCT -8 PM 1:55
Clerk of Court
County of San Diego

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

N/A

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

N/A

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

N/A

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?

N/A

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

N/A

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

- i. _____
- ii. _____
- iii. _____

N/A

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

(a) Just beginning my Remedy

(b) _____

(c) _____

10 OCT 19 PM 1:56
CLERK OF COURT
MIDLAND DISTRICT

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? _____

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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

(a) the name and address of each attorney who represented you:

i. LeGrand Carraway
P.O. Box 819 Okingstrie S.C. 29556.

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Guilty plea
Sentencing.

ii. _____

iii. _____

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

New Trial / Time Out

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

NO!

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ID OCT -8 PM 1:55
CLERK OF COURT
MIDWESTEE, S.C.

STATE OF SOUTH CAROLINA)

County of Williamsburg)

VERIFICATION

Stefon Nixon #288195, 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.

S/ Stefon Nixon / Stefon Nixon

SWORN to and subscribed before me this 4th day of October, 2010.

Sybra Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

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

I, Stefon Nixon #288195, 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.

Stefon Nixon
Applicant

SWORN or affirmed to and subscribed before me this
4th day of October, 2010.

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

FILED
10 OCT -8 PM 1:55
CLERK OF COURT
KING COUNTY, WA

June 27, 2012

Ms. Megan E. Harrigan, AAG
 SC Attorney General's Office
 P.O. Box 11549
 Columbia SC 29211

Stufon Nixon, #288195
 Lieber Corr. Inst. / CA-38
 P.O. Box 205
 Ridgeville SC 29472

Re: Supplemental to (PCR) Application

Dear Ms. Harrigan,

I am writing you this letter in concern to my original (PCR) application. Here is the docket number 2010-CP-45-0404, and I would like to have my Supplemental letter attach to my original (PCR) application. Also Ms. Harrigan will you kindly please forward me a copy of this letter back clocked, stamped, and filed.

Issues: (1) Not Knowing Involuntary Plead of Guilty Plea.

(2) Counsel failure to interview any witnesses.

(3) Counsel failure to perpare me in a defenses.

(4) Counsel failure to investigate any waives.

(5) Counsel also failure to give me my complete case file as requested.

(6) Counsel also failure to explain to me my Appeal rights or shared with me my plea bargain agreement papers.

(7) Counsel failure to inform me of the change with Solicitors.

(8) Counsel never file an Appeal on my behalf.

(9) Counsel failure to ask for a lesser included offense.

C. C. Ms. Megan E. Harrigan

Sworn or affirmed to and subscribed

before me this 28th day of June 2012

Sylvia Jones
 Notary Public

My Commission Expires: 1/29/2013

Stufon Nixon
 Stufon Nixon, 288195
 Lieber Corr. Inst. / CA-38
 P.O. Box 205
 Ridgeville SC 29472

State Of South Carolina
County of Williamsburg

} In The Court of Common Pleas

2010-CP-45-0404

Stufon Nixon, 288195
Applicant,

} Certificate of Service

v.

State of South Carolina,
Respondent.

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

Megan E. Harrigan, AAG
SC Attorney General's Office
P.O. Box 11549
Columbia SC 29211

Dated this 27th day of June, 2012

Sworn or affirmed to and
subscribed before me this 28th
day of June, 2012
Sylvia Jones
Notary Public

S. Stufon Nixon
Stufon Nixon, 288195
Lieber Corr. Inst. / CA-38
P.O. Box 205

My Commission Expires: 1/24/2013 Ridgeville SC 29472

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG)	
)	
)	2010-CP-45-0404
)	
Stufon Nixon, #288195,)	
)	
Applicant,)	
)	
v.)	RETURN
)	(Appointment of Counsel Requested)
State of South Carolina,)	
)	
Respondent.)	
)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed October 8, 2010,¹ 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 Williamsburg County Clerk of Court. The Applicant was indicted for (1) Murder, (2) Attempted Armed Robbery, and (3) Possession of a Weapon During Commission of a Violent Crime (2009-GS-45-0272). Legrand Carraway, Esquire, represented him. On July 19, 2010, the Applicant pled guilty. He was sentenced by the Honorable Clifton Newman to fifty (50) years imprisonment. Applicant did not appeal his conviction and sentence.

Attached herewith and incorporated herein are the records of the Williamsburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.
 - a. "Counsel talked me into pleading guilty."
2. Due process violation.
 - a. "Counsel failed to investigate the evidence."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRC.P.

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

¹ The application was received by Respondent on December 5, 2011.

judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

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

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the issue of ineffective assistance of counsel.

Respectfully submitted,

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May 18, 2012.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)
)
)
)
 STUFON NIXON, 288195,)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2010-CP-45-0404

AFFIDAVIT OF SERVICE BY MAIL

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

Stufon Nixon, #288195
Lieber Correctional Institution
Post Office Box 205
Ridgeville, SC 29472

DATED this 18th day of May, 2012.

Lauren Meara
 Lauren Meara, Legal Assistant
 For Respondent

1 State of South Carolina) In the Court
 2 County of Williamsburg) Of Common Pleas
 3
 4 Docket No. 2010-CP-45-0404
 5
 6 Stufon Nixon,)
 Applicant,)
 7)
 8 vs.) Transcript of Record
 9)
 10 State of South Carolina,)
 Defendant.)

11
 12 October 3, 2013
 13 Sumter, South Carolina
 14

15 B E F O R E:

16 The Honorable R. Knox McMahon, Judge.
 17

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

19 Charles Brooks, Esquire
 20 Attorney for the Applicant

21 Daniel Gourley, Assistant Attorney General
 22 Attorney for the Respondent

23
 24 Brenda J. Sigwald, Circuit Court Reporter
 For the Honorable R. Knox McMahon
 25 P.O. Box 206, Jackson, South Carolina 29831

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(REPORTER'S NOTE: There were no exhibits
entered during this hearing.)

1 THE COURT: All right. Mr. Gourley?

2 MR. GOURLEY: Yes, Your Honor, may it please the
3 Court. This is Stufon Nixon vs. State of South Carolina,
4 Docket No. 2010-CP-45-0404. The applicant is presently
5 confined in the South Carolina Department of Corrections
6 pursuant to orders of commitment out of the Williamsburg
7 County Clerk of Court. He was indicted for murder,
8 attempted armed robbery, possession of a weapon during the
9 commission of a violent crime. Mr. Carraway represented
10 him.

11 July 19th, 2010, the applicant pled guilty and was
12 sentenced by the Honorable Clifton Newman, fifty years
13 imprisonment. He did not appeal his conviction or
14 sentence. Subsequently he filed a PCR application on
15 February 8, 2010. Your Honor, that application was
16 received by respondent on December 5th, 2011. The
17 applicant is alleging that he is being held in custody
18 unlawfully based on ineffective assistance of counsel,
19 specifically that counsel talked him into pleading guilty
20 and a due process violation for failing to investigate the
21 evidence. The State made its return on May 18, 2012, and
22 he's represented in this action by Mr. Charles Brooks.

23 THE COURT: Thank you.

24 Mr. Brooks, anything before you call your first
25 witness?

1 **MR. BROOKS:** Judge, my client wants to respectfully
2 ask the Court for a continuance. He's indicated he's got
3 some more research that he wants to do in order to enhance
4 his ability to prevail in his PCR.

5 **THE COURT:** Is that correct?

6 **MR. BROOKS:** Yes.

7 **THE COURT:** Thank you, Mr. Brooks.

8 Mr. Gourley?

9 **MR. GOURLEY:** Your Honor, we would adamantly oppose
10 a continuance. The State's expended resources to get
11 Mr. Nixon here and Mr. Brooks is here and has been
12 representing Mr. Nixon -- I'm looking that up now, Your
13 Honor -- since February 14, 2013 this application has been
14 pending for three years now approximately. Furthermore,
15 Your Honor, we have victims here present who have given up
16 their time. Mr. Carraway has given up his time to be here
17 today. And, Your Honor, we would just ask that this case
18 go forward. It was a guilty plea, Your Honor. He's only
19 alleged that counsel was ineffective for failing to
20 investigate and that he was forced into pleading guilty,
21 Your Honor.

22 **THE COURT:** All right. I would respectfully deny
23 the motion to continue the case.

24 **MR. BROOKS:** I understand, Your Honor.

25 **THE COURT:** You may call your first witness.

Stufon Nixon - Direct Examination by Mr. Brooks

1 MR. BROOKS: We'd call Mr. Nixon to the stand.

2 THE COURT: All right. If you'd come around,
3 Mr. Nixon, and be sworn.

4 STUFON NIXON,
5 having been duly sworn, testified as follows:

6 THE BAILIFF: Thank you. State your name, please
7 and spell YOUR last name for the record.

8 THE WITNESS: Stufon Nixon, N-i-x-o-n.

9 THE COURT: All right. Mr. Brooks.

10 DIRECT EXAMINATION

11 BY MR. BROOKS:

12 Q Mr. Nixon?

13 A Yes.

14 Q You're here for your post conviction relief
15 application and we're trying to get you a new trial.
16 That's what you want; is that correct?

17 A Yes.

18 Q Okay. And you had Mr. Carraway appointed to
19 represent you?

20 A Yes.

21 Q You ended up pleading guilty. Did you do that
22 upon -- with the advice of Mr. Carraway?

23 A Yes.

24 Q Okay. Now, what did he tell you to get you to
25 plead guilty?

Stufon Nixon - Direct Examination by Mr. Brooks

1 A Well, Mr. Carraway told me was clearly that the
2 State had evidence against me that it didn't look good for
3 me to go to trial because he didn't think we had a chance
4 at trial. So that's what he used for me to get me to plead
5 guilty.

6 Q Okay. Did he give you any specifics?

7 A Yes. He said that the State had fingerprints
8 residues; firearms, stuff like that. Witnesses, statements
9 against me.

10 Q Okay. His discussion with you, is that the sole
11 reason that you ended up pleading guilty?

12 A Yes.

13 Q Now, after you got incarcerated and went to prison,
14 you got to look at your file; is that right?

15 A Yes.

16 Q And what did you see in your file that made you
17 think that that's something you should not have done?

18 A I noticed in my file that what Mr. Carraway said
19 that the State had against me -- they really didn't have
20 what he said they had against me.

21 Q What did they have?

22 A They didn't have any fingerprints, any residue,
23 none of the witness statements or anything against me.

24 Q So now, if you had known this prior to your plea,
25 what would you have done?

Stufon Nixon - Direct Examination by Mr. Brooks

1 A I would have insisted on going to trial.

2 Q Okay. Did he tell you anything else to entice you
3 to plead? Like what kind of time you're looking at?

4 A Yeah, he told me that I wouldn't get more than
5 thirty years.

6 Q Okay. Is that what you thought you were looking at
7 when you went in front of Judge Newman?

8 A Yes, I thought I was getting thirty years.

9 Q Okay. If you'd known you were getting fifty, you
10 definitely wouldn't plea?

11 A No, I would have insisted on going to trial.

12 Q Okay. And do you recall how many times you met
13 with Mr. Carraway on the case?

14 A The only time I met with Mr. Carraway was down at
15 the Court.

16 Q How long were you in jail?

17 A Ten months.

18 Q And you didn't bond out, right?

19 A No. Never seen a judge to get a bond.

20 Q Okay. And you only talked to him the day you went
21 and pled?

22 A The day I went to plead.

23 Q Okay. Now, was he the only lawyer on your case?

24 A He was the only one.

25 Q Okay. All right. And you didn't have any

Stufon Nixon - Direct Examination by Mr. Brooks

1 resources to hire private counsel, right?

2 A No.

3 Q All right. So basically, you feel like you got bad
4 advise from your court appointed counsel?

5 A Yes.

6 Q And that led you to plead; is that right?

7 A Yes.

8 Q And if you knew then what you know now, you would
9 have insisted on going to trial?

10 A Yes, I would still insist on going to trial.

11 Q All right. Now, Mr. Nixon, we talked about this --

12 A Yes.

13 Q If we convince Judge McMahon to grant your PCR, you
14 understand that basically the relief is to go back and get
15 a new trial?

16 A Yes.

17 Q And you -- you know you got 50 years, a long time;
18 it could get worse?

19 A Yeah.

20 Q You could get life. You understand that?

21 A Yes.

22 Q And you still want to go forward and have your PCR
23 granted; is that correct?

24 A Yeah.

25 Q Okay. Is there anything else that you want to tell

Stufon Nixon - Direct Examination by Mr. Brooks

1 the Court that we haven't covered here?

2 A The only thing I want to let the Courts know that
3 I'm really not fully prepared for this, but just wanted to
4 make sure that it be put on the record there's still some
5 witnesses that I would like to have subpoenaed and all that
6 to the case where as far as the witnesses who supposedly
7 wrote statements against me; and experts to have them
8 subpoenaed to testify evidence that they gave forth with.

9 Q You're talking about the experts whose names came
10 up in the discovery that you saw?

11 A Yeah, in my discovery.

12 Q And the witnesses that law enforcement had taken
13 statements from as a part of the case?

14 A Yes, supposedly had taken statements from.

15 Q All right. These are things that you saw in
16 discovery after you got incarcerated?

17 A Yes.

18 Q That's what you're talking about?

19 A Yes.

20 Q Okay. Is there anything else?

21 A No, that's it.

22 Q Are you sure now? This is your day to ask the
23 Court for a PCR. Is there anything we haven't covered?

24 A Basically that's it.

25 Q All right. Go ahead and answer any questions of

Stufon Nixon - Cross-Examination by Mr. Gourley

1 the attorney general.

2 THE COURT: Thank you, Mr. Brooks.

3 Mr. Gourley?

4 MR. GOURLEY: Thank you, Your Honor.

5 CROSS EXAMINATION

6 BY MR. GOURLEY:

7 Q Mr. Nixon, how many times did you meet with your
8 counsel prior to your guilty plea?

9 A Once.

10 Q One time. Did you ever review discovery with him,
11 look over the evidence or anything before your guilty plea?

12 A No, we never -- we never reviewed none of that.

13 The only thing he did was when he brought the discovery to
14 me, he just pulled out my statement and that was it. He
15 never went over the rest of the discovery with me.

16 Q Okay. Did you discuss any possible defenses.

17 A No, he never did nothing. The only thing he said
18 was we didn't have a chance at trial.

19 Q So you're saying you didn't have enough time,
20 didn't have enough meetings?

21 A Yeah.

22 Q Do you remember telling the Court that you had
23 enough time to discuss this with your attorney? You
24 remember that?

25 A Yes.

Stufon Nixon - Cross-Examination by Mr. Gourley

1 Q You said that under oath.

2 A Yes.

3 Q Okay. You also told him that he had done
4 everything that you think he should have done to assist you
5 in this case. Remember that?

6 A Right.

7 Q Okay. And that you had had enough time to make up
8 your mind that you decided that you wanted to plead guilty?

9 A Yes.

10 Q So you're here today saying you didn't have enough
11 time, you didn't have enough meetings; and you didn't have
12 enough time to review the discovery?

13 A Yes.

14 Q So -- and you're under oath today?

15 A Yes.

16 Q So which one is it, Mr. Nixon, were you lying then
17 to the judge or are you lying now to the judge?

18 A No, what I'm saying is, I'm going by what I'm
19 saying today, I didn't have enough time to spend with my
20 attorney or --

21 Q But you told the judge at your guilty plea that you
22 did.

23 A That's the only reason why I told the judge that
24 because the simple fact the advice that the counsel gave
25 me.

Stufon Nixon - Cross-Examination by Mr. Gourley

1 Q Well, who's doing the time, Mr. Nixon?

2 A Me.

3 Q Okay. So if you didn't feel you'd had enough time,
4 why didn't you speak up to the judge?

5 A Because the simple fact, upon my counsel's advise
6 of what he told me I was going to get; but if I knew I
7 wasn't going to get it; I would have spoke up.

8 Q And he told you that you were going to get thirty
9 years?

10 A Yes.

11 Q You remember you were facing -- the jury indicted
12 you and you were facing a murder charge and you could get
13 up to life?

14 A Yes.

15 Q You remember the judge advising you that you were
16 facing an attempted armed robbery, that the minimum you
17 could get was twenty years on that?

18 A Right.

19 Q Okay. Remember the judge telling you you were
20 facing --

21 MR. GOURLEY: Beg the Court's indulgence, Your
22 Honor.

23 BY MR GOURLEY:

24 Q That you were facing on possession of a weapon, you
25 were going to face five years for that?

Stufon Nixon - Cross-Examination by Mr. Gourley

1 A Yes.

2 Q But you were facing a life sentence?

3 A Yeah.

4 Q And you knew that before you pled guilty?

5 A He never told me that.

6 Q The judge said right here, that I have the
7 authority to sentence you to life in prison. And you said,
8 yes, sir?

9 A The judge did, but my counsel never told me that.

10 Q That doesn't matter. The judge said that he had
11 the authority to sentence you to life in prison and you
12 said yes, sir and you understood that. And you didn't feel
13 inclined to say, Hey, Judge, my counsel promised me I was
14 going to get 30 years?

15 A No.

16 Q Why not?

17 A Because I didn't know that I could do that.

18 Q Okay. You didn't know you could speak to the
19 judge. The judge told you if you, you had the opportunity
20 to give a statement to the judge. You remember him saying
21 that?

22 A Right. But I didn't know that I could actually
23 tell the judge what my counsel told me.

24 Q Yes, sir. Do you remember your statement to the
25 judge?

Stufon Nixon - Cross-Examination by Mr. Gourley

1 A Yes.

2 Q You remember saying that you killed the victim
3 Kenny Scott in this case?

4 A Yes.

5 Q So you are guilty of killing Kenny Scott?

6 A No.

7 Q So you lied to the judge and told him that you shot
8 him?

9 A Yeah.

10 Q You lied to the judge when you said that was over a
11 drug transaction, that y'all got in an argument, you pulled
12 out a gun and you shot him?

13 A Yeah.

14 Q That was all a lie?

15 A (Witness nodded head.)

16 Q Okay. And now you want a trial on these charges?

17 A Yes.

18 Q So just so I have it straight, Mr. Nixon, when you
19 stated all these things at your guilty plea, you were lying
20 to the Court, under oath?

21 A Yes, I was.

22 Q Okay.

23 MR. GOURLEY: No further questions, Your Honor.

24 THE COURT: Redirect, Mr. Brooks?

25 MR. BROOKS: No, sir, Judge.

LeGrand Carraway - Direct Examination by Mr. Gourley

1 THE COURT: Thank you. Thank you very much, Mr.
2 Nixon, you may step down.

3 MR. BROOKS: That's the applicant's side of this.

4 THE COURT: Thank you.

5 All right. Mr. Gourley, you may call your
6 witnesses.

7 MR. GOURLEY: Your Honor the State would call
8 Mr. LeGrand Carraway.

9 THE COURT: All right. If you'd come around and be
10 sworn for us, Mr. Carraway.

11 LEGRAND CARRAWAY,
12 having been duly sworn, testified as follows:

13 THE BAILIFF: State your name, please, and spell
14 your last name for the record.

15 THE WITNESS: LeGrand Carraway, Carraway.

16 THE COURT: All right. Mr. Gourley?

17 MR. GOURLEY: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. GOURLEY:

20 Q Mr. Carraway, were you appointed or retained in
21 this case?

22 A Appointed.

23 Q Okay. And you know how many times you met with the
24 applicant, just a rough approximation?

25 A Every time I would go over to the jail, I go over

LeGrand Carraway - Direct Examination by Mr. Gourley

1 to the jail once a week and every time I would go over
2 there, we would talk either for -- so I guess 15 or 20
3 times. I don't know how long we talked or whatever, but,
4 you know, I talked to him.

5 Q Okay. And did you receive discovery in this case?

6 A Yes, I did.

7 Q Did you review it with him?

8 A Yes, I did.

9 Q Did he seem to understand it?

10 A Yes, he did.

11 Q Any questions that he asked, did you answer them?

12 A Yes.

13 Q Okay. Did you discuss any possible defenses to
14 these charges he was facing?

15 A Yes.

16 Q Okay. And based upon your meetings and the
17 reviewing of the discovery with the applicant, were you
18 able to develop an opinion regarding the State's ability to
19 prove his guilt beyond a reasonable doubt?

20 A Yes.

21 Q And what was that, Mr. Carraway?

22 A That he needed to plead guilty.

23 Q You think the State's evidence was overwhelming?

24 A Yes.

25 Q Okay. You think that you had enough time to

LeGrand Carraway - Cross-Examination by Mr. Brooks

1 prepare this case for trial?

2 A Yes.

3 Q You recall any plea negotiations in this case?

4 A No.

5 Q Okay. There was a burglary, first dismissed as
6 part of this plea, correct?

7 A Yes.

8 Q You recall that?

9 A Yes.

10 Q And whose decision was it to plead guilty?

11 A His.

12 Q Did you talk the applicant into pleading guilty?

13 A No.

14 Q Okay. Did you feel you -- okay. Strike that.
15 If he'd elected to go to trial, you were prepared
16 to take this to trial?

17 A Yes.

18 MR. GOURLEY: No further questions, Your Honor.

19 THE COURT: Thank you, Mr. Gourley.

20 Mr. Brooks?

21 CROSS-EXAMINATION

22 BY MR. BROOKS:

23 Q Mr. Carraway?

24 A Yes, sir, Mr. Brooks. How are you?

25 Q Doing good. How are you?

LeGrand Carraway - Cross-Examination by Mr. Brooks

1 A I'm doing good.

2 Q Of course you represented Mr. Nixon in this matter?

3 A Yes, I did.

4 Q And this was part of being the public defender at
5 that time?

6 A Yes.

7 Q Did you think about whether or not he should
8 receive a mental evaluation?

9 A No.

10 Q So you never thought about that, right?

11 A No.

12 Q Okay. Did you go to his preliminary hearing?

13 A Yes, I did.

14 Q And was he present at the preliminary hearing too?

15 A I do not recall.

16 Q Do you recall how many times you met with him to
17 discuss this case with him while he was in jail?

18 A Every week I'd go to the jail.

19 Q So you don't necessarily have a record of meeting
20 with him?

21 A No.

22 Q You would just go to the jail --

23 A To see everybody.

24 Q To see everybody. Okay. Now, did you talk to some
25 of the witnesses who alledgedly pulled the victim out of

LeGrand Carraway - Cross-Examination by Mr. Brooks

1 the vehicle?

2 A I didn't talk to any of the witnesses. Basically,
3 talked to him and we went over his statement.

4 Q Okay. So basically, in addition to talking to him,
5 the only thing you relied on was the prosecution talking to
6 the solicitor?

7 A The prosecution talking to the solicitor and based
8 on what he said in his own statement.

9 Q Okay. Did you advise him of how problematic his
10 statement was?

11 A Well, I mean, you want me to tell you what his
12 statement was?

13 Q Sure.

14 A All right. His statement was that he had -- it's
15 my recollection that, this part any way -- that he had been
16 in a detention center or in prison with the victim before
17 and I think my idea was that they done a short amount of
18 time together and had been either in a detention center or
19 off maybe doing something. So he knew him there and the
20 guy was from Kingstree.

21 And he told me, he said, this guy -- we had argued
22 once before. He said this guy had a very nice car and he
23 had a car that -- he was running the car on this particular
24 day that was -- I think the car may have been four or five
25 years old, but it was painted up, brightly painted, big

LeGrand Carraway - Cross-Examination by Mr. Brooks

1 wheels and all of that stuff or whatever. And I think this
2 guy may have, you know, dealt in drugs or whatever. He may
3 have done that or whatever. But Stufon said he had an
4 argument with him at a car wash. He said he had met him
5 there and they argued about something or whatever and he
6 said this guy just thought he was better than me. He said
7 I always got the idea that this guy just had the idea that
8 he was better than me.

9 Q Was this in his statement?

10 A This is what he told me. He told me this.

11 Now, in his statement, he goes onto say this: He
12 says, I went up to this guy to rob him on this particular
13 day and I went up to his car and I had a gun and pointed a
14 gun and I'd told him to give it up or something to that
15 effect. And he said this guy said to me, he said, you
16 don't want to do this. He said why don't you get in the
17 car with me and let's just go for a ride and let's talk
18 about this. And I kept saying to him, I want you to give
19 me what you got.

20 And he said this guy kept saying to me, get into
21 the car and let's go for a ride and let's just talk about
22 this. And he said this -- he said -- he said that to me
23 four or five different times. He just kept saying to me,
24 Get in the car and let's just go for a ride and talk about
25 this. I finally got tired of hearing that and he said I

LeGrand Carraway - Cross-Examination by Mr. Brooks

1 just shot him four or five times. I just fired at him.

2 And he told me this, I was -- he said I was -- I had been

3 high at that point for two or three days, he said, I

4 don't -- he said I didn't hardly know what I was doing at

5 that point. He said I was -- I had been high and he said I

6 don't know -- I'd taken all this different stuff and

7 everything and I hardly knew -- he said, I just been

8 completely out of it for days; and I think he was arrested

9 maybe later on -- this may have happened in the morning or

10 in the middle of the day or whatever. Either that night or

11 the next day and he said I just --

12 I've known him since he was twelve years old. He's

13 a good kid. He's a nephew of a long-time secretary at the

14 solicitor's office. He's a good guy. He's a good fellow,

15 I just don't know what happened on this particular day. I

16 think at various times in his statement he had said that

17 they were arguing about something or that he thought the

18 guy was reaching for a gun, but finally, that's what he

19 told me.

20 And that's what was in his statement there as to

21 what happened. That was the final thing he said about what

22 happened there. And when I talked to him about what we

23 needed to do at trial, he said, well, I -- you know, he

24 didn't, you know -- he just -- didn't protest when he -- he

25 understood that -- and I think what the State -- the State

LeGrand Carraway - Cross-Examination by Mr. Brooks

1 also had some witnesses that were going to say that they
2 were talking to him before this guy pulled up in this case.
3 I think what he did is he shot this guy three or four times
4 and then the guy was trying to drive off in the car and the
5 guy actually didn't -- cranked the car up, or either the
6 car was still going, and the guy drove off a little ways;
7 and I think he ended up in a ditch or up against a tree or
8 something like that or whatever.

9 But some guys said they had talked to Stufon -- the
10 State said that they had had witnesses that were going to
11 say that Stufon was talking to them and he said I'm going
12 to rob somebody. I'm going to rob the next person that
13 comes through here. I'm going to rob somebody today. And
14 they said they saw him go over to this car and they were a
15 little distance off and they weren't quite -- I don't know
16 that they quite heard -- I don't know how far away they
17 were, whether it was 25, 50, 75, 100 yards, but they said
18 they did hear the gunshots or whatever over there.

19 Q Did you look at any discovery information such
20 as -- was there any gunshot residue on the victims hands?

21 A He never said that the guy even had -- he said
22 he -- at one point he said either to me or in his
23 statement, I believe, that, I thought he was reaching for
24 something. He never claimed that the guy actually shot or
25 fired a shot or that he actually saw a gun.

LeGrand Carraway - Cross-Examination by Mr. Brooks

1 I believe as far as what he said was in his
2 statement was I thought he was reaching for something or
3 whatever, but I don't know that anybody ever -- I don't
4 think he ever claimed that the guy actually fired a gun.

5 Q Okay. Did you -- were you aware that SLED still
6 has this open as an active investigation?

7 A I'm not aware of that.

8 Q Did you look to see whether or not there was any
9 defects in the indictment, such as when it was true billed
10 before going to general sessions.

11 A I didn't see any defects in it.

12 Q Did you discuss everything you just testified to
13 with him?

14 A When I went over that statement with him, you know,
15 I mean he could have said, wait a minute, I didn't -- I
16 didn't tell them that or -- but this was an actual
17 transcript, now, it wasn't the tape. And as we know in
18 transcripts sometimes, they can get words wrong or
19 whatever, even innocently get something wrong and somebody
20 can be talking and something -- you can look at the
21 sentence and say this doesn't quite make sense the way they
22 put this in there.

23 But his mother even came to me after the trial and
24 said, you know, I heard this, I heard that, or whatever.
25 And I said, this is his statement here. I want you to look

LeGrand Carraway - Cross-Examination by Mr. Brooks

1 over there.

2 Q Did you perhaps contemplate whether or not that
3 statement could have been suppressed?

4 A Yes, but he never claimed -- he never claimed this.
5 It was just a lengthy -- and I think he'd given -- he may
6 have said something else earlier in the statement about
7 Well, I thought this or whatever or either they came back
8 another day or whatever, but this was his final statement
9 and he never denied when I talked to him about that, is
10 this what happened here, he never denied that that's what
11 had happened.

12 Q Okay.

13 A But he -- his -- he did say, I was so high on so
14 many different things here, that I wasn't in my right mind
15 and I know he would have never done anything like this had
16 he been in his right mind because that's not him. He's a
17 good guy.

18 Q What -- okay. Did -- was he out of his right mind
19 when he was talking to law enforcement? Did you look into
20 that?

21 A He didn't deny that he -- he didn't deny -- when I
22 went over that statement with him, he didn't deny that part
23 of his statement. He didn't deny that he was --

24 Q He didn't say that I was going -- okay.

25 A He denied -- when we read over that, he could have

LeGrand Carraway - Cross-Examination by Mr. Brooks

1 said, Look that's not really what happened. He didn't say
2 that. He basically -- you know he denied that that's what
3 he said or deny that that's what I said, but that's not
4 what happened. He didn't deny that that's what happened.

5 Q Did you tell him he was going to be looking at
6 maybe thirty years?

7 A I didn't tell him that.

8 Q Did you tell him anything about sentencing? What
9 his sentence would be?

10 A I told him it was up to the judge. And he's a good
11 guy or whatever here and drugs had so much to do with this.
12 But even -- it was very chilling to hear what he said about
13 what this guy said about let's just go for a ride here and
14 talk about this. Just get in and let's go for a ride. And
15 he just said, I just got tired of hearing that and it was
16 about as senseless as anything can be. It just -- but it
17 was because of the drugs, not because he's a bad guy, but
18 it was just -- you know, you do things a long time or
19 whatever and, you know, it just -- there wasn't any -- it
20 just -- there was no anger involved here. The other guy
21 didn't -- it didn't escalate into an argument. But that's
22 what he said that the guy said to him three, four or five
23 times.

24 Q Okay. Do you remember getting numerous letters
25 from Mr. Nixon from the jail asking to look at his file,

LeGrand Carraway - Cross-Examination by Mr. Brooks

1 Look into his discovery, go over things with you?

2 A I do remember that, yeah.

3 Q Okay. And it's your testimony that you did go over
4 that; is that right?

5 A Yeah, well, that was -- that's a good starting
6 point. Now, this is going to be their strong point right
7 here. When you get up on that stand, now what are you
8 going to say here? Tell me what you're going to say and
9 there could be something he could say, but he didn't have
10 anything to say about that. I got the idea he was very
11 remorseful and that -- and as he told me, I don't even
12 hardly remember those two or three days. I barely
13 remember -- you know, he said -- that's what he said, any
14 way, but he, of course -- you know, stated pretty clearly
15 what I said to this guy and what he said back to me and
16 what I did.

17 Q Okay.

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

20 THE COURT: Yes, sir, certainly.

21 MR. BROOKS: No other questions, Judge.

22 THE COURT: Thank you. Mr. Brooks.

23 Redirect?

24 MR. GOURLEY: Yes, Your Honor, just briefly.

25 ///

LeGrand Carraway - Redirect Examination by Mr. Gourley

REDIRECT EXAMINATION

1
2 BY MR. GOURLEY:

3 Q Mr. Carraway, you reviewed the evidence in this
4 case?

5 A Yes, I did.

6 Q And if there was any way to suppress a motion or
7 anything else that you found, you would have discussed that
8 with the defendant?

9 A I would have.

10 Q And you would have, obviously, he would have been
11 aware of that, correct?

12 A Yes.

13 Q And it was his decision to plead guilty, correct?

14 A Yes, it was.

15 Q Okay. You said that he was very remorseful, right?
16 About this crime that he committed?

17 A Yes, he was.

18 Q Okay. And he apologized to the Court a good number
19 of times when he was in front of the judge during the
20 guilty plea, correct?

21 A Yes, he did.

22 Q And he also admitted that he did shoot the victim
23 in this case, correct?

24 A He did.

25 **MR. GOURLEY:** No further questions, Your Honor.

1 THE COURT: Recross, Mr. Brooks?

2 MR. BROOKS: No, sir.

3 THE COURT: Thank you. Thank you very much,
4 Mr. Carraway. You may step down.

5 All right. You may call your next witness.

6 MR. GOURLEY: No further witnesses, Your Honor.

7 THE COURT: Anything in reply?

8 MR. BROOKS: No, sir, Judge.

9 THE COURT: All right. I'll be glad to hear from
10 you, Mr. Brooks.

11 MR. BROOKS: Just briefly, Judge, we think that my
12 client's testimony, he established that he should have his
13 PCR granted and he should be given a new trial on the basis
14 that this was an involuntary waiver of his rights and we
15 ask that you overturn it.

16 THE COURT: Thank you, Mr. Brooks.

17 Mr. Gourley?

18 MR. GOURLEY: Your Honor, the applicant stated that
19 he was not truthful under oath during his guilty plea, that
20 he lied about his statements he made under oath. I would
21 submit to the Court that that makes his testimony not
22 credible at that point in time; Your Honor. Especially
23 here at this hearing. Mr. Carraway testified that he met
24 with the applicant fifteen to twenty times. He reviewed
25 the discovery and the applicant was aware of the evidence

1 against him prior to his guilty plea.

2 Your Honor, furthermore, as Mr. Carraway stated,
3 the evidence in this case was very overwhelming, and Your
4 Honor, I believe the record speaks for itself with
5 Mr. Nixon's statements during that guilty plea. It's
6 pretty incriminating. And Your Honor, we do have victims
7 present here in the courtroom and I don't know if they
8 would like to speak to Your Honor. If you would indulge
9 them.

10 THE COURT: I certainly will. I'll hear from
11 anybody you want me to hear from or anybody that Mr. Brooks
12 wants me to hear from.

13 MR. GOURLEY: Your Honor, this is Ms. Scott.

14 THE COURT: All right. You may stand up at the
15 microphone and tell me your full name.

16 MS. SCOTT: Eustace Scott.

17 THE COURT: All right. Ms. Scott, I'll be glad to
18 hear from you.

19 MS. SCOTT: That was my nephew that he killed and
20 our family really suffered; and we're definitely not
21 looking forward to him having a new trial. I was in the
22 courtroom whenever he got sentenced the first time and he
23 seemed like he understood very clear what the judge was
24 saying and he said he was very sorry about what he did and
25 he was really intoxicated and high.

1 And what Mr. Carraway said, you know, that's
2 basically what happened. A lot of people in the streets
3 saying that that's what happened. You know, he was looking
4 for somebody to rob. And I think he just don't want to do
5 all that time that he's got coming to him, but I think he
6 deserves every bit of it and that he does not deserve a new
7 trial.

8 **THE COURT:** Thank you. Thank you very much. I'm
9 sorry you have to be here, Ms. Scott. Thank you, thank you
10 for being here.

11 **MR. GOURLEY:** And Your Honor, we appreciate you
12 indulging Ms. Scott in this and, of course, we know that
13 this isn't evidence in the PCR, it was just a moment to
14 talk to the Court, Your Honor.

15 **THE COURT:** Yes, sir.

16 Mr. Brooks, anything further?

17 **MR. BROOKS:** Judge, we just -- my client's position
18 is that he should be granted a new trial.

19 **THE COURT:** Thank you. Thank you, very much.
20 Thirty days proposed orders to my law clerk and to each
21 other. Thank you very much.

22 Good luck to you, Mr. Nixon.

23 * * * * * END OF TRANSCRIPT * * * * *

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State of South Carolina)
County of Aiken) **Certificate of Reporter**

I, THE UNDERSIGNED, Brenda J. Sigwald, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that I reported the proceedings in the captioned case in the Court of General Sessions in and for the State of South Carolina on the 3rd day of October, 2013.

I FURTHER CERTIFY that the 30 foregoing pages, constitute a true, accurate and complete transcript of said hearing.

I FURTHER CERTIFY that I am neither kin, counsel, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Aiken County, this 5th day of March, 2014.



Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020.

1	<p>addition [1] - 19:4 admitted [1] - 27:22 advice [2] - 5:22, 11:24 advise [3] - 8:4, 12:5, 19:9 advising [1] - 12:15 ahead [1] - 9:25 Aiken [2] - 31:2, 31:18 allegedly [1] - 18:25 alleged [1] - 4:19 alleging [1] - 3:17 amount [1] - 19:17 anger [1] - 25:20 answer [2] - 9:25, 16:11 apologized [1] - 27:18 appeal [1] - 3:13 Applicant [2] - 1:6, 1:20 applicant [9] - 3:4, 3:11, 3:17, 15:24, 16:17, 17:12, 28:18, 28:24, 28:25 applicant's [1] - 15:3 application [4] - 3:14, 3:15, 4:13, 5:15 appointed [4] - 5:18, 8:4, 15:20, 15:22 appreciate [1] - 30:11 approximation [1] - 15:24 argued [2] - 19:21, 20:5 arguing [1] - 21:17 argument [3] - 14:11, 20:4, 25:21 armed [2] - 3:8, 12:16 arrested [1] - 21:8 assist [1] - 11:4 assistance [1] - 3:18 Assistant [1] - 1:21 attempted [2] - 3:8, 12:16 attorney [3] - 10:1, 10:23, 11:20 Attorney [3] - 1:20, 1:21, 1:21 authority [2] - 13:7, 13:11 aware [4] - 23:5, 23:7, 27:11, 28:25</p>	<p>BAILIFF [2] - 5:6, 15:13 barely [1] - 26:12 based [3] - 3:18, 16:16, 19:7 basis [1] - 28:13 beg [2] - 12:21, 26:18 better [2] - 20:6, 20:8 beyond [1] - 16:19 big [1] - 19:25 billed [1] - 23:9 bit [1] - 30:6 bond [2] - 7:18, 7:19 Box [1] - 1:25 Brenda [3] - 1:24, 31:6, 31:22 briefly [2] - 26:24, 28:11 brightly [1] - 19:25 BROOKS [14] - 4:1, 4:6, 4:24, 5:1, 5:11, 14:25, 15:3, 17:22, 26:18, 26:21, 28:2, 28:8, 28:11, 30:17 Brooks [16] - 1:19, 3:22, 3:24, 4:7, 4:11, 5:9, 10:2, 14:24, 17:20, 17:24, 26:22, 28:1, 28:10, 28:16, 29:11, 30:16 Brooks..... [1] - 2:4 Brooks..... [1] - 2:8 brought [1] - 10:13 burglary [1] - 17:5 BY [6] - 5:11, 10:6, 12:23, 15:19, 17:22, 27:2</p>	<p>15:20, 16:21, 17:23, 27:3, 28:4, 28:23, 29:2, 30:1 case [18] - 4:17, 4:23, 7:13, 7:23, 9:6, 9:13, 11:5, 14:3, 15:21, 16:5, 17:1, 17:3, 18:17, 22:2, 27:4, 27:23, 29:3, 31:9 center [2] - 19:16, 19:18 certainly [2] - 26:20, 29:10 Certificate [2] - 2:10, 31:1 certify [1] - 31:8 CERTIFY [2] - 31:12, 31:15 chance [2] - 6:3, 10:18 charge [1] - 12:12 charges [2] - 14:16, 16:14 Charles [2] - 1:19, 3:22 chilling [1] - 25:12 Circuit [2] - 1:24, 31:7 claimed [4] - 22:24, 23:4, 24:4 clear [1] - 29:23 clearly [2] - 6:1, 26:14 clerk [2] - 3:7, 30:20 client [1] - 4:1 client's [2] - 28:12, 30:17 Clifton [1] - 3:12 coming [1] - 30:5 commission [2] - 3:9, 31:24 commitment [1] - 3:6 committed [1] - 27:16 Common [1] - 1:1 complete [1] - 31:13 completely [1] - 21:8 confined [1] - 3:5 constitute [1] - 31:13 contemplate [1] - 24:2 continuance [2] - 4:2, 4:10 continue [1] - 4:23 conviction [2] - 3:13, 5:14 convince [1] - 8:13 correct [8] - 4:5, 5:16, 8:23, 17:6,</p>	<p>27:11, 27:13, 27:20, 27:23 Corrections [1] - 3:5 counsel [11] - 3:18, 3:19, 4:19, 8:1, 8:4, 10:8, 11:24, 13:9, 13:13, 13:23, 31:15 counsel's [1] - 12:5 County [4] - 1:2, 3:7, 31:2, 31:18 course [3] - 18:2, 26:14, 30:12 COURT [28] - 3:1, 3:23, 4:5, 4:7, 4:22, 4:25, 5:2, 5:9, 10:2, 14:24, 15:1, 15:4, 15:9, 15:16, 17:19, 26:20, 26:22, 28:1, 28:3, 28:7, 28:9, 28:16, 29:10, 29:14, 29:17, 30:8, 30:15, 30:19 Court [15] - 1:1, 1:24, 3:3, 4:2, 7:15, 9:1, 9:23, 10:22, 14:20, 27:18, 28:21, 30:14, 31:7, 31:9, 31:23 court [2] - 3:7, 8:4 Court's [2] - 12:21, 26:18 courtroom [2] - 29:7, 29:22 Courts [1] - 9:2 covered [2] - 9:1, 9:23 cranked [1] - 22:5 credible [1] - 28:22 crime [2] - 3:9, 27:16 CROSS [2] - 10:5, 17:21 Cross [2] - 2:5, 2:8 CROSS-EXAMINATION [1] - 17:21 Cross-Examination [2] - 2:5, 2:8 custody [1] - 3:17</p>
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DEC 16 2013

S.C. Supreme Court

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS)
FOR THE THIRD JUDICIAL CIRCUIT)

Stufon Nixon, #288195,)

Case No. 2010-CP-45-0404)

Applicant,)

v.)

ORDER OF DISMISSAL)

State of South Carolina,)

Respondent.)

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S.C. SUPREME COURT

This matter comes before the Court by way of a post-conviction relief application filed on October 8, 2010 and received by the Attorney General Office on December 3, 2011. Respondent made its Return on May 18, 2012. An evidentiary hearing into the matter was convened on October 3, 2013, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. Applicant was indicted during the December 2009 term of the Williamsburg County Grand Jury for Murder, Attempted Armed Robbery and Possession of a Weapon During Commission of a Violent Crime (2009-GS-45-272). Legrand Carraway, Esquire, represented him. On July 19, 2010, the Applicant pled guilty. He was sentenced by the Honorable Clifton Newman to fifty years imprisonment for Murder, five years imprisonment for Possession of a Weapon During Violent Crime, and twenty years imprisonment for Attempted

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ARMED ROBBERY. Applicant did not appeal his guilty plea or sentence.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of Counsel
 - a. "Counsel talked me into pleading guilty."
2. Due Process violation
 - a. "Counsel failed to investigate the evidence."

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, LeGrand Carraway, Esquire (Counsel). This Court also had before it a copy of Applicant's guilty plea transcript, the records of the Williamsburg County Clerk of Court, and records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified he met with Counsel one time prior to his guilty plea. Applicant testified he reviewed discovery and discussed possible defenses with Counsel. Applicant recalled telling the plea judge that he was satisfied with Counsel and Counsel had done everything he asked him to do. However, Applicant stated he was lying to the plea judge and in fact was not satisfied with Counsel services. Applicant recalled agreeing to the facts stated by the Solicitor during his guilty plea. Applicant recalled telling the plea judge that he was guilty of this crime. Applicant testified he was lying to the plea judge and is in fact not guilty of this crime. Applicant recalled telling the plea judge that a fight broke out over some drugs and he shot the Kenia Scott (Victim) as a result of the argument. However, Applicant testified he was lying to the plea judge. Applicant testified he was not satisfied with Counsel's services because Counsel failed to subpoena witnesses and experts for his case. Applicant further testified he pled guilty was due to Counsel's lack of preparation in his case. Applicant



argued the State had no evidence linking him to the crime. Applicant further testified Counsel promised he would only receive thirty years if he pled guilty.

Following Applicant's testimony, Counsel was called to testify by the State. Counsel testified he was appointed in this case. Counsel estimated that he visited Applicant at least fifteen to twenty times prior to Applicant's guilty plea. Counsel testified he filed for and received discovery in Applicant's case. Counsel testified he reviewed the complete discovery with Applicant and discussed all possible defenses with him. Counsel testified he reviewed Applicant's statement with him. Counsel explained that Applicant admitted to getting into an argument with Victim over drugs. Counsel testified Applicant felt that Victim thought he was better than him because Victim drove a nicer car. Counsel testified Applicant told him that they were only going to rob Victim, but Victim attempted to persuade Applicant not go through with the robbery. Counsel further testified, Applicant got frustrated and shot Victim four to five times. Counsel testified Applicant never denied his statement to police. Counsel testified the State had multiple witnesses who could implicate Applicant in the crime. After meeting and reviewing the discovery with the Applicant, Counsel testified that he felt the State could easily prove Applicants guilt beyond a reasonable doubt. Counsel characterized the State's evidence against Applicant as "overwhelming." Counsel testified he had enough time to prepare this case for trial if Applicant chose not to plead guilty.

Counsel testified there were plea negotiations with the State, resulting in an indictment for Burglary in the First Degree being dismissed. Counsel testified he never promised Applicant would receive a certain sentence and Applicant was aware of the potential sentences he was facing when pleading guilty. Counsel testified that it was Applicant's decision to plead guilty and he did not coerce Applicant. Counsel further testified that he was prepared to take



Applicant's case to trial had he choose to proceed to trial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's testimony is less credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985). Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

INEFFECTIVE ASSISTANCE OF COUNSEL

Plea counsel ineffective for coercing him into pleading guilty.

Applicant alleges that Counsel was ineffective for coercing him to enter a guilty plea. This Court finds the guilty plea transcript, along with Counsel's credible testimony, reveals Applicant freely and voluntarily pled guilty. Counsel testified he met with Applicant fifteen to twenty times prior to his guilty plea. Counsel testified he reviewed and discussed all discovery material with Applicant prior to his guilty plea. Counsel further testified he discussed the possibility of any defenses, but the evidence against Applicant was "overwhelming." Counsel testified the State *not proessed* a charge of Burglary in the First Degree as part of the plea deal. Further, the plea transcript reveals, Applicant informing the plea court that he was fully satisfied with Counsel. Applicant further informed the plea court that Counsel had done everything that was asked of him and there was nothing left for Counsel to do. Further, Counsel testified he never promised Applicant a certain sentence nor did he coerce Applicant into pleading guilty. Counsel testified he was prepared to take the case to trial, but ultimately Applicant chose to plead guilty. This Court finds that Counsel's performance was reasonable and effective.



Furthermore, the Applicant has shown no actual prejudice from any alleged deficiency of Counsel. This Court finds that Applicant has failed to meet his burden of proof in regards to this allegation, and accordingly this allegation must be denied and dismissed with prejudice.

Plea Counsel failed to investigate into the evidence.

This Court finds Applicant's allegation of ineffective assistance of plea counsel due to Counsel's alleged failure to investigate evidence is without merit. Based on the credible testimony of Counsel, this Court finds that Counsel fully investigated and prepared Applicant's case for trial. Applicant alleged that Counsel should have investigated into potential alibi witnesses, lack of fingerprints, and a lack of gunshot residue. However, Applicant presented no reports, offered no expert testimony, and otherwise provided no evidence to support this allegation. Applicant was unable to even speculate as to what benefit could have been derived by any such investigation. Counsel testified he met with Applicant fifteen to twenty times prior to his guilty plea. Counsel testified he reviewed and discussed all discovery material with Applicant prior to his guilty plea. Counsel further testified that he discussed the possibility of any defenses, but the evidence against Applicant was "overwhelming."

Based on the foregoing, this Court finds that the Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). This Court finds that Counsel performed a thorough investigation and was not deficient in regards to his investigation or preparation for trial. Furthermore, the Applicant has shown no actual prejudice from any alleged deficiency of counsel. Applicant entered a guilty plea based on a favorable plea offer from the State that was secured after Counsel's competent performance. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.



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 Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

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 notes that that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.




IT IS THEREFORE ORDERED:

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 26 day of Nov, 2013.

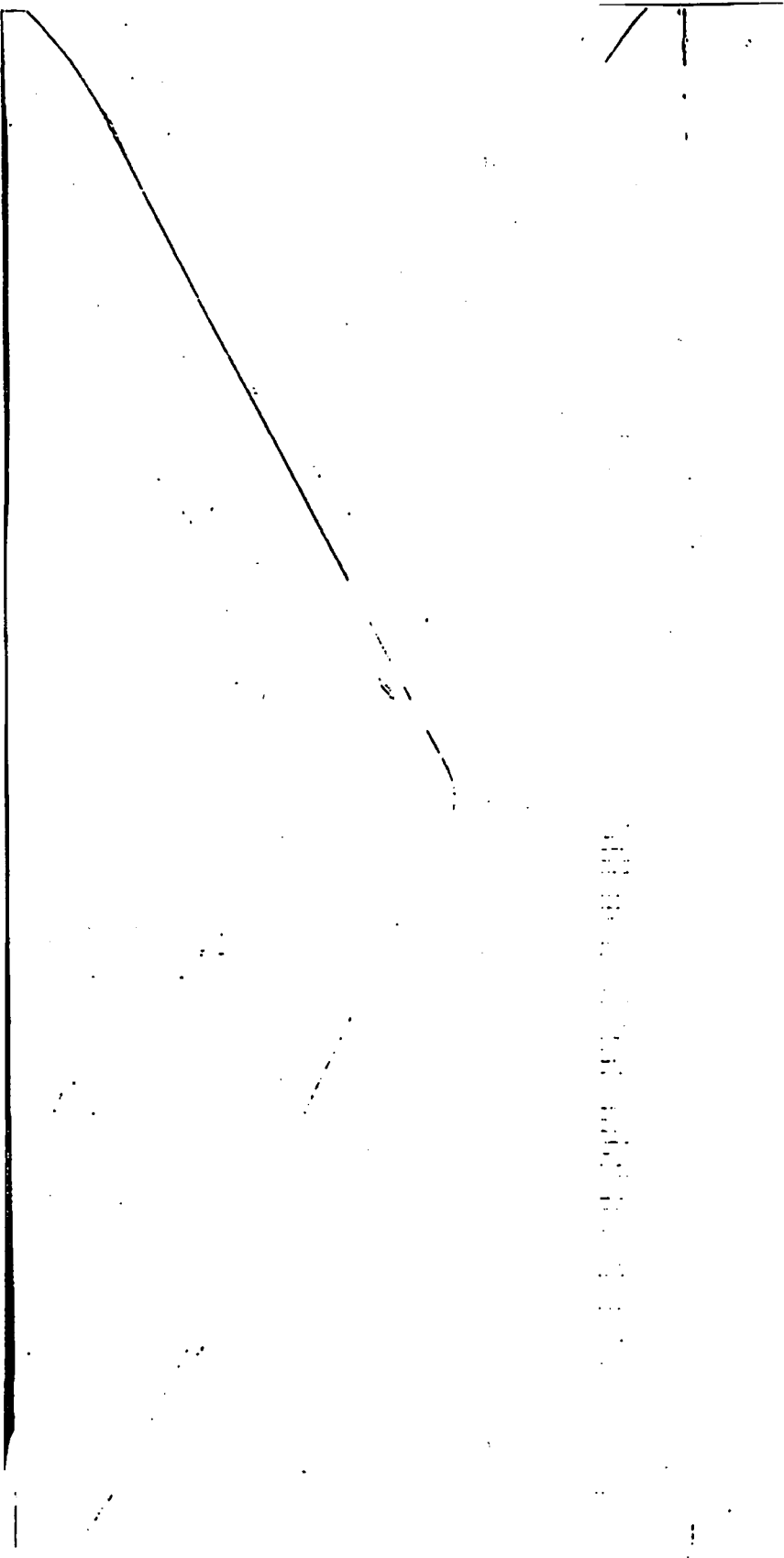


R. KNOX MCMAHON
Presiding Judge
Third Judicial Circuit

 South Carolina

CHARLES T. BROOKS, III
THE BROOKS LAW OFFICE, LLC
POST OFFICE BOX 3512
SUMNER, S. C., 29151

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211



WITNESSES

SHERIFF'S OFFICE

Pamela Lail

ARREST WARRANT NUMBER

M 061249

D/A: 9/16/09

ACTION OF GRAND JURY

True Bill

Sara J. Huggins

Foreperson of Grand Jury
Date: 12/10/09

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2009-GS-45- 272

The State of South Carolina

County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

DECEMBER TERM 2009

THE STATE

vs.

STUFON DELSHAN NIXON

Indictment for

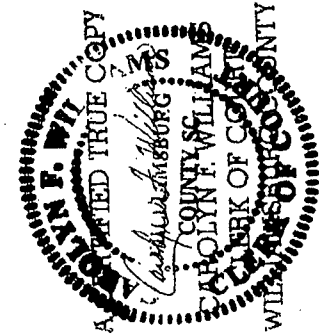
MURDER, ATTEMPTED ARMED
ROBBERY AND POSSESSION OF A
WEAPON DURING VIOLENT CRIME

C. KELLY JACKSON, SOLICITOR

FILED

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CAROLYN F. WILLIAMS
CLERK OF COURT
KING OF LEAF, S.C.



STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG) **INDICTMENT FOR**
MURDER, ATTEMPTED ARMED ROBBERY AND
POSSESSION OF A WEAPON DURING
VIOLENT CRIME

At a Court of General Sessions, convened on December 14, 2009, the Grand Jurors of WILLIAMSBURG County present upon their oath:

COUNT ONE - MURDER - §16-3-10

That **STUFON DELSHAN NIXON** did in Williamsburg County on or about September 13, 2009, feloniously, wilfully and with malice aforethought, kill one **Keena S. Scott** by means of shooting the victim, and that the said victim did die as a proximate result thereof, in violation of Code Section 16-3-10, Code of Laws of South Carolina (1976), as amended.

COUNT TWO - ATTEMPTED ARMED ROBBERY - § 16-11-330 (B)

That **STUFON DELSHAN NIXON** did in Williamsburg County on or about September 13, 2009, violate Section 16-11-330 (B) of the Code of Laws of South Carolina (1976), as amended, in that he attempted to take cash or other personal property from the person or in the presence of the victim, while armed with a pistol or other deadly weapon.

COUNT THREE - POSSESSION OF A WEAPON DURING VIOLENT CRIME - §16-23-490

That **STUFON DELSHAN NIXON** did in Williamsburg County on or about September 13, 2009, possess or visibly display a firearm during the commission or attempted commission of a violent crime, in violation of Code Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

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

C. Kelly Jacobson

SOLICITOR

CAROLYN E. WILLEMS
 CLERK OF COURT
 KING OF TREET, S.C.
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FILED

