

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Cherokee County
J. Derham Cole, Circuit Court Judge

RECEIVED

JUN - 4 2014

S.C. Supreme Court

KENYAL L. ROGERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000547

APPENDIX

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1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF CHEROKEE) IN THE COURT OF GENERAL SESSIONS

3
 4 THE STATE)
 5 -vs-) TRANSCRIPT OF RECORD
 6 KENYAL ROGERS,) 2008-GS-11-226
 7 Defendant.) JANUARY 27, 2009
 8) Gaffney, South Carolina
 9

10 B E F O R E:

11 THE HONORABLE ROGER L. COUCH, JUDGE.
 12
 13

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

15 MICHAEL MORIN, ASSISTANT SOLICITOR
 16 Attorney for the State

17 THOMAS SHEALY, ASSISTANT PUBLIC DEFENDER
 18 Attorney for the Defendant

19
 20 Michael R. Watts
 21 Circuit Court Reporter
 22
 23
 24
 25

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EXHIBITS

NO. DESCRIPTION

ID. EV.

(NO EXHIBITS MARKED)

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(PROCEEDINGS, JANUARY 27, 2009)

KENYAL ROGERS, having been first duly sworn,
testified as follows:

THE COURT: Mr. Morin?

MR. MORIN: Your Honor, this is Kenyal Rogers.
He's pleading to 08-GS-11-226, originally indicted as
murder, pleading guilty to manslaughter.

There is a negotiated sentence of thirty years.

It is my understanding that the defense intends to
present it as an Alford plea. The State does not object.

THE COURT: Your name is Kendall or Kenyal, excuse
me?

THE DEFENDANT: It's pronounced Kenyal.

THE COURT: Kenyal Lamond Rogers, is that correct?

THE DEFENDANT: Yes, sir, that is correct.

THE COURT: Now, sir, you are before me today on a
charge that was originally indicted as a murder by the Grand
Jury and it was True Billed as that offense.

The State has informed me that they are willing to
accept a plea to voluntary manslaughter. That particular
charge is a lesser included offense of the one that was
indicted, and that carries a potential sentence of anywhere
from zero to thirty years in prison.

The State has informed me that they have entered
into negotiations with you and your attorney. And as a

1 result of those negotiations, the State has agreed to a
2 negotiated sentence of thirty years in prison.

3 Now, sir, I will advise you that this is a violent
4 and most serious offense that you are pleading to. That
5 means that this will serve as one of your strikes. In the
6 future, if you are found guilty of or plead guilty to other
7 cases classified as these either violent, serious, or most
8 serious, those pleas or that finding of guilty of those
9 offenses could result in your being in prison for life
10 without the possibility of parole. So, in other words, your
11 plea in this case could be used against you in the future.

12 Do you understand that fact?

13 THE DEFENDANT: Yes, sir, I understand, Your
14 Honor.

15 THE COURT: All right. Now, also I will advise
16 you, since this is a negotiated sentence, I have the
17 authority to either accept or not accept that negotiation.
18 If I decide that I will not accept the negotiation, I will
19 advise you of that fact and at that time give you an
20 opportunity to withdraw your plea. Do you understand that
21 as well?

22 THE DEFENDANT: Yes, sir, I understand, Your
23 Honor.

24 THE COURT: Also, have you been informed of the
25 fact that you have ten days from the date of this plea in

1 which to appeal this plea, if you choose to do so?

2 THE DEFENDANT: Yes, sir, Your Honor.

3 THE COURT: All right.

4 Now, do you currently suffer are any mental,
5 physical, or nervous problem that would in any way affect
6 your ability to make good decisions today or to know what
7 you are doing?

8 THE DEFENDANT: No, sir, Your Honor.

9 THE COURT: Have you taken or used any drugs or
10 any other substances that would in any way affect your
11 ability to reason or make good decisions today?

12 THE DEFENDANT: No, sir, Your Honor.

13 THE COURT: So, Mr. Rogers, you are telling me
14 that you do know what you are doing, is that correct?

15 THE DEFENDANT: Yes, sir, Your Honor.

16 THE COURT: And you are able to go forward with
17 your plea, is that also correct?

18 THE DEFENDANT: Yes, sir, Your Honor.

19 THE COURT: Now, sir, I have explained to you the
20 fact that the original indictment was for murder and that
21 the plea is being offered to voluntary manslaughter. Do I
22 need to read the original charges to you?

23 THE DEFENDANT: No, sir, Your Honor.

24 THE COURT: Do you understand what you were
25 charged with, is that correct?

1 THE DEFENDANT: Yes, sir, Your Honor.

2 THE COURT: Do you also understand that the nature
3 and the elements of the lesser included offense of voluntary
4 manslaughter?

5 THE DEFENDANT: Yes, sir, Your Honor.

6 THE COURT: So I do not need to explain that to
7 you as well, is that also true?

8 THE DEFENDANT: Correct, Your Honor.

9 THE COURT: Now, your attorney has informed me
10 that it's your intention to offer a plea under the case of
11 Alford versus the State of North Carolina. That particular
12 case states that you and your attorney have the right to
13 review the evidence that's in the possession of the State.
14 And once you have completed that review, you have the right
15 to make a decision that, based on your review, it's your
16 belief that if that evidence were presented to a jury at a
17 trial, that it would more than likely result in your
18 conviction of the offense, and, therefore, you have the
19 right to make a decision not to contest the charges. Is
20 that true?

21 THE DEFENDANT: Yes, sir, Your Honor.

22 THE COURT: So, therefore, would your plea in this
23 case be no contest?

24 THE DEFENDANT: Yes, sir, Your Honor.

25 THE COURT: Now, counsel, have you had an

1 opportunity to discuss this plea with your client?

2 MR. SHEALY: Yes, Your Honor.

3 THE COURT: Are you satisfied that he understood
4 the discussions that he had with you?

5 MR. SHEALY: I am, Your Honor.

6 THE COURT: And was he able to participate in his
7 defense?

8 MR. SHEALY: Very much so, Your Honor.

9 THE COURT: Now, among the many things that I
10 believe that you have discussed with your client, you would
11 have discussed such matters as the nature of the original
12 charge and the elements thereof; the elements and the nature
13 of the charge to which he's pleading; the potential
14 penalties that are involved; the negotiations that have gone
15 on; any defenses that he might have had to the charges that
16 are before the court, as well as the rights that he might
17 have under the Constitution. Is that a correct statement?

18 MR. SHEALY: It is, Your Honor.

19 THE COURT: Are you satisfied he understood those
20 rights?

21 MR. SHEALY: Yes, Your Honor.

22 THE COURT: Did you also discuss with him the
23 limited possibility of parole in this case?

24 MR. SHEALY: Yes, Your Honor. In fact, I told him
25 it was a nonparolable offense and that he would be looking

1 at serving 85 percent of the time.

2 THE COURT: Did you understand that as well, Mr.
3 Rogers?

4 MR. SHEALY: Minimum.

5 THE DEFENDANT: Yes, sir, Your Honor.

6 THE COURT: All right. Now, do you agree that
7 your attorney discussed the things that I mentioned to him?

8 THE DEFENDANT: Yes, sir, Your Honor.

9 THE COURT: And is there any part of that that you
10 wish to discuss further with your lawyer?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: Are you satisfied with your attorney's
13 services?

14 THE DEFENDANT: Yes, sir, Your Honor.

15 THE COURT: Mr. Rogers, my documents indicate that
16 you are 30 years of age, is that true?

17 THE DEFENDANT: Correct, Your Honor.

18 THE COURT: And how far did you go in your
19 schooling?

20 THE DEFENDANT: Three years in college, Your
21 Honor.

22 THE COURT: Are you married?

23 THE DEFENDANT: No, sir.

24 THE COURT: Do you have children?

25 THE DEFENDANT: No, sir, Your Honor.

1 THE COURT: Were you employed at the time that you
2 were arrested for this offense?

3 THE DEFENDANT: Yes, sir, Your Honor.

4 THE COURT: And can you tell me how you were
5 employed?

6 THE DEFENDANT: I was employed through Spectol
7 USA, which is a subsidiary of the Thomas School Bus Company.
8 We manufactured and installed school bus windows for every
9 school bus in America, Your Honor.

10 THE COURT: All right.

11 Now, sir, has anyone in any way threatened you,
12 coerced you, put pressure on you, tried to intimidate you,
13 done any act whatsoever to try to get you to offer a plea in
14 this case against your wishes?

15 THE DEFENDANT: Your Honor -- Your Honor -- no,
16 sir, Your Honor.

17 THE COURT: Well, you hesitated, and my question
18 again now has someone intimidated you, tried to put pressure
19 on you, tried to do any act to get you to plead against your
20 wishes?

21 THE DEFENDANT: No, sir, Your Honor.

22 THE COURT: Are you offering the plea that you are
23 offering freely and voluntarily?

24 THE DEFENDANT: Yes, sir, Your Honor.

25 THE COURT: Have you had enough time to consider

1 your case and prepare a defense, if that's what you chose to
2 do?

3 (Off the record)

4 (Back on the record)

5 THE DEFENDANT: Yes, sir, Your Honor.

6 THE COURT: Now, sir, has anyone made any
7 promises, guarantees or assurances to you concerning any
8 matters whatsoever, including, but not limited to, such
9 matters as pardon, parole, probation, or early release in
10 order to get you to offer a plea in this case?

11 THE DEFENDANT: No, sir, Your Honor.

12 THE COURT: Now --

13 MR. SHEALY: I would say I guaranteed him that --

14 THE COURT: Well, there is --

15 MR. SHEALY: -- he would either get 30 years or he
16 would --

17 THE COURT: This is a negotiated sentence. We
18 have already talked about that, but I'm just asking you if
19 there has been any guarantees or assurances, because I told
20 him even that's not guaranteed, because I don't have to
21 accept it.

22 MR. SHEALY: Yes, Your Honor.

23 THE COURT: So I hope he understands that.

24 Do you understand that?

25 THE DEFENDANT: Yes, sir, Your Honor.

1 THE COURT: All right, sir.

2 Now, I'm obligated to explain your rights under
3 the Constitution, because by pleading no contest, you are
4 waiving or giving up some of those rights.

5 THE DEFENDANT: Yes.

6 THE COURT: I want to be sure that you understand
7 these rights before I accept the plea finally.

8 Now, sir, if you have any questions when I finish
9 this, you let me know and we will go back over this with
10 you.

11 You have a right to have your case considered by a
12 Grand Jury. That's occurred, because the Grand Jury issued
13 a True Bill for the higher offense of murder.

14 You have a right to have your attorney assist you
15 throughout the process. Mr. Shealy is here and is of
16 assistance.

17 You have right to a trial by jury. At the jury
18 trial you would be presumed to be innocent, until the State
19 proves your guilty beyond a reasonable doubt. The State
20 always has the burden of proof in a criminal trial.

21 At the trial you could require witnesses through
22 subpoena to come to court and testify for you.

23 You would have the right to confront or question
24 any person who might testify against you.

25 At the trial you could present any and all

1 defenses that you have to the charges that were before the
2 court, and you would be given the opportunity to try to
3 suppress any and all of the evidence that the State may have
4 in its possession against you.

5 You always have the right to remain silent.

6 At a jury trial, if you decided to remain silent,
7 the trial judge is obligated to instruct the jury that your
8 silence could not be used against you in any fashion
9 whatsoever.

10 Now, are there any of the rights that I just
11 explained that you do not understand?

12 THE DEFENDANT: No, sir, Your Honor.

13 THE COURT: Do you have any questions about any of
14 them?

15 THE DEFENDANT: No, sir, Your Honor.

16 THE COURT: If you continued to plead no contest,
17 and if I decided to accept the plea and the negotiations,
18 then you will be waiving or giving up all of those rights I
19 just described to you, with the exception of the right of
20 having a lawyer assist you. Do you understand that fact?

21 THE DEFENDANT: Yes, sir, Your Honor.

22 THE COURT: Does that fact change your plea?

23 THE DEFENDANT: No, sir, Your Honor.

24 THE COURT: So you are still pleading no contest?

25 THE DEFENDANT: Yes, sir, Your Honor.

1 THE COURT: And is that based on a review of the
2 evidence in the possession of the State?

3 THE DEFENDANT: Yes, sir, Your Honor.

4 THE COURT: Mr. Morin, go over the evidence that's
5 in the possession of the State.

6 MR. MORIN: Your Honor, on January 29th, 2008, law
7 enforcement was called out to [REDACTED] here in
8 Cherokee County.

9 At that home, which -- the way this began was
10 Minor who was a six year old child of the victim,
11 was seen fleeing the house around ten o'clock at night
12 wearing nothing but panties. Several passers-by saw her.
13 They called the police. The police responded.

14 Mr. Rogers was seen in the parking lot of the
15 Hardee's. The house was right next door to Hardee's. He
16 was seen in the parking lot of the Hardee's with a firearm.
17 They gave chase. It took them awhile to catch him. The
18 firearm was not recovered. He was caught in a fairly wooded
19 area down there behind Sixth Avenue.

20 After the investigation, Mr. Gerald Scott, the
21 victim's father, who is present in the courtroom on the
22 stretcher, reported that the two of them, being Mr. Rogers
23 and the victim in this case, Tasha Scott, were having an
24 argument in a room adjacent to where he was. It went on for
25 awhile and then he heard a loud bang. Ms. Scott was found

1 in her bed with a bullet hole; died from as a result of
2 being shot in the head one time.

3 The State's position for murder would have been
4 obviously that he was the one that fired it.

5 The child, Minor has given us
6 statements and indicated that she had seen -- she actually
7 saw the event. But in speaking with Mr. Scott, along with
8 Ora Burris. She's seated in the front row. That's the
9 victim's mother, the child has had some problems dealing
10 with it, as you can imagine, and that came into play when we
11 made a decision as to whether or not to try the case. She
12 may very well have been a witness in this case. But to
13 avoid that, that was one of the main things we were
14 concerned with. Nonetheless, that would have been the case.
15 There is an argument, there is a shot, Ms. Tasha Scott is
16 killed from that. Her father heard it. And when I say he
17 heard it, my estimate from looking at the evidence in our
18 possession is is that the shot would have been fired no
19 farther away than I am from you now, although he could not
20 see it because of his position in the room. Mr. Rogers
21 within a few seconds of that appeared in the doorway holding
22 the gun and told Mr. Scott he was sorry. But that would
23 have been the State's main case.

24 Several witnesses were subpoenaed that saw the
25 child and heard what the child said as she fled the scene.

1 I don't think there is any issue as to cause of
2 death in this case, and I don't think that would have been
3 an issue at trial.

4 As I stated, Mr. Scott is present in the
5 stretcher, and Ms. Burris is present. I know Ms. Burris
6 does not wish to speak.

7 I have had many conversations with Mr. Scott over
8 the last few weeks. I don't know if he wishes to speak at
9 the appropriate time or not.

10 THE COURT: I'll give them an opportunity, if they
11 choose to do so.

12 MR. MORIN: Okay.

13 THE COURT: Anything further from the State?

14 MR. MORIN: That would be the State's case, Your
15 Honor.

16 THE COURT: All right. Mr. Rogers, you were
17 present in the courtroom. You heard the solicitor go over
18 the alleged facts. Is that true?

19 THE DEFENDANT: Yes, sir, Your Honor.

20 THE COURT: Did you understand what he told me?

21 THE DEFENDANT: Yes, sir, Your Honor.

22 THE COURT: All right, sir.

23 Is that the information that you and your attorney
24 have reviewed? And based on your review of that
25 information, you have decided that if that was presented to.

1 a jury, that it would more than likely result in your
2 conviction of the offense; and, therefore, you and your
3 attorney have reached a decision not to contest these
4 charges. Is that true?

5 THE DEFENDANT: Yes, sir, Your Honor.

6 THE COURT: So are you still offering a plea of
7 no-contest with the negotiated sentence?

8 THE DEFENDANT: Yes, sir, Your Honor.

9 THE COURT: Now, have you told me the truth today,
10 Mr. Rogers?

11 THE DEFENDANT: Yes, sir, Your Honor.

12 THE COURT: Did anyone tell you how to answer my
13 questions?

14 THE DEFENDANT: No, sir, Your Honor.

15 THE COURT: The answers I have received, were
16 those your answers?

17 THE DEFENDANT: Yes, sir, Your Honor.

18 THE COURT: Is there any part of what you and I
19 have discussed today that you wish to go back over or change
20 any of your responses to the court?

21 THE DEFENDANT: No, sir, Your Honor.

22 THE COURT: So you stand by the plea that you have
23 offered?

24 THE DEFENDANT: Yes, sir, Your Honor.

25 THE COURT: All right. I'm going to accept the

1 plea as being freely, voluntarily given.

2 The defendant is aware of the charges. He's aware
3 of the lesser included offense, and the potential penalties,
4 therefore. He has had the advice of an attorney. He says
5 he's satisfied with that advice. I find there is a factual
6 basis for him to offer a plea of no-contest.

7 I'll be happy to hear from you, Mr. Shealy, on
8 behalf of your client.

9 MR. SHEALY: Thank you, Your Honor.

10 Your Honor, you have elicited a good bit of the
11 background information from Kenyal.

12 Kenyal, the Christmas prior to this he was living
13 with Ms. Scott. They were boyfriend girlfriend. They had
14 been living quite awhile together and -- or at least from
15 his part, he was in love with her. He felt very deeply for
16 her.

17 Now, there is the reports during this incident
18 there is mentioning that they were arguing, and I believe
19 that would have come in. And in talking to Kenyal about
20 that, I asked him, you know, "what were you arguing about?"
21 And Kenyal, as he told you, he has three years of college,
22 and I have talked to some people that were in high school
23 with him, and they were surprised he didn't go on and get
24 his college degree and go even further than that.
25 Apparently he was well known for being very intelligent, and

1 you have heard he's very articulate.

2 Anyway, I asked him "well, what were you arguing
3 about?" And he looked at me and he said "Mr. Shealy, it was
4 more like a discussion. A conversation. She had one side,
5 one position, and I had a different position." And what the
6 argument was about was that he had gotten this job. He was
7 saving up some money and he wanted to move out. Not because
8 he was upset with her, but he wanted his own place, because
9 it bothered him that his mother and his niece had to come to
10 her house to visit him during Christmas. And he wanted to
11 have his own place and she didn't see the sense of that.
12 But he tells me it wasn't -- it wasn't, you know, something
13 that would provoke rage or anything like that. But,
14 nevertheless, that's the foundation for the State's case. I
15 mean, that's the first brick.

16 The second brick was the -- I thought it was five
17 year old daughter. The paperwork says five year old ran
18 from the house screaming "he shot my momma. He shot her in
19 the head." In our pretrial discussions, you know that I was
20 going to try to keep that out. And I knew that the State
21 had very strong case of excited utterance, and I had a case
22 that said, well, not only does it have to be an excited
23 utterance, but she has to witness the event. And we were
24 taking the position that -- we were going to take the
25 position that she didn't witness the event. And there is

1 certain things in here that would indicate that she did not,
2 but there is also things that indicate that she did. The
3 solicitor just told you that.

4 But, at any rate, when the six year old daughter
5 left, there was no one to go after her. Now, we are talking
6 about this house fronts on Cherokee Avenue and that's a very
7 busy road. In fact, it's right next door to Hardee's. And
8 she ran across the parking lot of Hardee's; tried to get in
9 the front door, couldn't get in, and then she ran -- and he
10 knew that if she kept on running, she would come to either
11 Sixth Street or Cherokee Avenue, both of which are traveled
12 roads. She did actually run across Sixth Street. After he
13 apologized to Mr. Scott, he took off after her, but she
14 left -- while he was apologizing, it was his position that
15 she walked into the bedroom, because he was in the door with
16 Mr. Scott and saw her mom there, unfortunately, and that's
17 what scared her and caused her to run.

18 Mr. Scott unfortunately is a double amputee. He
19 could not give chase. And that counts for all four people
20 that are in the house.

21 So Mr. Rogers went after her. And some witnesses
22 that were ready to testify say that they essentially took
23 charge of the little girl at the gas station and they
24 wouldn't let Mr. Rogers take the little girl back to the
25 house.

1 One of the witnesses -- Mr. Rogers denied saying
2 this, but one witness would have testified that, in fact,
3 Mr. Rogers -- that Kenyal said "I know who did this. I'm
4 going to get them," and which is a false statement. And
5 that would have hurt his credibility at trial, but,
6 nevertheless, that's what we had.

7 When he went after her, he took the gun and he
8 took it and he put it in the car and then continued to
9 chase. He didn't have the gun when he was chasing her.
10 When they wouldn't let him take the girl back, a police car
11 arrives on the scene. He sees it and literally loses his
12 mind. He panics. He has -- he's in shock at this time, and
13 he goes -- he retrieves whatever he can. Apparently he
14 didn't pay much attention to what he was retrieving, but he
15 retrieved the pistol. He retrieves some tax forms of Ms.
16 Scott. He retrieved some bullets, loose bullets, and then
17 he proceeded to run around Hardee's twice. And the police
18 cruiser sort of glides behind him, but he's clearly -- he's
19 like a deer scared to death. His mind is not working.

20 Finally after circling Hardee's twice, and this is
21 all on tape. Unfortunately it doesn't have very much
22 detail, but he departs the area, goes a couple of blocks.
23 He tries to climb a fence and he cuts his stomach. At that
24 point his sanity returns. I guess it's the pain of the
25 barbwire, or whatever it was, that cut him on the stomach.

1 He dropped the gun at that point and he went and laid down
2 and waited for the police to come arrest him, and very
3 shortly after that they came.

4 He cooperated with the police. He was still in
5 shock at the time he gave the statement and he said he
6 blacked out. He doesn't know what happened. He didn't know
7 how the gun came into play.

8 Since then in talking to him, he says that he
9 doesn't know much about this pistol, that he and Ms. Scott
10 bought the pistol together and they kept it in a drawer in
11 the table by her side of the bed. She was familiar with the
12 gun. He was not. He thought the gun was unloaded. He had
13 taken an action earlier to make sure it was unloaded, so he
14 thought it was unloaded.

15 She laid down on the bed and they are having this
16 discussion back and forth. She laid down on the bed and she
17 asked him to move the pistol. He picked up the pistol and
18 he doesn't know what happened after that. He doesn't know
19 that she took the pistol, or what. That still isn't clear
20 in his mind.

21 The thing that clinched this for this Alford Plea
22 is the -- we had a theory as to what happened, that we
23 thought the forensics at the scene backed up. It was blood
24 on the ceiling. There was a flattened bullet found in the
25 blood clothes. There was tissue from a hanging plant, and

1 we thought this indicated that the pistol had fired upwards
2 and exhausted itself through her body and hit the wall and
3 fell back down on the bed, which would indicate that the
4 pistol was firing up, and that would support that he was
5 handing her the pistol. Unfortunately the autopsy report
6 came back and we can't explain the autopsy report, and there
7 was no way, in my mind, to beat the autopsy report.

8 There was so many things in this case that was so
9 unsympathetic to Kenyal, and plus that autopsy report, that
10 this is by far the best means to go.

11 I sat down -- this is his mother, Linda Rogers,
12 and this is his aunt, Dr. McFadden. Dr. McFadden was
13 principal of my son's junior high and she also ran the
14 alternative school. She is a very well respected educator
15 here in the county. I sat down with both of them. First I
16 sat down with Kenyal and went over everything, and then I
17 sat down with them. They made an appointment and came in
18 and we sat down and we went through this. We must have
19 talked for an hour, two hours, maybe even longer, and we all
20 agreed that this was the wise thing for Kenyal to do.

21 Based on the State's, what we thought the State
22 would present, based on -- you never know what a jury is
23 going to do, what kind of jury would get the case. Quite
24 frankly I tried to negotiate for something lighter than this
25 and the best I could do is have the charge reduced to

1 voluntary manslaughter, and the State was insistent on the
2 minimum of -- well, was insistent on the thirty years.

3 At that point the options were clear. We could
4 either go to trial for murder, and my estimation is that we
5 would not win that case, or we could enter this plea.

6 And we would ask that you accept that plea, Your
7 Honor.

8 THE COURT: Mr. Rogers, anything that you wish to
9 say?

10 THE DEFENDANT: No, sir, Your Honor.

11 THE COURT: Do any of these individuals wish to
12 speak on his behalf?

13 Ma'am, do you wish to speak?

14 UNKNOWN PERSON: No, sir.

15 THE COURT: Ma'am?

16 UNKNOWN PERSON: No, sir.

17 THE COURT: Thank you.

18 Anything further from the State?

19 Prior record for this individual?

20 MR. MORIN: I apologize, Your Honor. I don't
21 believe he has a prior record, Your Honor. I can just --

22 MR. SHEALY: I don't believe he has one either,
23 judge.

24 MR. MORIN: No, sir.

25 THE COURT: Now, you mentioned that two people

1 from the victim's family might wish to speak. Do they wish
2 to do so?

3 MR. MORIN: Mr. Scott?

4 THE COURT: Mr. Scott, did you wish to speak?

5 GERALD SCOTT: Yes, sir.

6 THE COURT: All right. You need to speak up from
7 back there.

8 Your full name is?

9 GERALD SCOTT: Gerald Scott.

10 THE COURT: Sir, I'll be happy to hear from you.
11 Yes, sir.

12 GERALD SCOTT: Well, my daughter was with me and
13 she was the only -- she -- I don't have nobody else. He
14 take her away from me. And my granddaughter, she don't have
15 nobody else. And I would like -- I would like for you to do
16 justice before I die. I would like to see justice before I
17 die, because I think he take her life, he should -- he
18 should be dead to.

19 THE COURT: Thank you, sir. Anyone else wish to
20 speak?

21 Ma'am.

22 UNKNOWN PERSON: No, sir, Your Honor.

23 MR. MORIN: That's all.

24 THE COURT: That's it?

25 MR. MORIN: Yes, sir.

1 THE COURT: Mr. Rogers, I accept the negotiation.

2 The sentence is thirty years in the State

3 Department of Corrections.

4 Good luck to you, sir.

5 MR. SHEALY: Thank you.

6 (END OF REQUESTED TRANSCRIPT OF RECORD)

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1 CERTIFICATE

2 I, the undersigned, Michael R. Watts, Official Court
3 Reporter for the Sixteenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate and complete Transcript of Record of the
6 proceedings had and the evidence introduced in the trial of
7 the captioned case, relative to appeal, in the Court of
8 General Sessions for CHEROKEE County, South Carolina, on the
9 27th day of JANUARY, 2009.

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

12
13
14 APRIL 9, 2009

15
16
17 

18 Michael R. Watts
19 Circuit Court Reporter
20
21
22
23
24
25

010CP-110936

In the Court of Common Pleas

STATE OF SOUTH CAROLINA)

County of Cherokee)Kenyol Lamond Rogers 332892)
Full name and prison number, if any, of applicant.)

v.)

State of South Carolina)
Name of Respondent)APPLICATION FOR
POST-CONVICTION RELIEF

DIANE W. MCREE

2010 DEC 10 A 10:29

RECEIVED
CLERK OF COURT
SOUTH CAROLINA
CHEROKEE COUNTYINSTRUCTIONS - 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 it clear to which question any such continued answer refers.

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

If the applicant 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 applicant was convicted.

1. Place of detention McCormick Correctional Institution, 386 Redemption Way, McCormick, S.C. 29899
2. Name and location of Court which imposed sentence Court of General Sessions
1213 Cherokee Avenue, Gaffney, South Carolina 29340
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2008 CS11226 Murder
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) January the Twenty-Seventh, Two Thousand and Nine, Thirty years
 - (b) _____
 - (c) _____

ATTORNEY GENERAL'S OFFICE

RECEIVED DEC 14 2010

ADMINISTRATIVE INSTRUCTIONS

gwl FILE *✓* OPEN _____ END
____ HAVE _____ COPIES MADE
____ ROUTE TO _____
____ ORDER: _____ TRANSCRIPT
____ TEN RECORDS _____ CLERK RECORDS
____ OTHER: _____

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere ☒ _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? Judgment
of conviction yes
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
 - i. The South Carolina Court of Appeals
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Dismissed
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. October the Twenty-First, Two Thousand and Ten
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. None
 - ii. _____
 - iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) N/A
 - (b) _____
 - (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See Attachment
 - (b) See Attachment
 - (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) See Attachment

(b) See Attachment

(c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law?

N/A

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

N/A

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) N/A

(d) any other petitions, motions or applications in this or any other Court?

N/A

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? N/A

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

15. If any ground set forth in (9) 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) N/A
- (b) _____
- (c) _____

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

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

17. If you answered "yes" to one or more parts of (16), list:

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

- i. Thomas E. Shealy, Office of the Public Defender, P.O. Box 8091 (See Attachment)
- ii. SEE Attachment
- iii. _____

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

- i. Trial Court / Guilty Plea Counsel
- ii. Appellant / Direct Appeal Counsel
- iii. _____

18. State clearly the relief you seek in filing this application.

Guilty plea sentence AND conviction VACATED AND remanded

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

No

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Cherokee)

VERIFICATION

I, Kenzal L. Rogers, 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.

Kenzal L. Rogers

Sworn to and subscribed before me

This 7 day of Dec, 2010

George L. Young L.S.
 Notary Public for South Carolina

My Commission Expires 8-28-2011

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

I, Kenzal L. Rogers, 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 or 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 proceeding or give security therefor.

Kenzal L. Rogers
 Applicant

Sworn to and subscribed before me

This 7 day of Dec, 2010

George L. Young L.S.
 Notary Public for South Carolina

My Commission Expires: 8-28-2011

BRANDY W. MCREE

2010 DEC 10 A 10:31

CLERK OF
 DISTRICT COURT
 CHIEF JUSTICE
 S.C.

17. If you answered "yes" to one or more parts of (16), list:

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

i. Thomas Edward Shealy, Office of the Public Defender,
P.O. Box 8091 GAFFNEY, South Carolina 29340

ii. Wanda H. Carter SCCID, P.O. Box 11589 Columbia,
South Carolina 29211 - 1589

CLERK OF COURT
JUDICIAL DISTRICT OF
SOUTH CAROLINA

2010 DEC 10 A 10:31

BRANDY W. MOBEE

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

(a) I contend that I was denied Due Process and Equal Protection of Law under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution as well as Article I Section 3, of the South Carolina Constitution, through and by way of Ineffective Assistance of Counsel and Trial Court error.

(b) I assert that as a result of Ineffective Assistance of Counsel, as well as Trial Court error, I did not receive the guaranteed rights or protections pursuant to the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and Article I Section 3 of the South Carolina Constitution.

BRANDY W. MCBEE

2010 DEC 10 A 10:31

CLERK OF COURT
JUDICIAL BRANCH
S.C.

1D. State concisely AND in the same order the facts which support each of the grounds set out in (a):

(a) The trial court failed to adhere to the mandates and requirements of Rule 11 Section (c)(1) of the Federal Rules of Criminal Procedures, Additionally, my Afford Plea Attorney failed to discuss or explain the nature and crucial elements of the offense of Murder or Voluntary Manslaughter prior to or during my trial.

(b) The trial court failed to comply with Rule 11 Section (d) of the Federal Rules of Criminal Procedures, Additionally, I claim that my trial counsel failed to provide me with adequate or sufficient legal advice to ensure trial court that my guilty plea was intelligently, knowingly, voluntarily and knowingly entered.

CLERK OF COURT
JAMES L. SMITH, S.C.
2010 DEC 10 A 10:31
BRANDY W. MOORE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE	)	
	)	
	)	2010-CP-11-0936
Kenyal Lamond Rogers, #332892,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed December 10, 2010, 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 Cherokee County Clerk of Court. The Applicant was indicted at the March 2008 term of the Cherokee County Grand Jury for murder (08-GS-11-0226). He was represented by Thomas E. Shealy, Esquire. On January 27, 2009, the Applicant pled guilty to the lesser-included voluntary manslaughter. He was sentenced by the Honorable Roger L. Couch to confinement for a period of thirty years.

The Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed the appeal by written Order. Op. No. 2010-UP-452 (filed October 21, 2010). The Remittitur was returned on November 9, 2010.

Attached herewith and incorporated herein are the records of the Cherokee County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina

Department of Corrections, the Applicant's appellate records, 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, in that;
 - a. Counsel failed to discuss or explain the nature and crucial elements of the offense of murder or voluntary manslaughter prior to or during my trial,
 - b. Counsel failed to provide me with adequate or sufficient legal advice to ensure the court that my guilty plea was intelligently, knowingly, and voluntarily entered; and
2. Trial court error, in that;
 - a. The court failed to adhere to the mandates and rules of Rule 11 §§ (c)(1) and (d).

III.

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

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

The Applicant also claims that the trial court made errors at this guilty plea. Any allegations of trial court error presented by Applicant raise direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised these issues at trial or on appeal. His failure to do so has waived these allegations as grounds for relief. Therefore, the Court should

summarily dismiss these claims in Applicant's application for post-conviction relief.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

November 1, 2011.

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Kenyal Lamond Rogers,

2010-CP-11-0936

Applicant,

v.

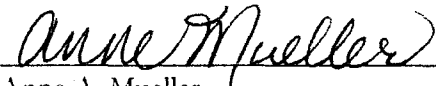
CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

Respondent.

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

Rodney W. Richey, Esquire
Richey & Richey, PA
P.O. Box 10916
Greenville, South Carolina 29603-0916



Anne A. Mueller
Legal Assistant for the Respondent

DATED this 1st day of November, 2011.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COMMON PLEAS COURT
3
4 Kenya Lamond Rogers,)
5 Applicant,) TRANSCRIPT OF RECORD
6 -vs-) 2010-CP-11-0936
7 The State.) October 4, 2013
8 Spartanburg, South Carolina
9
10

11 B E F O R E:

12 HONORABLE J. DERHAM COLE, JUDGE
13
14

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

16 SUZANNE H. WHITE, ESQUIRE
17 Attorney for the State
18
19
20
21

22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

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1 MS. WHITE: Your Honor, the case today is Kenya
2 Lamond Rogers vs. the State. It's case
3 No. 2010-CP-11-0936.

4 Mr. Rogers is here today representing himself. We've
5 had a couple of hearings in which he asked to relieve his
6 appointed counsel and was instructed to either hire an
7 attorney or represent himself. And we've had several
8 subsequent hearings. And so we're before you now with him
9 proceeding pro se.

10 He was indicted March of 2008 for a murder charge,
11 ultimately pled to voluntary manslaughter, negotiated plea
12 of 30 years on January 27th of 2009 pursuant to North
13 Carolina vs. Alford.

14 There was an appeal that was dismissed. And he filed
15 this application December 10th of 2010 alleging ineffective
16 assistance of counsel and trial court error.

17 He alleged that counsel failed to discuss or explain
18 the nature and crucial elements of the offense of murder or
19 voluntary manslaughter prior to or during trial, counsel
20 failed to provide adequate or sufficient legal advice to
21 ensure the Court that the guilty plea was intelligently,
22 knowingly and voluntarily entered, and failed to adhere to
23 mandates and rules of rules (c)(1) and (d). And I believe
24 that is all.

25 So I can turn it over to Mr. Rogers at this time.

1 THE COURT: All right. You are Kenya Lamond Rogers.

2 THE APPLICANT: That is correct, Your Honor.

3 THE COURT: And you have previously been appointed
4 counsel that you asked the Court to relieve from any
5 further obligation to represent you, is that true?

6 THE APPLICANT: That is correct, Your Honor.

7 THE COURT: And you were going to retain counsel, but
8 you did not.

9 THE APPLICANT: I had no funds to retain counsel.
10 That wasn't -- I kind of felt like I was forced, Your
11 Honor.

12 Me and my counsel at the time, Mr. Rodney Richey, we
13 weren't seeing eye to eye.

14 He had one direction for my case. I had another
15 direction.

16 THE COURT: Well, that's why you get to have a choice
17 to hire somebody else that will agree with you in toto,
18 whether it's prudent or not, or to represent yourself.

19 You had appointed counsel. You fired your counsel,
20 did you not?

21 THE APPLICANT: That's correct, Your Honor.

22 THE COURT: And you were given an opportunity to
23 retain counsel, were you not?

24 THE APPLICANT: Correct.

25 THE COURT: You have not, have you?

1 THE APPLICANT: No, sir. I haven't.

2 THE COURT: So then your only other choice is to
3 represent yourself. So you're here to do that?

4 THE APPLICANT: Yes, sir, I am.

5 THE COURT: All right. What -- what allegations do
6 you specifically make regarding your entitlement to post
7 conviction relief? What is your relief based upon?

8 THE APPLICANT: My relief is based upon, first of all,
9 subject matter jurisdiction. I'm stating --

10 THE COURT: You don't think the Court had authority to
11 hear a murder case?

12 THE APPLICANT: Excuse me, Your Honor?

13 THE COURT: You didn't think that the Court had the
14 authority to hear a murder case?

15 THE APPLICANT: I didn't think that the Court had
16 authority to hear a murder case based on preliminary
17 hearing information, Your Honor. I requested it.

18 THE COURT: Okay. What court do you think should have
19 heard your murder case?

20 THE APPLICANT: Well, the general sessions would have
21 authority to hear the murder case but for the simple fact I
22 filed -- I was arrested on January the 29th of 2008.

23 On January the 30th of 2008 I went before a
24 magistrate, Magistrate Judge Clary, the same magistrate who
25 issued my arrest warrant.

1 On January the 30th of 2008, Your Honor, I was handed
2 a copy of a form stating to me that I had a notice of a
3 right to a preliminary hearing.

4 THE COURT: All right. I'm going to let you testify,
5 but right now I'm just trying to get the allegations.

6 All right. So your first allegation is the Court did
7 not have subject matter jurisdiction because you had
8 requested a preliminary hearing and it was not held?

9 THE APPLICANT: That is correct, Your Honor.

10 THE COURT: All right. What's your second ground?

11 THE APPLICANT: My second ground is that ineffective
12 assistance of trial counsel.

13 THE COURT: In what specifics?

14 THE APPLICANT: Well, I pled guilty to a negotiated
15 sentence of 30 years.

16 My trial counsel, for one, he never informed me of the
17 nature of the charge to which I pled, but, two, he never
18 informed me of the critical elements or any elements to the
19 charge of murder or the charge of voluntary manslaughter.

20 THE COURT: Okay. What else?

21 THE APPLICANT: That's all, Your Honor.

22 THE COURT: That's all.

23 Okay. All right. Let me ask you to come around so
24 you can testify to those, in support of those allegations.
25 And bring with you whatever it is you need.

Kenya Lamond Rogers

1 KENYAL LAMOND ROGERS, having
2 been first duly sworn, testified as follows;

3 THE COURT: All right. Now, you can tell me in detail
4 what it is that you're relying upon when you're seeking
5 post conviction relief.

6 A First of all, subject matter jurisdiction, Your Honor.

7 As I stated, on January the 29th of 2008 I was
8 arrested.

9 On January the 30th of 2008 I was brought before a
10 magistrate, Magistrate Judge Clary, the same magistrate who
11 issued my warrant. And he informed me that I had notice of
12 a right to a preliminary hearing and that notice of a right
13 to a preliminary hearing would inform me of the probable
14 cause that the state had to prove for issuing a warrant.

15 He informed me that I had ten days from the date of
16 January the 30th of 2008 to sign for a preliminary hearing.
17 If I didn't sign for that preliminary hearing after those
18 ten days, then my notice of a right to a preliminary
19 hearing would be waived.

20 On January the 30th of 2008, Your Honor, I signed for
21 a preliminary hearing, requesting one. I have an exhibit
22 here for you, Your Honor, if you'd like, and also for the
23 attorney general.

24 MS. WHITE: No objection.

25 (Notice of right marked Applicant's Exhibit No. 1.)

Kenya Lamond Rogers

1 A On January the 30th of 2008 I --

2 THE COURT: Mr. Rogers, she's marking something. She
3 can't take down what you're saying, sir.

4 (Pause.)

5 THE COURT: Mr. Rogers, we're talking to Mr. Rollins.
6 He's a lawyer in another P.C.R. case that was held earlier
7 in the week, and somebody didn't appear. So he's come back
8 today. And I'm simply having Ms. White tell him that we
9 don't need him to stay because we still don't have that
10 other witness.

11 THE WITNESS: Yes, sir, Your Honor.

12 THE COURT: It doesn't relate to your case.

13 (Pause.)

14 MS. WHITE: Thank you, Your Honor, no objection to
15 this being entered.

16 THE COURT: All right, Mr. Rogers.

17 A As I stated, Your Honor, I filed for my preliminary
18 hearing on January the 30th of 2008 as instructed by the
19 magistrate judge, same judge that issued the warrant, Judge
20 Clary.

21 He also informed me that if I signed for a preliminary
22 hearing and a preliminary hearing was granted, then I would
23 also be afforded an attorney. An attorney would be
24 appointed to me. He asked me if I understood. I said that
25 is correct that I did understand.

Kenya Lamond Rogers

1 Now, just to give the Court a little background, Your
2 Honor, the Code of Laws -- just to know that it's not my
3 saying that I had a right to a preliminary hearing. But
4 it's from the state of South Carolina. I'd like to quote
5 from the Code of laws of South Carolina, 1976, 2013
6 edition.

7 South Carolina Rules of Criminal Procedure, Rule 2,
8 simply states preliminary hearing, subsection (a), notice
9 of right.

10 "Any defendant charged with a crime not triable by a
11 magistrate shall be brought before a magistrate," which I
12 was, "and shall be given notice of his right to a
13 preliminary hearing," which I was, "solely to determine
14 whether sufficient evidence exists to warrant the
15 defendant's detention and trial. In the case of bailable
16 offenses the notice shall be given at the bond hearing. In
17 the case of nonbailable offenses," Your Honor, "the notice
18 shall be given no later than will be required if the
19 offense were bailable. Notice shall be given orally and
20 also by means of a simple form," the form which I have
21 turned into you, "providing the defendant an opportunity to
22 request a preliminary hearing by signing the form and
23 returning it to the advising magistrate," which I did.

24 "In all cases the request for a preliminary hearing
25 shall be made within ten days after the notice."

Kenya Lamond Rogers

1 Subsection (b) says the time for the hearing. "If the
2 defendant requests a preliminary hearing," which I did,
3 "the hearing shall be held within ten days following the
4 request. The hearing shall not be held however if the
5 defendant is indicted by a grand jury or waives indictment
6 before the preliminary hearing is held. The defendant may
7 appear by counsel or in person or both."

8 As I stated, Your Honor, as you can see from
9 Exhibit 5, that on January the 30th of 2008 my name, the
10 magistrate's name, I signed for a preliminary hearing
11 within those ten days.

12 Now, the rule also says that not only must I sign for
13 a preliminary hearing within those ten days, it must also
14 be within ten days before the next convening of sessions of
15 general sessions court.

16 So on January the 30th of 2008 is when I signed for my
17 preliminary hearing. The next convening of general
18 sessions court for Cherokee County, Your Honor, as you can
19 see on the second page of your exhibit, court was held the
20 week of February the 11th of 2008, which would have given
21 me time within the statute to have my preliminary hearing.
22 But, Your Honor, I was never scheduled for a preliminary
23 hearing.

24 Now, a preliminary hearing as I stated, that is signed
25 by a magistrate. The magistrate signs the -- the

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1 magistrate signs the warrant as I stated.

2 The crime that was charged was not triable by a
3 magistrate, so therefore the magistrate by me signing for a
4 preliminary hearing, the magistrate was still to retain
5 jurisdiction of my case before handing it over to the grand
6 jury to indict me.

7 So by me saying that subject matter jurisdiction, Your
8 Honor, I'm simply stating that my indictments, which were
9 handed over to the grand jury that indicted me, were a
10 nullity. They were void. So I was indicted illegally.

11 THE COURT: Do you have a case that says such an
12 indictment is null and void?

13 A I sure do, Your Honor.

14 THE COURT: What's the name of it?

15 A State vs. Funderburk. It's cited as 191, S.E. 2d 520,
16 1972.

17 State vs. Funderburk says Mr. Funderburk filed for a
18 preliminary hearing exactly ten days before the convening
19 of general sessions but the hearing was not held until
20 after he was indicted and true bill returned.

21 The Court was without jurisdiction, and the
22 jurisdiction of the grand jury being coextensive with the
23 criminal jurisdiction of the Court, the indictment was a
24 nullity and conviction to be vacated.

25 Funderburk won on this argument. He was -- he was

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1 convicted in violation of Article One, Section 11, and
2 Article One, Section 14, of the South Carolina
3 Constitution, and also he was in violation of Article -- of
4 the 14th Amendment of the United States Constitution.
5 Excuse me, Your Honor.

6 I also have another case, State vs. Dinger, Your
7 Honor. It says, "whereas, the preliminary hearing is an
8 important part of the judicial process and the right to the
9 same is given under the law. The denial of a requested
10 hearing constitutes a," quote, unquote "serious breach of
11 law by the Court."

12 The purpose of a preliminary hearing, Your Honor, is
13 to apprise the defendant of the nature of the state's
14 evidence. It's purpose is more specifically to establ --
15 establish -- excuse me -- that probable cause exists to
16 continue the criminal process. The state has the burden of
17 proving probable cause.

18 Now, Your Honor, I stated that the magistrate can only
19 conduct preliminary hearings in cases that are not triable
20 by a magistrate. That means that the cases are felonies.
21 The magistrate cannot try felonies.

22 And I have a case State vs. Ramsey, that's cited as
23 398, Supreme Court, 275, South Carolina Appellate 2012,
24 says the Supreme Court said magistrates may not conduct
25 preliminary hearings in cases within their trial

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1 jurisdiction.

2 THE COURT: All right. Do you have anything else to
3 present on that particular issue, subject matter
4 jurisdiction?

5 A Yes, sir, I do, Your Honor.

6 As I stated, the defendant's right to request a
7 preliminary hearing -- preliminary hearing is not
8 constitutionally mandated. That means nothing in the
9 United States Constitution that says that a defendant must
10 have a preliminary hearing.

11 A preliminary hearing is provided solely by state
12 statute. And, as I stated, the state statute with the
13 South Carolina Rules of Criminal Procedure, Rule 2, the
14 defendant's right to request a preliminary hearing is
15 provided solely by state statute.

16 It is not required, as I said, by either the state or
17 federal constitution and is not necessary before a grand
18 jury can indict a person for a crime.

19 I'd also like to quote State vs. Wheeler, Your Honor,
20 193, S.E. 2d 518. It says in March of 1970 a preliminary
21 hearing in South Carolina was considered as not being a
22 critical stage of criminal proceedings.

23 But, however, Your Honor, in Coleman vs. Alabama, 399
24 U.S. 1, 90, Supreme Court, 1999, 26 Lawyer Edition, Second
25 Edition, it says that -- held that a preliminary hearing is

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1 a critical stage in the criminal process and that when
2 there is a preliminary hearing an accused is entitled to
3 the aid of counsel.

4 And also in Adams vs. Illinois, Your Honor, quoted as
5 405, U.S. 278, 92, Supreme Court, 916, 31, Lawyers Edition
6 Second, two thousand -- excuse me -- 202, the United States
7 Supreme Court held that the rule announced in Coleman did
8 not have retroactive application and did not apply to
9 proceedings held prior to June 22nd of 1970. So that means
10 that it was practive.

11 Any case that was -- that came after June 22nd of 1970
12 where you went by -- if you were in compliance with your
13 state statute, you should have been afforded a preliminary
14 hearing.

15 If not and you were indicted, the indictment was a
16 nullity. And if you case went to general sessions, general
17 sessions didn't have subject matter jurisdiction, Your
18 Honor, to even hear my case to indict me or to try me.

19 THE COURT: Okay. Is that all you had to present on
20 subject matter jurisdiction?

21 A That's all I have to present, Your Honor, on subject
22 matter jurisdiction.

23 THE COURT: All right. Let's move on to ineffective
24 assistance of counsel claims.

25 A Okay. Ineffective assistance of counsel claims, Your

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1 Honor, I have some exhibits also for you.

2 This exhibit that I'm turning into you now, Your
3 Honor, is my attorney sign-in sheets. As I stated, I was
4 arrested on January the 28th -- 29th -- excuse me -- 2008.
5 I was arrested on January the 28th -- 29th of 2008.

6 THE COURT: Ms. White, do you want to come and get you
7 a copy of those exhibits?

8 MR. WHITE: Yes. No objection, Your Honor.

9 (Attorney sign-in sheet marked Applicant's Exhibit No.
10 2.)

11 THE COURT: All right. Mr. Rogers.

12 A Yes, sir, Your Honor.

13 As I stated, I was arrested on January the 29th of
14 2008.

15 At the time we didn't have funds, so I couldn't
16 appoint -- I mean, I couldn't retain counsel because we had
17 no funds.

18 So I signed for a preliminary -- excuse me. I signed
19 for a public defender or an attorney. A public defender
20 was appointed to me on March the 5th of 2008.

21 On March the 5th of 2008 I didn't know that I had an
22 attorney. The first time that I met with my attorney who
23 was appointed to me from the Cherokee County Public
24 Defender's Office, Mr. Thomas E. Shealy, was on 5/20/2008.

25 So, as I stated, I was arrested on January 29th of

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1 2008. The first time I met with my attorney was on
2 5/20/2008.

3 Now, on 5/20/2008 the only matters that me and
4 Mr. Shealy discussed was a bond hearing. As you know, I
5 had sat in the county for quite some time, around four
6 months, hadn't heard anything from a lawyer.

7 I meet Mr. Shealy on 5/20/2008 and give him a quick
8 rundown of my case. Asked him, "Mr. Shealy, do you have
9 any type of discovery for me?" He said no, that he put in
10 for discovery on March the 5th, the day that he was
11 appointed to me, but he heard nothing back from the state
12 yet.

13 He asked me would I like to plea. I said there's no
14 way I'd like to plea, I'd like to first of all go before
15 and see if I can't get a bond, I been sitting here four
16 months, I need a bond to try to get out. Okay. So he
17 stated that he would.

18 I have a proposed bond order, Your Honor, that I would
19 like to turn into you also. So on 5/20/2008 was the first
20 time I actually spoke with my attorney, Mr. Thomas Shealy,
21 for approximately 15 minutes.

22 As I stated, the only thing that we discussed during
23 that time was very briefly if I'd like to plea. I gave him
24 a rundown of my case, my side of the case, and also that we
25 will be going up on the next convening of general sessions

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1 court to go to propose a bond order.

2 The bond-order hearing, Your Honor, was held on May
3 the 30th, ten days after I had spoken with Mr. Shealy. I
4 went before the Honorable Judge Hayes, Your Honor, and he
5 said that he would get back with me and my attorney to
6 inform me of the conditions of the bond.

7 Now, the next time that I saw Mr. Shealy, as you can
8 see in your Exhibit 1, second page, was on September the
9 8th of 2008, roughly four months later. Still hadn't heard
10 of a bond, still hadn't heard anything back from
11 Mr. Shealy.

12 Well, I have also an exhibit for you. On
13 September the 5th of 2008, which I received from the
14 Cherokee County Public Defender's Office, that Mr. Shealy
15 along with the Honorable Judge Mark Hayes and also the
16 solicitor in Cherokee County already knew that I had a
17 bond, but I was the only one that wasn't informed that a
18 bond had been scheduled for me. As you can see from your
19 exhibit, Your Honor, this is dated September the 5th of
20 2008.

21 THE COURT: Just a minute. What exhibit are you
22 referring to?

23 A Proposed bond order.

24 THE COURT: All right.

25 MS. WHITE: No objection. We'll just note this is not

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1 a signed bond order.

2 THE COURT: That's Defendant's or Applicant's No. 3.

3 (Facsimile transmittal sheet, letter and order marked
4 Applicant's Exhibit No. 3; facsimile transmittal sheet and
5 order marked Applicant's Exhibit No. 4; letter marked
6 Applicant's Exhibit No. 5.)

7 THE COURT: You may continue.

8 A As you see from your proposed bond order, Your Honor,
9 Exhibit No. 2, this is dated September the 5th of 2008. As
10 I stated, I met with Mr. Shealy for the second time on
11 September 8th of 2008.

12 On September the 8th of 2008 when I met with
13 Mr. Shealy he said that him, along with the solicitor, Mr.
14 Morin, and also Judge Hayes were in discussions and that
15 they had come up with a bond hearing but that some things
16 needed to still be worked out during the bond hearing. So
17 he said that he would get back with me and inform me of
18 those conditions.

19 I didn't quite understand what he was talking about.
20 I asked Mr. Shealy do I have a bond or don't I have a bond.
21 He said, well, at the present moment you don't have a bond
22 but very shortly I will get back with you and inform you of
23 your bond.

24 So this is February the 8th of 2008, Your Honor, I
25 mean, excuse me, September the 8th of 2008. I've been

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1 sitting in the county since January the 29th of 2008. This
2 is only my second time meeting with Mr. Shealy. The first
3 time was very briefly, 15 minutes. This is the second
4 time.

5 I'm thinking he's coming to inform me that I have a
6 bond and at least bring me my Rule 5 motion of discovery.
7 But, Your Honor, on September the 8th of 2008 he still has
8 no information for me, whether it be my Rule 5 motion of
9 discovery or a bond hearing.

10 Now, I also received from the Cherokee County Public
11 Defender's Office on September the 9th, Your Honor, a day
12 after I met with Mr. Shealy, that a bond had actually been
13 set for me.

14 On September the 9th, Your Honor, as you can see from
15 your Exhibit 3, a bond had actually been set for me, but I
16 wasn't informed of that bond hearing. I wasn't informed
17 that those negotiations from September the 5th had been
18 going on also, Your Honor.

19 And also, Your Honor, I have a document, Exhibit 4,
20 that I'd like to present to you and the attorney general.
21 It's negotiations that have been going on between my trial
22 attorney, Mr. Shealy, and the solicitor, Your Honor. And
23 if you don't mind I would like to read this to you.

24 It says -- it's dated January the 15th of 2009. "I am
25 in receipt of your client's offer to plead to voluntary

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1 manslaughter. Having now prepared the case for trial, I
2 can accept a manslaughter plea only if it includes a
3 negotiated 30 years. I have no objection to your client
4 entering an Alford plea, although I do not believe any of
5 the evidence supports your client's contention that this
6 was an accident. I realize your client may not view this
7 as an offer, however as you are aware, a murder conviction
8 is a day-for-day sentence with a maximum of life. If you
9 have any further questions, please contact me." This is
10 from Solicitor Morin, Your Honor.

11 I had no -- I had no awareness that these negotiations
12 were taking place. As I stated, the last time that I had
13 spoken Mr. Shealy was on September the 8th of 2008, and we
14 were discussing bond and Rule 5 motion of discovery. I
15 received neither one of those. Now, I received this as I
16 just read, which is dated January 15th of 2009 from the
17 Cherokee County solicitor's Office.

18 Your Honor, I have a witness. Your Honor, I have a
19 witness that spoke with Mr. Shealy actually longer than I
20 ever spoke with Mr. Shealy, and the details of their
21 discussion was the Rule 5 motion of discovery. I would
22 like to call that witness please, Your Honor, if it pleases
23 the Court.

24 THE COURT: Well, they can testify when you get
25 through.

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1 A Okay. Well, just to finish up, Your Honor, the last
2 time that I met with Mr. Shealy was on January the 12th of
3 2009.

4 As I stated, by this time I've actually been informed
5 that I have a bond. That didn't come from Mr. Shealy.
6 That actually came from my witness who I'm going to call,
7 and that came around November of 2008, Your Honor.

8 As I stated, on January 12th of 2009 was the last time
9 that I actually spoke with Mr. Shealy. And he informed me
10 then that my case was on trial for -- my case was on the
11 docket for trial.

12 And I said, "Well, Mr. Shealy you haven't informed me
13 of any evidence that the state has on me. We've barely
14 gone over anything. You haven't informed me of anything
15 about this case, let alone you haven't informed that me
16 that I even have a bond. I heard that from an outside
17 source. You never informed me that I have a bond,
18 Mr. Shealy."

19 And so he said, "Well, Mr. Rogers, there's only been
20 one murder case ever won in Cherokee County." And he said,
21 "That case was won because the prosecution couldn't prove
22 that the defendant was at the scene of the crime."

23 And I said, "Well, Mr. Shealy, I asked you from the
24 very first time that I met you if we needed to hire a
25 private investigator and you told me no. You said that you

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1 would do all the work, but you haven't informed me of
2 anything, and I'm still willing to go forward with the
3 trial under this limited information that you have brought
4 to me. I'm still willing to go forward with the trial
5 because I know I'm innocent of murder, whatever, whatever
6 the elements of murder are. I just felt in my heart that I
7 was innocent of murder."

8 And as I stated, on January the 12th of 2009 I still
9 stated to Mr. Shealy that I was willing to go forward for a
10 trial of murder.

11 And I also have my final exhibit for you, Your Honor.
12 This is from the South Carolina Law Enforcement Division.
13 This is all of the evidence that the detectives -- that the
14 detectives retrieved and sent to SLED, Your Honor, which I
15 did not receive until January the 14th of 2009. Two days
16 after the last time I met with my attorney, Mr. Shealy, was
17 the last -- was actually the first time that these exhibits
18 were presented. So as you can see, Mr. Shealy...

19 (SLED report marked State's Exhibit No. 6.)

20 Q So as you can see clearly, Your Honor, the last time
21 that I spoke with my attorney, Mr. Shealy, concerning a
22 murder trial was January the 12th of 2009.

23 Exhibit 6 simply shows you that on January the 14th of
24 2009 the SLED report comes back. Now, Mr. Shealy's office
25 is 30 steps away from the county jail where I'm at.

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1 And upon receiving these from the prosecution, Your
2 Honor, Mr. Shealy never came. He never informed me orally
3 or he never showed up personally to inform me that all of
4 the evidence that the state had upon me that came back from
5 SLED, Your Honor, was actually null and void.

6 He never informed of a bond. He never informed me
7 that I had a Rule 5 motion of discovery.

8 And, more importantly, Your Honor, actually at the
9 guilty plea hearing if you get into -- if you get into my
10 transcript, Your Honor, actually at the guilty plea hearing
11 he never informed me of the nature of the charge of murder.
12 He never informed me of the elements of the charge of
13 murder.

14 We were prepared to go to trial, Your Honor. As you
15 can see, I have motions to suppress, Your Honor, that's
16 dated January the 26th of 2009, the date that I was
17 supposed to go for trial -- voir dire and everything.

18 Your Honor, so it wasn't like that I had spoken with
19 Mr. Shealy and agreed that I was going to plead prior to my
20 trial hearing. I was prepared to go to trial, Your Honor.

21 So on January the 26th of 2009 Mr. Shealy comes up to
22 me. He says, "Mr. Rogers, I really don't want you to do
23 this. I just feel that there's no way to win this murder
24 trial. The autopsy report has come back, and I really
25 can't explain. I just feel like we -- the best option for

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1 you will be to take a negotiated plea."

2 And I said, "Well, what exactly is a negotiated plea?"

3 And he said that the state would agree to give me 30
4 years if I pled.

5 I said, "No, sir. That's 30 years -- I'm not even 30
6 years of age yet, and you are asking me to give you 30
7 years of my life."

8 And he said that this will be the best course to take.
9 And so thinking about it, I thought about it. I said,
10 well, if my attorney doesn't have my back and he doesn't --
11 he's not going to give my case his all, then probably the
12 best option for me to take would be to go ahead and sign
13 this plea, which I did, Your Honor. So I signed to plead.

14 But Mr. Shealy never informed me of the nature of
15 voluntary manslaughter. He also never informed me of the
16 critical elements of intent. He never informed me of the
17 element of provocation, legal provocation, Your Honor.

18 There was nothing explained to me about voluntary
19 manslaughter the day that I signed my plea. There was
20 nothing explained to me the day after I signed my plea of
21 voluntary manslaughter, Your Honor.

22 So that's why I'm stating that my counsel was
23 ineffective for not informing me of the critical elements
24 of murder, which is malice aforethought, or the critical
25 elements of voluntary manslaughter. The critical element

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1 of voluntary manslaughter, Your Honor, is intent. That's
2 the very same element that I was fighting the whole time --
3 intent.

4 And as I said, you can -- in the transcript, Your
5 Honor -- in the transcript, Your Honor, on page six, lines
6 19 through 25, if you don't mind, it says: The Court,
7 "Now, sir, I have explained to you the fact that the
8 original indictment was for murder and that the plea is
9 being offered to voluntary manslaughter. Do I need to read
10 the original charges to you?"

11 I said, "No, sir, Your Honor.

12 The Court said, "Do you understand what you are
13 charged with?"

14 I said, "That is correct."

15 On page seven of the transcript, lines one through
16 seven, the judge asked me, "Do you understand that the
17 nature and the elements of the lesser included offense of
18 voluntary manslaughter?"

19 I replied, "I do, Your Honor."

20 "So I do not need to explain that to you as well. Is
21 that also true?"

22 I said, "That's correct, Your Honor."

23 The problem with that, Your Honor, is that I have many
24 case laws on it. Every case law that I looked up in any
25 law book, it says that if a defendant is going to plead,

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1 Your Honor, the judge should assume that the defendant is
2 ignorant of the elements of the crime and inform him in
3 open court on the record of at least the critical elements
4 of the crime to which he is charged or to which he is
5 pleading.

6 Now, that can be cured by my attorney. My attorney on
7 the record in open court can inform me of the nature or the
8 critical elements of a crime.

9 But going along with rule 11(c)(1) of the federal
10 rules of criminal procedure it says -- and this was amended
11 December the 1st, 1975: "Advice to defendant. Before
12 accepting a plea of guilty or nolo contendere the court
13 must address the defendant personally in open court and
14 inform him of and determine that he understands the
15 following: The nature of the charge to which he is pleading
16 and the critical elements of the charge to which he is
17 pleading."

18 And as I stated, every case in a law book will back
19 that up, Your Honor.

20 And as I said, in the transcript it simply shows that
21 I was neither afforded the information of the critical
22 elements by my attorney; I wasn't afforded to be informed
23 of the critical elements by the judge, Your Honor.

24 So therefore my plea will be involuntary. It will be
25 unknowing, and it would also be unintelligent, because an

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1 intelligent plea would be a plea to be informed of -- I was
2 indicted for murder. That's the highest charge. So an
3 intelligent plea to that would be to at least be informed
4 of the elements of murder. But I pled to voluntary
5 manslaughter, which is a lesser included offense of murder.

6 So an intelligent of voluntary and a knowing plea
7 would be to at least be informed of the elements of murder
8 and also be informed of the elements of voluntary
9 manslaughter so I can rationalize which one of these crimes
10 my actions actually constituted, Your Honor. But I wasn't
11 afforded that because I wasn't informed of the nature of
12 the charge or also the critical elements of the charge,
13 Your Honor.

14 THE COURT: All right. Is that all you could tell me
15 on that issue?

16 A That's all I need to tell you on that issue, Your
17 Honor.

18 THE COURT: And those are the only two issues that you
19 have?

20 A Those are the only two issues that I have.

21 THE COURT: All right. You need to answer Ms. White's
22 questions then.

23 A Yes, sir.

24

25

Kenya Lamond Rogers
Cross-examination by Ms. White

1 CROSS-EXAMINATION

2 BY MS. WHITE

3 Q Mr. Rogers, you mentioned the part of the plea where
4 the judge asked you if you understood the nature and
5 elements of the crime, and you said yes.

6 A That is correct.

7 Q Okay. And your testimony is that your attorney had
8 never explained those to you prior to this?

9 A That is correct.

10 Q Okay. Now, also on page nine in your transcript the
11 judge asked you at this point, "Do you agree that your
12 attorney discussed the things that I mentioned to him?"

13 And if you'll look on the page before that the Court
14 had asked the -- your attorney if he had discussed with him
15 such matters as the nature of the charge and elements,
16 elements of the original charge, elements and nature of the
17 charge to which you're pleading, potential penalties,
18 negotiations, etc.

19 And you said you agree your attorney discussed the
20 things I mentioned to him. "Yes, sir, Your Honor."

21 A That is correct.

22 Q So are you saying today that that actually was
23 incorrect, that you disagreed that he had discussed those
24 things with you?

25 A No, ma'am. I'm stating that what my attorney informed

Kenya Lamond Rogers
Cross-examination by Ms. White

1 me of at the time and when I went to the Department of
2 Corrections and learned at the time what actually were the
3 critical elements of the charge were not the same thing
4 that my lawyer discussed with me at the time.

5 Q So you're saying he talked with you about elements but
6 they were incorrect?

7 A He never spoke with me about elements. I pled on the
8 day that I was supposed to go to trial.

9 Q Right.

10 A Right. And my attorney told me that this was just a
11 lesser included offense of murder. I wasn't informed of
12 the elements of murder. The only element of murder that I
13 was ever informed of Mr. Shealy asked me a question, "well,
14 did you plan on killing anyone?" I told him, "No, sir, I
15 never planned on killing anyone."

16 But as far as any other element of murder -- malice
17 aforethought -- those were never discussed with me.

18 Q So you are saying today that when you said at the plea
19 that he had discussed the crucial -- the nature and the
20 elements of the original offense and the offense that you
21 were pleading to, you are saying now that that is not
22 correct.

23 A I was never informed of the nature or the crucial
24 elements of murder or voluntary manslaughter.

25 What I'm agreeing to him with is that the potential

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Cross-examination by Ms. White

1 penalties that were involved -- and then just like this
2 court today. I'm a layman. This was my first time ever
3 being arrested. As I have shown you, I've only saw my
4 court-appointed attorney for three times in a matter of 365
5 days.

6 This is a murder charge that I've been indicted on,
7 and I've only seen my attorney for three times. Twice of
8 those three times we only spoke about a bond hearing.

9 On the third time, January the 12th of 2009, he comes
10 to me and states to me that, hey, we're going to trial for
11 murder. Going to trial for murder, I mean, that's fine.
12 That's what I wanted. But I would like to have been
13 informed of the process, at least the elements of what it
14 is that I must fight.

15 So this entire process, I'm a layman. I don't
16 understand anything dealing with the criminal justice
17 system, the judicial system.

18 Q But you're an intelligent guy. You went to three
19 years of college, right?

20 A Yes, ma'am. I sure have.

21 Q So when you hear the Court asking you a question, you
22 agree with what I just asked your attorney, and you say
23 yes. Do you not understand that that appears then that you
24 agreed with everything he said?

25 A That is correct. I have a case for you.

Kenya Lamond Rogers
Cross-examination by Ms. White

1 Q Let me -- let me ask you a couple more questions.

2 You also -- the Court asked you if you were satisfied
3 with your attorney's services. And you said, "Yes, sir,
4 Your Honor." Do you disagree with that now?

5 A I was satisfied with my attorney's services. He's a
6 public defender. I thought, hey, at the very least you get
7 what you pay for. I paid for nothing, I got nothing.

8 Q Okay. And the Court talked with you about that this
9 was a negotiated sentence. You knew that you were pleading
10 guilty to voluntary manslaughter for 30 years, is that
11 right?

12 A That's correct.

13 Q Okay. And the Court also went over with you your
14 constitutional rights to a jury trial, to be able to
15 present any defenses, is that right?

16 A That is correct.

17 Q And the Court asked you if that changed anything or if
18 you were still pled -- excuse me -- pleading no contest.
19 And you said that was right.

20 A That's correct.

21 Q And based on information the Court went over the facts
22 of the case and what the state would have presented at
23 trial. And you said that the D.N.A. obviously had come
24 back June or January 14th. There wasn't any D.N.A.
25 evidence to -- to I guess -- you think find you guilty on

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Cross-examination by Ms. White

1 that. But wasn't there a witness, the child, that claimed
2 she had seen the shooting?

3 A Actually my attorney told me that the child would not
4 testify. He never informed me who would testify. But I
5 know he said that the child would not testify.

6 Q But the --

7 A And that's another issue. I asked him, well, if the
8 child's not going to testify, who is going to testify, have
9 you interrogated the state's witnesses. He told me no,
10 that he hasn't.

11 Q And the victim's father had also been in the home,
12 although he did not see the shooting, is that right?

13 A That is what the state says, Your Honor.

14 Q Okay. And he had given a statement. He talked to the
15 police, is that right?

16 A That's correct.

17 Q And the police also have their incident reports of the
18 initial contact with you when there was a little trouble
19 with getting you to stop for them, is that right?

20 A That's not correct.

21 Q Okay. So you disagree that you ran from the police
22 slightly before you were arrested?

23 A That's correct, yes, ma'am.

24 Q Okay. That's what I was trying to clarify.

25 so that evidence would have potentially been presented

Kenya Lamond Rogers
Cross-examination by Ms. White

1 had you gone to trial, is that right?

2 A That's the evidence, and argument, and shots, and
3 obviously there's a dead body. That's -- that's basically
4 all the evidence that the state had.

5 Q But there's no question you and your girlfriend at the
6 time were the only two people in the room involved with a
7 gun, is that right?

8 A That's not correct. They actually found alcohol. I
9 didn't have any alcohol in my system. There was alcohol
10 spilled on the floor.

11 There were numerous people in the household during
12 that day. Even after the shooting there were witnesses
13 that came inside of the house while the -- while the police
14 were investigating. So, no, ma'am, that's not a correct
15 statement.

16 Q My question was though at the time of the shooting was
17 anybody testifying that -- or was anybody saying that there
18 was a third party in the room that could have shot?

19 A I actually had an alibi defense. My attorney never
20 followed that alibi defense up, Ms. Attorney General.

21 Q Okay. So when you told the victim's father that you
22 were sorry that didn't --

23 A That's hearsay. I never told anyone that I was sorry.

24 Q Okay. Ultimately, though you did plead guilty to
25 this, and plead guilty pursuant to Alford saying that you

Kenya Lamond Rogers
Cross-examination by Ms. White

1 believed based on your review of the information if it was
2 presented to a jury it was likely you could be convicted.

3 A That's correct.

4 Q And you told the Court you'd told the truth, you
5 didn't want to go back on anything and that was what you
6 were going with.

7 A That's correct at the time, yes, ma'am.

8 Q Okay. And-but now you're coming back saying you
9 didn't want to have pled guilty?

10 A Absolutely. I have a case for you. You might be
11 familiar with it. It's Key vs. United States. It simply
12 says that a defendant will not forever be bound by his
13 responses to the Court's questions on the entry of a guilty
14 plea. "If at a later time," which this is a later time,
15 "at a collateral proceeding I can present new and specific
16 allegations," in which that's exactly what I'm doing today.

17 At the time, as I stated, hey, I been -- I been in
18 jail -- first time ever being arrested -- 365 days. I've
19 only met with my attorney three times on a -- on a murder
20 charge. I'm nervous, of course, which I am today. I'm
21 nervous. I'm scared to death.

22 My attorney, he's wishy-washy, he's in and out.
23 He's -- the majority of the information he's not related to
24 me. He's negotiating. He's taking part with the
25 solicitor. They're negotiating behind my back. And I'm

Kenya Lamond Rogers
Cross-examination by Ms. White

1 not informed of those negotiations.

2 I have a bond scheduled. I don't even know about the
3 bond.

4 He hasn't informed me of any of the state's witnesses
5 that's going to testify as I just stated to you. The only
6 thing he says is that the little girl is not going to
7 testify.

8 But as far as any other witnesses, he hasn't informed
9 me of those. He hasn't even informed me. I asked him to
10 go and tell me anything about the crime scene, whether the
11 state had actually retrieved the gun or not. He still
12 couldn't confirm to me if the state had retrieved the gun.

13 So, yes, at the time when I gave my plea I was
14 nervous.

15 Q All right. Now, let me ask you a question.

16 Your attorney spoke on your behalf. Obviously, it was
17 a negotiated plea. So it was either the judge was going to
18 take 30 or not, right?

19 A Well, as you can see in the transcript, my attorney
20 actually said that he guaranteed me that I would either
21 receive 30 years or, and the judge interrupted him and
22 said, well, this is a negotiated plea.

23 He wouldn't allow my attorney to inform him or the
24 Court in open court of what he actually guaranteed me of.
25 So there is no set guarantee that I was informed that I was

Kenya Lamond Rogers
Cross-examination by Ms. White

1 just going to receive 30 years.

2 Q Okay. My question is when he talked to the Court he
3 talked about sitting down with you, your mother and your
4 aunt for a couple of hours going over the case and based on
5 the information agreeing that that was the wise thing for
6 you to do, was accept a plea. Do you recall that?

7 A He never sat down with me for an hour in 365 days. He
8 sat down with my mother and my aunt for an hour and a half,
9 two hours. But he never spoke to me longer than 45 minutes
10 within a year.

11 Q Okay. That's all I have of this witness, Your Honor.

12 THE COURT: Okay. Thank you, Mr. Rogers. You can
13 step down, and then you can call your other witness. Who
14 is your witness?

15 THE APPLICANT: I'd like to call Ms. Angela Rogers,
16 Your Honor, to the stand.

17 She actually -- this is right on time. The attorney
18 general was just talking about my attorney speaking with me
19 for an hour and a half or maybe two hours. He never spoke
20 to me for an hour and a half or two hours. He actually
21 spoke to my mother and my aunt for an hour and a half or
22 two hours. As I stated, within 365 days, three times
23 meeting my attorney, he never spoke to me for 45 minutes at
24 the most.

25 THE COURT: All right. Mr. Rogers, now, you've

Angela Rogers
Direct examination by the Applicant

1 already testified. You don't get to testify from over
2 there. You've already testified from over here. But you
3 can call another witness if you have one.

4 THE APPLICANT: Okay. Your Honor, I'd like to call
5 Ms. Angela Rogers to the stand, please.

6 THE COURT: All right. Where is Angela Rogers?
7 Keep in mind that you get to ask her questions. You
8 don't testify again. You get to ask her questions.

9 THE APPLICANT: Yes, sir.

10 ANGELA ROGERS, having been
11 first duly sworn, testified as follows:

12 THE COURT: And your name is Angela Rogers.

13 A Angela Rogers.

14 THE COURT: And are you related to the defendant?

15 A I'm his mother.

16 THE COURT: Excuse me. The applicant.

17 A Mother.

18 THE COURT: You're his mother.

19 A Yes, sir.

20 THE COURT: All right. Mr. Rogers.

21 DIRECT EXAMINATION BY THE APPLICANT

22 Q Ms. Rogers, now, I'm informed that along with myself
23 that you actually spoke with my trial attorney, Mr. Thomas
24 Shealy, is that correct?

25 A That's correct.

Angela Rogers
Direct examination by the Applicant

1 Q Now, I'd like to ask you. What exactly were the
2 details of your discussions with Mr. Shealy at the time you
3 spoke with him, ma'am?

4 A We spoke on maybe a couple of hours on several
5 different occasions on my behalf.

6 I made the attempt to go speak with him. He never
7 contacted me. And we spoke about the discovery. I asked
8 him what -- I told him to give me a little information if
9 he could about the case. And we mainly spoke about the
10 discovery.

11 Q What exactly about the discovery did you talk about?
12 Do you remember anything specifically about it?

13 A He was telling me that the discovery -- he told me a
14 few little informations about the discovery. I can't
15 remember exactly. But the main thing that he did tell me
16 is that you, Kenya Rogers, did not need a copy of the
17 discovery back there in the -- in the jail because of the
18 other inmates may get it and use it against you.

19 Q Ms. Rogers, I have also stated that I was never
20 informed of my bond. And I understand that during your
21 discussion with Mr. Shealy he actually informed you of the
22 bond. And would you tell the Court why Mr. Shealy never
23 informed me of the bond?

24 A I have no understanding as to why he never informed
25 you.

1 The only way I knew of the bond was I kept asking him
2 about what is the bond amount. I called him. I contacted
3 him and asked him what was the bond amount. So he told me
4 it was the amount that it was.

5 Q Okay.

6 THE APPLICANT: Your Honor, that's all the questions
7 that I have of this witness.

8 THE COURT: All right. You can have a seat.

9 Ms. White is going to ask you some if she likes.

10 MS. WHITE: Your Honor, I don't think I have any
11 questions for this witness.

12 THE COURT: All right. Thank you, Ms. Rogers. You
13 may step down.

14 THE WITNESS: Thank you.

15 THE COURT: Mr. Rogers, do you have any other
16 witnesses you'd like to call?

17 THE APPLICANT: No, sir, Your Honor. Actually, I
18 subpoenaed Mr. Thomas Shealy, but I see he's not actually
19 in court today.

20 THE COURT: He's here. Do you want to call him as a
21 witness?

22 THE APPLICANT: Absolutely.

23 THE COURT: Okay.

24

25

Thomas E. Shealy
Direct examination by the Applicant

1 THOMAS E. SHEALY, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY THE APPLICANT

4 Q How are you doing, Mr. Shealy? Glad to see you. It's
5 been a long time.

6 Could you inform me, sir, on actually why I never was
7 informed that I had a bond, first of all?

8 A You were informed that you had a bond.

9 Q That is correct. I was informed by my mother that I
10 had a bond. But why wasn't I ever informed by you, my
11 attorney, that I had a bond, Mr. Shealy?

12 A As you stated, we had a bond hearing. And I don't
13 recall the exact date of the bond hearing.

14 For some reason Judge Hayes did not actually issue the
15 bond until I believe it was in September. You'd called me
16 that -- and we talked about -- you called me from the jail
17 cell, and we talked about all of that.

18 On December the 5th of 2008 I wrote a letter to you
19 and sent a copy of the bond. I told you that the bond had
20 been set. I believe I said it was set. But I believe it
21 was heard on May the 30th of 2008. And that I had been in
22 touch with you and your mother since then and that I'd
23 explained all of this to you in person and to your mother
24 that in order for -- this letter doesn't say this. But in
25 order for me to bring another motion for bond I have to

Thomas E. Shealy
Direct examination by the Applicant

1 either have permission within the bond order for it, and
2 since after 180 days I can renew this motion, or I have to
3 have a significant change of circumstances.

4 And I explained to you in that letter that no one had
5 made me aware of any significant change of circumstances
6 that would support asking for the bond to be changed. And
7 that was on December 5th of 2008.

8 Q On December 5th. Now, Mr. Shealy, you stated that I
9 actually called you from the county jail. Is that a
10 correct statement?

11 A You called me often from the county jail despite my
12 warnings that the conversations were being recorded.

13 Q Now, Mr. Shealy, I'm aware that your office does not
14 take collect calls. Is that true?

15 A That's correct.

16 Q well, any call coming from the county jail would be a
17 collect call, Mr. Shealy. So I'm actually saying there's
18 no way that I could have personally called you from the
19 county jail because that would have been a collect call,
20 which your office does not accept collect calls, correct?

21 A Mr. Rogers, how could you call my office?

22 THE WITNESS: Excuse me, Your Honor. I'm not allowed.

23 A The way that you called my office is through what's
24 commonly called a 3-way. So there are ways for -- in fact,
25 inmates call routinely when they use their phone

Thomas E. Shealy
Direct examination by the Applicant

1 privileges.

2 Q So, Mr. Shealy, you're telling me -- actually, what
3 day did you inform me? As we stated, on May 30th of 2008
4 we went before a bond hearing. What date actually did you
5 inform me that I actually had a bond?

6 A I couldn't tell you that. We were in contact both by
7 phone and in person numerous times. I didn't tape
8 transcripts of any of our conversations.

9 Q So -- so you don't know the exact date?

10 A That's correct.

11 Q So it could have been any date, if any, correct?

12 A Well, I know it was at least by December 5th of 2008.
13 But even that letter refers to earlier conversations we had
14 where we discussed your bond. And if I recall correctly
15 that was a major concern of yours as opposed to the actual
16 merits of the case.

17 Q Would it be a true statement, Mr. Shealy, to say that
18 we actually met three times as I stated?

19 A No. I dispute that. We met many times more than
20 that.

21 THE APPLICANT: Well, Your Honor, you have the
22 exhibit.

23 And you also, Ms. Attorney General.

24 Exhibit 1 that simply showed the attorney sign-in
25 sheets where I actually met with Mr. Shealy three times.

Thomas E. Shealy
Direct examination by the Applicant

1 Q Now, Mr. Shealy, can you give me --

2 THE WITNESS: Your Honor, may I?

3 Q Can you give me a background on the actual nature of
4 the charge to which you informed me of and also the
5 critical elements of murder?

6 A Well, if I had my books with me up here, yeah, I
7 could.

8 The fact is that I did at the time that I interviewed
9 you. Your -- as to the attorney sign-in sheets, this is a
10 looseleaf notebook where attorneys come in -- attorneys,
11 preachers. Anybody can come in. They sign in.

12 You might -- the pages are not necessarily in
13 chronological order. Pages fall out. Pages get thrown
14 away. There's not a custodian of records, so to speak, of
15 these attorney sign-in sheets.

16 So as to the date that you and I talked, you were
17 correct. It was May. If I can find it -- May 20th of
18 2008.

19 And I received the discovery on May 22nd of 2008.
20 Ordinarily, I would not have talked to you until receiving
21 discovery because I needed to know what to discuss with
22 you.

23 However, I believe -- well, I know you'd been calling
24 the office. And I wanted to say that your mom had come by.
25 And, additionally, I couldn't talk to her because I didn't

Thomas E. Shealy
Direct examination by the Applicant

1 have your permission.

2 And so I came on May 20th of 2008 and did my initial
3 interview with you. And at that time we talked about
4 murder, possession of a firearm and possession of crack
5 cocaine.

6 Q Possession of firearm, crack cocaine. Actually, I was
7 indicted for murder, so there shouldn't have been any
8 discussion of possession of firearm.

9 But can you give me a detailed message of what we
10 actually talked about, the nature of the critical elements
11 of murder that you informed me of?

12 A I informed you of the elements of murder by reading to
13 you the statute dealing with murder and asking you if you
14 had any questions. That's the way I do everyone.

15 The possession of firearm charge, same thing.

16 The possession of crack cocaine charge, same thing.

17 I told you that -- explained to you what an element
18 was and that they had to prove each element beyond a
19 reasonable doubt.

20 Q Possession of crack cocaine. I don't understand where
21 the possession of crack cocaine came in, Mr. Shealy, or the
22 possession of a firearm. As I said, I was only indicted
23 for murder and not for possession of any crack cocaine or
24 possession of a firearm.

25 A But it appears that these were prior -- either

Thomas E. Shealy
Direct examination by the Applicant

1 prior -- must have been prior charges.

2 I can tell you what you told me about them, that you'd
3 gotten paid and you were with a friend in his car. He gets
4 a call and goes on his way to pick up a friend. You went
5 to Westwood Apartments. Tany Turner needed a ride to the
6 hotel. You were going to Morris Byers' trailer, and you
7 got to the hotel. You didn't get out. You took her back.
8 Pulled over by Officer Anderson. He pulled the driver out
9 and your tag light -- the tag light was out. He searched
10 you. Found nothing. He took the pay from -- from you of
11 \$600, the pay that you had just gotten paid. It was more
12 than \$600.

13 They found crack in the back seat where Tammy was --
14 one rock -- after they searched the vehicle for an hour.

15 THE APPLICANT: Now, Your Honor, if you -- if you
16 would turn to the discovery as you see on page -- one
17 moment, Your Honor.

18 (Pause.)

19 THE APPLICANT: Actually what I'm trying to find here,
20 Your Honor, is where the judge asked Mr. Shealy are you
21 aware of this, Mr. Shealy, where the judge actually asked
22 you have I ever been convicted of any crime. And the
23 answer was no.

24 Q Is that a correct statement, Your Honor, Mr. Shealy?

25 A Well --

Thomas E. Shealy
Direct examination by the Applicant

1 Q I'm looking for it in my transcript.

2 MS. WHITE: Page 24.

3 THE APPLICANT: Page 24. Thank you.

4 A In my notes I have that you have no criminal record.

5 Q That is correct.

6 A And this is prior to this plea. And page -- what,
7 please?

8 MS. WHITE: Twenty-four.

9 A That's correct. Mr. Morin and I both said we didn't
10 believe you had a prior record.

11 Q Okay.

12 A Well, you know what a prior record is.

13 Q Absolutely. I know exactly what a prior record is.
14 Thank you.

15 A But these other two charges that I mentioned never
16 went to trial.

17 Q Never went to trial. Thank you very much.

18 The last question that I have for you, Mr. Shealy.
19 You said that you actually informed me of the nature, or
20 was it the critical elements of murder by reading the
21 statute? You said that you read a statute to me. Were you
22 informing me of the nature or were you informing me of the
23 critical elements of murder?

24 A I was informing you of both.

25 Q Of both. But what about the critical elements and the

Thomas E. Shealy
Direct examination by the Applicant

1 nature to the charge to which I pled, which is voluntary
2 manslaughter, Mr. Shealy? When did you ever inform me of
3 the nature and/or the critical elements of voluntary
4 manslaughter?

5 A All right. It was shortly prior to -- it was between
6 January 13th -- no. I'm sorry.

7 The first time that we talked about it was prior to
8 August 26th of 2008. The -- you and I had discussed a
9 guilty plea to involuntary manslaughter.

10 At that time I was -- read to you just as I just
11 mentioned what the elements were of voluntary manslaughter.

12 You authorized me to negotiate with the solicitor's
13 office. I orally requested a voluntary manslaughter and
14 he -- he orally rejected that. But he left the possibility
15 open that he might consider voluntary manslaughter.

16 On January 13th I wrote to the solicitor's office -- I
17 wrote to the solicitor's office stating that you had
18 agreed -- you had authorized me to request that you be
19 allowed to plead to voluntary manslaughter.

20 The -- once again, I would have made sure you knew
21 what we were talking about. Otherwise, there's no reason
22 to talk about it.

23 You authorized me to request you be allowed to plead
24 to manslaughter, and I also told them that you may have
25 to -- excuse me. I'm getting dry. You may have to plead

Thomas E. Shealy
Direct examination by the Applicant

1 under Alford because you told me it was an accident. And
2 that was a letter from me to the solicitor on January the
3 13th of 2009.

4 His reply was January 15th of 2009 where he said if he
5 was going to let you plead to voluntary manslaughter,
6 having now prepared the case for trial, he would accept --
7 he would accept the plea only if it included the negotiated
8 30 years. He had no objection to you entering an Alford
9 plea.

10 And that's the exchange of letters that we had on your
11 plea.

12 Q So you're saying once again that you actually read to
13 me a statement or a statute of voluntary manslaughter even
14 though we were discussing involuntary manslaughter. Is
15 that a correct statement, Mr. Shealy?

16 A I read to you what the elements were. And then I
17 would go over as to what facts -- their allegation of the
18 facts -- would fit each element. And we -- and you're an
19 intelligent man. We had a very good discussion about all
20 of this.

21 Q Right, right.

22 A But the -- the -- but for me to have you plead to
23 something that you didn't know what the elements were, this
24 is a trap for a defense counsel, because as soon as the
25 judge asks and you don't know, then the judge looks at me.

Thomas E. Shealy
Direct examination by the Applicant

1 And the judge has looked at me before, and I didn't want
2 that to happen again.

3 Q So you're saying that you did inform me that the
4 critical element of voluntary manslaughter was intent, the
5 very same thing that I was intent on going to trial for?

6 A I told you what -- rephrase the question. Reask the
7 question. I lost it.

8 Q All right. All throughout our discussions the main
9 element that we ever talked about was the defense of
10 accident, correct?

11 A Correct.

12 Q And we actually were prepared to go to trial from day
13 one, is that correct?

14 A That's correct. We were ready.

15 Q We were ready. And on the day of trial we were ready
16 to go to trial.

17 A That's correct.

18 Q But you had said that I authorized you to speak --
19 speak with the solicitor on numerous occasions about
20 negotiations as far as pleading, correct?

21 A Correct.

22 Q And as far as those pleadings, you're telling me that
23 you informed me, although we were prepared to go to trial
24 from day one -- you informed me of the elements of
25 voluntary manslaughter along with the elements of

Thomas E. Shealy
Direct examination by the Applicant

1 involuntary manslaughter even though we were prepared to go
2 to trial for murder?

3 A That's correct. Because we don't know if the
4 solicitor's going to agree to what we want to plead to or
5 not.

6 But in order for us to have a discussion as to what
7 you would plead to you have to know what the crime is. And
8 so all of that -- had we gone to trial all of that wouldn't
9 have amounted to anything. But I couldn't make the offer
10 without your authorization, and I couldn't get your
11 authorization unless you knew what you were authorizing.

12 Q Well, why didn't you inform me that these plea
13 negotiations were taking place behind my back? Why didn't
14 you inform me that the state had offered a negotiated
15 30-year sentence?

16 A First off, I didn't do anything behind your back.
17 Now, you are sitting in a jail cell. They don't let you
18 attend the -- our discussions with the solicitor.

19 Now, I'm sorry about that, but I don't control that.
20 Any discussions I had with the solicitor are discussions
21 that you have authorized, that you've asked me to do.

22 The fact that they didn't come out the way you
23 wanted -- I'm not the solicitor. I don't make the
24 decisions. He makes them.

25 Q My question is why didn't you inform me.

Thomas E. Shealy
Cross-examination by Ms. White

1 A I did.

2 Q There's no way, Mr. Shealy. The timeframe from the
3 time that I saw you from Exhibit 1 and to the exhibits that
4 I turned in, they don't add up.

5 The negotiations that were taking place between you
6 and the solicitor and the times that I actually spoke with
7 you, those times don't add up, Mr. Shealy.

8 You never informed me of the negotiations that were
9 taking place with you and the solicitor. You never
10 informed me of the bond hearing that I actually had before
11 September the 8th --

12 MS. WHITE: Your Honor --

13 Q -- the second time that I met you, is that correct?

14 A No. that's not correct.

15 THE APPLICANT: Your Honor, that's all I have of this
16 witness, Your Honor.

17 Q Thank you very much, Mr. Shealy.

18 A Thank you.

19 THE COURT: All right. You can take your seat.

20 Ms. White's going to ask you some questions.

21 CROSS-EXAMINATION

22 BY MS. WHITE

23 Q Mr. Shealy, obviously you recall representing Mr.
24 Rogers in this case.

25 A Yes.

Thomas E. Shealy
Cross-examination by Ms. White

1 Q And in regards to the timeframe of meeting, he
2 provided three pages that are looseleaf pages that he says
3 constitute all of your meetings. You testified that you
4 actually met with him and communicated with him numerous
5 times.

6 A Certainly. More times towards getting ready for
7 trial, but it started on May 20th.

8 Q Now, in regards to the state's case and the evidence,
9 did you feel that this was going to be a tough case to win
10 at trial?

11 A Well, the -- Mr. Rogers could not have testified on
12 his behalf. Well, he could have, but it could have been
13 worse.

14 His statement to me as to what happened was worse --
15 excuse me -- worse than the -- the statement he gave. He
16 had stated that the victim was selling crack cocaine and he
17 was essentially the enforcer.

18 And he had a pistol that he was unfamiliar with. And
19 they went out to collect the money, and when they came back
20 he didn't know how to unload the pistol, so he fired it in
21 the air. He thought that unloaded it.

22 And then he denied that there was an argument, any
23 arguments, going on in the bedroom. They were in the
24 bedroom. They were getting ready I believe to have sex.

25 She said take the gun off the bed. He wouldn't do it.

Thomas E. Shealy
Cross-examination by Ms. White

1 Take the gun off the bed. And it discharged and killed
2 her. The -- that was his statement.

3 The original statement was he talked about an argument
4 with her and that he had -- he had blacked out as to when
5 the gun actually -- or he believed he blacked out because
6 he didn't remember the gun actually going off. And so it
7 would have been very hard for him to have testified.

8 Q And --

9 A Go ahead.

10 Q I'm sorry. And so he did give a statement to police.
11 He was arrested on the night of the shooting.

12 A Correct.

13 Q And weren't there -- was there the victim's father had
14 been in the home?

15 A Right. The victim's father was bedridden. I don't
16 believe he had any -- any legs. And he was in the -- a
17 bedroom in the house.

18 I want to say the bedroom was next to that, but I'm
19 not certain about that.

20 He hears arguing, and he hears a pop. And then
21 Mr. Rogers sticks his head in -- and this is all very
22 abbreviated -- apologizes to him.

23 Meanwhile, the little girl, ^{Minor} saw all of this
24 happening. And she yells that he shot her -- her mama in
25 the head.

Thomas E. Shealy
Cross-examination by Ms. White

1 She runs out of the house. The grandfather can't go
2 after her as Mr. Rogers explained to me.

3 And so this house is right next door to a Hardee's
4 restaurant, and it's on Cherokee County Avenue. Cherokee
5 Avenue is a very, very busy road. There are other stores
6 and businesses along there.

7 The little girl ran out, and he didn't know where she
8 was running to. He ran out after her trying to protect
9 her, I believe.

10 The -- she ran up to a group of people. She crossed
11 the street, but I think it was an adjacent street, not
12 Cherokee Avenue, where she found a group of people.

13 She yelled that he shot my mother, he killed my
14 mother, shot her in the head.

15 He tried to take the little girl. That group of
16 people -- you're not taking her. And they waited -- they
17 called the police.

18 He goes. And at this point I think he's confused. He
19 doesn't know what to do. He goes back to -- starts to head
20 back to the house.

21 One of these police S.U.V.s, I think it was, with blue
22 lights going pulls up. He starts running. Well, he
23 doesn't know where to run so that -- and we have video of
24 this. The S.U.V. chases him around Hardee's a couple of
25 times. And finally he gives himself up.

Thomas E. Shealy
Cross-examination by Ms. White

1 But the only person that could have testified that it
2 was an accident would have been him, and he would've had to
3 tell the truth. Quite frankly, I don't know how a jury
4 would develop sympathy for an enforcer of a drug deal.

5 Q And so in your conversations with him did you share
6 your concerns over the evidence and how it would look to a
7 jury?

8 A Certainly. That's my job.

9 Q And in discussions with him obviously you testified
10 that you talked to the solicitor and indicated by letter
11 that you'd been authorized to talk with him about
12 negotiations.

13 What timeframe was that in the preparation for trial,
14 do you recall?

15 A It started as early as August of 2008, I believe. And
16 obviously it gained momentum the closer we got to trial.

17 Q Did you have a chance to talk with him about the
18 witness statements, the video from them?

19 A Oh, on more than one occasion. We went through it.
20 As we got closer to trial we'd go over things more and
21 more.

22 When you get a client like Mr. Rogers it'd be arrogant
23 to think he has nothing to contribute. And I found that,
24 you know, in discussing the case with him he would -- he
25 would think of other things that I should look at. And so

Thomas E. Shealy
Cross-examination by Ms. White

1 it was valuable every time I met with him to talk to him at
2 least to some sort of detail as to the actual defense of
3 the case.

4 Q Did he ever offer an alibi defense to you that he
5 wanted you to investigate?

6 A No, no. And people saw him come out of the house and
7 run up and try to take -- take the girl.

8 Q And on the day of the plea did you ever have any
9 concerns that he was pleading without knowing what he was
10 pleading to?

11 A No. He knew what he was pleading to. There's no
12 doubt in my mind about that.

13 Understand this. I became -- I'm no longer a public
14 defender. But I became a public defender because I wanted
15 to try cases. And if he wanted to try this case my biggest
16 concern is -- is that I wouldn't emphasize enough the
17 perils of it, because that's what I do, is I try cases.

18 The -- I don't particularly care for negotiations and
19 I don't particularly care for guilty pleas.

20 Q And how long have you been practicing as an attorney?

21 A Since November 8th, 1978. So that would be in excess
22 of 33 years.

23 Q Has all of that time been in criminal law?

24 A A vast majority of it has.

25 Q And the time obviously you were representing him was a

Thomas E. Shealy
Cross-examination by Ms. White

1 defense -- public defender work. How long had you been at
2 the public defender's office?

3 A Since February of 1994. Now, sometimes it was full
4 time and sometimes it was by contract, but-and in some
5 capacity or other.

6 Q And at the guilty plea whose choice was it to plead
7 guilty to voluntary manslaughter for 30 years that day?

8 A His.

9 Q Okay.

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

11 THE COURT: Okay. You may step down.

12 Mr. Rogers, do you have any other witnesses you'd like
13 to call?

14 THE APPLICANT: No, sir, Your Honor.

15 THE COURT: Does the state have any additional
16 evidence to present?

17 MS. WHITE: No, Your Honor.

18 THE COURT: All right. I will take the matter under
19 advisement. I'll review the exhibits, as well as the
20 transcript of the hearing, and issue an order shortly.

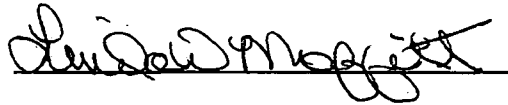
21 END OF REQUESTED TRANSCRIPT OF RECORD
22
23
24
25

CERTIFICATE

I, the undersigned Linda D. Moffitt, 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 all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court of for Cherokee County, South Carolina, on the 4th day of October 2013.

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

March 31, 2014

A handwritten signature in black ink, appearing to read 'Linda D. Moffitt', written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

ATTORNEY SIGN IN SHEET

ATTORNEY	INMATE NAME	DATE	TIME	UNIT
Tommy Shealy	Shawn Martin	5/20/08	9:45	
	Blackely Foster			
XXXXX ©	Kenya Rogers			
Don A. Thompson	JAMES FORD	5/20/08	1330	
	THOMAS HESSER			
	CHRISTOPHER SCHALLER			
	JOSHUA WOOD			
	REBINA NALLEY			
	WESLEY BRAZELL			
	WILLIAM LINDER			
	TERRELL RAMSEY			
	AMANDA CHILDERS			
	JESSICA LITTLESON			
	TRINA VESSEL			
Phil Sinclair	Derrick Byars		3:35 PM	
	Jesse Willis		" "	
HISKE	Billy Rodgers			
	W. Shane Panther	5/20/08	3:40	
Don A. Thompson	TRINA VESSEL	5/21/08	1230	
	PATRICK VALENTINE			
	LARRY HOLMES			
Tommy Shealy	Donald Deaton	5/22/08	9:40	
	Lee Tate			
	Terry Martin			
Tommy Shealy	Lee Tate	5/23/08	9:45	

Exhibit #1

ATTORNEY SIGN IN SHEET

ATTORNEY	INMATE NAME	DATE	TIME	UNI
Tommy Shealy	Kenyal Rodgers	9/8	2:00	
1	Marcus Carson	1	1	
Don A. Thompson	JAMES RAY HARKINS	9/9/08	1330	
{	KERRY JEFFERIES	{	{	
	MICHAEL DAVID KENDRICK			
	KEVIN BOLINI			
Tommy Shealy	Scott Wyatt	9/10	10:00	
	Scott Jeter			
	Timothy J. Moore			
	Jonathan Futral			
	John Kennedy			
	Lisa Miller			
Cyrus Horton	Reginald Burner	9/11	9:45	
Tommy Shealy	Scott Jeter	9/11	10:00	
	Tamon Hollis			
	Darin Petty			
	Brian Teeve			
	Matthew Jofferies			
	Steven Mullinax			
Frank Green	Tyral Garner	9/11/08	1:50	
	David Hernandez	1	1	
Don A. Thompson	CHARLES BUTCHWELL	9/11/08	1515	
{	WILLIAM LITTLESHIP	{	{	
	JOHN DAVIS			
	WILLIAM McMurphy			

Exhibit #1

Attorney Sign In Sheet

ATTORNEY	INMATE NAME	DATE	
Don A. Thompson	KATHER THOMPSON	1/7/09	1015
	RICHARD FOWLER		
~~Tommy Shealy~~ ~~Kenya Rogers~~	Kenya Rogers	1/12/09	
Albert V. White	Jonathan Bolin		
Jack N. Wilson			
Albert V. White	William A. Brown		
William A. Brown			
Thomas B. White IV	Richy Stewart	1/14/09	
V. Lee Shupps	McClain Stewart		
Tommy Shealy	Matthew Hich	1/15/09	1015
	Jeremy Ivey		
	Walter Lyeely		
Don A. Thompson	BRANDY DAY	1/15/09	1355
	TERRY TYLER		
	ROBERT MOSLEY		
	STEVEN MARTIN		
Tommy Shealy	Christine DeRossatt	1/15/09	1330
	Tabitha Jackson		
	Christy Eunice		
Don A. Thompson	ROGER WILKINSON	1/16/09	1107
	KENNETH HOPPER		
	RODNEY LOVE		
	JOSHUA WILSON		
James W. Pender	Michael Dover	1/21/09	8:19am
	Michael Dedeola		
	Christina Littlejohn		

Exhibit #2 Proposed Bond Order

KENYAL ROGERS
2010-CP-11-0936105

CHEROKEE COUNTY PUBLIC DEFENDER

Thomas E. Shealy
Public Defender
310 (B) North Limestone Street
Gaffney, South Carolina

Telephone: (864) 487-8538
Facsimile: (864) 487-6200

Post Office Box 8091
Gaffney, South Carolina 29340

Facsimile Transmittal Sheet

CONFIDENTIAL

FROM: Tommy Shealy

DATE: September 5, 2008

NUMBER OF SHEETS TRANSMITTED (including this cover sheet): 4

If you did not receive the above number of pages or if any pages are illegible, please call us immediately.

TO: The Honorable J. Mark Hayes, II

FIRM: Circuit Court Judge

FAX #: 9-1-864-562-4142

RE: State v Kenyal Rodgers

MESSAGE: SEE Note

CONFIDENTIALITY NOTICE

This facsimile transmission and the accompanying documents contain legally privileged confidential information. The information is intended only for the use of the recipient named above. If you are not an intended recipient, you are hereby notified that any disclosure, copying, distribution, exploitation of, or the taking of any action in reliance on the contents of this facsimile is strictly prohibited. If you have received this facsimile in error, please notify us immediately by telephone to arrange for the return of the original documents to us at our own expense.

SEVENTH CIRCUIT PUBLIC DEFENDER

Cherokee County Office
310-B N. Limestone Street
Gaffney, S.C. 29340

P.O. BOX 8091
GAFFNEY, S.C. 29340

PHONE (864) 487-8538
FAX (864) 487-6200

September 5, 2008

The Honorable J. Mark Hayes, *II*
FACSIMILE

RE: State v Kenyal Rodgers

Dear Judge Hayes:

Under cover of this fax, please find the proposed bond order for Kenyal Rodgers. The Solicitor Morin has approved it.

I have the bondsman monitoring the drug tests so I would not become a witness against my client if he tests positive. If he does test positive, I assume the bondsman will want to know so he can consider going off his bond. I also used a prior order to define house arrest.

If you want changes, please indicate the changes and fax it back to me. Please let me know where you will be next week so I can fax a corrected copy to you.

Very truly yours,

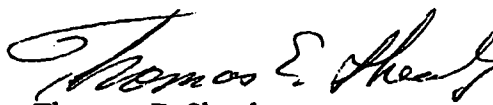

Thomas E. Shealy

Exhibit # 2 Proposed Bond order

KENYAL RODGERS
2010-CF-110936

STATE OF SOUTH CAROLINA) IN THE GENERAL SESSIONS COURT
COUNTY OF CHEROKEE) SEVENTH JUDICIAL CIRCUIT

State of South Carolina,) ORDER FOR BOND
Plaintiff,)
vs) DOCKET #
Kenyal L. Rodgers,) WARRANT #H-9939965, 66
Defendant.)

This matter comes before the Court upon motion of the Defendant to have a bond set on the charge against him. He is charged with murder and possession of a firearm during a violent crime. Bond has not been set on the murder charge and was denied on the firearm charge. He has been incarcerated since January 29, 2008. This hearing was held May 30, 2008.

After hearing from the Defendant and the Solicitor, the Court finds he is entitled to a bond certain conditions.. Therefore it is

ORDERED

1. The Defendant's motion for a bond is granted..
2. The Defendant's bond is set at seventy-five thousand dollars (\$75,000.00) This bond shall be a signed surety bond. Special conditions of this bond are set out below.
3. He shall be under house arrest and confined within his home and may not depart his home except for the following reasons:
 - A. He may attend religious services twice a week.
 - B. He may leave in the case of a medical emergency.
 - C. He may visit his attorney but only pursuant to an appointment made beforehand.
 - E. He must attend drug testing as set out below

F. In the instance of each of the above reasons, he must travel directly to the destination and back home without any delay. There may be no deviation from direct route or time to travel.

G. This condition of house arrest and the reasons denoted by the above lettered paragraphs shall expire sixty days upon release from incarceration, provided there is no violation. In the event of a violation, the Defendant is to be seized and brought before the next general sessions court for resolution of the violation. All other numbered paragraphs herein shall remain in effect.

4. He will have no contact with the family of Tasha Scott, the victim in this matter, either directly or indirectly. In any event, he may not come within one-half (½) mile of any such family member's home.

5. He shall submit to drug testing every thirty days upon his release from custody. The bondsman will monitor the testing and provide the Solicitor and defense counsel copies of each test's results

IT IS SO ORDERED!

_____, 2008
_____, S.C.

J. Mark Hayes, II
General Sessions Judge
Seventh Judicial Circuit

CHEROKEE COUNTY PUBLIC DEFENDER

Thomas E. Shealy
Public Defender
310 (B) North Limestone Street
Gaffney, South Carolina

Telephone: (864) 487-8538
Facsimile: (864) 487-6200

Post Office Box 8091
Gaffney, South Carolina 29340

Facsimile Transmittal Sheet

CONFIDENTIAL

FROM: Tommy Shealy

DATE: Sep 9, 2008

NUMBER OF SHEETS TRANSMITTED (including this cover sheet):3

If you did not receive the above number of pages or if any pages are illegible, please call us immediately.

TO: Mike Morin

FIRM: Solicitor

FAX #: 9-487-2753

RE: State v. Rodgers

MESSAGE: I added some stuff to the order. I cannot monitor his drug test and then tell you he failed. I can't be a witness against him. Any objections? I'd like to fax it to him tomorrow (Friday)

CONFIDENTIALITY NOTICE

This facsimile transmission and the accompanying documents contain legally privileged confidential information. The information is intended only for the use of the recipient named above. If you are not an intended recipient, you are hereby notified that any disclosure, copying, distribution, exploitation of, or the taking of any action in reliance on the contents of this facsimile is strictly prohibited. If you have received this facsimile in error, please notify us immediately by telephone to arrange for the return of the original documents to us at our own expense.

110

Exhibit #3 Order For Bond

Kenyal Rogers
2010-CP-11-0936

STATE OF SOUTH CAROLINA) IN THE GENERAL SESSIONS COURT
COUNTY OF CHEROKEE) SEVENTH JUDICIAL CIRCUIT

State of South Carolina,) ORDER FOR BOND
Plaintiff,)
vs) DOCKET #
Kenyal L. Rodgers,) WARRANT #H-9939965, 66
Defendant.)

This matter comes before the Court upon motion of the Defendant to have a bond set on the charge against him. He is charged with murder and possession of a firearm during a violent crime. Bond has not been set on the murder charge and was denied on the firearm charge. He has been incarcerated since January 29, 2008. This hearing was held May 30, 2008.

After hearing from the Defendant and the Solicitor, the Court finds he is entitled to a bond certain conditions.. Therefore it is

ORDERED

1. The Defendant's motion for a bond is granted..
2. The Defendant's bond is set at seventy-five thousand dollars (\$75,000.00) This bond shall be a signed surety bond. Special conditions of this bond are set out below.
3. He shall be under house arrest and confined within his home and may not depart his home except for the following reasons:
 - A. He may attend religious services twice a week.
 - B. He may leave in the case of a medical emergency.
 - C. He may visit his attorney but only pursuant to an appointment made beforehand.
 - E. He must attend drug testing as set out below



Exhibit #3 Order For Bond

F. In the instance of each of the above reasons, he must travel directly to the destination and back home without any delay. There may be no deviation from direct route or time to travel.

G. This condition of house arrest and the reasons denoted by the above lettered paragraphs shall expire sixty days upon release from incarceration, provided there is no violation. In the event of a violation, the Defendant is to be seized and brought before the next general sessions court for resolution of the violation. All other numbered paragraphs herein shall remain in effect.

4. He will have no contact with the family of Tasha Scott, the victim in this matter, either directly or indirectly. In any event, he may not come within one-half (1/2) mile of any such family member's home.

5. He shall submit to drug testing every thirty days upon his release from custody. The bondsman will monitor the testing and provide the Solicitor and defense counsel copies of each test's results

IT IS SO ORDERED!

9/5, 2008
S.C.

J. Mark Hayes, II
General Sessions Judge
Seventh Judicial Circuit

Exhibit #9
142

Plea OFFER

Kenya Rogers
2010-CP-11-093b

State of South Carolina

Spartanburg County Court House
180 Magnolia Street
Spartanburg, S.C. 29306
Phone (864) 596-2575
Fax (864) 596-2386



Cherokee County Court House
Floyd Baker Blvd.
Gaffney, S.C. 29340
Phone (864) 487-2576
Fax (864) 487-2753

TREY GOWDY

Solicitor, Seventh Judicial Circuit

January 15, 2009

Thomas E. Shealy
Assistant Public Defender
310-B North Limestone Street
Post Office Box 8091
Gaffney, South Carolina 29340

RE: State v. Kenya Rogers

Mr. Shealy:

I am in receipt of your client's offer to plead to voluntary manslaughter. Having now prepared the case for trial I can accept a manslaughter plea only if it includes a negotiated 30 years. I have no objection to your client entering an Alford plea, although I do not believe any of the evidence supports your client's contention that this was an accident. I realize your client may not view this as an offer, however, as you are aware a murder conviction is a day for day sentence with a maximum of life.

If you have any further questions please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael D. Morin".

Michael D. Morin
Assistant Solicitor

KENYAL ROGERS
2010-CP-11-0936

NOTICE OF RIGHT TO PRELIMINARY HEARING

STATE OF SOUTH CAROLINA

UNIFORM WARRANT NUMBERS:

COUNTY OF Shelby

1. A-993966

3. A-993965

5. _____

My/Me. KENYAL L. ROGERS

you are charged with MURDER - 1ST DEGREE

TRIAL DATE: 01/30/08

and you may be entitled to Preliminary Hearing. You must request a Preliminary Hearing within ten (10) days of this notice or lose your right to such hearing. You may request such hearing by completing the lower left section of this notice and returning it to the Court either in person or by mail to the following address:

CLERK OF COURT

CHEMUNEE COUNTY LAW ENFORCEMENT CENTER

200 N. CHEMUNEE STREET

CHEMUNEE, SOUTH CAROLINA 29340

NOTICE GIVEN BY:

[Signature]

(Judge)

1-30-08

(Date)

I request a Preliminary Hearing.

Defendant: KENYAL LAMOND ROGERS

Address: 9500 Woodland Estates

CHARLOTTE, NC 28211

My Attorney is: _____

FOR COURT USE ONLY:

Date Request Received: _____

By: _____

SCCA512 (1/91)

State of South Carolina,
County of McCormick) Certificate of Service

I, Kenya Lamond Rogers, certify that I
have served this letter, by depositing a
copy thereof within the U.S. mail postage
pre-paid addressed as follows:

Mrs. Brandy W. McBee
Clerk of Court, Cherokee County
P.O. Box / Drawer 2289
Cahoon, South Carolina 29312

BRANDY W.
s/ Kenya Rogers
Kenya L Rogers

Suborn and Subscribed Before Me

This 7 day of May 2013
Kenya Rogers
My Commission Expires 10/11/2011

To Clerk of Court,

Thank you for sending

me, Kenya Rogers, a copy of the judgement
and order of continuance from the PCR

hearing of April 3rd, 2013. As you very well

know, I am, Pro SE, in the upcoming PCR

hearing. So, like the last letter that I wrote

to you around April 25th, 2013 requesting the

specific dates of court for General Sessions

of February 2008, and the presiding judge.

I still have not received a response for this,

so this would be a follow-up letter to request

a copy of the dates of court for General

sessions in Cherokee County for the term of

February 2008. Also the presiding judge.

As I stated in my last letter, I need this

information for an argument that I am raising

on my next PCR scheduled hearing.

Thanks

Kenya Rogers

Court was held the
week of February 11, 2008

+ Judge Roger L. Couch

provided even that term. NO other GS
Court was held
in Cherokee.

Exhibit 5

Preliminary Hearing

KENYAL RODGERS
2010-CP-11-0936
115

Cherokee County Bond Court

CASE HISTORY FOR CASE H993966

The State of South Carolina VS Kenyal Lamond Rodgers

FILED DATE: 4/11/2008

CASE TYPE: CR

STATUS: Prelim Requested

JUDGE: Howell, Robert

ARRESTING AGENCY: Cherokee County Sheriff

CASE PARTIES:

Defendant Rodgers, Kenyal Lamond

, Gaffney, SC 293410000

Officer Vanderburg, Mark

312 E. Frederick St., Gaffney, 29340

Affiant Mark Vanderburg, Ccsd

312 E. Frederick St, Gaffney, SC 293400000

CASE HISTORY FOR CASE H993966

Rodgers, Kenyal Lamond

Age: 31

DOB:

DL#:

SSN:

Gaffney, SC 293410000

CHARGE		VIOL. DATE	DISPOSITION	DISP. DATE
0116	Murder / Murder	1/30/2008		1/1/1753

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
------	----------	-------------	-----------	--------------

Total:

DATE	TIME	EVENT DESCRIPTION
01/30/2008	5:09 pm	Court event: Bond Hearing
01/31/2008	5:09 pm	recorded the following Case Note: MURDER
04/21/2008	5:09 pm	Filing recorded: PLM - LETTER PRINTED
05/13/2008	5:09 pm	Court event: Preliminary Hearing Scheduled w/o Notices

Print Date: 09/21/2009
Print Time: 4:29:12PM
Requested By: C11VWALLAC

CaseHistory.rpt

Page 1 of 1

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Exhibit # 6

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

Det. Mark David Vanderburg
Cherokee County Sheriff's Office
312 East Frederick St.
Gaffney, SC 29340

DNA ANALYSIS
January 14, 2009
SLED LAB: L08-03364
Your Case No: FA08-046
Incident Date: 1/29/2008
[S] Kenyal Rodgers
[V] Latica Scott

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

SEROLOGY ANALYSIS

Items Submitted:

Results of Examinations:

1	Hair extensions from floor near headboard	1	See DNA analysis.
1.1	Hair with possible root from extensions	1.1	See DNA analysis.
2	Hair extensions from floor in front of dresser	2	See DNA analysis.
3	Long braided hair extension from floor in front of fireplace	3	See DNA analysis.
3.1	Hair with possible root from extension	3.1	See DNA analysis.
4	Piece of lead from bullet	4	No analysis performed.



SLED LAB No. L08-03364
January 14, 2009

Page 2 of 4

Items Submitted:

Results of Examinations:

5	Swab from N. wall door knob	5	No analysis performed.
6	Head hair from center of victim's back		
6.1	Strand with associated debris	6.1	See DNA analysis.
7	Hair from plant hanging above headboard	7	No hairs suitable for STR PCR DNA analysis.
8.1	Cutting from sleeveless t-shirt	8.1	Blood indicated. See DNA analysis.
8.2	Cutting from sleeveless t-shirt	8.2	Blood indicated. See DNA analysis.
8.3	Cutting from sleeveless t-shirt	8.3	Blood indicated. See DNA analysis.
9.1	Cutting from pants	9.1	Blood indicated. See DNA analysis.
11.2.1	Cutting from "shorter" pair of socks	11.2.1	No blood indicated.
11.2.2	Cutting from "shorter" pair of socks	11.2.2	No blood indicated.
13	Blood standard - Kenyal L Rodgers	13	See DNA analysis.
21	Blood standard - Latica A Scott	21	See DNA analysis.

DNA ANALYSIS

ITEMS ANALYZED:

13 Blood standard - Kenyal L Rodgers
21 Blood standard - Latica A Scott

1 Swab from hair extensions from floor near headboard
1.1 Hair with possible root from extensions
2 Hair extensions from floor in front of dresser
3 Long braided hair extension from floor in front of fireplace
3.1 Hair with possible root from extension
6.1 Strand with associated debris
8.1 Cutting from sleeveless t-shirt
8.2 Cutting from sleeveless t-shirt
8.3 Cutting from sleeveless t-shirt
9.1 Cutting from pants



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SLED LAB No. L08-03364
January 14, 2009

Exhibit #6

Page 3 of 4

EXAMINATIONS

DNA analysis was performed on the items above. The results of Short Tandem Repeat (STR) PCR DNA analysis are shown in Table 1.

RESULTS

A partial DNA profile was developed from item 1.1. Latica Scott can not be excluded as a possible contributor to this partial DNA profile. Kenyal Rodgers can be excluded as a possible contributor to this partial DNA profile.

The partial DNA profile developed from item 2 is a mixture of at least two people. Latica Scott and Kenyal Rodgers can be excluded as possible contributors to this mixture.

A partial DNA profile was developed from item 3.1. Kenyal Rodgers can not be excluded as a possible contributor to this partial profile. Latica Scott can be excluded as a possible contributor to this partial DNA profile.

A partial DNA profile was developed from item 3. This partial DNA profile is insufficient for comparison purposes.

No DNA profile foreign to the victim, Latica Scott, was developed from item 6.1.

No DNA profile foreign to the subject, Kenyal Rodgers, was developed from items 8.1, 8.2, 8.3 and 9.1.

No DNA profile was developed from item 1.

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.



Matthew G. Fitts, Ph.D.
Forensic Scientist

cc: Cherokee County Solicitor's Office



Exhibit #6

Table 1 - Identifier

Items	D8S1179	D21S11	D7S820	CSF1P0	D3S1358	TH01	D13S117	D16S539	D1S1338	D19S433	VWA	TPOX	D18S51	D5S818	FGA	Amelogenin
21 Lacie Scott	12,14	30,31,2	9,11	8,13	15	7,9	11,12	9,10	21,22	12,15,2	16	8,11	14,18	12,13	21,23	X
23 Kenya Rodgers	12,13	27,28	8,11	11,12	14,16	7,9	11,12	9,11	21,24	12,13	18,19	7,12	12,16	12,14	21,24	XY
1 Extension headboard	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
1.1 Hair from extension	(13)	(31,2)	(11)	(8)	15	(7),9	(12)	(9,10)	-	-	16	(8)	-	(12)	(21,23)	X
2 Extension dresser	13,14	29,(30)	-	-	14,15	8,9	12	10,(11)	(22)	(11) 14,2,15,2	(14) 15,16	8,11	-	11,13	(23)	X
3 Braided extension	-	-	-	-	(15)	-	-	-	-	(12)	-	-	-	-	-	(X)
3.1 Hair from extension	(12,13)	-	-	-	(14)	(9)	-	-	-	(12,13)	-	-	-	(12)	-	(XY)
6.1 Strand with debris	13,14	30,31,2	9,11	8,13	15	7,9	11,12	9,10	21,22	12,15,2	16	8,11	14,18	12,13	21,23	X
8.1 t-shirt	12,13	27,28	8,11	11,12	14,16	7,9	11,12	9,11	21,24	12,13	18,19	7,12	12,16	12,14	21,24	XY
8.2 t-shirt	12,13	27,28	8,11	11,12	14,16	7,9	11,12	9,11	21,24	12,13	18,19	7,12	12,16	12,(13) 14	21,24	XY
8.3 t-shirt	12,13	27,28	8,11	11,12	14,16	7,9	11,12	9,11	21,24	12,13	18,19	7,12	12,16	12,14	21,24	XY
9.1	12,13	27,28	8,11	11,12	14,16	7,9	11,12	9,11	21,24	12,13	18,19	7,12	12,16	12,14	21,24	XY

(-) = alleles between 75 and 149 flu - = no results Bold = major contributor



STATE OF SOUTH CAROLINA)

COUNTY OF CHEROKEE)

Kenyal Lamond Rogers, #332892,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2010-CP-11-0936

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 10, 2010, and amendment filed July 31, 2013. The Respondent made its Return on or about November 1, 2011. An evidentiary hearing into the matter was convened on October 4, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and represented himself *pro se*¹. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant and his mother, Angela Rogers, testified on Applicant's behalf. Thomas E. Shealy, Esquire, also testified. This Court also had before it a copy of the records of the Cherokee County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the plea transcript and Applicant's exhibits.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. The Applicant was

¹ Applicant asked to relieve appointed counsel and with the knowledge that he would not be appointed additional counsel, insisted that he would retain counsel; however, the Applicant was unable to do so and proceeded *pro se*.

indicted at the March 2008 term of the Cherokee County Grand Jury for murder (08-GS-11-0226). He was represented by Thomas E. Shealy, Esquire. On January 27, 2009, the Applicant pled guilty to the lesser-included voluntary manslaughter. He was sentenced by the Honorable Roger L. Couch to confinement for a period of thirty years.

The Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed the appeal by written Order. State v. Rogers, Op. No. 2010-UP-452 (filed October 21, 2010). The Remittitur was returned on November 9, 2010.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to discuss or explain the nature and crucial elements of the offense of murder or voluntary manslaughter prior to or during my trial,
 - b. Counsel failed to provide me with adequate or sufficient legal advice to ensure the court that my guilty plea was intelligently, knowingly, and voluntarily entered; and
2. Trial court error, in that;
 - a. The court failed to adhere to the mandates and rules of Rule 11 §§ (c)(1) and (d).
3. Lack of jurisdiction, in that;
 - a. Applicant requested a preliminary hearing on January 30, 2008, following his arrest and never received one and, but was indicted on March 6, 2008.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186,

480 S.E.2d 733, 735 (1997) (citing Strickland).

Applicant introduced Applicant's Exhibit #2, copies of three sign-in sheets from the Cherokee County Detention Center, indicating visits from Counsel to Applicant. Applicant testified that he was arrested on January 28, 2008, and Counsel was appointed on March 5, 2008. Applicant testified that the first time he met with Counsel was May 20, 2008. Applicant testified that they had a quick meeting about the case and bond hearing. Counsel informed Applicant that he had not received any discovery materials at that time. Applicant testified that his bond hearing was held on May 30, 2008. Applicant then testified that Counsel's second visit was on September 8, 2008. Applicant alleged that he had been granted bond on September 5, 2008, and Counsel, Judge J. Mark Hayes II, and the Assistant Solicitor were all aware that bond had been granted, but Applicant was not released on bond. Applicant testified that on September 8, 2008, Counsel informed Applicant that there were bond conditions that still needed to be worked out. In support of this claim, Applicant submitted Applicant's Exhibit #3, which was a copy of an unsigned proposed bond order. Applicant also introduced Exhibit #4, a signed bond Order from September 5, 2008, and fax cover sheet from September 9, 2008, and Exhibit #5, a letter from the Assistant Solicitor regarding a plea offer. Applicant testified that Counsel's last visit was on January 12, 2009, at which time Counsel informed Applicant that bond had been granted and informed Applicant that the case was set for trial.

Applicant testified that he believes Counsel should have hired a private investigator. Applicant testified that he provided Counsel with an alibi defense and Counsel never investigated his alibi. Applicant testified that he was prepared to go to trial for murder. Applicant testified that he received a copy of discovery materials on January 14, 2009, which included Applicant's Exhibit #6, the SLED DNA analysis report. Applicant testified that he.

believed the report indicated that it was null and void. Applicant also testified that Counsel never told him if the State had found the gun, never told Applicant which witnesses were going to testify at trial, and never explained the elements of murder and voluntary manslaughter to Applicant. Applicant testified that Counsel came to him and indicated that there was no way to win at trial because the autopsy report could not be explained. Applicant testified that Counsel advised him that a negotiated plea for thirty years to voluntary manslaughter was Applicant's best option. Applicant also testified that he believed that the court should have informed Applicant of the nature and critical elements of murder and voluntary manslaughter during the plea pursuant to Rule 11(c)(1), Fed Crim.P.

Angela Rogers, Applicant's mother, testified that she met with Counsel a couple of times and spoke for a couple of hours total. Ms. Rogers testified that she and Counsel discussed discovery materials mainly. Additionally, Ms. Rogers testified that Counsel told her that Applicant did not need a copy of the discovery materials in jail because other inmates could potentially use it against him and then told her what Applicant's bond amount was.

Counsel testified that he has been practicing law in South Carolina since November 8, 1978. Counsel testified that he began at the public defender's office in 1994 and the majority of his experience since 1978 has been with criminal law. Counsel testified that he met with the Applicant many more than three times. Counsel testified that the sign-in sheets are kept in a loose-leaf notebook with no custodian of the records, so he does not agree that those three sheets are indications of the only meetings he had with Applicant. Counsel testified that the initial interview with Applicant was May 20, 2008, at which time Counsel discussed the charge of murder and Applicant's prior charges of possession of crack and possession of a firearm. Counsel testified that he read the statute regarding murder to the Applicant and asked Applicant

if there were any questions. Also, Counsel testified that he did the same for voluntary manslaughter, as early as August 2008. In fact, Counsel testified that he reviewed the elements of murder, voluntary manslaughter and involuntary manslaughter with the Applicant. Counsel testified that he received discovery materials in Applicant's case on May 22, 2008. Counsel testified that the Applicant claimed that he blacked out at the time of the shooting and denied having any arguments with the victim. However, the victim's father was in the house at the time of the shooting and was planning on testifying that he heard the arguing. Additionally, the victim's young daughter was present at the time of the shooting and was a witness, along with the video of the car showing the Applicant running from police. Counsel testified that he spoke with the Applicant about the witness statements and video. Counsel testified that he talked with the Applicant about presenting a defense of accident, but there was never an alibi defense. Counsel testified that the Applicant's ability to testify at trial was hurt because he was seen with the gun as he had run away from the victim's home.

Counsel testified that the Applicant was informed that bond had been granted, and agreed that bond was not granted until after the hearing in September 2008. Counsel testified that the Applicant called Counsel from the jail regarding bond and a copy of the Order granting bond was sent to Applicant on December 5, 2008. Counsel testified that the Applicant called Counsel from the county jail using three-way calling often, but Counsel advised Applicant that because the calls were recorded, it was not a good idea. Counsel testified that in most of their conversations, the Applicant appeared to be more concerned about bond than the case. Counsel testified that the Applicant authorized Counsel to negotiate with the Solicitor's office regarding a possible plea offer. Counsel testified that he attempted to negotiate a plea to involuntary manslaughter, but the Solicitor rejected that.

This Court finds the testimony of Counsel to be more credible than the testimony of the Applicant. The Applicant's allegation that Counsel did not conduct an adequate pre-trial investigation is without merit. Following testimony and review of the transcript, it is clear that Counsel had reviewed the facts and evidence, as well as the options that Applicant faced. The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). The Applicant failed to point to any specific matters Counsel failed to discover, or any defenses that could have been pursued had Counsel been more fully prepared. Although he alleged that Counsel failed to investigate Applicant's alibi defense, the Applicant failed to present any evidence or witness that would have supported that defense. Furthermore, the Applicant failed to show any prejudice that may have resulted from Counsel's alleged inadequate preparation. Accordingly, this allegation is dismissed.

Additionally, as to the Applicant's claim that Counsel was ineffective for failing to review the elements of the charges with Applicant prior to his plea, this Court finds that the Applicant has failed to meet his burden of proof. This Court finds Counsel's testimony on this issue to be credible. Further, the transcript reflects that the Applicant was asked if Counsel reviewed the elements with him and the Applicant indicated in the affirmative. In Hill v. Lockhart, 474 U.S. 52 (1985), the United States Supreme Court held that the two-part standard

adopted in Strickland v. Washington, *supra*, for evaluating claims of ineffective assistance of counsel applies, as well, to guilty plea challenges based on ineffective assistance of counsel. To meet the Court's "prejudice" requirement, a criminal defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. Hill at 59. Not only did the Applicant fail to establish that Counsel did not properly review the charge that Applicant faced or pled guilty to or fully investigate the case, but the Applicant has failed to establish that he would have proceeded to trial, but for, these alleged deficiencies of Counsel. Therefore, this claim is denied and dismissed.

Lack of Subject Matter Jurisdiction

Applicant testified that he was arrested on January 28, 2008, and was taken before a magistrate judge on January 30, 2008, at which time he was informed of his right to a preliminary hearing and the fact that he had ten days from the 30th to request a hearing. Applicant testified that he did want to know if there was probable cause for his arrest, so he did request a preliminary hearing. Applicant introduced his request for a preliminary hearing as Applicant's Exhibit #1. Applicant testified that he never received his preliminary hearing, so he believes that the indictments were null and void. Applicant acknowledged that a preliminary hearing is not constitutionally mandated, but required only by state statute. Counsel testified that he was appointed in early March and the Applicant was indicted by the Cherokee County Grand Jury on March 6, 2008.

A defendant has no constitutional right to a preliminary hearing. State v. Keenan, 278 S.C. 361, 365, 296 S.E.2d 676, 678 (1982). Thus, although the Applicant may have timely requested a preliminary hearing, his right to have the hearing ended with the grand jury's

indictment. However, the Applicant has claimed that the trial court lacked subject matter jurisdiction due to the fact that he was never provided with a preliminary hearing. Subject matter jurisdiction is the power of a court to hear a particular class of cases. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994). An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, 363 S.C. 93, 610 S.E.2d 494, 499 (2005); See also S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction. This claim is denied and dismissed.

Trial Court Error

The Applicant also alleged that the trial court erred during his guilty plea when Applicant was not informed of the critical elements of the offenses of murder and voluntary manslaughter at the plea. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). This Court finds that there was no error. The court completed a thorough plea colloquy, including making sure the Applicant was clear as to the charge he was

pleading to, the constitutional rights he was giving up at the plea, and the consequences of pleading at that time. Therefore, this Court finds that this allegation is denied and dismissed.

Summary

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

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

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

CONCLUSION

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

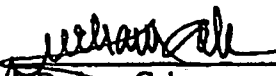
This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 19 day of February, 2014.

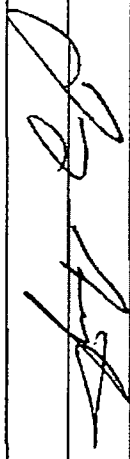


J. Derham Cole
Presiding Judge

131

WITNESSES

Cherokee County Sheriff's Office



ARREST WARRANT NUMBER

H993966

ACTION OF GRAND JURY
FILED


Foreperson of Grand Jury
Date: 2/26/08

VERDICT

Foreperson of Petit Jury
Date:

08-03-11-226

The State of South Carolina

County of Cherokee

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAR 05 2008

TERM

THE STATE

vs.

Kenyal Lamond Rodgers

Indictment for

MURDER

SC Code: 16-03-0010, 0020
CDR CODE: 116
CLASS: FEL-EXM

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

INDICTMENT

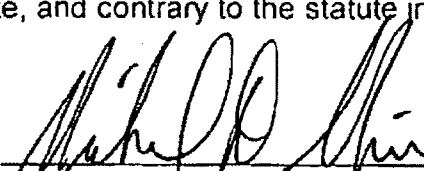
MAR 06 2008

At a Court of General Sessions, convened on _____, the
Grand Jurors of Cherokee County present upon their oath:

Murder

That Kenyal Lamond Rodgers did in Cherokee County on or about January 29, 2008, feloniously, willfully, and with malice aforethought, kill one Tasha Scott, by shooting the victim, and that the victim died as a proximate result thereof, all in violation of §16-3-0010, 0020, *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.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Cherokee
STATE VS.

Kenyal Lamond Rodgers

AKA:

Race: B Sex: M Age: 30

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

Gaffney, SC 293400000

DL#: [REDACTED] SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS 133

INDICTMENT/CASE#: 2008GS11226

A/W#: H993966

Date of Offense: 1/29/2008

S.C. Code §: 16-03-0010

CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Manslaughter / Voluntary manslaughter (0-30 years)

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] MORIN, MICHAEL D

[Signature] Kenyal Rodgers Defendant

[Signature] Thomas E. Henry 5048
Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

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

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

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

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

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

3% to County (if paid in installments) \$ 3.90

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00

TOTAL \$ 133.90

[Signature] Clerk of Court/ Deputy Clerk

Court Reporter: Mike Watts

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE [Signature]

Judge Code: 2111 13 15

Sentence Date: 1/27/09

SCCA/217 (07/2008)

ARREST WARRANT

H- 993966

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of
 CHEROKEE COUNTY

THE STATE

against

KENYA LAMOND RODGERS

Address: [REDACTED] GREENEY, SC 29340

Phone: [REDACTED] SSN: [REDACTED]

Sex: [REDACTED] Race: [REDACTED] Height: [REDACTED] Weight: [REDACTED]

DL State: [REDACTED] DL #: [REDACTED] Agency ORI#: SC0110000

Prosecuting Agency: SHERIFF'S OFFICE

Prosecuting Officer: DETECTIVE MARK VANDERBURG

Offense: MURDER

Offense Code:

Code/Ordinance Sec. 16-3-10

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

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

Signature of Judge

(L.S.)

Date:

RETURN

 A copy of this arrest warrant was delivered to
 defendant Kenya Rodgers
on 1-31-08

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Magistrate's Office,

Cherokee County Court House

GREENEY, SC 29340

803 487-2533

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of
 CHEROKEE COUNTY

AFFIDAVIT

DEFECTIVE MARK VANDERBURG

Personally appeared before me the affiant DEFECTIVE MARK VANDERBURG whobeing duly sworn deposes and says that defendant KENYA LAMOND RODGERSdid within this county and state on January 29, 2008State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of CHEROKEE COUNTY)

in the following particulars:

DESCRIPTION OF OFFENSE: MURDER

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

THE DEFENDANT, KENYA LAMOND RODGERS, DID WITH MALICE AFORETHOUGHT CAUSE THE DEATH OF TASHA SCOTT BY
 SHOOTING HER WITH A .45 CALIBER PISTOL. INCIDENT OCCURRED ON JANUARY 29, 2008, AT 1213 CHEROKEE AVENUE,
 NEAR GREENEY, WITHIN CHEROKEE COUNTY, S.C.

WARRANT BASED ON THE INVESTIGATION BY THE CHEROKEE COUNTY SHERIFF'S OFFICE.
 CASE# 2008-000208

Signature of Affiant

Affiant's Address

312 EAST FREDRICK STREET
GREENEY, SC 29340

Affiant's Telephone

864 487-2503

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of
 CHEROKEE COUNTY

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

 on January 29, 2008 defendant KENYA LAMOND RODGERS

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☐ Municipality of CHEROKEE COUNTY) as set forth below:

DESCRIPTION OF OFFENSE: MURDER

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

Sworn to and subscribed before me

on 01/31/2008

Judge's Address

Cherokee County Court House

Signature of Issuing Judge

GREENEY, SC 29340

Judge Code: 503

Judge's Telephone

803 487-2533

Issuing Court: ☐ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

H-993966

BAIL set by

35

Judge

on

Type and Amount:

Name of Surety:

PRELIMINARY HEARING held by

Judge

on

Defense Attorney:

Decision:

DISPOSITION before

Judge

on

by (indicate jury trial, bench trial, plea, not, pros., etc.)

Disposition:

Sentence:

JURORS

WITNESSES

Name: Address: Telephone:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

CODEFENDANTS