

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Anderson County
R. Lawton McIntosh, Circuit Court Judge

S.C. Supreme Court

DARYL GRAY

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013- 002623

APPENDIX

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STATE OF SOUTH CAROLINA)
) COURT OF GENEERAL SESSIONS
COUNTY OF ANDERSON) 10-GS-04-02186

THE STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 vs.) TRANSCRIPT OF RECORD
)
) (ORIGINAL)
DARYL LEON GRAY,)
)
 DEFENDANT.)

APRIL 16, 2012
ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J.CORDELL MADDOX, JUDGE.

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

Elizabeth Huffstetler Byford, ESQ.,
Attorney for the Plaintiff.

ANDREW TROY POTTER, ESQ.,
Attorney for The State.

VIVIAN H. CROSS
OFFICIAL COURT REPORTER

APRIL 16, 2012
(STATE OF SOUTH CAROLINA V. DARYL LEON GRAY)
(PLEA HEARING)
(2010-GS-04-02186)

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E X H I B I T S

IDENTIFICATION

ENTERED

*****NO EXHIBITS OFFERED*****

P R O C E E D I N G S

(CASE NO.: 10-GS-04-02186)

(APRIL 16, 2012 - 2:48 P.M.)

THE COURT: Okay; yes, ma'am?

MS. BYFORD: Yes, sir, Your Honor; may it please The Court, this is Daryl Gray.

THE COURT: (After pause) Is this a plea?

MS. BYFORD: (Nod.)

THE COURT: Yes, ma'am?

MS. BYFORD: May it please The Court, before you is Daryl Leon Gray; it's indictment 2010-GS-04-2186. He's pleading guilty to Voluntary Manslaughter. The recommendation is twenty-five years.

(WHEREUPON, PAPERWORK HANDED TO THE COURT.)

THE COURT: (After pause.) Mr. Gray, how long you (sic) been in jail?

MR. GRAY: Two years.

THE COURT: Two years? Anybody got a date or a number of days?

MS. BYFORD: Yes, sir; he's been in jail since, uh, July 28th 2010.

MR. POTTER: Actually, it was June.

MS. BYFORD: I'm sorry, June -- June. I said July; I meant June. Six-twenty-eight, 2010.

(WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A

1 CONFERENCE, OFF THE RECORD.)

2 (WHEREUPON, COURT RESUMED.)

3 THE COURT: All right, Mr. Gray, I need you to raise
4 your right hand.

5 (WHEREUPON, DARYL LEON GRAY WAS DULY SWORN AND TESTIFIED
6 AS FOLLOWS:)

7 THE COURT: Okay; you need to really speak up 'cause
8 she's taking everything down. If you don't understand the
9 question I have for you, just stop me and I'll be happy to
10 repeat it. And if at any time you need to stop and speak to
11 your lawyer, just ask me to do that and you can do that too.

12 MR. GRAY: All right.

13 DARYL LEON GRAY, EXAMINATION BY THE COURT:

14 Q Have you had any drugs or alcohol within the last
15 twenty-four hours?

16 A No, sir.

17 Q Are you taking any kind of prescriptions or medication
18 at this time?

19 A No, sir.

20 Q Okay. Has anybody threatened you in any way or promised
21 you anything to get you to plead guilty to this charge today?

22 A No, sir?

23 Q You understand there's a recommendation of twenty-five
24 years, uh, in prison on this charge?

25 A Yes, sir.

1 Q Have you had plenty of time to speak to your lawyer
2 about that charge and about this case?

3 A Yes, sir.

4 Q Okay. Do you understand, if you want to plead guilty in
5 this state that you have to waive your constitutional rights?

6 A Yes, sir.

7 Q And in particular, you have to waive your right to a
8 jury trial. Are you waiving that right?

9 A Yes, sir.

10 Q Are you waiving your right to remain silent?

11 A Yes, sir.

12 Q Are you waiving your right to put up a defense to these
13 charges?

14 A Yes, sir.

15 Q You also have the right of confrontation; that is, the
16 right to require The State to come in and bring in their
17 witnesses and testify against them in your presence -- or, to
18 testify against you in your presence. Um -- are you waiving
19 your right to confrontation?

20 A Yes, sir.

21 Q Okay. And you feel like you've had plenty of time to
22 speak with your attorney?

23 A Yes, sir.

24 Q Are you satisfied with his services?

25 A Yes, sir.

1 Q Has he done everything that you've asked him to do?

2 A Yes, sir.

3 Q Do you have any questions for him now?

4 A No, sir.

5 Q All right; do you have any questions for me?

6 A No, sir.

7 Q If you do, now is the time.

8 A I don't have none.

9 Q Okay.

10 THE COURT: Mr. Potter, have you had plenty of time to
11 speak with your client?

12 MR. POTTER: I have, Judge.

13 THE COURT: And you think he understands the elements of
14 the charges against him and also his waiver of constitutional
15 rights?

16 MR. POTTER: Yes, sir.

17 Q All right, Mr. Gray, you want to plea guilty to
18 Voluntary Manslaughter?

19 A Yes, sir.

20 Q And are you guilty of that charge?

21 A Yes, sir.

22 Q All right.

23 THE COURT: Yes, ma'am?

24 MS. BYFORD: Your Honor, may it please The Court. This
25 occurred on June 27th 2010. Uh -- the Defendant and his

1 girlfriend, Deidra Harrison at the time, uh, went over to the
2 victim's house at 3 [REDACTED] E [REDACTED] S [REDACTED] in Anderson County.
3 Uh -- they were returning a cell phone that had been loaned
4 to them from the victim.

5 Um -- Mr. Gray got out of the car, went over and knocked
6 on the door, uh, went back to the car. The decedent, uh,
7 Lahani Bozeman came out. Uh -- he and the girl that was
8 driving the car, Deidra Harrison, got into an argument.
9 Um -- they are alleging that at some point the victim did
10 strike Ms. Harrison.

11 Um -- the Defendant got out of the car, came around, the
12 argument continued with the Defendant and the victim sort of
13 in front of the car.

14 Um -- during this, Patricia Clayburn, she's the victim's
15 Mother Your Honor, she came out on the porch and witnessed,
16 um, the rest of the event, um, during the course of the
17 argument.

18 Um -- and she would testify that the victim turned to
19 walk back to the house and Mr. Gray began firing.

20 He hit the victim once in the calf, once in the hip, um,
21 there was a shot that went through the chest and also one
22 that came through his arm all the way down, Your Honor. And
23 that was the -- the fatal shot. Um---

24 THE COURT: From the back?

25 MS. BYFORD: It came -- the final shot was right through

1 here (gesture) and Doctor Woodard would testify that of the
2 shots, three of the four were in a left to right -- they all
3 were at this angle (gesture), does that make any sense? I'm
4 sorry---

5 THE COURT: Yeah.

6 MS. BYFORD: ---as he was turned away from the
7 Defendant.

8 Um -- Mr. Bozeman did die right there in his front yard.
9 Um -- the Defendant and Ms. Harrison left the scene. Um --
10 he did turn himself in on unrelated matters later that night
11 at the police department, um, and gave a written statement
12 admitting to shooting the victim.

13 THE COURT: Okay.

14 MS. BYFORD: And I think there are two members of the
15 victim's family who would like to speak at the appropriate
16 time.

17 THE COURT: Sure. Um -- Mr. Gray, you admit to those
18 facts?

19 MR. GRAY: Yes, sir. The only thing is that, you know,
20 I never was in his yard when the victim fell. I was in the
21 road and the victim was in the road, you know? And the
22 victim was coming at me' that's the only reason this
23 happened.

24 You know, I'm sorry that it happened, but I was
25 defending myself.

1 THE COURT: All right; but you understand you're
2 pleading guilty to Involuntary Manslaughter?

3 MR. GRAY: Yes, sir.

4 THE COURT: Or, Voluntary Manslaughter, right?

5 MR. GRAY: Yes, sir.

6 THE COURT: And to do that, you'd have to waive your
7 right under the law for -- to assert self-defense. You also
8 would have to waive your right to require a preliminary
9 hearing on the Defense of property act. Do you understand
10 all that?

11 MR. GRAY: Huh-uh.

12 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
13 CONFERENCE, OFF THE RECORD.)

14 (WHEREUPON, COURT RESUMED.)

15 THE COURT: Have you had a chance to talk to your lawyer
16 about that?

17 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
18 CONFERENCE, OFF THE RECORD.)

19 (WHEREUPON, COURT RESUMED.)

20 MR. GRAY: Yes, sir; I understand that. Um -- you --
21 you -- you kind of threw me off with the property act thing.

22 THE COURT: Well, South Carolina has a law similar to
23 other laws that have been in the news lately and basically
24 would allow you to have a hearing in front of me to make
25 a determination about whether or not you'd be immune

1 because you were defending yourself or your property. I
2 mean, that's -- that's the law in a nutshell; that's not all
3 the facts.

4 In order to plead guilty, you need to understand that
5 you don't get that right.

6 MR. GRAY: Oh yeah, I understand that now.

7 THE COURT: Okay. You also, since this, uh, case was
8 indicted for murder, you have a right, technically, to have
9 the case sent back to the grand jury on the Voluntary
10 Manslaughter. Do you want to waive that right?

11 MR. GRAY: Yes, sir.

12 THE COURT: Okay. All right; yes, sir?

13 MR. POTTER: Thank you, Judge; may it please The Court.
14 The first thing I want to note is he did turn himself in
15 later on that night when this incident occurred.

16 Uh -- he is twenty-nine years old; he'll turn thirty in
17 August. Eleventh grade education; does have a G-E-D. He's
18 working doing plastic molding work.

19 Uh -- stays with his father -- stayed with his father.

20 He does have two children; one two-year-old, one
21 thirteen-year-old. But, uh, they -- and they're both girls.

22 Judge, uh, a little bit more specific on the facts. The
23 first shot was in the calf -- in the back of the calf. Um --
24 Daryl wrote out---

25 THE COURT: On the left -- left leg?

1 MR. POTTER: Left leg. Daryl wrote out a full statement
2 indication what happened. Uh, the first shot was low; the
3 second shot was another low shot that hit him in the hip.
4 Um -- then Daryl closed his eyes and -- and -- and fired off
5 four more rounds.

6 Um -- I -- I think it fits clearly within voluntary,
7 Judge, I really do. Um -- be that as that may, um, I've
8 explained to Daryl, uh, the specifics in regards to, uh,
9 16-11-410 and all the statutes related to that. The, uh --
10 the presumptions and the fact that when you're entitled to it
11 and when you're not entitled to a presumption. Whether or
12 not a judge has to make that decision. Um -- I explained to
13 him that (sic) and I've given him my -- my analysis on what I
14 thought would be the likely outcome of those issues and that,
15 based upon whatever the judge ruled, that issue would have to
16 be appealed.

17 Um -- he's understanding that; he understands that if he
18 had gone forward there would have been issues that if this
19 came back, uh, to trial that he might be looking at the
20 possibility of life without.

21 So, um, I think he's taken that all in consideration and
22 in consideration of trying to get this thing taken care of
23 and put to rest, not only himself but also the victim's
24 family.

25 Um -- respectfully, Your Honor, I understand there has

1 been a recommendation of twenty-five years. I have talked to
2 the Solicitor about this; we're going to ask Your Honor to
3 consider a little bit less than twenty-five, um, in light of
4 the fact that, um, this was a hostile and -- and volatile
5 situation, um, that pretty much spower (phonetic/sic) --
6 spired (phonetic/sic) -- spiraled, pardon me -- out of
7 Daryl's control. It might have been a situation that was
8 egged on by a woman, um, and, uh, unfortunately Daryl's here
9 today.

10 And he's accepting responsibility for the actions that
11 he has done.

12 Um -- Your Honor, I -- again, we've had many
13 negotiations going back and forth on this case. We're gonna
14 ask Your Honor to consider something more along the lines of
15 twenty years. Uh -- we think that's a reasonable outcome.
16 Uh -- he is thirty-years-old. He'll turn -- excuse me, he'll
17 turn thirty in August, so that's a significant amount of
18 time.

19 Uh -- and it -- it's a situation where, as I indicated,
20 there was no real malice, per se. It was clearly a voluntary
21 case. And, uh, we would respectfully ask Your Honor to
22 consider that he turned himself in, gave a statement to the
23 police, cooperated with the police for the most part.

24 There was gunshot residue found on the victim's hands.
25 It could be construed as him holding his hands up like this

1 (gesture) or it could be construed as him holding his hands
2 out like this (gesture). But, in light of that he's still
3 entering the plea of voluntary. We just ask you to consider
4 that.

5 THE COURT: To voluntary? I've heard involuntary; it's
6 Voluntary Manslaughter.

7 MR. POTTER: Did I -- I meant voluntary, Your Honor.

8 THE COURT: Okay -- okay. Okay; all right, I'm gonna
9 accept the plea and find it freely and voluntarily made,
10 based upon the advice of Counsel.

11 I find that Mr. Gray has intelligently waived his
12 constitutional rights.

13 Um -- he's also waived his right to presentment.

14 And also, he's waived any statutory preliminary hearings
15 that might conceivably be, uh, necessary in this case.

16 I'll be happy to hear from the family. I just need you
17 to make sure you give her your name for the record.

18 MS. CLAYBURN: Um -- my name is Patricia Clayburn; I'm
19 Lahani's mother. And, can I tell my side of it?

20 THE COURT: Yes, ma'am; oh, yes, ma'am.

21 MS. CLAYBURN: Well that Sunday morning, uh, I'm gonna
22 say I don't know which one knocked on the door, but Leon
23 knocked on the door or his girlfriend knocked on the door.
24 My son went to the door. Leon said he had gotten back in his
25 car; that's not true. He hadn't gotten back in the car when

1 Hotrod went to the door.

2 And about three or four minutes later -- it wasn't that
3 long -- I heard some arguing. I looked out the door. And so
4 I went to the door and said -- opened the door. Leon was
5 standing on the side of the car. His girlfriend was sitting
6 in the driver's side of the car.

7 And I said, you-all get out from the front of my door
8 this minute. His girlfriend hollered out the door -- up and
9 said that Hotrod told a lie on her. Hotrod said, aw Bitch
10 something, he swung his arm, and she started rolling up the
11 window in the car.

12 And Hotrod turned around and he was coming back to the
13 house. And that's when Leon started shooting.

14 That was just cold-blooded murder. Me, at first I
15 thought Leon was shooting in the ground. And Hotrod start
16 (sic) turning around and he just open fire and started
17 shooting. But every time the bullet would hit my son, he
18 would jump back. And he stood right there and he shot
19 him three or four times right there in the stomach. And
20 Hotrod went down on his knees and that's when I myself
21 started screaming. And that's where he fell. That was just
22 cold-blooded murder.

23 Your Honor, my son was turning around to come back in
24 the house. He did not bother him and he did not see him hit
25 that girl. Now they're just lying about that. That was just

1 cold-blooded murder.

2 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
3 CONFERENCE, OFF THE RECORD.)

4 (WHEREUPON, PROCEEDINGS CONTINUED.)

5 And I do want to know -- I know this -- want to know why
6 are they not charging her too because she was in the car with
7 him. She did not -- she seen my son when he went down on the
8 ground. She did not try to get up and help or nothing. And
9 why didn't she leave when I asked them to get out the front
10 of my door the first time? You know, I said that to keep it
11 from escalating.

12 THE COURT: Right. Okay; thank you, ma'am.

13 MS. CLAYBURN: But Leon, you're lying. You know Hotrod
14 wasn't in the street and you wasn't either.

15 THE COURT: All right. Yes, ma'am; I'll hear from
16 anybody else.

17 MR. BOZEMAN: My name (sic) Randy Bozeman, sir.

18 THE COURT: Yes, sir.

19 MR. BOZEMAN: And, uh, like I told you -- well, I -- we
20 really just want to know why the girl ain't being charged.
21 We can't understand no kind of way -- no kind of way if -- if
22 she brought him there and she took him away from there. And
23 I don't care whatever happens though, why she can't be
24 charged with accessory before or after or sometime during it?
25 You know, but it ain't -- it ain't right -- it ain't right.

1 Leon, now I know -- I know you probably got scared, but
2 man, look here, that was your boy, man. He was coming up
3 there trying to tell you about this woman; you know what I'm
4 saying? And maybe---

5 MS. CLAYBURN: And Hotrod was your friend.

6 MR. BOZEMAN: Leon, he was your brother, man.

7 MS. CLAYBURN: Leon been to my house several times --
8 several times. I mean, Hotrod and Leon, I say they was
9 associates or friend (sic) or whatever. Leon had been down
10 to my house several times.

11 MR. BOZEMAN: They was together that Friday, riding
12 around in my car. You were just wrong, man; know what I'm
13 saying, you just wrong; know what I'm saying? I ain't -- I
14 ain't -- hey, God's gonna -- God's gonna -- God's gonna get
15 you; I ain't. Know what I'm saying, I -- I've -- I wash my
16 hand (sic) of it.

17 Your Honor, I thank you for letting me speak, sir.

18 THE COURT: Yeah, thank you -- thank you.

19 MR. BOZEMAN: It's gonna be all right.

20 THE COURT: All right.

21 MR. BOZEMAN: But sir, oh, one more thing though;
22 anything less than twenty-five, I don't think he -- he
23 deserves no less than twenty-five. If anything, he deserve
24 (sic) more.

25 THE COURT: Okay. Anything else from the victims?

1 (NOD.)

2 THE COURT: All right; anything else from the Defendant?

3 MR. POTTER: Judge, not to belabor the point, I -- I --
4 I think Leon is sorry for what has happened. Uh -- this is
5 something that -- like I indicated before, it just spired out
6 of control and it -- and I -- I think it was---

7 THE COURT: Well now, if you shot somebody in the ankle
8 and in the calf, why do you shoot again? He's obviously
9 down.

10 MR. POTTER: Well, he wasn't down at that time, Judge.
11 And I don't want to argue the facts of the case; there is
12 photographs indicating blood in the street. All shell
13 casings were found in the street. Uh -- so, it is what it
14 is, Judge. It -- it's a voluntary; it really is. Um -- and
15 he panicked; that's what happened, he just panicked.

16 THE COURT: Has he got any previous record?

17 MS. BYFORD: Yes, sir, Judge; he has a 2001 Trespassing,
18 uh, Giving False Information to Police.

19 A 2003 Criminal Domestic Violence.

20 2004 Possession of Crack, uh, 2004 Carrying a Concealed
21 Weapon, Driving Under Suspension.

22 He has a 2006 Disorderly Conduct and Simple Possession
23 of Marijuana, a 2006 Possession of Crack.

24 A 2008 Possession -- Simple Possession -- Possession of
25 Mari- -- Simple Possession Marijuana -- excuse me, sir.

1 And, a 2010 Simple Assault.

2 'THE COURT: Okay. All right, I've accepted the plea, as
3 I said. And, I'm gonna go along with the recommendation of
4 The State. Sentence is twenty-five years, but I give you
5 credit for time served; six hundred and fifty-eight days
6 credit for time served.

7 MR. POTTER: Thank you, Judge.

8 THE COURT: Thank you.

9 MS. BYFORD: Thank you, sir.

10 (WHEREUPON, HEARING ENDED AT 3:06 P.M.)

11 *****END OF REQUESTED TRANSCRIPT*****
12
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STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED VIVIAN H. CROSS, OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THOSE PROCEEDINGS AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR ANDERSON COUNTY, SOUTH CAROLINA, ON THE 16TH DAY OF APRIL 2012.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

NOVEMBER 4, 2012


VIVIAN H. CROSS
CIRCUIT COURT REPORTER

FORM 5

STATE OF SOUTH CAROLINA)

County of Anderson)

IN THE COURT OF COMMON PLEAS

Darryl Leon Gray #317285)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

2012-CP-04-02644

INSTRUCTIONS B READ CAREFULLY

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

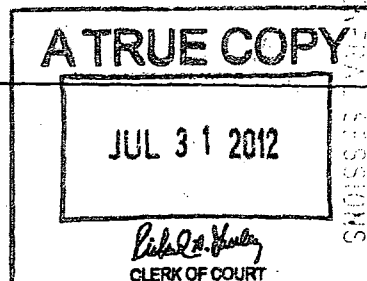
Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

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

1. Place of detention 1009 County Home Road, Anderson, S.C. 29625
2. Name and location of Court which imposed sentence Anderson Court of General Session Court House 100 S. MAIN ST. Anderson, S.C. 29621
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) I-722154 and I-722155

1



FILED-CLERK'S OFFICE
ANDERSON, SC

2012 JUL 31 A 11:03

- (b) _____
- (c) _____

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

- (a) April 16, 2012
- (b) 25 years in SDNY with 10 years of parole
- (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty Yes
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

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

This is my first appeal

8. If you answered Ayes@ to (7), list:

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

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

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

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

(c) the date of each such result:

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

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

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

9. If you answered Ano@ to (7), state your reasons for not so appealing:

- (a) In the process of appealing now

- (b) _____
- (c) _____

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

- (a) the state is holding myself and my wife and children
- (b) ineffective counsel and due process
- (c) _____

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

- (a) I was charged myself and my wife and children
- (b) the state did not really go with what I needed the to stay present
- (c) I was charged myself and my wife and children

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

- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? YES
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

- (a) the specific nature thereof:
- _____
 - _____
 - _____
 - _____
- (b) the name and location of the Court in which each was filed:
- _____
 - _____
 - _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) ① Because I just got this application
 - (b) ② Because my public defender was not doing my legal mail
 - (c) ③ Because I was just sentenced to 10 years
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
 - (b) your trial, if any? _____
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Andrew T. Potter, Esq.
301 Camson Road, Anderson, S.C. 29625
 - ii. _____
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. my plea which was the day I was suppose to pick my jury but I was told they didnt have enough people for a jury
 - ii. so they gave me 2 hours to decide between a 50 years and 25 years without consulting with my family about what to do about the matter. It was my lawyer who told me I didnt have enough people for a trial.
 - iii. _____

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

I am trying to get my charge since either a
unintentional manslaughter or Justifiable Homicide due to the terms
of my evidence. I would also like to have my sentence reduced by 15 years.

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Anderson)

I, Darryl Leon Gray, 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.

Darryl Leon Gray

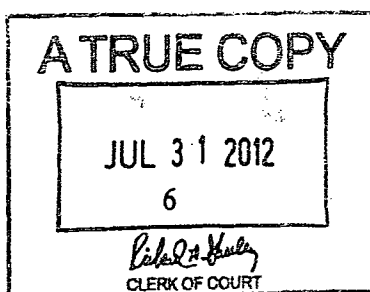
SWORN to and subscribed before me this 20th
 day of July, 2012.

[Signature] (L.S.)
 Notary Public My Commission Expires

October 8, 2014

My Commission Expires: _____

FILED-CLERK'S OFFICE
 ANDERSON SC
 2012 JUL 31 A 11:03
 COMPTON, J. AND
 GENERAL CLERK



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

I, Daryl Leon Gray, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Daryl Leon Gray
Applicant

SWORN or affirmed to and subscribed before me this
20th day of July, 2012.

[Signature]
Notary Public My Commission Expires

October 8, 2014

My Commission Expires: _____

CLERK OF COURT'S OFFICE
ANDERSON SC
GENERAL SESSIONS

2012 JUL 31 A 11:03

FILED - CLERK'S OFFICE
ANDERSON SC

A TRUE COPY

JUL 31 2012

[Signature]
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	Case No: 2012-CP-04-02644
	)	
Daryl Leon Gray, #317285,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed July 31, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. The Applicant was indicted at the October 2010, term of the Anderson County Grand Jury for Murder and Possession of a Weapon During the Commission of a Violent Crime (2010-GS-04-02186). Applicant was represented by Andrew Troy Potter, Esquire. On April 16, 2012, the Applicant pled guilty to the lesser included offense of Voluntary Manslaughter. The Applicant also pled guilty to the other charges. Applicant was sentenced by the Honorable J. Cordell Maddox to confinement for a period of twenty-five years for Voluntary Manslaughter. Applicant did not appeal his sentence.

Attached herewith and incorporated herein are the records of the Anderson County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina

Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials. The plea transcript will be forwarded upon receipt.

II.

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

1. Ineffective Assistance of Counsel
 - a. "Council did not go forward with self-defense defense."
 - b. "Was told that there were not enough people to hold a jury trial and he had to either plea guilty to a 25 or 50 year sentence."
2. Due Process
 - a. "Indictment papers served on June 11, 2012 but were signed on October 26, 2011."

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 second claim alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since

the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45, -90 (2003).

VI.

The State therefore requests that this Court convene an evidentiary hearing solely on the issues of ineffective assistance of counsel and voluntariness of the plea. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VII.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Assistant Deputy Attorney General

JOHN W. WHITMIRE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

December 6th, 2012.

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Daryl Leon Gray, # 31285

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent

IN THE COURT OF COMMON PLEAS
IN THE TENTH CIRCUIT

2012-CP-04-02644

AFFIDAVIT OF SERVICE BY MAIL

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

Floy Kenyon Anderson, Esquire
Post Office Box 1286
Anderson, SC 29622

DATED this 6th day of December, 2012


 Troyeshi Brailey, Legal Assistant
 For Respondent

State of South Carolina

County of Anderson

In the Court of Common Pleas

Daryl L. Gray,

Applicant,

-vs-

State of South Carolina,

Respondent.

)
)
)
)
)
)
)
)
)
)
)

2012-CP-04-2644

September 17, 2014

Transcript of Record

BEFORE:

The Honorable R. Lawton McIntosh, Judge

APPEARANCES:

Charles Anderson, Esquire
Attorney for the Applicant

John W. Whitmire, Esquire
Attorney the State

Renee H. Tollison
Circuit Court Reporter

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EXHIBITS

No	DESCRIPTION	ID	EV
A-1	<i>No exhibits were presented during the hearing.</i>		
A-2			
A-3			

Daryl L. Gray v. State of South Carolina 2012-CP-04-2644
PCR Hearing September 17, 2014
Opening Statements by Mr. Whitmire

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1 (WHEREUPON, court convened with all parties present
2 and the following proceedings were had commencing at
3 approximately 10:14 a.m.)

4 THE COURT: We're going first to Gray; is that
5 right, Mr. Whitmire?

6 MR. WHITMIRE: Yes, Your Honor.

7 THE COURT: Okay.

8 MR. WHITMIRE: May it please the Court, Your
9 Honor.

10 THE COURT: Yes, sir.

11 MR. WHITMIRE: The first case this morning is
12 the matter of Daryl Gray v. State of South Carolina,
13 2012-CP-04-2644. Mr. Gray was indicted for murder and
14 possession of a weapon during a violent crime. He was
15 represented by Mr. Potter. Mr. Gray entered a guilty
16 plea of voluntary manslaughter and to the weapons charge.
17 Mr. Gray was sentenced accordingly by Judge Maddox to a
18 term of twenty-five years on those charges. He did not
19 file a notice of appeal.

20 Mr. Gray is present and is represented by Mr.
21 Anderson. I believe his allegations at this time are
22 ineffective assistance of counsel for failure to
23 investigate self-defense. And two other allegations,
24 Your Honor. Failure to object to an indictment and one
25 relating to the empaneling of the jury. At this time, I

Daryl L. Gray v. State of South Carolina 2012-CP-04-2644
PCR Hearing September 17, 2014
Opening Statements by Mr. Anderson

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1 turn matters over to Mr. Anderson.

2 THE COURT: Mr. Anderson?

3 MR. ANDERSON: Thank you, Your Honor. May it
4 please the Court. I'd like to call Andy Potter.

5 THE COURT: Let me see -- before you do, let me
6 make sure I have the issues down.

7 MR. ANDERSON: Yes, sir.

8 THE COURT: Number one is ineffective
9 assistance for failure to investigate a claim of self-
10 defense. And what would be the other two? Failure to
11 object?

12 MR. ANDERSON: That's correct. Failure to
13 object to the indictment.

14 THE COURT: To the indictment?

15 MR. ANDERSON: To the indictment itself. And
16 then a due process claim.

17 THE COURT: What is the due process claim?

18 MR. ANDERSON: Failure to file a motion to
19 suppress evidence before the case. And there was a jury
20 issue about the number of jurors that were selected at
21 the time.

22 THE COURT: Are you talking about the
23 composition of the jury?

24 MR. ANDERSON: The composition of the jury
25 pool. At least what he was told. But obviously it was a

Daryl L. Gray v. State of South Carolina 2012-CP-04-2644
Andrew Potter - Direct Examination by Mr. Anderson

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1 plea, so there was no jury.

2 THE COURT: Have you seen the cases on that?

3 MR. ANDERSON: I'd have to get you one, Your
4 Honor.

5 THE COURT: No, I have. I'm going to say that
6 it has to be extensive evidence as to the jury
7 composition, intentional ---

8 MR. ANDERSON: Yes, sir.

9 THE COURT: So unless you're ready to go there
10 today, it probably won't go very far. I just wanted to
11 let you know.

12 MR. ANDERSON: I understand, Your Honor.

13 THE COURT: Okay. Call your first witness.

14 MR. ANDERSON: Thank you. I call Andy Potter,
15 Your Honor.

16 (WHEREUPON, the witness was duly sworn.)

17 MR. ANDERSON: May it please the Court?

18 THE COURT: Yes, sir.

19 **ANDREW POTTER,**

20 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. ANDERSON:

23 Q. Mr. Potter, do you remember when this incident
24 occurred?

25 A. I'm sorry. Say again?

1 Q. Do you remember when this incident occurred that he
2 was charged with? About the date, about when it
3 occurred?

4 A. I guess so. I wasn't there. I'm familiar with the
5 date the incident allegedly occurred.

6 Q. Okay. Do you remember about how long after he was
7 arrested that you were appointed to represent him?

8 A. Offhand, I do not know how quickly I was appointed.
9 Typically, at this point in time, it would probably be
10 anywhere from two to three weeks maybe.

11 Q. Okay. To refresh your memory, it was in June of
12 2010 when this incident occurred.

13 A. If that's when it is, yes.

14 Q. Okay. I assume you keep records of when all you
15 meet with your clients and so forth?

16 A. For the most part, I do. There's times when I do go
17 out to the detention center, I'll meet with somebody and
18 sometimes I won't take notes. We'll be discussing their
19 plea option or what's happening on the case.
20 Particularly, I do try to keep notes.

21 Q. Okay. In Mr. Gray's particular case, he was never
22 released on bond; is that correct?

23 A. That's correct.

24 Q. He was in jail the entire time?

25 A. That's correct.

Daryl L. Gray v. State of South Carolina 2012-CP-04-2644
Andrew Potter - Direct Examination by Mr. Anderson

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1 Q. Do you have a record of how often you met with him
2 prior to his guilty plea?

3 A. I can rely upon my notes. I've got a meeting on
4 April 12th, 2012, a meeting on April 9th, 2012. Looks
5 like January 13th, 2012, June 22nd, 2011, July 19th,
6 2011, September 21st, 2010. It looks like we did a bond
7 hearing then.

8 Q. Who's normally present? Was it just you and the
9 defendant or ...

10 A. That's correct. And September 1st, 2010.

11 Q. Okay. And he actually pled April 2012; is that
12 correct?

13 A. I believe so, yes.

14 Q. Now, during the period of time that he was
15 incarcerated and you were meeting with him, did you ever
16 discuss any sort of -- did you discuss his case with him?

17 A. Yes.

18 Q. And you were well-versed on all the facts
19 surrounding the case?

20 A. I believe so from what he told and from when I
21 reviewed the discovery.

22 Q. And did you ever discuss any sort of defenses that
23 he may have to the charge of murder?

24 A. We talked about -- we talked about stand your
25 ground, the ability to assert immunity from prosecution

1 under the-stand-your-ground statute. And we discussed
2 that extensively. As closer and closer we got to trial,
3 the more in-depth we got into discussions about that
4 particular potential defense.

5 Q. Could you give the Court a brief outline of what
6 happened in this so the Court can understand, from your
7 memory?

8 A. From my memory, this was a shooting in the city of
9 Anderson outside a house. The defendant and a
10 girlfriend, I think, rolled up to the decedent's house.
11 There was an issue, I think, on a cell phone. The
12 girlfriend was driving, if I remember correctly. The
13 decedent came out. There was an argument between the
14 decedent and the girlfriend. I think the decedent hit
15 the girlfriend. Daryl got out of the car. He was armed.
16 And the shooting happened out in front of the house,
17 outside -- well, between the car and the house on the
18 street. The shooting happened there.

19 Q. Was there ever any information about the decedent
20 being armed?

21 A. None that I was aware of.

22 Q. Never any findings of another gun, anything like
23 that?

24 A. No, no.

25 Q. You have discussed certain defenses with Daryl, I

1 assume?

2 A. Uh-huh (affirmative).

3 Q. Stand your ground?

4 A. Uh-huh (affirmative).

5 Q. Did you discuss with him the right to have a hearing
6 on that issue?

7 A. We talked about the right to have, I guess, what
8 would be classified as a preliminary hearing, a
9 determination to determine whether or not he was immune
10 from prosecution. That would be a hearing held in front
11 of a judge. Depending on how the judge ruled -- at that
12 point in time there was an issue of whether he could
13 immediately appeal that or not. I told him he could
14 immediately appeal that if the judge denied his motion
15 for immunity. That could be appealed up to the Supreme
16 Court. If the judge ruled in our favor, then the case
17 would be over. I also explained to him that we could
18 have the hearing. If the judge rules against us, we go
19 through the appeal process. Again, at that point in
20 time, we were under the impression we could appeal. It
21 was interlocutory in nature. That if it came back down
22 and immunity was still denied, that he still had the
23 opportunity to argue self-defense to a jury.

24 Q. Do you think he understood all these conversations?

25 A. Yes.

1 Q. Did you ever explain any of that to anyone else in
2 his family as far as possible defenses, stand your ground
3 as a defense?

4 A. Probably not. I don't typically get too involved
5 with the family on something like that. It's an issue
6 between myself and my client.

7 Q. All right. So as you were approaching April of
8 2012, was he on the jury docket or trial list for that --
9 I guess, that term of April?

10 A. Up until that point in time, the solicitor wasn't
11 willing to come off a murder plea. So I was in the
12 process of preparing the case for trial. I presume -- I
13 don't have a copy of the docket. I presume he was on the
14 roster. I don't have a jury listing or anything like
15 this in my file. So I'm assuming that it never got to
16 the point where I needed to actually look at a jury list
17 and start determining to prepare for striking a jury or
18 not. But again, I presume he was on a list of some sort.

19 Q. So at no point between the time that you had the
20 discussions with him and then when he finally pled in
21 April, was that stand-your-ground hearing ever held?

22 A. No.

23 Q. Was there a reason why?

24 A. The main reason I think was they came -- the
25 solicitor offered a voluntary plea on the case. We

Daryl L. Gray v. State of South Carolina 2012-CP-04-2644
Andrew Potter - Direct Examination by Mr. Anderson

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1 discussed it. And the reason we didn't have the hearing
2 was that he wanted to go ahead and enter a guilty plea on
3 the voluntary.

4 Q. Would having that hearing affect whether or not
5 there was going to be a plea of voluntary or not? I
6 mean, if he would -- let me rephrase it. If you had
7 requested a hearing on the stand your ground, was he
8 going to lose anything?

9 A. He was going to lose the voluntary offer.

10 Q. So there were not going to offer involuntary?

11 A. It was either take the voluntary, enter a guilty
12 plea or we're going to have to go forward with your
13 hearing and have a trial. If it's an interlocutory in
14 nature, he could appeal it. And you know -- so it was
15 either take the plea and not have the hearing or have the
16 hearing and not have the voluntary offer.

17 Q. So that's when the decision was made?

18 A. Yes, sir.

19 Q. To plead to voluntary?

20 A. That's what his -- I presume that's why he came to
21 that decision.

22 Q. And do you remember what the sentence was?

23 A. I think twenty-five.

24 Q. Twenty-five years. Was that with the offer?

25 A. I believe so.

1 THE COURT: Was that a recommended offer?

2 THE WITNESS: Yes.

3 Q. So you felt like you had spent enough time with him
4 on his various defenses for him to make that decision and
5 waive that hearing and go forward?

6 A. Yeah. I fully explained to him what the nature of
7 what the hearing would be. And in looking at my notes,
8 you know, I know that we talked about that. And
9 actually, I prepared some notes in regards to preparing
10 for the hearing, what issues I thought I could raise.
11 And at the plea -- and I do remember speaking with Judge
12 Maddox ahead of time saying, there's a potential I may
13 need to do this hearing. At that point in time, I think
14 we were still in the discussions of whether he was going
15 to plead to the voluntary or not. And if I remember
16 correctly, Judge Maddox went through the fact that he was
17 entitled to a preliminary hearing to determine immunity
18 from prosecution. And he indicated he didn't want to
19 have the hearing on the record if I remember correctly.

20 Q. He mentions in his application that there was an
21 issue that there not enough jurors called and that he was
22 on the trial list. Do you remember any issue about there
23 being enough jurors and him being told that there were
24 not enough jurors?

25 A. I don't remember. There may have been a situation

Daryl L. Gray v. State of South Carolina 2012-CP-04-2644
Andrew Potter - Direct Examination by Mr. Anderson

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1 where they didn't have enough jurors to empanel more than
2 one jury like they tend to do on Mondays. I don't
3 remember. I don't dispute that at this point. I just
4 don't remember that.

5 MR. ANDERSON: If I could have just a moment,
6 Your Honor.

7 Q. So if you had gone forward with the stand-your-
8 ground hearing and lost, what would have been the status
9 of the case? You would have gone back and appealed that
10 issue?

11 A. We would appeal the issue. We -- at that point in
12 time, we were -- I was under the impression it was
13 interlocutory in nature and we would have appealed the
14 issue right away. I think I'd explained that to him,
15 that we would have to go through the appeal process. And
16 if I remember correctly, he might have said, well, what
17 happens if we don't appeal it? What if I don't want to
18 appeal it? I'm like, we're going to appeal it no matter
19 what because we have nothing to lose.

20 Q. Right.

21 A. So the understanding was if we went forward with the
22 hearing and we lost, we would appeal it. And at that
23 point in time, the case would be in a holding pattern,
24 you know, until the appeal was decided whether immunity
25 was granted or not. If not, I explained to him it would

1 come back for trial. He would still be able to argue
2 self-defense to a jury, and a jury could still decide if
3 it was self-defense or not. However, we wouldn't be able
4 to argue stand-your-ground immunity from prosecution.

5 Q. That's correct. A jury would not know anything
6 about the stand-your-ground hearing; correct?

7 A. Correct.

8 Q. And obviously, he would have remained in jail during
9 that period of the appeal? I mean, he never received any
10 sort of bond; is that correct?

11 A. He had a bond hearing in front of -- according to my
12 notes on September 21st. We had a bond hearing September
13 21st, 2010, Judge Maddox. We had a bond hearing with
14 Judge Maddox. Bond was denied at that point in time. I
15 suppose I could have put in for another bond hearing.

16 Q. Now, after his plea in April 2012, did anyone,
17 either you or the judge or anyone, instruct him that he
18 had ten days to appeal that plea that you know of?

19 A. I did not. I can't -- I don't think the judge did.
20 I'd have to look at the transcript. Typically, I don't
21 appeal guilty verdicts -- or guilty pleas.

22 Q. So you don't remember him ever asking to appeal that
23 verdict -- excuse me -- that plea?

24 A. No.

25 MR. ANDERSON: That's all the questions I have

1 at this time, Your Honor.

2 THE COURT: Cross-examination?

3 MR. WHITMIRE: Briefly, Your Honor. May it
4 please the Court.

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. WHITMIRE:

8 Q. Mr. Potter, did you review the statements of
9 witnesses at the scene with Mr. Gray?

10 A. We went over discovery. I provided him all his
11 discovery that he requested. Or all the discovery that I
12 received, I provided him. The only thing I think I
13 didn't provide for him was color photographs that I had
14 done in preparation for trial.

15 Q. And do you recall Patricia Clyburn's statement?

16 A. I'd have to look through my notes. I don't
17 specifically recall that.

18 Q. She was Leslie Clyburn, the victim's mother?

19 A. If she is ---

20 Q. And didn't she -- if it rings to your recollection,
21 didn't she witness Mr. Gray shoot her son from her porch?

22 A. Yes.

23 Q. Did she say that her son had disengaged from the
24 argument with Mr. Gray's girlfriend and was walking when
25 Mr. Gray shot him in the back?

1 A. I believe so.

2 Q. And didn't Mr. Gray's girlfriend give two statements
3 in this case?

4 A. I'm sorry. Say that again.

5 Q. Did Mr. Gray's girlfriend, Diedra Harriston, give
6 two statements in this case?

7 A. If you can give me a quick moment. I do have a copy
8 of Ms. Clyburn's statement. Hang on a minute. Give me a
9 second. Yeah, there were two statements done by Ms.
10 Harrison -- Harriston.

11 Q. And this initial altercation was between the victim
12 and Ms. Harriston; is that correct?

13 A. Correct.

14 Q. And did Ms. Harriston, in her first statement, say
15 that she asked Mr. Gray to withdraw from the altercation?

16 A. In the statement done on June 27, 2010, on the
17 second page she states, "Then Daryl Leon Gray jumped out
18 of the car, went towards Hotrod" -- which is the decedent
19 -- "and they were exchanging words. I saw Hotrod go
20 towards Leon. Leon was doing the same. I was screaming,
21 telling him, Leon, to get in the car. We didn't need
22 this drama."

23 Q. And did you explain the legal defense of defense of
24 others?

25 A. I believe so, yes.

Daryl L. Gray v. State of South Carolina 2012-CP-04-2644
Andrew Potter - Cross-examination by Mr. Whitmire

17

1 Q. And did you go through the four elements of self-
2 defense was with Mr. Gray?

3 A. I'm sure I did. I mean, we talked extensively about
4 self-defense and what issues we had that I think we could
5 raise, and that it was a jury decision if it came to that
6 point.

7 Q. Did you review the autopsy report with Mr. Gray?

8 A. I don't think I reviewed the autopsy report with him
9 in the same room as me, but he was provided a copy of the
10 autopsy report.

11 Q. And did you obtain Mr. Gray's statement from
12 Detective Ogelsby?

13 A. Yes.

14 Q. And based on all this, what was your advice
15 regarding self-defense, the applicability of it?

16 A. My advice is I would argue it if he wanted me to. I
17 think there were some issues we could raise, and
18 ultimately it was going to be a jury decision. He had
19 the right to stand your ground even though it didn't
20 involve his own personal house. He was at somebody
21 else's house. I said we would go ahead and make that
22 argument to the judge. The judge would make the
23 determination upon immunity. You know, I didn't feel
24 real comfortable with the self-defense argument, but
25 that's all I had.

1 Q. Regarding the immunity hearing, specifically the
2 presumption of imminent danger, did you explain to him
3 any basis he might have for invoking one of those
4 requirements and presumption?

5 A. I'm sorry. Say that again.

6 Q. Regarding the actual immunity statute, did you
7 explain the presumption for imminent danger to him?

8 A. I explained to him, as best as I could, what my
9 interpretation of the immunity statute was and what his
10 grounds -- and what he could raise. And I told him that
11 was the judge's decision on whether the facts and the
12 allegations, that he would have to testify at that
13 immunity hearing. So I believe he understood what he was
14 deciding to do and what he was deciding not to do.

15 Q. Did you explain to him at the immunity hearing it
16 would be your burden of proof?

17 A. Yeah. Yes, I did.

18 Q. And one last question. Did Ms. Clyburn state that
19 she asked Mr. Gray to leave her residence before he shot
20 the victim?

21 A. If that's in her statement, then that's what she
22 did. I don't have any independent recollection of that.

23 Q. Did you have any issues with the indictments in this
24 case?

25 A. I didn't see any issues with the indictments.

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Andrew Potter - Redirect Examination by Mr. Anderson

19

1 MR. WHITMIRE: No further questions, Your
2 Honor.

3 THE COURT: Redirect?

4 MR. ANDERSON: Just one. Briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. ANDERSON:

7 Q. On the stand-your-ground issue, did you ever discuss
8 with him the idea that even though he was not at his own
9 residence, that since he owned the vehicle that was
10 involved in this, that he might could have used that ---

11 A. Yes.

12 Q. --- as a basis for the stand-your-ground defense?

13 A. And that's what the basis of the stand-your-ground
14 defense was going to be for us, was that he was in the
15 vehicle. This guy was allegedly coming out towards him.
16 That he had no alternative but to defend himself at that
17 point in time. And we had discussed that. Had he been
18 at his own house, it would have been a better argument.

19 Q. So there are some states that recognize that?

20 A. There are. Yes, there are.

21 Q. Stand your ground?

22 A. And there was -- where he was when the shooting
23 happened versus where the car was, I had some concerns
24 about that. But that wasn't going to prevent me from
25 trying to make the argument, trying to convince the judge

1 that he was entitled to immunity.

2 Q. All right. Thank you.

3 MR. ANDERSON: That's all the questions I have.

4 THE COURT: All right.

5 MR. WHITMIRE: One follow-up, Your Honor.

6 RECROSS-EXAMINATION

7 BY MR. WHITMIRE:

8 Q. Were there witness statements that Mr. Gray exited
9 his car and voluntarily engaged the victim?

10 A. There were.

11 MR. WHITMIRE: No further questions.

12 THE COURT: All right. May this witness be
13 excused?

14 MR. ANDERSON: Yes, Your Honor.

15 THE COURT: Thank you, sir.

16 (Off record discussion)

17 THE COURT: Call your next witness, please.

18 MR. ANDERSON: I call Daryl Gray, Your Honor.

19 (WHEREUPON, the witness was duly sworn.)

20 MR. WHITMIRE: Your Honor?

21 THE COURT: Yes, sir?

22 MR. WHITMIRE: Just for the record, Ms.

23 Clyburn, the victim's mother in this case, is here and
24 present with her husband.

25 THE COURT: Okay, sir.

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Daryl Gray - Direct Examination by Mr. Anderson

21

1 MR. ANDERSON: Thank you, Your Honor. May it
2 please the Court.

3 THE COURT: Yes, sir.

4 **DARYL GRAY,**

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MR. ANDERSON:

8 Q. Give us your full name, Mr. Gray?

9 A. Daryl Leon Gray.

10 Q. Just kind of lean up a little bit so ---

11 A. Daryl Leon Gray.

12 Q. All right. And Mr. Gray you obviously were
13 represented by Mr. Potter; is that correct?

14 A. Yes, sir.

15 Q. Do you remember when his representation of you
16 began?

17 A. (No verbal response)

18 Q. Like how long after you were arrested did you see
19 Mr. Potter?

20 A. It was September of 2010, my first time seeing him.

21 Q. Okay. And this incident occurred in June, 2010?

22 A. Yes, sir.

23 Q. How long after the incident before you were
24 arrested? Do you remember?

25 A. The same day.

- 1 Q. You were arrested on the same ---
- 2 A. I turned myself in the same day.
- 3 Q. Okay. And then you saw him in September?
- 4 A. Yes, sir.
- 5 Q. All right. During the period of time from the day
- 6 you got arrested until you pled guilty in 2012, were you
- 7 incarcerated that entire time?
- 8 A. Yes, sir.
- 9 Q. You never had a bond?
- 10 A. No, I never got a bond. They denied me.
- 11 Q. Denied your bond the entire time?
- 12 A. (No verbal response)
- 13 Q. Between September of 2010 and April of 2012, did you
- 14 see Mr. Potter?
- 15 A. About four or five times.
- 16 Q. Okay. And what did you normally -- what did you
- 17 discuss when he came to see you?
- 18 A. Well, the first time we was just trying to figure
- 19 out what the statements was about. The second time he
- 20 came to see me, we was talking about the actual shooting
- 21 and how they were saying that I shot him from the back.
- 22 Q. Okay.
- 23 A. The last couple of times, we was preparing for
- 24 trial. He was saying that we was going to go straight to
- 25 trial because at that point they had no pleas to come at

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Daryl Gray - Direct Examination by Mr. Anderson

23

- 1 me with.
- 2 Q. All right. So they never offered you any kind of
- 3 plea?
- 4 A. No.
- 5 Q. Up until April of 2012?
- 6 A. Yeah.
- 7 Q. And were you -- did you tell Mr. Potter everything
- 8 you knew about the case?
- 9 A. Yes, sir.
- 10 Q. Okay. And you didn't hold anything back?
- 11 A. No, sir.
- 12 Q. All right. As you prepared for trial, what was your
- 13 plan of action going into trial? Did you have a defense
- 14 you were planning on using?
- 15 A. We was planning on using self-defense.
- 16 Q. All right. And did he describe to you what self-
- 17 defense was?
- 18 A. He was telling me about the -- something about the
- 19 Trayvon Martin case. Something about he could use
- 20 something, that he was looking at the Trayvon Martin
- 21 case, about what happened in Florida or something saying
- 22 I had reason to stand my ground because I was getting
- 23 attacked at that moment.
- 24 Q. Now, there are different types of defenses. Did he
- 25 ever explain to you the four elements of self-defense?

1 A. No, sir.

2 Q. He didn't take you through the elements of self-
3 defense?

4 A. No, sir.

5 Q. Okay. What about the defense of others? Did he
6 ever explain to you what that meant? Defending someone
7 else?

8 A. He said something about I had a right to defend her,
9 but he never actually explained to me the true meaning of
10 what I had, I had to know about it.

11 Q. So he never explained to you that in order to defend
12 her, she would have had to have been able to use self-
13 defense?

14 A. Yes, sir.

15 Q. Did he explain any of that to you?

16 A. No, sir.

17 Q. Okay. Now, you're getting into this other part,
18 this stand-your-ground issue. Did he explain to you that
19 you had a right to a hearing on that issue?

20 A. He told me about it the day of the trial. We was
21 supposed to been going to pick out a jury, but he told me
22 about it in the little meeting we had downstairs in the
23 basement.

24 Q. So y'all never had discussed the stand your ground
25 or a hearing about that prior to April 2012?

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25

- 1 A. No, sir.
- 2 Q. Okay. So on April 2012, it was your understanding
- 3 that you were going to trial that day?
- 4 A. Yes, sir. I was going to pick my jury that day.
- 5 Q. So how much time prior to that day -- when you got
- 6 brought over here to the courthouse and pled guilty, how
- 7 many times did you see him prior to that?
- 8 A. Well, in between July of 2011 and April of 2012, I
- 9 seen him according about three or four times then.
- 10 Q. Okay. All right. Did you see him the day before
- 11 you were brought over to the courthouse?
- 12 A. Oh, yeah. He came to see me.
- 13 Q. And he told you that you were going to trial?
- 14 A. Yes, sir.
- 15 Q. All right. And do you know whether he'd contacted
- 16 any witnesses on your behalf?
- 17 A. He said he had tried to get in touch with Ms.
- 18 Harriston, but she gave him a statement. And he didn't
- 19 know if she was going to show up or not.
- 20 Q. And that would have been the girl you were riding in
- 21 the car with?
- 22 A. Yes, sir.
- 23 Q. Okay. So when you showed up at the courthouse that
- 24 morning, what happened that morning?
- 25 A. Well, I sat there until about twelve until he came

1 and told me that -- something about they didn't have
2 enough people for the jury.

3 Q. Okay. What do you mean by -- can you tell the Judge
4 what you mean by that?

5 A. Well, we was supposed to have been picking a jury.
6 And all of a sudden, he come down there and tells me
7 that. The feds -- a charge or something about you get a
8 fifty-year charge about a gun, something about me being a
9 felon. He said that they did not have enough people for
10 the jury, so we would not be going through with the jury
11 trial.

12 Q. Okay. And when was the first time you heard about
13 this plea, this voluntary manslaughter plea?

14 A. About one thirty that afternoon.

15 Q. Okay. And what were you told about it?

16 A. He told me that the feds would take their charge
17 away if I took the twenty-five years, twenty-five year
18 plea.

19 Q. All right. But have you ever been charged federally
20 with anything?

21 A. No, sir.

22 Q. So he's talking about the gun that was used in this
23 case?

24 A. Yes, sir.

25 Q. You being charged by the feds for being in

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1 possession of it?

2 A. Yes, sir.

3 Q. But you'd never talked to a federal agent or ---

4 A. No, sir.

5 Q. --- been served with any kind of federal indictment
6 or anything like that?

7 A. No, sir.

8 Q. Okay. Is that the reason you decided to plead
9 guilty?

10 A. I pled guilty because he made it seem like that we
11 had no win. You know, he tell me that we was going to
12 lose and they was going to give me life.

13 Q. So did that include having the hearing on immunity
14 on the stand your ground?

15 A. Yes, sir.

16 Q. Did he explain to you your right to appeal any of
17 that?

18 A. No, sir.

19 Q. Did he explain your right to appeal the plea that
20 you did on April the ---

21 MR. WHITMIRE: Objection, Your Honor. This
22 allegation is not presented before this Court.

23 THE COURT: Overruled.

24 Go ahead.

25 Q. Did you feel like you were pressured into pleading

1 guilty?

2 A. Yes, sir.

3 Q. All right. Now, when you went upstairs and the
4 judge took the plea, all your rights were explained to
5 you; is that correct?

6 A. Yes, sir.

7 Q. And you waived all your rights ---

8 A. Yes, sir.

9 Q. --- under that plea? And the court asked you if
10 you'd had enough time to speak with your attorney?

11 A. Yes, sir.

12 Q. And what was your response to that?

13 A. Yes, sir.

14 Q. And do you remember the court taking you through the
15 right to present defenses?

16 A. Yes, sir.

17 Q. And you waived all of that, correct?

18 A. Yes, sir. But I had misconception of -- he asked me
19 did I understand the stand-your-ground law. And when he
20 asked me that, I really didn't understand what was going
21 on because he really didn't take me through every step of
22 the stand-your-ground law. As I've been sitting in
23 prison, I understand that I had a right to do what I had
24 to do.

25 Q. Right.

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Daryl Gray - Direct Examination by Mr. Anderson

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1 A. But he never took me through that, so I really
2 didn't know what was going on with the law because really
3 this is my first time getting in trouble like this.

4 Q. And the first time you heard of the stand-your-
5 ground defense was that day; is that correct?

6 A. Yes, sir.

7 Q. So you don't feel like you had an opportunity to
8 explore your defenses?

9 A. Yes, sir.

10 Q. All right. And what are you asking this Court to do
11 today?

12 A. Well, I'm just asking for a new -- a chance for a
13 new trial because if he had took me through the stand-
14 your-ground law, I believe that we could have went to
15 trial and it would have made a difference on my verdict.

16 Q. So you're asking the Court to grant you a new trial?

17 A. Yes, sir.

18 Q. All right.

19 THE COURT: Have you explained to him that he'd
20 be looking at the possibility of life in prison if he is
21 granted a new trial?

22 MR. ANDERSON: Yes, sir.

23 Q. We have discussed that, correct?

24 A. Yes, sir.

25 Q. And if you were granted a new trial, that your

1 indictment for murder would be what you'd actually be
2 tried for?

3 A. Yes, sir.

4 Q. Plus you pled to a lesser-included of the voluntary
5 manslaughter?

6 A. Yes, sir.

7 Q. And you understand that if you get found guilty of
8 murder, you could face life without parole?

9 A. Yes, sir.

10 Q. And you still want to go forward; is that correct?

11 A. Yes, sir.

12 Q. Okay.

13 MR. ANDERSON: Thank you, Your Honor. That's
14 all the questions I have at this time.

15 THE COURT: Cross-examination?

16 MR. WHITMIRE: May it please the Court.

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. WHITMIRE:

20 Q. Mr. Gray, if I'm correct, I recall that you just
21 said Mr. Potter never discussed stand-your-ground law
22 with you?

23 A. Yes.

24 Q. But didn't you testify earlier that he discussed the
25 Treyvon Martin case and asked the facts ---

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Daryl Gray - Cross-examination by Mr. Whitmire

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- 1 A. He said he was going to use something out of the
2 Treyvon case. He never explained the case to me.
- 3 Q. But he just talked about using it. He didn't ---
- 4 A. He didn't ---
- 5 Q. --- discuss the actual national law?
- 6 A. Yes. He said he was looking into something out of
7 the Trayvon Martin case.
- 8 Q. Didn't Judge Maddox advise you that your pleading
9 guilty, you'd be waiving your right to put up a defense?
- 10 A. Yes.
- 11 Q. And when the solicitor presented the facts in the
12 case, you agreed with all these facts; is that correct?
- 13 A. Yes.
- 14 Q. Well, actually you didn't agree with one fact. You
15 believed you were in actual fear; is that correct?
- 16 A. Yes.
- 17 Q. And do you recall taking a break and consulting with
18 Mr. Potter after Judge Maddox asked if you still want to
19 plead guilty?
- 20 A. Yes.
- 21 Q. And based on the advice Mr. Potter gave you, you
22 voluntarily entered your guilty plea; is that correct?
- 23 A. Yes.
- 24 Q. And didn't Mr. Potter advise you you would have a
25 hard time meeting all four self-defense requirements?

- 1 A. Could you repeat it?
- 2 Q. Didn't Mr. Potter advise you you would have a
3 difficult time meeting all four self-defense
4 requirements?
- 5 A. No.
- 6 Q. Never did?
- 7 A. No.
- 8 Q. And Mr. Potter did review the State's evidence with
9 you; is that correct?
- 10 A. As far as -- what evidence?
- 11 Q. The statements, the ballistics.
- 12 A. Yeah. He went over the statements. He never went
13 over the autopsy or none of that with me. I had to do
14 that myself.
- 15 Q. And didn't you give a statement to Detective Oglesby
16 in this case?
- 17 A. Yes, I did.
- 18 Q. And on June 27th, 2010, didn't you tell Detective
19 Oglesby you exited your vehicle, grabbed a nine
20 millimeter, approached the victim to confront him after
21 he swung at your girlfriend; is that correct?
- 22 A. Yes.
- 23 Q. And didn't you tell Detective Oglesby that you first
24 attempted to fire rounds at the victim but failed because
25 the safety on the gun was still on?

- 1 A. Yes.
- 2 Q. And the victim wasn't armed; is that correct?
- 3 A. Huh?
- 4 Q. The victim didn't have a gun on him; is that
- 5 correct?
- 6 A. Not that I know of.
- 7 Q. And didn't the victim's mother, Ms. Clyburn, witness
- 8 you shoot her son?
- 9 A. Yes.
- 10 Q. And she also gave a statement on June 27, 2010, to
- 11 Detective Oglesby; is that correct?
- 12 A. Yes.
- 13 Q. Didn't Ms. Clyburn ask you and your girlfriend to
- 14 leave before you pulled the gun on the victim?
- 15 A. No.
- 16 Q. Did she never asked you to leave?
- 17 MS. CLYBURN: Yes, I ---
- 18 THE COURT: Excuse me. Just one second. Who
- 19 was that? Who said that? Raise your hand.
- 20 MR. WHITMIRE: Stand up.
- 21 (WHEREUPON, Ms. Clyburn stood.)
- 22 THE COURT: Okay. Let me tell you -- you're
- 23 the victim's mother?
- 24 MS. CLYBURN: Yes, sir.
- 25 THE COURT: I'm going to give you a little

1 leeway because of that fact, but we're not going to
2 tolerate any more of that outburst. If you want to
3 remain here -- you have a right to be here, but you have
4 to abide by the rules of the court. Okay? Ms. Clyburn,
5 do you understand me?

6 MS. CLYBURN: Yes, sir.

7 THE COURT: Okay. No more.

8 MR. WHITMIRE: Just a few more questions, Your
9 Honor.

10 Q. And after the altercation between the victim and
11 your girlfriend, didn't your girlfriend get back in the
12 car?

13 A. She never exited the vehicle.

14 Q. Do you recall Ms. Clyburn's statement in this case?

15 A. Not fully.

16 Q. And after this occurred, didn't you tell Detective
17 Oglesby that you got in the car and left?

18 A. Yeah.

19 Q. Didn't your attorney advise you that flight
20 constitutes evidence of guilt?

21 A. No.

22 Q. He never did?

23 A. No.

24 Q. And did you have a chance to review Ms. Harriston's
25 statements given on June 27th, 2010, to Officer Brooks?

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1 A. Sir?

2 Q. Did you review the statements that your girlfriend
3 gave in this case?

4 A. Yes.

5 Q. And based on all of this, you decided to enter a
6 guilty plea of voluntary manslaughter; is that correct?

7 A. Yes.

8 MR. WHITMIRE: No further questions, Your
9 Honor.

10 THE COURT: Redirect?

11 MR. ANDERSON: Just briefly.

12 REDIRECT EXAMINATION

13 BY MR. ANDERSON:

14 Q. So basically you're telling the Court that the
15 reason you decided to plead to voluntary manslaughter is
16 that you were told you were going to get charged
17 federally for a gun; is that correct?

18 A. Yes.

19 Q. Were you ever told that if you requested your
20 hearing on stand your ground, that you could not get the
21 voluntary manslaughter offer?

22 A. Sir?

23 Q. Do you understand what I'm asking? You were offered
24 voluntary manslaughter and twenty-five years; correct?

25 A. Yeah.

1 Q. Were you ever told that if you requested your right
2 to a immunity hearing on the stand-your-ground law, that
3 that offer of voluntary manslaughter would be taken off
4 the table?

5 A. Yes.

6 Q. You were told that?

7 A. Yes.

8 Q. Okay. That's why you pled guilty?

9 A. Yes.

10 Q. All right.

11 MR. ANDERSON: That's all the questions I have,
12 Your Honor. Thank you.

13 MR. WHITMIRE: Two follow-ups, Your Honor.

14 RECROSS EXAMINATION

15 BY MR. WHITMIRE:

16 Q. When Judge Maddox asked you if you had been coerced
17 to plead guilty or anything to induce your guilty plea,
18 did you tell him about these federal charges?

19 A. No.

20 Q. Did you discuss these federal charges at all at your
21 guilty plea?

22 A. No.

23 MR. WHITMIRE: Beg the Court's indulgence.

24 Q. And didn't Judge Maddox advise you of your right to
25 an immunity hearing on the record?

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1 A. Yeah.

2 Q. And didn't Mr. Potter advise you that the State
3 could withdraw that plea offer anytime they wanted; is
4 that correct?

5 A. No.

6 Q. Never did?

7 A. No.

8 Q. He didn't advise you that unless you do something to
9 detrimentally rely on that plea offer, the State's free
10 to revoke at any minute?

11 A. No.

12 MR. WHITMIRE: No further questions, Your
13 Honor.

14 MR. ANDERSON: That's all I have.

15 THE COURT: All right. Thank you, sir. You
16 may step down.

17 Would you call your next witness?

18 MR. ANDERSON: That's all from the Petitioner,
19 Your Honor.

20 THE COURT: Okay. Any evidence from the State
21 beyond what's been presented?

22 MR. WHITMIRE: No, Your Honor.

23 THE COURT: All right. Let me make sure I
24 understand some of the issues. One is ineffective
25 assistance of counsel for failure to properly investigate

1 self-defense?

2 MR. ANDERSON: That's correct, Your Honor.

3 That's a part of that failure to hold the hearing.

4 THE COURT: Stand your ground?

5 MR. ANDERSON: The stand-your-ground hearing,

6 Your Honor.

7 THE COURT: Okay. Failure to object to the

8 indictment. Failure to seek a suppression hearing.

9 Objection to the jury composition. Now, it's not -- I

10 was thinking when I heard that initially that it was

11 based on the racial makeup, but you're talking about

12 there just wasn't a sufficient amount of jurors ---

13 MR. ANDERSON: That's correct, Your Honor.

14 THE COURT: --- to constitute a jury? And then

15 right to appeal subject to objection of the State.

16 I'm denying your petition in its entirety. Number

17 one, as an Applicant you have to show the burden of

18 proof. This is a guilty plea. You have the burden of

19 proof shown by preponderance of the evidence, number one,

20 that such facts that would exist if you had known those

21 facts that you would not have chosen to plead guilty but

22 instead would have gone to trial.

23 As to the self-defense, the stand your ground,

24 there's been no evidence presented that you didn't know

25 any facts that are out there. And certainly, there's

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Ruling by the Court

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1 been no evidence presented as to what those facts would
2 have been. Quite frankly, under the circumstances, as I
3 read in the transcript and I heard testified to, that
4 self-defense probably would not be available to you and
5 stand your ground would not either.

6 There's been no evidence as to the indictment as
7 well. And any more -- there's no objection to the
8 indictment prior to the swearing in of the panel.

9 As to the suppression, I'm not sure if I heard
10 anything as to what should have been suppressed. What
11 was that?

12 MR. ANDERSON: We didn't cover that, Your
13 Honor.

14 THE COURT: Okay. So there's no evidence
15 presented on that.

16 The jury composition is just totally without merit,
17 and that's not on that right.

18 And as to the right to appeal, which I let you
19 proceed on, there's been no evidence presented that you
20 requested that an appeal take place and that you were not
21 afforded that opportunity. Therefore, you've failed to
22 meet your burden of proof in this matter. And looking at
23 the transcript, it appears that Judge Maddox properly
24 walked through all the constitutional elements. You
25 stated multiple times that you were competent to plead.

1 No prescriptions. You weren't being threatened. You
2 understood that this was a recommendation. That you've
3 had plenty of time to speak with your attorney. You
4 waived your constitutional rights to include jury trial
5 right, right to remain silent, the right to put up
6 defenses, the right to confront the State's witnesses
7 against you. And you said you were satisfied with the
8 services of your attorney after having plenty of time to
9 speak with him. You had no questions of your attorney.
10 You wanted to plead guilty or you pleaded guilty because
11 you are. Yes, I am.

12 Further, there was an opportunity for you to speak
13 with your attorney off the record as to stand your ground
14 and on self-defense. You came back and you said, in
15 fact, told the court, I didn't understand that, I
16 understand that now, and decided to go forward.

17 All that said and done, you've just not met your
18 burden of proof that would entitle you to any relief in
19 this case. It appears that you're faced with the
20 potential of life in prison or getting a substantial
21 sentence of twenty-five years for voluntary manslaughter
22 and you just chose that instead, so I'm going to deny
23 your petition. You have thirty days to appeal this order
24 once it is filed by the State.

25 Mr. Whitmire, if you would prepare me an order?

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Ruling by the Court

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1 MR. WHITMIRE: Yes, sir.

2 THE COURT: Send it to Mr. Anderson before
3 sending it to me.

4 MR. WHITMIRE: Thank you, Your Honor.

5 MR. ANDERSON: Thank you, Your Honor.

6 THE COURT: Thank you.

7 (WHEREUPON, the hearing ended at approximately 10:56
8 a.m.)

9 *** End of Requested Transcript of Record ***

1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Tenth 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 all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Circuit Court for Anderson County, South Carolina,
9 on the 17th day of September 2013.

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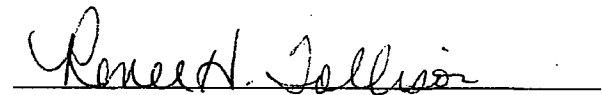
12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14 February 5, 2012

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Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

2013 DEC -3 A 9:33

Case No. 2012-CP-04-2644

Daryl L. Gray,
S.C.D.C. No. 317285,

Applicant,

v.

State of South Carolina,

Respondent.

COMMON PLEAS AND
GENERAL SESSIONS

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

A TRUE COPY

DEC -3 2013

Richard A. Kates
CLERK OF COURT

ORDER OF DISMISSAL

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed July 31, 2012. Respondent made its Return on December 6, 2012. An evidentiary hearing into the matter was convened on September 17, 2013 at the Anderson County Courthouse. The Applicant was present and was represented by Charles Anderson, Esq. The Respondent was represented by Walt Whitmire, Esq., of the Office of the Attorney General. Applicant and trial counsel testified at the hearing.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Anderson County. Applicant was indicted by the Anderson County Grand Jury at the October 2010 term of the Court of General Sessions for Anderson County for murder and possession of weapon during the commission of a violent offense (2006-GS-04-2186). He was represented by Andrew Potter, Esq. Applicant entered a guilty plea to the lesser included offense of voluntary manslaughter. The Honorable J. Cordell Maddox, Jr., sentenced Applicant to an aggregate term of twenty-five (25) years imprisonment. Applicant did not appeal his sentence or conviction.

At the PCR hearing, the Applicant alleged he was being held in custody unlawfully for the following reason:

1. Ineffective Assistance of Trial Counsel:
 - a. Failure to investigate and advise on the applicability of self-defense.
 - b. Failure to advise on the merits of pursuing an immunity hearing.
 - c. Failure to advise on the impact of alleged collateral federal charges prior to the guilty plea.
 - d. Failure to file a notice of appeal.
2. Involuntary Guilty Plea
 - a. The plea colloquy resulted in an involuntary guilty plea
3. Due Process Violation
 - a. Inadequate jury composition resulted in denial of a right to trial

SUMMARY OF TESTIMONY

At the PCR hearing, Applicant testified and alleged plea counsel was deficient on several grounds. Applicant testified counsel never discussed pursuing self-defense or defense of others during their consultations. Applicant was denied bond during the pendency of the disposition of the charges. Counsel met with him on four or five occasions. Applicant stated counsel did discuss the "Trayvon Martin" defense strategy with him. Applicant stated that counsel discussed the eyewitness statements with him. However, upon cross-examination, Applicant acknowledged counsel advised him the State's evidence precluded a meritorious defense strategy. Applicant acknowledged that he gave statement after the commission of the offense to Detective Oglesby. Applicant told the Oglesby that he exited his vehicle and grabbed his pistol to confront the victim subsequent to a confrontation with a third person. In Applicant's statement, he further told Oglesby he first attempted to fire a round into the victim but failed because the safety mechanism on the pistol was still in place. Subsequently, Applicant fired the first round into the victim's calf muscle before unloading the remainder of the clip at the victim. Applicant acknowledged the

third person, Applicant's girlfriend, who prompted Applicant's actions gave a statement on June 27, 2010 to Officer Brooks. She told Brooks that she pleaded with Applicant to disengage from the confrontation with the victim and leave the scene prior to the killing. Applicant acknowledged the victim's mother, Patricia Clyburn, was an eyewitness to the offense. Clyburn gave a statement on June 27, 2010 to Oglesby. In Clyburn's statement, she told Oglesby that Applicant gunned down the victim after he attempted to walk back into her residence. Clyburn watched the victim get shot by Applicant. In Clyburn's statement, she asked Applicant to leave the area after she noticed he was armed. As the victim retreated back to her residence, Applicant shot the victim in the calf which caused his fall. Applicant fired numerous shots into the victim after he fell to the ground. Applicant acknowledged that Clyburn along with other witnesses gave statements that he and his girlfriend fled after he killed the victim. Applicant also acknowledged that none of the eyewitnesses gave statements that the victim was or might have been armed with a weapon during the offense.

Applicant testified counsel advised him he was already going to be incarcerated and convicted for unknown federal charges. Applicant also testified counsel advised him to accept the offer because the probability he would be found guilty at trial and face a potential sentence of life imprisonment on the murder charge. On cross-examination, Applicant acknowledged that he never advised the plea judge that this was the but for reason of pleading guilty when the plea judge inquired if had had been influenced or coerced into entering the plea. Applicant also alleged plea counsel never discussed his right to an appeal or filed a notice of appeal on his behalf.

Applicant alleged his guilty plea was rendered involuntarily because the plea judge failed to go through the charges and requisite waiver of rights with him in colloquy. Upon cross-

examination, Applicant acknowledged the plea judge further inquired on his desire to enter the plea after Applicant contested the solicitor's version of facts to one of the elements of self-defense. Furthermore, Applicant acknowledged he utilized the opportunity provided by the plea judge to temporarily stop the plea hearing to discuss the waiver of an immunity hearing with plea counsel. Last Applicant alleged a due process violation because he claimed he desired a jury trial but pled guilty because there were an inadequate number of potential jurors that week for a jury trial.

At the PCR hearing, counsel was appointed to represent Applicant on the Anderson County charges in September of 2010. Counsel filed for discovery and reviewed the State's evidence with Applicant. Counsel discussed viable defenses included the recent "Protection of Persons and Property" statute with Applicant. Counsel discussed Applicant's right to an immunity hearing, the burden of proof at the hearing, and the possibility of an appeal prior the Supreme Court's recent decision denying the interlocutory appeal. Counsel explained the Applicant's version of the facts of the offense: Applicant accompanied his girlfriend to the victim's home to confront the victim; a confrontation between the girlfriend and the victim escalated to victim throwing a punch at the girlfriend; and Applicant engaged the victim and shot him outside the victim's residence. As a result of the overwhelming evidence, counsel entered plea negotiations with the solicitor. Counsel obtained a favorable offer to plead Applicant to voluntary manslaughter with the recommendation of a twenty-five (25) year term of imprisonment. Counsel conveyed the offer and thoroughly explained the nature of a guilty plea hearing along with the requisite constitutional waivers. Counsel stated Applicant was provided sufficient time to consider accepting the offer. Counsel stated he discussed the Applicant's right to an immunity hearing as provided by the "Protection of Persons and Property Act." Counsel

advised Applicant not to pursue a fruitless immunity hearing because the solicitor was free to withdraw the plea offer at will. Counsel advised Applicant of his full exposure to incarceration. Counsel stated he would have filed a notice of appeal had Applicant requested an appeal. Last, plea counsel stated on the day of the plea at the beginning of April in 2012, he would not have yet even been provided a list of the venire panel to begin any preliminary trial preparations.

APPLICABLE LAW

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, (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 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. at 668, 104 S.Ct. at 2064. 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, *supra*. 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court's records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and exhibits from the prior proceedings, and, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

I.

This Court finds Applicant is not entitled to a new trial. Applicant failed to meet his burden to prove his guilty plea was entered involuntarily as a result of counsel's alleged deficiencies, error in the manner the plea judge conducted the hearing, or by an alleged due process violation. This Court also finds Applicant is not entitled a review of direct appeal issues. This Court finds counsel's testimony credible and Applicant's testimony not credible. This Court finds plea counsel effectively represented Applicant in this matter that resulted in obtaining Applicant a favorable plea offer while the there existed overwhelming evidence of guilt.

A.

This Court finds Applicant failed to prove counsel was deficient in failing to investigate and advise him regarding self-defense. "Where the alleged error of counsel is a failure to advise the defendant of a potential affirmative defense to the crime charged, the resolution of the prejudice inquiry will depend largely on whether the affirmative defense likely would have

succeeded at trial. Stalk v. State, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009).

To establish self-defense, four elements must be present: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief, if the defendant was actually in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life; and (4) the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in the particular instance.

State v. Strickland, 389 S.C. 210, 214-15, 697 S.E.2d 681, 683-84 (Ct. App. 2010) (citing Hendrix, 270 S.C. at 657-58, 244 S.E.2d at 505-06). This Court finds counsel reasonably advised Applicant that pursuing a self-defense strategy at trial would have been futile in this case. Applicant failed to show any beneficial evidence that could have aided his defense in any of the four elements. Although Applicant testified he felt that he was subjectively in imminent danger of serious bodily injury or death, his statements provided to police after he killed the victim completely negated that testimony. Applicant attempted to shoot the victim at three different instances during the offense, two of which resulted in the victim being shot. The first instance the victim was shot, the eyewitness statements along with the pathologist's findings showed the victim was shot while he retreated from Applicant. (Flea Transcript p.8). Because of the State's evidence and overwhelming evidence of guilt, counsel's representation on the matter was sound. Counsel pursued a strategy to show the absence of malice in the offense. See Lounds v. State, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008) (citing Ingle v. State, 348 S.C. 467, 560 S.E.2d 401 (2002) (when counsel articulates a valid reason for employing a certain strategy, such

conduct generally will not be deemed ineffective assistance of counsel.). As a result, counsel obtained a plea offer to the lesser-included offense of voluntary manslaughter. He further presented his case on the absence of malice during mitigation phase of the plea hearing in urging the plea judge to accept the solicitor's recommendation. (Plea Transcript pp.12-13).

B.

Additionally, Applicant failed to prove counsel was ineffective for advising him on his was ineffective in advising him regarding an immunity hearing. The Protection of Persons and Property Act established:

The Act provides, "It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person's home is his castle...." S.C.Code Ann. § 16-11-420(A) (Supp.2010). The Act also states, "the General Assembly finds that it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others."

State v. Duncan, 392 S.C. 404, 407-08, 709 S.E.2d 662, 663 (2011) (S.C.Code Ann. § 16-11-420(B) (Supp.2010). The immunity provision at issue provides: "A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer." § 16-11-450(A) (Supp.2010). This Court finds Applicant failed to produce any evidence that showed he was entitled to the presumption of imminent danger under § 16-11-440(A) (Supp.2010) at an immunity hearing. This Court finds Applicant failed to prove that he would meet prove by a preponderance of the evidence at an immunity hearing he did not kill the victim on Clyburn's property after she asked him to leave. § 16-11-440(B). Last, this Court finds § 16-11-440(C) provided no benefit to Applicant's presumed immunity challenge for the

reasons announced above regarding the merits of self-defense at trial. Although this code section negates the fourth element of self-defense, the duty to retreat, only at the immunity hearing, the State's evidence disproved beyond a reasonable doubt any notion that Applicant was in actual or objective imminent danger of substantial harm, and was without fault in causing the incident that led to the victim's death.

This Court finds counsel's advice to forgo an immunity challenge was objectively reasonable. Counsel advised Applicant the probable finding at an immunity hearing and an unsuccessful appeal, prior to the Court's holding in State v. Isaac, did not justify the rejection of the plea offer at the risk of exposure of spending the rest of his life in the Department of Corrections. See State v. Isaac, Appellate Case No. 2013-001464, 2013 WL 4456870 (S.C. Aug. 21, 2013).

C.

Last, this Court Applicant's allegation that counsel was deficient in advising him to enter a guilty plea because he was already going to serve a prison sentence on a collateral charge is without merit. Applicant produced no evidence to show he faced pending charges in other jurisdictions. This Court finds the Department of Correction's August 13, 2012, Summary Report on Applicant stated that there were no pending detainers on Applicant. Holden v. State, 393 S.C. 565, 573, 713 S.E.2d 611, 615 (2011) ("the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing."). Regardless, this Court finds Applicant did not inform the trial judge alleged collateral inducement. Therefore, this allegation is denied and dismissed.

D.

This Court finds Applicant failed to prove plea counsel was ineffective for not filing a notice of appeal on his behalf. This Court accepted consideration of this allegation over the State's objection based on Applicant's failure to make this allegation in his application for PCR or timely amend. "[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S.Ct. 1029 (2000). First, this Court finds that a rational defendant in Applicant's position would not have desired an appeal. The State's evidence of Applicant's guilt for voluntary manslaughter was overwhelming; the evidence of Applicant's guilt for murder was exceptionally strong. Applicant own statement after the commission of the offense shows evidence of malice. Numerous eye-witnesses gave statements that Applicant continued to shoot the victim after the initial shots left him incapacitated. Applicant killed the victim in front of his mother and immediately fled the scene. The exposure on murder charge would have precluded a reasonable defendant's in Applicant's position from desiring an appeal. Furthermore, counsel conveyed the offer along with solicitor's recommendation of twenty-five (25) year term of imprisonment to Applicant and was followed by the plea judge. Second, Applicant failed to produce any evidence that showed he indicated his displeasure or desire to appeal the conviction and sentence in a timely fashion.

E.

This Court finds Applicant failed to meet his burden to prove the plea judge's acceptance of his guilty plea constituted a due process violation. The Due Process Clause requires guilty pleas be entered into voluntarily, knowingly, and intelligently. Boykin v. Alabama, 395 U.S.

238, 89 S.Ct. 1709, 23 L.E.2d 274 (1969). "Before a court can accept a guilty plea, a defendant must be advised of the constitutional rights he or she is waiving. In addition to the requirements of Boykin, a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000). This Court finds Applicant's statement that he was defending himself went to one element of self-defense and was inconsequential where Applicant made a knowing, intelligent, and voluntary waiver of his right to trial. Furthermore, Applicant told the plea judge he was guilty of the voluntary manslaughter. (Plea Transcript p.6). Applicant accepted the State's recitation of the facts of the offense with the exception of particular location he shot the victim and subjective belief he was defending himself during the commission of the offense (Plea Transcript p.6, line 25—p.8, line 28). The plea judge further inquired on Applicant's desire to enter the guilty plea and Applicant adamantly affirmed his desire to plead guilty. (Plea Transcript, p.9). Furthermore, Applicant told the plea judge he was guilty of the voluntary manslaughter. (Plea Transcript, p.6). Therefore, this allegation is denied and dismissed.

II.

Except as discussed above, this Court finds that the Applicant affirmatively abanded the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's

failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

Based on all the forgoing, 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 for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

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

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

GENERAL SESSIONS
CLERK
FILED - CIVIL DIVISION
ANTHONY
DEC - 3 A 9 34


R. LAWTON MCINTOSH
Presiding Judge
Tenth Judicial Circuit

Anderson, South Carolina

FILED-CITIZEN'S OFFICE
ANDERSON SC
2013 DEC -3 A 9 34
GENERAL SESSIONS

DOCKET NO. 2010GS04 02186

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The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

OCT 26 2010

Term

THE STATE

VS.

Daryl Gray

COMMITMENT

4-16-12-12

A TRUE COPY

JUL 31 2012

CLERK OF COURT

FILED

EJB

Indictment for

COUNT ONE : Murder / Murder
SC Code: 16-03-0010, 0020
CDR Code: 0116

COUNT TWO : Weapon / Possession of a
Weapon during violent crime
SC Code: 16-23-0490
CDR Code: 0549

WITNESSES

M Aikens, Anderson Police Dept.

ARREST WARRANT NUMBER

1722154

1722155

ACTION OF GRAND JURY

OCT 26 2010

RW Humphrey

Foreperson of Grand Juryperson

Date:

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Anderson)

INDICTMENT

At a Court of General Sessions, convened on JUN 26 2010, the Grand Jurors of Anderson County present upon their oath:

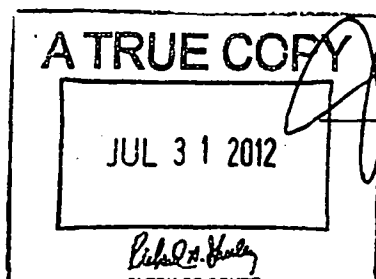
COUNT ONE**Murder / Murder**

That Daryl Gray did in Anderson County, on or about June 27, 2010, unlawfully and with malice aforethought kill Lahani M. Bozeman by means of shooting victim with a gun, and that Lahani M. Bozeman died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO**Weapon / Possession of weapon during violent crime**

That Daryl Gray did in Anderson County, on or about June 27, 2010, while committing the crime of Murder, a crime of violence, have in his possession a 9 mm Lugar handgun, all in violation of Section 16-23-490, Code of Laws of South Carolina, (1976), as amended.

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



ASSISTANT SOLICITOR