

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Chester County

Brian M. Gibbons, Circuit Court Judge

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JUL 18 2014

S.C. Supreme Court

KEITH RAMON KEENER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000510

APPENDIX

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STATE OF SOUTH CAROLINA.

-----x

STATE,

Plaintiff,

Case No.

-against-

2011-GS-12-0052-53

KEITH RAMON KEENER,

Defendant.

-----x

June 18, 2012

CHESTER, S.C.

B E F O R E:

HONORABLE BROOKS P. GOLDSMITH

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

DOUG BARFIELD, Esquire

SOLICITOR

MICHAEL LIFSEY, Esquire

Attorney for the Defendant

Aileen Butler

Official Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
	NO EXHIBITS MARKED		

1 MR. BARFIELD: This is State versus Keith
2 Ramon Keener. He represented by Mike Lifsey.
3 There are four Indictments in the case. This is
4 a guilty plea, Your Honor.

5 The first Indictment is 2011-GS-12-52, the
6 Indictment is for murder. Mr. Keener is pleading
7 guilty to voluntarily manslaughter.
8 2011-GS-12-55 carrying a pistol. Mr. Keener is
9 pleading guilty as charged. 2011-GS-12-53,
10 possession of a firearm during the commission
11 of a violent crime. Mr. Keener is pleading
12 guilty as charged. The final Indictment is
13 2011-GS-12-54 which charges him with possessing a
14 pistol on the premises where alcohol is sold.
15 Upon the completion of the plea I will dismiss
16 that final count.

17 Your Honor, the only recommendation in the
18 case is that the sentences imposed on the three
19 Indictments to which Mr. Keener is pleading
20 guilty be run concurrent. There is no
21 recommendation or no plea negotiations about
22 sentence.

23 I will also tell you, Your Honor, that it is
24 our intention after discussing this case with Mr.
25 Lifsey today we are simply doing the guilty plea.

1 This case was scheduled for trial next Monday.
2 Mr. Keener I think had a family member or members
3 who had made travel arrangements from somewhere
4 way off to be here next week and instead of
5 changing those arrangements we will delay
6 sentencing until next Monday morning. Same time.
7 Same place.

8 THE COURT: Thank you. Solicitor
9 Do you agree with that, Mr. Lifsey?

10 MR. LIFSEY: Yes, sir, I do.

11 THE COURT: Now Mr. Lifsey, have you
12 explained to your client the charges contained in
13 these Indictments and the possible punishment and
14 have you explained to your client his
15 constitutional rights?

16 MR. LIFSEY: I have, Your Honor.

17 THE COURT: Do you believe that Mr. Keener
18 has understood the discussions you have had with
19 him?

20 MR. LIFSEY: Yes, sir, I do.

21 THE COURT: Based on your investigation, the
22 facts and circumstances of of this case or these
23 cases, do you believe it likely that the State
24 could convince the jury that he is guilty of each
25 of these charges beyond a reasonable doubt?

1 MR. LIFSEY: Yes, sir, I do.

2 THE COURT: Now Mr. Keener, I have before me
3 an affidavit, the guilty plea, it was handed up a
4 moment ago by your attorney.

5 Defense Attorney: I would ask that be made a
6 part of the record.

7 THE COURT: And the Court will accept as
8 such. How old are you?

9 THE DEFENDANT: Twenty-four.

10 THE COURT: How far did you in in school?

11 THE DEFENDANT: 10th grade.

12 THE COURT: Was that here in Chester County?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: I will need you to speak up a
15 little louder. If can't hear you then my
16 reporter probably will have a problem too.

17 THE COURT: What kind of work have you
18 normally done?

19 THE DEFENDANT: Construction.

20 THE COURT: Are you married?

21 THE DEFENDANT: No, sir.

22 THE COURT: Do you have any children?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: How many children?

25 THE DEFENDANT: One.

1 THE COURT: How old is your child?

2 THE DEFENDANT: Two.

3 THE COURT: Have you ever been in criminal
4 Court before?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And the last time approximately
7 how long ago? One year or ten years or last
8 year.

9 THE DEFENDANT: Last year.

10 THE COURT: And what happened to you as a
11 result of you being in Court a year ago.

12 THE DEFENDANT: I had a probation violation.

13 THE COURT: you had probation revoked; is
14 that what mean?

15 THE DEFENDANT: Yes, sir.

16 MR. LIFSEY: It was a probation matter. He
17 was on probation for other reasons unconnected to
18 this and probation was revoked.

19 THE COURT: Do you agree with that?

20 THE DEFENDANT: Yes.

21 THE COURT: Mr. Keener, have you ever been
22 treated for abuse OF alcohol, abuse of drugs or
23 treated for any kind of mental illness?

24 THE DEFENDANT: Drug treatment.

25 THE COURT: Drug treatment?

1 THE DEFENDANT: Yeah.

2 THE COURT: And did you complete that
3 program?

4 THE DEFENDANT: Yes.

5 THE COURT: In the past 24 hours have you
6 taken any medication, drugs or have you consumed
7 any alcohol?

8 THE DEFENDANT: No, sir.

9 THE COURT: Mr. Keener, are you aware today
10 of any physical, nervous or emotional problem
11 that you might have that would interfere with
12 your ability to understand what is happening hear
13 today?

14 THE DEFENDANT: No, sir.

15 THE COURT: Your attorney and the solicitor
16 both tell me they believe you wish to plead
17 guilty to those three charges outlined a moment
18 ago by the solicitor. One would be voluntarily
19 manslaughter. Another would be carrying a
20 pistol and the third would be possession of a
21 fire arm during the commission of a violent
22 crime; is that correct.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now Mr. Keener, it is my
25 understanding in speaking with the solicitor and

1 your attorney, that the only thing the Court
2 would do today is consider whether to accept your
3 guilty plea or not and then sentencing would
4 occur next week presumably on Monday. Is that
5 your understanding also?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Now, I am going to ask the
8 solicitor to give me some of the facts about the
9 cases that bring you here that cause you to plead
10 guilty . So please listen to what he says.

11 MR. BARFIELD: Your Honor, I will give a
12 fairly brief summary of the factual background
13 for this plea.

14 I will tell you that since we are having a
15 sentencing hearing next Monday I will not get
16 into Mr. Keener's record today or anything like
17 that today.

18 I will also tell you that today Wanda
19 Stevenson and Scottie Stevenson the mother and
20 stepfather respectfully of the victim are
21 present with other family members and they also
22 understand that today is not the day for them to
23 speak and they are okay with that. But they are
24 here because they have been very interested in
25 this case and have been working with me for some

1 time now to get it resolved.

2 Your Honor, this case occurred on Monday
3 morning, September 20th of 2010. The events
4 which led up to this actually started Sunday at
5 a place call Studio 72 off JA Cochran Bypass
6 here in Chester. Studio 72 was a club that was
7 hosting a motorcycle, car show scheduled for
8 that Sunday afternoon. Lots of people were in
9 and out. The festivities continued into the
10 night and actually into the early morning hours.

11 Your Honor, this incident itself actually
12 happened about two a.m., Monday and it occurred
13 in the parking lot of Studio 72. The victim in
14 the case is Antonio Durrell Price, who was known
15 to family and friends as Jack. He was 24 years
16 old also. I will go ahead and tell you that the
17 event in the parking lot resulted in Mr. Price
18 being shot. He had two gunshot wounds. One to
19 his lower abdominal or pelvic region. Through
20 and through gunshot wound. He had another
21 gunshot wound to his right mid-back, also through
22 and through, which excited his left mid-lower
23 back. The first gunshot wound perforated the
24 iliac artery and veins and Mr. Price bleed to
25 death essentially. He was initially transported

1 by private car to Chester Regional Medical
2 Center. Because of the graveness of the
3 situation he was transported, I think, by air to
4 Carolina Medical Center where surgery was done.
5 And my understanding he died during the process
6 of that surgery some time during the day, Monday.

7 All of what I previously told you is as
8 a result of the autopsy done on Mr. Price.

9 Your Honor, the short version of these
10 events is that some time over into the morning
11 inside the club there were actually a couple of
12 different brush-ups between different sets of
13 people inside. The first brush-up resulted in
14 some people being ejected. Some of them were
15 allowed to come back in. Later on there was
16 another brush-up between two pretty clearly
17 identified people. Mr. Keener might or might not
18 have been involved in the first brush-up, but in
19 the second brush-up clearly was involving two
20 people other than Mr. Keener who started throwing
21 stuff at each other and hitting on each other and
22 two groups of witnesses described sort of bum
23 rushed each other in the middle of the dance
24 floor. Two groups kind of going at it.

25 During that incident something totally

1 unrelated to Mr. Keener occurred. Another person
2 apparently had a handgun. Fired some shots.
3 Three people inside were injured. Again, not Mr.
4 Keener's ball of wax on that. But that resulted
5 in everybody pouring out of the club into the
6 parking lot and in the parking lot two groups
7 again got together. Started squabbling and
8 fighting. Mr. Keener was back off from that
9 group and the State alleges that Mr. Keener had
10 brought a gun. I will tell you about his
11 statement briefly in a minute. But he had
12 brought a gun and concealed it out in the parking
13 lot and at some point during the confrontation
14 that was going on in the parking lot he retrieved
15 that gun and fired into that crowd of people and
16 his firing into that crowd of people the State
17 contends resulted in Jack Price being shot which
18 ultimately lend to his death.

19 Mr. Keener, we believe took off running.
20 A deputy chased him across the bypass. I don't
21 need to get into all of that detail, but he ended
22 up in Rock Hill at a motel and some time up in
23 the day Monday and I think Tuesday he was in the
24 company of a female who picked him up and law
25 enforcement apparently got wind of where we was

1 and who he was with and the car was stopped and
2 he was taken into custody and arrested and
3 charged with these events.

4 Mr. Keener gave a statement on the day of
5 his arrest which, was September 21st. He gave a
6 second statement the next day on September 22nd
7 and again without getting into all the details I
8 will simply tell you that Mr. Keener admitted
9 that he had a gun. Described the gun which was
10 never recovered. Admitted that he concealed it
11 under a car or near a car. The one that he road
12 there in with other people and that in fact when
13 this confrontation and fight was going on in the
14 parking lot he had retrieved that gun and did in
15 fact fire several shots toward the crowd in his
16 words which resulted in Mr. Price being shot and
17 later dying. That again for my purposes is
18 sufficient for a factual basis. .

19 I would reserve the right to talk more about
20 the case at the sentencing because number one, it
21 is going to be a week from now until then and we
22 need to remind ourselves about this and there are
23 other things we will need to discuss with you.
24 That is the facts from the State for the purpose
25 of this plea.

1 THE COURT: Thank you solicitor.

2 Mr. Keener, you heard the solicitor's
3 statement of the facts concerning each of these
4 charges. Do you agree with what he told me about
5 these charges?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Are you guilty of the crime of
8 voluntarily manslaughter?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And of the crime of carrying a
11 pistol?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And of possession of firearm
14 during the commission of a violent crime?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Mr. Keener, has your attorney
17 explained to you your rights to have a jury trial
18 on these charges if you wanted one?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you ever had a jury trial?

21 THE DEFENDANT: No, sir.

22 THE COURT: Bear with me just one minute.

23 If you were to have a jury trial and I need to
24 tell you you are still entitled to one right this
25 very moment as you stand there you are still if

1 you were to have one among among other things the
2 Court would instruct the jury that you are
3 presumed innocent and that the burden would be
4 upon the State to prove your guilt to the jury
5 beyond a reasonable doubt.

6 You would have the right to cross examine
7 any witnesses that the State might call to
8 testify against you. You of course could have
9 your own witnesses to testify for you, and you
10 could testify yourself or not. If you decided
11 not to testify the Court would instruct the jury
12 that they could not hold that against you because
13 you have a constitutional right not to testify.
14 If you had made any incriminating statements,
15 confessions, such things as the solicitor
16 mentioned a moment ago, you actually have the
17 right to challenge the State's right to use that
18 evidence against you. As you would have of
19 course the right to challenge the use of any
20 evidence against you.

21 You may have certain defenses against these
22 charges.

23 Do you understand by pleading guilty you
24 would be giving up all of those rights?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Is that what you wish to do?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Mr. Keener, have you had enough
4 time to discuss these matters with Mr. Lifsey?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Has he answered all of your
7 questions?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Have you understood the
10 discussions you had with him?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Has he done everything you asked
13 him to do? Everything you would expect him to do
14 in representing you?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Are you satisfied with his
17 services as your attorney?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Mr. Keener, has anyone
20 threatened you or coerced you in any way to make
21 you or cause you to plead guilty to these
22 charges?

23 THE DEFENDANT: No, sir.

24 THE COURT: Has anyone promised you anything
25 or held out any hope or reward as inducement to

1 get you to plead guilty other than the statement
2 made a moment ago by the solicitor that there is
3 a recommendation of a concurrent sentence?

4 THE DEFENDANT: No, sir.

5 THE COURT: Do you understand you are
6 facing up to thirty years maximum?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Is that your understanding?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Mr. Keener have you understood
11 the discussions that you and I have had this
12 morning, my questions? Have you understood them?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Are you pleading guilty to these
15 three charges freely and voluntarily?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Are you pleading guilty to each
18 of these charges because you are guilty of each
19 of these charges?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Speak up.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. The Court finds
24 there is a substantial factual basis for each of
25 the pleas and your decision to enter the pleas

1 have been made freely and voluntarily and with
2 the advice of an attorney with whom the defendant
3 states is satisfied.

4 The Court accepts the plea. The Court will
5 defer sentencing as agreed upon until Monday or
6 some other suitable date next week.

7 MR. BARFIELD: Your Honor, the plan is to
8 reconvene here 9:30 Monday morning unless
9 something changes and Mr. Lifsey or I will notify
10 the Court if there is any need to change that.
11 But as of now it is 9:30 Monday morning unless
12 something changes.

13 THE COURT: Anything else?

14 MR. LIFSEY: I don't think so judge. I
15 would defer my comments until that time.

16 THE COURT: Anything you want to say Mr.
17 Keener?

18 THE DEFENDANT: No, sir.

19 THE COURT: All right. See you next week
20 Mr. Keener.

21 MR. BARFIELD: Thank you judge.

22 * * * *

23 (END OF TRANSCRIPT)

24

25

C E R T I F I C A T E

1
2
3 I, the undersigned Aileen Butler, Official Court
4 Reporter for the 16TH Judicial Circuit of the State of
5 South Carolina, do hereby certify that the foregoing is
6 a true, accurate, and complete transcript of record of
7 all the proceedings in the captioned case, in the
8 Circuit Court for Chester County, South Carolina, on the
9 18th day of June, 2012.

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

12 January 3, 2013
13
14

15 Aileen Butler
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STATE OF SOUTH CAROLINA)	GENERAL SESSIONS
)	
County of Chester)	2011-GS-12-0052
)	2011-GS-12-0053
)	
State of South Carolina,)	
)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
Keith Ramon Keener.)	
)	
)	
)	

June 25th, 2012
Chester, South Carolina

BEFORE:

THE HONORABLE BROOKS P. GOLDSMITH, JUDGE.

APPEARANCES:

DOUGLAS BARFIELD, SOLICITOR
Attorney for the State

MICHAEL LIFSEY, PUBLIC DEFENDER
Attorney for the Defendant

AMINAH R. HARDY, RPR
Official Court Reporter

EXHIBITS

No.	Description	Page
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(No exhibits were marked.)

PROCEEDINGS

1
2 MR. BARFIELD: Your Honor, we're back with State
3 versus Keith Ramon Keener. The case numbers were 2011-52,
4 55, and 53. The charges were -- well, first of all he
5 pled guilty last Monday on 52 to voluntary manslaughter,
6 and on 55 to carrying a pistol, and on 53 to possession of
7 a firearm during the commission of a violent crime. This
8 was a straight-up plea as to sentence, other than a
9 recommendation of concurrent sentences. He's represented
10 by Mr. Lifsey. We did the plea last Monday. We all
11 agreed to come back here today for sentencing. After
12 Mr. Lifsey and Mr. Keener are done, then I'll have some
13 victims, family members, and some law enforcement folks,
14 and I'll make a few comments myself and give you his
15 record.

16 THE COURT: Mr. Lifsey.

17 MR. LIFSEY: Thank you, Your Honor. I represent
18 Keith Keener. Mr. Keener is 24 years old. I want to
19 introduce some people to you --

20 THE COURT: Certainly.

21 MR. LIFSEY: -- that care about him and are here on
22 his behalf. First of all, standing up here are his
23 mother, Lenore Keener, and his grandmother, Remattie Peay.
24 I think at the appropriate time both of these people will
25 speak to you about Keith. In addition to them, he's got

1 number of other relatives who are seated kind of on the
2 first of the row out there. I'm going to read their
3 names, and if possible, they can just raise their hand.
4 Cathy Johnson, aunt. Ms. Johnson may also want to say a
5 word or two to you. That's Ms. Johnson right there.
6 Johnnie Coleman, who is a friend of the family, and I
7 think she wants to say something to you at the appropriate
8 time.

9 He's got some other relatives who are here and wanted
10 to be here for him. Shawntae Jackson, who is his cousin,
11 Ms. Jackson. Katrina Wilkes, who is also his cousin.
12 Another cousin, Leah Johnson. India Strong-Buchanan, who
13 is his cousin, they're here. Bernard Peay. Mr. Peay is
14 his uncle. I think and Brenda Johnson is also there.
15 Ms. Johnson, they all wanted to be here for him.

16 The bright side, I guess, of the story is he does
17 have family that cares about him and supports him. What I
18 try to tell people in these situations is regardless of
19 the sentence -- and, of course, Your Honor has a broad
20 range of sentencing options, from minimum of two up to 30
21 years. But regardless of whatever your sentence is, of
22 course, he's going be released from prison one day,
23 hopefully. As I said, he's 24 years old. I hope he will
24 be. We all anticipate he'll be released one day. One of
25 the things you worry about when people are being sentenced

1 that go to prison for a length of time is how well they
2 will reintegrate into society, how well they will function
3 when they're released. And I do think -- I have hope
4 for Mr. Keener because he's got the family that cares
5 about him and supports him.

6 As I said, he's 24 years old. He has a two-year-old
7 son. His son was born [REDACTED] of 2010, just turned two.
8 He's, frankly, locked up when the child was a few months
9 old and had very little time with his son. And, of
10 course, because of what's he's doing here, because of his
11 sentence, will probably not have some in the future,
12 though I hope he will have a sentence that allows him to
13 at some point participate in his son's life.

14 He has lived in Chester all his life. He was kicked
15 out of school when he was 15 years old, unfortunately.
16 What I'm going to tell you about him, I guess, is -- on
17 the one hand, it's a tragedy. What -- this whole incident
18 is a tragedy. It's awful. But it's a story that
19 unfortunately I've heard more than once and -- from
20 clients. You've got a young man who is, frankly, his
21 father was not involved in his life much at all, who --
22 the involvement he's had has been sort of sporadic off and
23 on. So he lacked that male role model that you'd like to
24 hope would channel the natural aggression that young men
25 have into more positive actions. I think -- I don't mean

1 that to say anything bad or negative about his mother or
2 his grandmother, because I think they tried their best.
3 They love him, care about him, but his father was not
4 involved in his life. He was kicked out of school at a
5 young age, 15, and he became involved with the criminal
6 justice system. I'm sure the solicitor will tell you
7 about his record. All these sort of lead up to the
8 tragedy we find ourselves in that occurred this night.

9 I've said this probably more than once in this case,
10 but I don't know any other way to put it. This is a case
11 that but for guns would not have been a murder. I was
12 talking to somebody about this earlier and, you know,
13 young men -- and I'm not defending fighting at all. But
14 ever since there have been young men on this earth, young
15 men have gotten into arguments and gotten in disputes, but
16 something has happened to us societally in the past 20
17 years that -- you know, so many people get in disputes,
18 and the presence of weaponry, high-powered handguns, often
19 leads, you know, to murder cases and things that
20 rightfully probably would have been in the old days a
21 bloody nose. And I don't know the answer to it.

22 I think Mr. Keener -- I understand that Mr. Keener is
23 not going to walk out of this courtroom today to freedom.
24 I understand fully he has to pay a price for what he's
25 done today. The question for the Court is what kind of

1 price should he pay? I would like the Court to take into
2 consideration his age. I would like the Court to take
3 into consideration that whatever sentence you impose, he
4 will have to do at least 85 percent. You have options to
5 you regardless of what sentence you impose to make sure
6 that he is supervised post-release. Even if you give him
7 a straight sentence, he'll have to do community
8 supervision under that program for two years. You have
9 the ability because there's not only within the charge
10 itself, but because of there being more than one charge --
11 I mean, you have the ability to structure a split sentence
12 in this case that would potentially carry supervision for
13 a longer period of time or at least provide that
14 possibility of what time he could serve.

15 I would ask the Court to consider a sentence in the
16 neighborhood of 15 years in the case. As you know, that
17 would incarcerate him for a long time. By my
18 calculations, he's 24, that's -- a sentence in this
19 neighborhood would put him out in his probably late --
20 mid- to late 30s. I have to imagine this young man, like
21 most of us, would be a different person after that
22 experience than he would be now.

23 I will tell you that over the course of my
24 representation of him, I've met with him more times than I
25 can count at the Chester County jail. He and I have

1 talked about this at length. I have seen growth in him
2 since I first met him, both in acceptance of
3 responsibility and both awareness of his situation, and
4 awareness of what's going to happen to him. So I'd like
5 to take that accepting responsibility into account as
6 well. Obviously the solicitor was quite ready to try the
7 case and doesn't mind trying the case, I know, because I
8 try cases with him. But I tell you that I think there
9 were probably well in excess of 100 witnesses at trial in
10 the case had this case gone to trial. I think the witness
11 list itself was probably 150 people. How many of those
12 ultimately would have testified, I don't know, but I think
13 this is a case that would have taken up at least four,
14 five days worth of court time. I think his plea of guilt
15 has spared not only the expense of that for the county,
16 for the prosecution, but I think it's also spared the
17 victim's family, who I know obviously has to be suffering
18 for the loss of their loved one. I think it spared them
19 the difficulty of hearing intimate details about what
20 happened that night.

21 There certainly was a dangerous situation that night,
22 but I do think it's important to realize there were
23 multiple guns out there. Why so many people felt the need
24 to bring handguns, I don't know. I will tell you there
25 were certainly at least three people charged with

1 shooting, and there's evidence in the file that many more
2 people than that had or possessed firearms at least
3 because of the shell casings and evidence found at the
4 scene. Like I say, all this is -- this is a serious case.
5 I'd like you to hear from his family, if you would --

6 THE COURT: Glad to.

7 MR. LIFSEY: -- and then I'd like to say a few more
8 words to you. I'll start with his mother, Lenore Keener,
9 wants to speak to you.

10 THE COURT: Ms. Keener, be glad to hear from you.

11 MS. KEENER: Your Honor, my -- Your Honor, my child,
12 caught -- Your Honor, my child is coming up -- I've had
13 raised my child by myself. He -- his father wasn't in his
14 life. I raised him the best I could. He was a good boy.
15 He was a good little boy, but he would get up with the
16 wrong crowd. But Your Honor, I ask you: Please don't
17 sentence him too long.

18 MS. PEAY: Your Honor, I'm his grandmother.

19 THE COURT: Yes, ma'am.

20 MS. PEAY: I'm his father -- I'm his grandmother, his
21 father's mother. And my grandchild is not as bad as
22 people might think he is. Your Honor, he have done
23 wonderful things for me. I mean wonderful things. I have
24 had surgery three times on my back, and he was the only
25 one that would help me get in and out of the tub, wash my

1 back for me when I needed it. He was there, Your Honor,
2 when I needed him to help me. Your Honor, I ask
3 forgiveness from the Price family from the accident that
4 he had. Your Honor, I hope the Price family is able to
5 raise his children in the best they can raise him.
6 Because Keith got a baby, and I'm helping to raise him the
7 best that I can.

8 Your Honor, I know what he done was wrong. We are
9 asking for forgiveness for him. Please don't sentence
10 him, take him away from me, because I'm 60 years old. I
11 would like to spend some more time with him if I'm able.
12 Please take that under consideration for me. Thank you.

13 THE COURT: Thank you, ma'am.

14 MR. LIFSEY: If you would, Judge, I'd like you to
15 hear from a couple other people that would like to speak.
16 Ms. Johnson, come maybe just this direction, and --

17 THE COURT: Yes, ma'am.

18 MS. JOHNSON: I'm his aunt, Keith's aunt, and I come
19 on behalf of him. My nephew, he is really not no bad kid,
20 but like I said, being in the wrong place at the wrong
21 time. And not only that, he had started coming back to
22 church and everything. I asked him how did he enjoy the
23 service. He said he really enjoyed it. Next thing I
24 know, all this took place. I really hate it for the
25 family and everything what happened, you know. I'm sorry,

1 but -- you know. That's all I have to say. He not no bad
2 kid.

3 MR. LIFSEY: Ms. Coleman?

4 SPEAKER: Judge, my name is Johnnie Coleman. I'm
5 here on behalf of Keith and his grandmother. I'm a good
6 friend of hers; have been for 20 or more years. And I've
7 known Keith since he was a youth, and I would visit his
8 grandmother. He would be there washing cars or cutting
9 the grass or helping her around in the house, and I just
10 wanted to be here to stand up for him if I could.

11 THE COURT: Thank you, Ms. Coleman.

12 MR. LIFSEY: Your Honor, hearing from us, I don't
13 think of any of the rest of them want to speak. As you
14 might imagine, this is a pretty emotional thing.

15 Judge, obviously nothing you can do today can make up
16 for the horrible loss of the Price family, and I'm sorry
17 they're suffering for this because I know they are. The
18 question, I guess, becomes -- no amount of time is enough.
19 I would ask the Court to sentence him to less than the
20 maximum taking into account his age, his willingness to
21 enter this plea, his acceptance of responsibility, and I
22 think his remorse in this matter. I'd ask you to hear
23 from Mr. Keener if he wants to say anything.

24 THE COURT: Mr. Keener, be glad to hear from you if
25 you wish to say anything.

1 THE DEFENDANT: Right now at this time, I'd like to
2 say to both parties, my family and Mr. Price, I'm sorry
3 for the hurt and loss that I caused them all of them, and
4 everything. That's nothing more I can say, Your Honor.

5 THE COURT: Okay. All right. Thank you, Mr. Keener.
6 Solicitor?

7 MR. BARFIELD: Your Honor, first part of my
8 presentation will concern the victim. The victim was
9 Antonio Durrell Price, known as Jack. He was 24 years old
10 when he was shot and killed. He has a whole bunch of
11 family members and some friends here, family connected
12 folks here today. Several of them want to speak, and with
13 the Court's permission, I'm going to ask them to come
14 around on this side and stand over here next to me. And
15 there's a microphone here, and you might be able to hear
16 them better. Wanda Stevenson is his mom, and I would ask
17 Ms. Stevenson to come up first, please.

18 MS. STEVENSON: Good morning. I'm Wanda Stevenson,
19 Antonio Price's mother, Jack. These are his two children
20 that's left behind, McKenzie Danielle Price and Antonio
21 Price, Jr. And just want to say that I appreciate him
22 saying that he is sorry, but on the other hand...

23 MR. BARFIELD: Take your time.

24 MS. STEVENSON: I don't have my son anymore. I can't
25 look at him. I can't talk to him. I can't touch him.

1 And they was so young. They don't have any idea what's
2 going on. I constantly tell them about their father so
3 they can be reminded of him. They don't have that. That
4 was taken from us. And I don't know if time is going to
5 make it better. But that's a start. That's a start so we
6 can go on and move forward with our lives. Because this
7 caused so much pain. So much hurt. And I'm just ready to
8 start a new beginning now, and try to learn to live each
9 day without my son through my children, through my
10 grandchildren. Oh, God. I didn't think this was going to
11 be this hard. That's all I have to say.

12 MR. BARFIELD: Thank you, ma'am. Danielle?

13 THE COURT: Thank you, Ms. Stevenson.

14 MR. BARFIELD: Your Honor, next is Jack Price's
15 sister, Danielle Jackson.

16 MS. JACKSON: I'm Danielle Jackson, Antonio Price's
17 oldest sister. This is a really hard time for my family.
18 And we can't -- as a citizen of this county, I don't feel
19 safe because of all the activities that's been going on,
20 whether you're 24, 18, 20 to pick up a gun and kill
21 someone, to go to a hospital emergency room and kill
22 someone, that's unheard of these days. I can't tell you
23 the pain that I feel every day because I don't have my
24 brother anymore. I can't go to a prison to visit him. I
25 can't receive a letter. I can't receive a phone call from

1 him. He has two small kids. He was a great uncle for my
2 two girls.

3 I know you want to get this all behind us, and no
4 amount of time that you sentence today is going to bring
5 my brother back. I miss him dearly, and all we have to go
6 by is the memories we have with Jack, the pictures, and
7 his children. That's all we have as a family to remember
8 him by, and I'm asking you today -- 30 years, they say
9 that's the maximum he could get. To me, that's not enough
10 time because I cannot see my brother. I can never hug
11 him, talk to him, do any of that anymore, play with him.
12 You know, none of that and we played a lot when he visited
13 me. So I'm just -- want you to take into consideration
14 that, you know, this was a unfortunate situation that
15 caused a lot of families a lot of hurt. But for us as the
16 Price family, we're suffering the most from it. Thank
17 you.

18 MR. BARFIELD: Thank you, ma'am.

19 THE COURT: Thank you, Ms. Jackson.

20 MR. BARFIELD: Ms. Gore. Your Honor, this is Maureen
21 Gore, Mr. Price's aunt.

22 MS. GORE: Your Honor, thank you for allowing me the
23 time to speak and address the Court. I just want to
24 remind the Court that on Monday, September 20th, 2010,
25 we lost a son, a brother, an uncle, a nephew, a cousin, a

1 friend. He was a life mate, and above all, he was a
2 father. I understand the young man has a child of his
3 own, and he's asking for time to be with his child. Time
4 my nephew will never have again to be with his children.
5 His children will never know who his is other than by
6 pictures.

7 They say that time heals all wounds, and in time I
8 hope and pray our family can get through this. I'm
9 grateful this young man has acknowledged his wrong and has
10 apologized for it. Your Honor, we are asking for time for
11 our family, for this community to heal and get past this
12 moment. No amount of time that you can hand down can
13 bring my nephew back, but it's time that will allow us to
14 get past this act of violence, to get past this moment.
15 His family will have the opportunity and his child will
16 have opportunity and moments to visit him and to know him.
17 But my nephew's children won't, and all I'm asking is that
18 you take into consideration my nephew's children. Thank
19 you.

20 THE COURT: Thank you, Ms. Gore.

21 MR. BARFIELD: Mr. Roscoe? Your Honor, this is
22 Howard Roscoe, Mr. Price's uncle.

23 MR. ROSCOE: Thank you, Your Honor. I just want
24 to -- you've met Antonio's son and daughter, and I just
25 want -- you know, if I can, best I can, just let you know

1 what kind of father he was. He was a provider. He missed
2 the birth of both his son and daughter because he was out
3 on the road with me trying to work, provide, give a roof.
4 I mean, he left his family, and when I say he left, you
5 know, there's no jobs here. This is a small town, you
6 know, it's hard to find a job. I'm an independent
7 contractor, and I travel all over the country, and I
8 employed my nephew for several years so he can provide for
9 his family. He was out on the road with me, four months
10 until the last trimester of his son being born. So he
11 missed his son's birth. He said, "Unc, I want to stay out
12 here, make as much money as I can so I can go back home
13 and try to make up for the time that I lost. I want to
14 buy a house and I just want to be there for my kids."

15 And he and I, you know, had these talks all the time
16 when he was out on the road with me what he wanted to do.
17 He was supposed to come back out on the road with me the
18 night he got killed. I was supposed to pick him up
19 6:00 in the morning at the airport out in Iowa. Once
20 again, he was leaving his kids to come make a living, do
21 things the right way. Your Honor, I got a call from my
22 sister at 2:00 in the morning. I thought I had overslept
23 to pick him up from the airport, and it was her calling me
24 telling me that he got shot; he wasn't going to make it.
25 It was the worst phone call I ever had in my life. Still

1 haunts me to this day because I know what he was going to
2 do. Just four more hours, I was going to pick him up from
3 the airport.

4 THE COURT: Thank you, Mr. Roscoe.

5 MR. BARFIELD: Reverend Hawkins? Your Honor, this is
6 Reverend James Hawkins, Mr. Price's uncle.

7 REVEREND HAWKINS: How you doing, Your Honor? Just
8 to emphasize on what everybody else was saying, Jack
9 Price, he was in the process of trying to change his life.
10 We had spoke prior to him being murdered that he was tired
11 of living the life that he was living. We talked about
12 what he was going to do, and he had made the statement
13 that he was going out on the road this one last time, and
14 he was -- may not come back to this town because this town
15 was no good for him. He realized that.

16 As him taking care of his children, I don't think
17 there were -- are too many fathers that would do the
18 things that Jack did to give up his time with his family
19 to go out and work, to stay out as long as it took, and
20 what I'm asking, Your Honor, is that you consider the
21 family. Not only the Price family but the Stevenson
22 family, the Hawkins family, the Bagwell family, the Gore
23 family who will regret not seeing Jack for the rest of our
24 lives.

25 Jack played a big part in all of our lives. He

1 touched all of us in different ways. He was a loving son.
2 He was a giving nephew. He shared with everyone that knew
3 him. And the fact that he knew the church played a big
4 role in him wanting to change his life. He didn't just
5 come to church; he participated in church. He talked to
6 others in the street about church and he made it plain
7 that his life wasn't being lived right and he had to make
8 a change, and that change would have come about if his
9 life had not come to a end. I truly believe that it would
10 have come about, and I'm asking when you make your
11 decision, Your Honor, consider the family, and his
12 children and his mother, those that will miss him for the
13 rest of our lives.

14 And I also want to say this is a new beginning. Not
15 just for this family, but for their family as well. We
16 lost a loved one. They're about to lose a loved one as
17 well. They're about to see a son, a father, go away for a
18 who knows how much time. That's in your hands. He's
19 gone, and nothing we do can bring him back, but he's here.
20 And I know this hurts me to say because I love my nephew,
21 but he can have a chance to change. But that's up to you
22 right now. He done his wrong, he's going to -- I want him
23 to serve the time so that he can reflect, and while he's
24 reflecting, I want him to get a closer relationship with
25 God and possibly turn his life around that he might do the

1 right thing for his family.

2 But this is a new beginning for everybody. Today,
3 let's end all this. Let's make it a new beginning and a
4 better beginning for everybody. How much time you going
5 to have to give to make that right, I don't know. I
6 really can't say. I don't know what time is due for a
7 loss of a son. I don't know what time is due for someone
8 who did a crime that he's done, but I know that everybody
9 need a new beginning. We need to start this over and go
10 on with our lives.

11 THE COURT: Thank you, Reverend Hawkins.

12 MR. BARFIELD: Reverend Smith -- one more. This
13 Reverend Arthur Smith.

14 REVEREND SMITH: Judge Goldsmith, thank you for the
15 opportunity to speak to the Court on behalf of Antonio.
16 I'm pastor of the Brown's Chapel, and Antonio was a member
17 of my church. He had been a member since he was a young
18 boy, baptized him. He was a part of our church. He was
19 an usher. He ushered and as a boy and as a young man. He
20 was on our youth department, and he participated in the
21 youth activities. His mother was very avid about having
22 him in church, having him involved in church. He was part
23 of our boys-to-men mentoring group that I taught
24 personally. He attended and he was a good young man. He
25 was at that age where he was feeling out life and making

1 good decisions. He and I talked on the phone often and I
2 counseled with him.

3 This is a great loss losing Antonio. This is a great
4 loss to his family, as you can see. Great loss to our
5 church, great loss to the greater community. I don't have
6 anything against Mr. Keener or his family. In fact, his
7 grandmother is also a member of our church, very precious
8 member and I know her family well. Your Honor, I know
9 that you rule from the bench with compassion. I know
10 that. And my interest here today is to stand for Antonio
11 and with his family, and my prayer is for justice, Your
12 Honor. I think there has to be a sentence, and this
13 family needs a sentence that justice has been done. And
14 that's all I have to say.

15 MR. BARFIELD: And, Your Honor, I beg your indulgence
16 just a minute. Chelsea Sims would also like to speak.
17 She's --

18 THE COURT: Thank you, Reverend Smith.

19 MR. BARFIELD: Mr. Price's fiancée, Chelsea Sims.

20 MS. SIMS: Judge, I stand before you. I'm the mother
21 of Antonio Price, Jr., the three year old. It's very hard
22 without him growing up without his father. Every day he
23 asks me, "Where my dad? Can he come to see me play ball?"
24 You know, and it is really taken a toll on my son. It is.
25 And I understand he do have a child also, but my child

1 will never, ever see his dad again. And Jack was there
2 from -- he was out on the road, but once he got there, he
3 was there for AJ, and I just want you to take into
4 consideration my child and what I have go through, because
5 I haven't healed yet to allow him heal. So I just ask you
6 take my son into consideration today. Thank you.

7 THE COURT: Thank you, Ms. Sims.

8 MR. BARFIELD: Your Honor, this case was heavily
9 investigated by multiple agencies in law enforcement, and
10 on behalf of law enforcement today, Richard Smith, Sheriff
11 of Chester County, wants to speak, and I'll have some
12 comments when he's done.

13 SHERIFF SMITH: Thank you, Judge. Judge, it's a
14 shame that people can't even go out to a club and just
15 kind of enjoy themselves and try to get away from their
16 hard work, what they do at times where you have to worry
17 about violence, someone shooting at a club or getting
18 killed outside a club like Mr. Price did. The Sheriff's
19 Office has worked hard to put a stop to this kind of
20 violence, but it keeps popping its head up every now and
21 then. So we're requesting -- law enforcement is
22 requesting that you sentence Mr. Keener to 30 years for
23 his actions. These -- we -- it's the -- there's got to be
24 repercussions for what you do. Sad -- it's a sad
25 situation of what happened, but I just don't think turning

1 your head is a -- I'm not saying you're going to turn your
2 head, but we're requesting 30 years.

3 One thing, discharging a firearm into a crowd is
4 reckless disregard for life and safety for everybody. We
5 were -- it's unfortunate that we had one die, but it could
6 have been easily ten or 15 when you got 300 people.
7 Keener's actions also led to another shooting death at the
8 hospital minutes later, just all related. You know, I'm
9 sure Mr. Keener comes from a good family. And -- but he
10 is a grown man; he knows right from wrong. And -- but I
11 don't think he's learned since he's been incarcerated.
12 He's picked fights with people in the jail, I think he
13 was -- even had his jaw fractured from picking a fight
14 since being arrested.

15 But you know, the most tragic thing we're talking
16 about, Keener took a life. He took the life of Antonio
17 Price, a father, a brother, a son, a nephew. He was all
18 of these things to the Price family. But the worst thing
19 is that when a parent has to bury their son. And, you
20 know, it's like it says, no amount of years is going to
21 bring him back, but if he's gone for 30 years, at least
22 they won't have to worry about it for 30. And also the
23 citizens shouldn't have to worry about Mr. Keener being
24 out on the street, worry about going somewhere, somebody
25 going to come up and shoot somebody in the parking lot.

1 You know, so we're -- just ask the Court that you take all
2 the stuff that he's done into consideration for -- for the
3 family's sake and for public safety sake. We'd like to
4 see him gone. Thank you.

5 THE COURT: Thank you, Sheriff.

6 MR. BARFIELD: Your Honor, just a few comments from
7 me. I'm a firm believer that -- probably almost without
8 exception there's good in just about everybody, and I'm
9 also understanding of the idea that sometimes somebody
10 gets caught up with the wrong crowd. But I'm wondering
11 whether there might have been the mother of some other son
12 who might have been hanging around with Keener who would
13 be here today saying, "My son, by hanging out with Keener,
14 was hanging out with the wrong crowd." I think Keener is
15 the wrong crowd. I don't think he was hanging out with
16 the wrong crowd.

17 Your Honor, a couple things, and I will go ahead and
18 tell you too that the State is asking you to impose the
19 maximum sentence on the manslaughter plea. A few things I
20 ask the Court to consider of a factual nature. First of
21 all, I'll tell you about Mr. Keener's record. He has some
22 magistrate's court stuff, disorderly conduct in the
23 magistrate's court, both in '05 and '06. His foray in
24 general sessions was possession of cocaine base in 2006,
25 which he got a probationary sentence on. In 2007, he was

1 back in general sessions, not sure of the court date,
2 but -- well, actually in May of '07, he apparently pled
3 guilty to a weapons charge. I can't tell if it was
4 possession of pistol by a person under 21, or possession
5 of a stolen pistol, but it's under that five-year statute.
6 And he also had a conspiracy charge, and I'm not sure what
7 the underlying acts of the conspiracy were, but he was
8 convicted of those.

9 He -- apparently Mr. Keener -- Mr. Lifsey can correct
10 me if it's necessary, but he apparently got a -- looks
11 like he got a youthful offender sentence. But he did some
12 time at that time it looks like later in 2010 after this
13 incident had occurred. He had come out on supervision of
14 some sort and violated that and ended up going back into
15 the Department of Corrections for that. So he does have a
16 record of drugs and guns, which I argue to you are the
17 primary causes of most of the events that we have of this
18 nature that we have deal with in this court.

19 Your Honor, again, from a factual standpoint, just a
20 few things I want to point out. This, as you heard last
21 Monday, was a motorcycle/car show at a club on a Sunday
22 which continued into the night and into Monday morning.
23 Studio 72 was the name of the club. They had off-duty
24 sheriff's deputies who were working there. They had also
25 people privately working security and checking the door.

1 This club apparently had a reputation for being kind of a
2 trouble spot for law enforcement. The club allegedly
3 searched people coming in. The reputation of the club was
4 they don't search girls too thoroughly, so the guys would
5 let girls carry guns in.

6 Keener, in his own words, admitted that he went to
7 this club armed with a firearm. He gave two different
8 written statements on two different days, and in those two
9 statements, started off with one version and then later on
10 changed and gave other versions of the facts. But he
11 clearly admitted that when he went to the club, he came
12 there armed with a gun, which he subsequently admitted was
13 a 9-millimeter handgun, which was consistent with the
14 evidence found at the scene. He knew that he couldn't get
15 in the club with the gun, but he wanted the gun there with
16 him, and he apparently concealed the gun somewhere
17 underneath the car or up on the tire, but somewhere about
18 the car that he rode to the club in. And he also went
19 into the club, and there are statements from a witness or
20 two that indicate that Mr. Keener wasn't physically and
21 literally involved in the first altercation that occurred
22 inside the club that resulted in some people being
23 expelled from the club. He was allowed back in.

24 The second altercation occurred involved two other
25 people, and that's when the gunshots inside the club

1 Mr. Keener had nothing to do with occurred. Everybody
2 runs out. Keener at that point decides that he needs to
3 retrieve the firearm that he had taken to the club and
4 concealed about the car that he rode there in. And he
5 is -- he goes to the car, he gets the gun, things are
6 going on in the parking lot between the two sets of guys,
7 and he fires shots into the crowd and kills Mr. Price.

8 Your Honor, once that occurred, I would also ask the
9 Court to consider that he took off running, which I guess
10 probably is the natural thing to do. He fired a gun at
11 somebody. Of course he didn't know at that point, I
12 guess, what the outcome of the gunshots was, but he took
13 off running. He was chased by a deputy across the J. A.
14 Cochran bypass, hit the woods, hit the railroad tracks, on
15 the run. He ditched the gun somewhere according to him.
16 It was thoroughly searched for. The gun was never
17 located.

18 During the course of the next minutes and maybe
19 hours, I'm not sure, he starts making calls to people to
20 try to get people to come get him from being on the run.
21 He called -- I don't know exactly in what order, but he
22 called a young lady who was his ex-girlfriend. She had
23 was -- had not been at the club, had nothing to do with
24 any of this, but had better sense than to go out and pick
25 him up in the middle of the night, and she did not. He

1 called another young lady who was driving a car that had a
2 female passenger. He told them he was running from the
3 police; he was in the bushes. He was trying to tell them
4 where to come get him. They looked for him, and I'm not
5 real clear from his statement -- because it changed -- and
6 from the girls' statements, I'm not real clear whether
7 they actually picked him up or not, but he's calling
8 people trying to get rescued from being on the run from
9 law enforcement. He also called a guy named Santiago
10 Caldwell who was at the club and was involved in some of
11 this, and told Caldwell to go get the gun, to go hide the
12 gun, get the gun out of where he had left it. Of course,
13 Caldwell said, No, I'm not going to have anything to do
14 with that either.

15 He eventually got picked up by a young lady sometime
16 in the wee hours of the morning on that Monday. He ends
17 up in Rock Hill midday that day, Monday. He ends up with
18 making contact with a buddy of his, Emmett Douglas.
19 Mr. Douglas took him to his aunt, to Douglas's aunt's
20 house where Douglas's girlfriend was. And the girlfriend
21 apparently objected, so they put him up in a motel room.
22 The next morning, Tuesday morning, he gets picked up by
23 another young lady, and they're in her car, and law
24 enforcement -- I can't remember how all this played out,
25 but eventually law enforcement got information about where

1 he was, and he was arrested out of the car I think in Rock
2 Hill. Not positive about that.

3 Your Honor, couple of other things. We did make a
4 concession as to charge, which, as the Court knows, of
5 course, is certainly no guarantee he would have been
6 convicted of anything at trial. There's no guarantee he
7 would have been convicted of murder at a trial, but had he
8 been convicted of murder, sentencing options would have
9 been entirely different, and the State submits that the
10 concession on the charge is enough for Mr. Keener and that
11 the maximum on the manslaughter is a good and fair
12 sentence based on what he did and based on the facts of
13 the case.

14 Your Honor, I think that's all the State has at this
15 point. I couldn't agree with Mr. Lifsey more when he
16 opened up earlier about the fact that there were multiple
17 guns out there. And you can look at that two ways.
18 Mr. Keener can say, "I wasn't the only one out there with
19 guns." I look at it a different way. The more people out
20 there with guns, the worse off it is for the community and
21 for individuals who end up subjected to gunfire. I don't
22 understand why there's the need for these young men to arm
23 themselves when they go out there to an event that should
24 be fun and pleasurable for everybody involved. But he
25 did, others did, and, of course, he's responsible for only

1 what he has pled guilty to, but in the course of an hour
2 in Chester County, Price is dead, another guy is dead at
3 the hospital, and three people are shot up inside the
4 club. It just -- it doesn't get any worse than that, and
5 I ask you to give him the 30. Thank you.

6 THE COURT: Thank you, Solicitor. Mr. Lifsey?

7 MR. LIFSEY: Your Honor, if I could -- I don't want
8 to belabor things, but I do want to make a remark about
9 three brief matters. First of all, as to the history and
10 the revocations, what happened in this case is he when he
11 was arrested on these charges, he was brought a month or
12 two after his arrest in front of a judge on probation
13 violation related to the fact, of course, he gave a
14 statement admitting he had a gun. So it's not like -- he
15 never bonded out on these charges. He's been incarcerated
16 entirely since the date of his arrest. I didn't want you
17 to get the impression he was out on bond and somehow did
18 something else. He was revoked and sent back to the
19 Department of Corrections for a period of time, but he
20 never made bond. So I wanted you to reflect that.

21 Second thing, I would mention that the sheriff made
22 mention of a fight. Two things I think are important to
23 know about that. One, that happened very shortly after he
24 was arrested. In fact, I'm almost certain it happened
25 prior to his probation being revoked. He got his jaw

1 broken. The other fellow got charged. He's never been
2 charged with that. Seems pretty unfair to me to hold that
3 against him, the fact that he was assaulted by somebody
4 else. So I'd like you to note that.

5 And the third thing -- and like I said, I don't want
6 to argue the thing, but part of what you have heard today
7 is part of what I think the biggest problem in the case is
8 there's just been this conflating of these events into one
9 event. I mean, there are at least three separate
10 shootings in this matter. There's no indication that my
11 client is involved in any either of the other incidents.
12 The first shooting happened before -- by the State's
13 chronology of events happened first, the shooting inside
14 the club. The second shooting for which he's admitted his
15 guilty and pled guilty to happened in the parking lot, and
16 by the State's own recitation of the facts, he had fled
17 the area. I think it completely unfair to blame him for
18 the event at the hospital considering that there were
19 certainly not just Mr. Price, but the other victims from
20 inside the club that were taken there.

21 This is -- I agree. I live in and am a citizen of
22 this community. This is a horribly tragic event for all
23 of us, but I would ask the Court, you know, the reason we
24 have judges is to be what the Supreme Court called the
25 neutral and detached magistrate. I would ask the Court to

1 view this as what it is, which is awful. But not that
2 unlike many similar tragedies that we have had throughout
3 this circuit, for which sentences less than the maximum
4 has been imposed. I'd like the Court to take that into
5 consideration. Thank you.

6 THE COURT: Thank you, Mr. Lifsey.

7 Anything else, Mr. Keener?

8 THE DEFENDANT: No, sir.

9 THE COURT: The Court agrees with the statements made
10 by Mr. Lifsey and Mr. Barfield and others about this being
11 a tragic event. Court obviously agrees about the need to
12 stop the violence and stop the guns. I don't have an
13 answer to it, though. The Court can't ignore the fact
14 this occurred. Court does consider all of the things
15 stated by both sides in the case, including Mr. Keener's
16 relatively young age. His history, though, his criminal
17 record, the Court feels, though, that by taking the gun to
18 the club, hiding the gun, that that clearly indicates is
19 premeditated intent to use the gun if the circumstances
20 permitted, and that's exactly what happened in the case.

21 Sentence you to the Department of Corrections on the
22 charge of carrying a pistol for one year, concurrent,
23 credit for time served. On the charge of possession of a
24 firearm during the commission of a violent crime, sentence
25 you to five years, concurrent, credit for time served. On

1 the voluntary manslaughter, sentence you to 27 years,
2 concurrent, credit for time served.

3 (Whereupon, the proceedings were concluded.)
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650

STATE OF SOUTH CAROLINA

County of Chester

IN THE COURT OF COMMON PLEAS

Qui J. Carpenter
11/2/2012

Keith Ramon Keener #321935

Full name and prison number (if any) of Applicant

X

APPLICATION FOR

POST-CONVICTION RELIEF

State of South Carolina

INSTRUCTIONS BE 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 ~~Midland Ave~~ Lieber Corrections
2. Name and location of Court which imposed sentence Chester County Court of General Sessions
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) 11-52/M251479
 - (b) 11-55/M251484

(c) 11-53/M251480

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

(a) June, 25, 2012

(b) 27 years

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO

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

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

i. NI

ii. _____

iii. A

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

i. NI

ii. _____

iii. A

(c) the date of each such result:

i. NI

ii. _____

iii. A

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

i. NI

ii. _____

iii. A

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

(a) I was not aware that I could appeal a guilty plea!

(c) _____

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

(a) Ineffective Assistance of Counsel
 (b) "Guilty Plea" was not "knowingly or voluntarily"
 (c) _____

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

(a) _____
 (b) See Attached Sheet
 (c) _____

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

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

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

(a) the specific nature thereof:

i.	<u>N</u>
ii.	<u>A</u>
iii.	

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

i.	<u>N</u>
ii.	<u>A</u>
iii.	
iv.	

(c) the disposition thereof:

i.	NI
ii.	
iii.	A
iv.	

(d) the date of each such disposition:

i.	NI
ii.	
iii.	A
iv.	

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

i.	NI
ii.	
iii.	A
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.	NI
ii.	
iii.	A

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

i.	NI
ii.	
iii.	A

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

- (a) See 10(a) Applicant first time presenting ground
- (b) See 10(b) Applicant first time presenting ground

(c) _____

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

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

NIA

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. Michael H. Lifsey
P.O. Box 1809
- ii. LANCaster, S.C. 29721

iii. _____

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

- i. Plea and Sentencing

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application:
New trial and any other relief the court deems just and fair!

20. Are you now under sentence from any other court that you have not challenged?
NO

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of Chester)

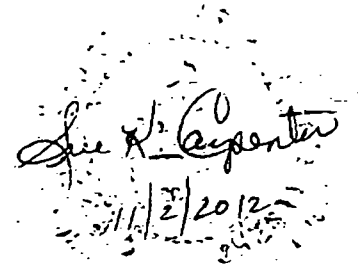
VERIFICATION

I, Keith R. Keener, 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.

Keith Keener

SWORN to and subscribed before me this 4th day of September 2012.

James R. Smith (N.S.)
Notary Public



My Commission Expires: 08-01-2022

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

I, Keith R. Keener, 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.

Keith Keener
Applicant

SWORN or affirmed to and subscribed before me this
4th day of September, 2012

James R. Smith
Notary Public

My Commission Expires: 08-01-2022

James R. Smith
Notary Public
2/1/2012

STATE OF SOUTH CAROLINA)

COUNTY OF Chester)

Keith Ramon Keener)
Plaintiff(s))

State of South Carolina)
Defendant(s))

IN THE COURT OF COMMON PLEAS ⁶⁵⁹

CIVIL ACTION COVERSHEET

2012-CP-12-00568

Submitted By:
Address:

SC Bar #:
Telephone #:
Fax #:
Other:
E-mail:

David R. Carpenter
Clerk of Court
Chester County, SC
11/2/2012

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
- NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20-CP- <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Assault/Slander/Label (300) <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (300) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Drv. License (S00) <input type="checkbox"/> Judicial Review (S10) <input type="checkbox"/> Relief (S20) <input type="checkbox"/> Permanent Injunction (S30) <input type="checkbox"/> Forfeiture-Petition (S40) <input type="checkbox"/> Forfeiture-Consent Order <input type="checkbox"/> Other (S99) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Confession of Judgment (770) <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) <input type="checkbox"/> Other (799) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Comm. (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Sexual Predator (610) | | | |

2012 NOV 2 12 P
CLERK OF COURT
CHESTER CO S.C.

Submitting Party Signature: _____

Date: 11-2-2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SIXTH JUDICIAL CIRCUIT
COUNTY OF CHESTER)	
)	
)	2012-CP-12-0568
Keith Ramon Keener, #321935,)	
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed November 2, 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 Chester County Clerk of Court. He was indicted at the February 2011 term of the Chester County Grand Jury for murder (2011-GS-12-0052), possession of weapon during violent crime (2011-GS-12-0053), and unlawful carrying of pistol (2011-GS-12-0055). The Applicant was represented by Michael Lifsey, Esquire. On June 18, 2012, the Applicant pled guilty to the lesser-included offense of voluntary manslaughter and pled to the remaining offenses as indicted. On June 25, 2012, he was sentenced by the Honorable Brooks P. Goldsmith to confinement for twenty-seven (27) years for voluntary manslaughter, five (5) years for possession of a firearm during the commission of a violent crime, and one (1) year for carrying a pistol, all running concurrently. Applicant did not appeal his conviction and sentence.

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

II.

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

1. Ineffective assistance of counsel; and
2. Involuntary guilty plea.

Applicant has failed to set forth with specificity the grounds upon which the application is based and facts in support thereof. S.C. Code §17-27-50.¹ Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

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

¹ Applicant references an attachment to his application. No "attached sheet" appears with the application as received
2 of 5

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.

In his second allegation the Applicant alleges that he did not plead guilty freely and voluntarily. The State submits this allegation has no merit. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The State submits the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Boykin, supra; Dover, supra. Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The State submits the Applicant should not be allowed to depart from the truth of the statements he made during his guilty plea hearing.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

Given the Applicant's burden of proof and the analysis to be applied to this claim, the Respondent submits that the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it should therefore, be treated as such.

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN RATIGAN
Senior Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

Nov. 12, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

)
)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Keith Ramon Keener,

)

2012-CP-12-0568

Applicant,

)

)

v.

)

CERTIFICATE OF SERVICE BY MAIL

)

State of South Carolina,

)

)

Respondent.

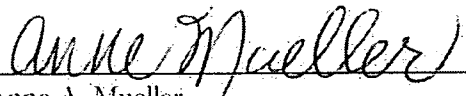
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-
1. I am an employee of the Respondent in the above-captioned action.
 2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
 3. I have this day served a copy of the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

Vanessa Cason, Esquire
P.O. Box 2842
Greenville, South Carolina 29602



Anne A. Mueller
Legal Assistant for the Respondent

DATED this 12th day of November, 2013.

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF CHESTER
4 2013-CP-12-00568

5
6 Keith Ramon Keener

7 vs.

8 State of South Carolina

9

10

11 Lancaster, South Carolina

12 February 3, 2014

13 Before the Honorable Brian P. Gibbons

14

15 APPEARANCES

16 For the State: Mary Williams

17 For the Petitioner: Vanessa Cason

18

19 Reported by: Michael C. Watkins

20 Official Court Reporter

21

22

23

24

25

1	Keith Ramon Keener:	3
2	Michael Lifsey:	15
3	Certificate:	23
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NO EXHIBITS

1 MS. WILLIAMS: This is the case of Keith Keener. Mr.
2 Keener pled guilty on June 18th of 2012, sentenced June 25th
3 of 2012, both of those transcripts are in your packet, Your
4 Honor. He pled to voluntary manslaughter, was originally
5 charged with murder, received a sentence of 27 years, had
6 concurrent sentences for possession of a firearm during the
7 commission of a violent crime and unlawful carrying of a
8 pistol. And Ms. Cason is representing him today, I will let
9 her take it over from there.

10 THE COURT: All right. Ms. Cason?

11 MS. CASON: Thank Your, Honor. May it please the
12 Court? I call Keith Keener to the stand.

13 The witness, KEITH KEENER, was first duly sworn
14 and testified as follows:

15 DIRECT EXAMINATION

16 BY MS. CASON:

17 Q. Mr. Keener, you are -- you heard the assistant attorney
18 general with regard to your charges. Are those correct?

19 A. Yes, ma'am.

20 Q. Okay. And with respect to your sentencing, was that
21 correct as well?

22 A. Yes, ma'am.

23 Q. All right. Now, you have filed a PCR application; is
24 that correct?

25 A. Yes, ma'am.

1 Q. And in your application you believe that your trial
2 attorney provided you ineffective assistance.

3 A. Yes, ma'am.

4 Q. And also you believe that your plea, which you did
5 plead guilty, is that correct, was not knowingly and
6 voluntary; is that correct?

7 A. Yes, ma'am.

8 Q. Do you still believe that your guilty plea was not
9 knowingly and voluntary?

10 THE COURT: Just get right into the mic.

11 A. Could you repeat the question again, please, ma'am?

12 Q. Do you still believe that your guilty plea was not
13 knowingly and voluntarily?

14 A. No, ma'am.

15 Q. So you believe that you understood the circumstances,
16 you understood the plea that you gave the Court at the time
17 that you pled?

18 A. Yes, ma'am.

19 Q. So you withdraw with respect to that ground.

20 A. Yes, ma'am.

21 Q. Okay. All right. So moving forward, now, you were
22 represented by Mr. Lifsey; is that correct?

23 A. Mr. Lifsey, yes, ma'am.

24 Q. And you believe that there were several things that he
25 did not do that you believed were necessary.

1 A. Yes, ma'am.

2 Q. Was one of those things to address the fact that you
3 believed your indictment was defective?

4 A. Yes, ma'am.

5 Q. How do you know that the actual indictment was
6 defective?

7 A. Because at the time I was arrested in September on the
8 indictment I was wondering why it took all of the way to
9 January 1st for the indictment when they came and charged me
10 on October 6th of 2010, but the indictment -- I ain't get
11 indicted until I think it said February 1st of 2011.

12 Q. Okay.

13 MS. CASON: May I approach, Your Honor?

14 THE COURT: Yes, ma'am.

15 Q. Okay. I'm just going to give you one indictment which
16 is the unlawful carrying of a pistol. What specifically do
17 you believe is defective about that indictment?

18 A. First it said January 10th of 2011, now then they
19 scratched it out and go back, now it says February 1st on
20 the indictment. So that's the reason why I was asking which
21 date was I really supposed to have been indicted.

22 Q. Okay. Would that be a determining factor in whether or
23 not you pled guilty to the charges?

24 A. Yes, ma'am. In a way, yeah.

25 Q. Do you believe that that would have entitled you to

1 something different than what you actually received?

2 A. Yes, ma'am.

3 Q. What is it that you believe that would have entitled
4 you?

5 A. Like one, the unlawful carrying of a pistol, I feel I
6 shouldn't have been charged with that because they didn't
7 get no pistol out of my possession.

8 Q. So are you saying you would not have pled to that?

9 A. Yes, ma'am.

10 Q. Because of the defective indictment?

11 A. It really didn't affect no indictment. That's like --
12 basically the indictment and that -- if I would have knew
13 that it was then I would have pointed to him then at the
14 time that I knew the indictment didn't come out until
15 February 1st of 2011, but at the time I didn't know that.
16 So I feel like if that was the case I would have objected
17 and brung it to his attention, and I feel like he was
18 obligated to supposed to have brung that to my attention,
19 too.

20 Q. All right. Did you have an opportunity to speak with
21 Mr. Lifsey on more than one occasion?

22 A. A few occasions. It's not according to the minute that
23 I feel like he should have come and spoke with me upon the
24 time to go to trial -- I mean, going to court.

25 Q. Do you believe that you had enough time to meet with

1 him?

2 A. Kind of. Not like -- like we supposed to, not like a
3 lawyer is supposed to that's representing me. I say if a
4 lawyer, you know you've got a case that you're ready to go
5 to court, he should have been there like, "I'm court
6 appointed, I'm ready to go to court on this trial right here
7 this date." I feel like he should have been here more
8 often, come and see me at least once or twice. He came like
9 four or five times out of a year I had seen Mr. Lifsey and I
10 had been at the county for two years, right there at two
11 years and some change.

12 Q. All right. Now, let's talk about your issues with
13 regard to the witness statements. Did you receive copies of
14 all of the witness statements in discovery?

15 A. Yes. I had received all of the stuff, partial of one.
16 I got half of a statement, and then like the week before I
17 get ready to go to trial I get the rest of the statement.

18 Q. Did you talk with Mr. Lifsey about that?

19 A. We didn't conversate about it because at the time -- I
20 didn't get it -- like I got the statement from Mr. Caldwell,
21 I got that statement like the week before I got ready to go
22 to trial and I done went ahead and signed for the plea.

23 Q. Now, you also had an issue with -- or you had an issue
24 with the actual statements that you did receive; is that
25 correct?

1 A. Yes, ma'am.

2 Q. Which statements in particular did you have an issue
3 with?

4 A. Like the statement I think there's -- I can't remember
5 the lead number, but it's Shareef (phonetically) Sanders,
6 she gave a statement saying that she was 65 percent sure
7 that it was me who pointed the firearm. How can you be
8 65 percent sure? You've got to be 100 percent sure to say
9 that was me.

10 Q. And did you discuss this with your attorney?

11 A. Basically, we talked about it.

12 Q. Did you all come to any conclusion?

13 A. No.

14 Q. Did this -- since you pled the person didn't testify,
15 but did your attorney interview this witness?

16 A. Not that I know of he didn't.

17 Q. How would that statement -- since you did have it prior
18 to the trial; is that right?

19 A. Yes, ma'am.

20 Q. How would that have changed the outcome of your plea
21 and your sentence?

22 A. I feel like if I would have went to trial with her
23 statements and she would have had to come up there, I feel
24 like the Judge would have -- with her saying she's
25 65 percent sure, he would have felt the same way, like she's

1 got to be 100 percent sure. You can't be 65 percent sure
2 saying that someone committed this crime.

3 Q. All right. And you also had an issue with another
4 statement.

5 A. With the Deputy Faile.

6 Q. Deputy Faile.

7 A. He gets a lineup of me, but it says on the front of the
8 lineup that he can identify me as the one who was the
9 shooter. But in his statement he said he knows me from the
10 one from the incident, an incident that had happened earlier
11 in the club, he knew that the person, though, was
12 Mr. Caldwell. How can you be sure if they give you a
13 lineup? If you know it was me from the person that was Mr.
14 Caldwell you're supposed to never pick me out of that
15 lineup.

16 Q. Okay. Did you talk that over with your attorney?

17 A. Yes, ma'am.

18 Q. And did you all come to any conclusion on that
19 statement?

20 A. He was like, he agreed too, the same thing. But at the
21 time we talked about it he didn't come to no conclusion or
22 nothing that he could do about it.

23 Q. Okay. And based on the fact that you all did come to a
24 conclusion, how would -- how did that affect you or your
25 plea or the sentence? How do you believe it affected you?

1 A. Like if he would have put -- I feel like if he would
2 have put more effort into it then I probably would have got
3 a lesser sentence and wouldn't have been charged with this
4 case like this right here, I wouldn't have been charged. I
5 would have had a lesser sentence.

6 Q. And why do you believe you would have gotten a lesser
7 sentence?

8 A. Because the officer said he know for a fact, he said in
9 his statement he seen me with an incident, he should have
10 been able to pick me out of a lineup saying that that was me
11 if you know for a fact. He just said it -- he said in his
12 statement that he knows for a fact it was me, the one from
13 the incident earlier with Mr. Caldwell so I feel like they
14 show you a lineup -- and the statement say he was six feet
15 away from me at the time I was pointing and presenting a
16 firearm he say, so he should have been able to tell who I
17 was if he was that close to me.

18 Q. Now, you said that you received a statement from a
19 witness Caldwell; is that correct?

20 A. Yes, ma'am.

21 Q. You received a partial statement?

22 A. Yeah, partial. And then I get another statement after
23 he done been incarcerated in the federal court saying he's
24 saying this and saying that. I can't exactly remember right
25 off the bat what it was because I misplaced the statement,

1 but I got parts of what he said when he gave the statement
2 at.

3 Q. And when did you receive this statement?

4 A. I know it was like June 15th.

5 Q. How did this statement, or how do you believe this
6 statement affected your plea or your sentence, or had you
7 received it prior to the week before trial?

8 A. If I would have received it then I would have rather
9 went ahead and put him on the stand and have him say the
10 same thing that he said in his statement on the stand.
11 Because he done gave a statement before -- I got a half
12 statement where he's saying for a fact it wasn't -- he was
13 saying it was somebody else in my statement, in one of the
14 statements, and now in this statement he come back after he
15 done caught some time saying something else in this
16 statement.

17 Q. So you're saying you would not have pled guilty?

18 A. No, ma'am. I would have went on ahead to trial.

19 Q. Did you talk that over with Mr. Lifsey prior to the
20 plea?

21 A. We talked, but he -- basically just like he said, that
22 statement, it was kind of looking kind of bad because it had
23 witnesses saying this and saying that.

24 Q. Now, you also had an issue with I believe Mr. Lifsey
25 didn't object to some statements that were made on the

1 record?

2 A. In court, yes, ma'am.

3 Q. And this was at the plea; is that correct?

4 A. It was at the time -- yeah, at the time I received my
5 time.

6 Q. At the time of sentencing?

7 A. Yes, ma'am.

8 Q. So your sentencing was held one day, and prior to that
9 you had already pled. Who spoke at the sentencing?

10 A. The sheriff. The sheriff had spoke and a couple of
11 more of the family members, the victim's family members and
12 stuff.

13 Q. And you had an issue with the sheriff making a
14 statement; is that correct?

15 A. Yes, ma'am.

16 Q. Did you talk with your attorney about that?

17 A. At the time when we talked right then and there he was
18 just like, "Are you going to object?" And I can't really
19 recall what he said. Did he say anything about it? I can't
20 remember that he did but I don't think so, he didn't say
21 anything really about it. Because the sheriff said
22 something that I feel like that really ain't have nothing to
23 do with my case, this is a whole nother case.

24 Q. So specifically what did you object to that the sheriff
25 said?

1 A. He brung up an incident that happened the same night at
2 the hospital with one of my friends and I feel like he
3 shouldn't -- they ain't had nothing to do with my case, that
4 ain't never obtained to me. I wasn't at the hospital when
5 that happened so what did that have something to do with me?
6 And he brung up something that I got an incident in the
7 jailhouse where I got in a fight, which I wasn't charged for
8 it and I got my jaw fractured. I feel like he is downgraded
9 me like I ain't changing and stuff, I can't predict what is
10 happening at the time.

11 Q. And do you believe that his statements affected the
12 Judge's decision to 27 years?

13 A. Yes, ma'am.

14 Q. Did you talk with Mr. Lifsey about that to see about
15 objecting to the sheriff making the statement?

16 A. Yes, ma'am. I said some words to him at the time but
17 at the time we was in the courtroom, and in the courtroom I
18 said something. I was like, "How can you bring this up,
19 something that ain't got nothing to do with this case?"

20 Q. Were there any other reasons that you believed that
21 Mr. Lifsey -- or were there any other instances that Mr.
22 Lifsey didn't do what you instructed him to do in this case?

23 A. I really remember -- I asked him for an appeal and -- I
24 know by now I asked for an appeal and I don't think he never
25 did file for the appeal.

1 Q. When did you ask for an appeal?

2 A. The same day of the sentencing.

3 Q. Were you told that you would -- that he would file an
4 appeal?

5 A. He told me he would file, because I asked for the PCR
6 papers, too, and he said he was going to send them to me.

7 MS. CASON: I have no further questions.

8 THE COURT: All right. Ms. Williams?

9 CROSS EXAMINATION

10 BY MS. WILLIAMS:

11 Q. Mr. Keener, you agreed with the facts that the
12 Solicitor stated in this case, right?

13 A. Right.

14 Q. And you gave some statements in this case, too, right?

15 A. Yes, ma'am.

16 Q. In one of the statements you admitted that you fired
17 into that crowd, right?

18 A. Yes, ma'am.

19 Q. And you also told the Judge that you'd had enough time
20 with your attorney; is that correct?

21 A. Yes, ma'am.

22 Q. You told him that he'd answered all of your questions,
23 did everything he asked you to do?

24 A. Yes, ma'am.

25 Q. Is that correct?

1 A. Yes, ma'am.

2 Q. And you understood that the sentence was up to 30
3 years.

4 A. Zero to 30.

5 Q. And you even apologized to the victim's family.

6 A. I didn't only -- I apologized to everyone, my family
7 and all.

8 MS. WILLIAMS: Thank you. I don't have anymore
9 questions.

10 THE COURT: Thank you, sir, you may step down.

11 MS. CASON: Your Honor, that's the petitioner's case.

12 THE COURT: All right. Ms. Williams?

13 MS. WILLIAMS: Your Honor, the State would call Michael
14 Lifsey.

15 THE COURT: All right, Mr. Lifsey.

16 The witness, MICHAEL LIFSEY, was first duly
17 sworn and testified as follows:

18 DIRECT EXAMINATION

19 BY MS. WILLIAMS:

20 Q. Mr. Lifsey, can you tell me just briefly about your
21 legal experience and how you came to represent Mr. Keener?

22 A. I have been licensed to practice law since 1991. I
23 have been either a public defender or a prosecutor since
24 1994. I was named -- became the Circuit Public Defender for
25 the Sixth Circuit in March of 2009. I took this case

1 shortly after the arrest.

2 Q. Do you recall how many times do you think you got to
3 meet with Mr. Keener?

4 A. Many, many, many times. I went to see him at the jail
5 more times than I could count. He remained in jail, he
6 could never make bond. He actually had a bond, I don't
7 recall off the top of my head what it was, but he had a
8 bond. We had a bond hearing and Judge Goldsmith set a bond
9 but he never could make it, and I met with him numerous
10 times at the jail.

11 Q. Tell me about a little bit about those meetings. Did
12 you discuss statements?

13 A. We did. Here is the biggest -- the problem in this
14 case is Mr. Keener confessed, you know. And, of course,
15 they had some witness statements and he mentioned some of
16 those, but the biggest problem was his own confession. He
17 gave basically two statements to law enforcement, he
18 initially -- he gave the one on the 21st of -- excuse me, if
19 you'll give me just one second I'll pull out the statements.
20 He gave two statements to law enforcement, one dated
21 September 21st, 2010, and then a second statement dated
22 September 22nd, 2010. The September 22nd statement was
23 particularly damning because he admits going to the Club 72
24 with a weapon. He says, "I bought it from my people in
25 Philly. I had the gun in my pocket when Latoya picked me

1 up. When I got to the club I put the gun under the tire of
2 her Ford Explorer. The door was locked, that was the only
3 place I had to put the gun." Then he admits later on -- the
4 statement goes on and on, but he talks about -- there's a
5 question and answer format portion of the statement.

6 "Question. What did you do when you ran out of the club? I
7 ran towards the car and I was just standing out there, I
8 looked around and I saw Julio and Duke Chalk fighting, there
9 was a group starting to gather around them. I had already
10 done got the gun out from under the car, and when I saw they
11 were surrounding Duke that's when I fired. I fired at that
12 crowd that was surrounding Duke. I wasn't trying to hit
13 nobody when I shot. I shot no more than three times and the
14 gun jammed." And then he admits running off. So the
15 biggest problem in this case from the very beginning was his
16 own statement, and that was the hurdle that we had to
17 overcome. And, of course, the problem is that statement
18 really isn't even a manslaughter statement, it's more of a
19 murder statement but we were able to negotiate it down to
20 voluntary manslaughter.

21 Q. You mentioned a plea affidavit. Tell me a little bit
22 about that.

23 A. I did. I tend to not 100 percent of the time, but most
24 of the time on very serious cases -- of course, as I say
25 this I didn't do it on one last week -- but on most cases,

1 very serious cases where people get 20 years or more I
2 generally do a plea affidavit, it's a multipage affidavit.
3 I can't remember -- it's something I started using when I
4 worked in York County at the public defenders office up
5 there. I don't have a copy of it here but it's certainly
6 with the clerk's files because I referenced it in the
7 transcript, I reference handing it up to the Judge. It goes
8 over their constitutional rights, and the normal -- it goes
9 over basically the plea colloquy that the Judge does and I
10 always have them sign it, which I did in this case.

11 Q. And you asked for a sentence of 15 years. Was there
12 any sentence promised in this case?

13 A. No, ma'am. This is a case where they negotiated it
14 down to voluntary manslaughter. He had some accompanying
15 weapons charges and things like that, but they ran
16 everything concurrent. So he was facing up to 30 years in
17 prison and so there was no particular promise as to sentence
18 beyond the minimum that is obviously required by voluntary
19 manslaughter.

20 Q. Were you able to clarify the statements regarding the
21 later incident at the hospital?

22 A. Yes, ma'am. I mean, the problem -- this is the other
23 problem. His statement was the biggest legal hurdle to why
24 we ended up with a plea. The other hurdle in regards to the
25 cases, this was a fairly high profile matter that occurred

1 in Chester, and what happened was you basically had three
2 different incidents that were all in public perception,
3 whether accurate or not, but they were publicly perceived as
4 being one incident. Basically you had a shooting inside the
5 nightclub where people were hurt but not killed. Then you
6 had the shooting in the parking lot for which Mr. Keener was
7 convicted which was a murder pled down to manslaughter. And
8 you had then as they are taking wounded from the -- this
9 happened right around the corner from the hospital, I guess
10 about a mile, maybe less than a mile from the hospital --
11 they take people from the club to the hospital and a person
12 is shot and killed in the hospital breezeway. I mean, this
13 was a fairly high profile matter for Chester, it got lots of
14 press and there were marches, it was a pretty significant
15 thing. What I tried to do throughout this case was sort of
16 decouple these incidents and try to make them viewed as one.
17 And, of course, the sheriff spoke at the sentencing, and I
18 believe law enforcement has a right to speak, I don't think
19 there's anything particularly objectionable about them
20 speaking and giving an opinion, but I did after the
21 Solicitor finished his presentation at sentencing put on the
22 record that I thought it was -- two things I thought were
23 unfair about what the sheriff had said. One, I thought that
24 linking all of these matters together because there
25 certainty wasn't any suggestion that Mr. Keener was involved

1 at the incident at the hospital. I also thought it was
2 unfair for them to criticize Mr. Keener for the incident
3 that happened at the jail. He got his jaw broken and he was
4 the victim in that case, not a defendant, I put those things
5 on the record. You know, the Solicitor asked -- the bottom
6 line to this case -- this is more than you asked and I'm
7 sorry -- the bottom line in this case is I think factually
8 it was a murder case, we got them to offer voluntary
9 manslaughter which was a victory in and of itself. The
10 Solicitor asked for 30 and he only got 27, so I know that's
11 a long time, I'm not making light of 27 years, but this was
12 a very serious, high profile case and I think that was a
13 fairly decent outcome and a very bad circumstance for Mr.
14 Keener.

15 Q. And you've heard Mr. Keener discuss some discrepancies
16 or issues with witness statements. Did the issues he raised
17 today affect your perception of whether this would be
18 successful at trial?

19 A. Well, no. Obviously all of the witnesses tell sort of
20 different stories and some of them had a record and I'm sure
21 we would have been able to cross examine them. He's right,
22 Mr. Caldwell -- my memory of Mr. Caldwell's statements --
23 and I haven't reviewed all of them -- but my memory is Mr.
24 Caldwell says one thing, then he gets in federal custody and
25 he's interviewed at a federal correctional institution and

1 gives a statement implicating Mr. Keener, and of course, we
2 would have been able to cross examine -- there's plenty of
3 fire to cross examine these people, but the problem is
4 Mr. Keener himself confirms their account of him being the
5 shooter and that was the biggest problem to me.

6 MS. WILLIAMS: Thank you so much for your time,
7 Mr. Lifsey.

8 THE COURT: Ms. Cason?

9 MS. CASON: No questions of this witness, Your Honor.

10 THE COURT: Thank you, sir, you can step down. The
11 State can call its next witness.

12 MS. WILLIAMS: Your Honor, that's the State's case.

13 THE COURT: All right. Arguments, Ms. Cason?

14 MS. CASON: Thank you, Your Honor. May it please the
15 Court? Mr. Keener did plead guilty and did -- pled guilty
16 to a lesser charged offense and was sentenced. He does
17 believe, however, that even though the testimony of Mr.
18 Lifsey was that he met with him on multiple occasions and
19 that he tried to mitigate the time that he would spend in
20 incarceration at the sentencing, he does believe that Mr.
21 Lifsey did not actually meet with him as much as he has
22 stated and that he believes that that in and of itself would
23 be ineffective assistance of counsel. He also indicates
24 that he would not have pled guilty, he would have insisted
25 on a trial had he had all of the statements from one of the

1 witnesses, that is Mr. Caldwell. So he does believe that he
2 would be entitled to a new trial based on those issues.

3 THE COURT: All right. Ms. Williams?

4 MS. WILLIAMS: Your Honor, Mr. Lifsey has testified
5 that he met with him multiple times, this is something Mr.
6 Keener confirmed during the plea hearing. Also, Mr. Keener
7 has failed to show the prejudice element of this in that he
8 has not shown what additional preparation would have done,
9 how that would have affected his decision to plead guilty.
10 I believe with the statements of Mr. Caldwell, that the
11 testimony was that he did receive those prior to his guilty
12 plea even though it was a few days prior, however he was
13 aware of them and still made the decision to plead guilty.
14 I think Mr. Lifsey summed this case up very well and he
15 appears to have talked to his client about it and his client
16 made a very wise choice in this matter with all of the
17 evidence in front of him.

18 THE COURT: All right. Based upon the testimony and
19 evidence presented and arguments of law presented by the
20 attorneys I respectfully deny the application for post
21 conviction relief. Ms. Williams, if you would please
22 prepare the order.

23 (End of the hearing.)

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2 I, the undersigned, Michael C. Watkins, Official Court
3 Reporter for the Sixth Judicial Circuit of the State of South
4 Carolina, do hereby certify that the foregoing is a true,
5 accurate and complete transcript of the proceedings had and
6 evidence introduced in the trial of the captioned case
7 relative to appeal, in the Court of Common Pleas for Chester
8 County, South Carolina, on the 3rd day of February, 2014.

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


11

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May 25, 2014

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Michael C. Watkins
Court Reporter

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHESTER)
)
 Keith Ramon Keener, #321935,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2012-CP-12-0568

ORDER OF DISMISSAL

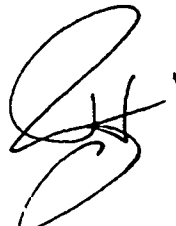
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 2014 FEB 26 3:27
 CLERK OF COURT
 CHESTER COUNTY S.C.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed on November 2, 2012. An evidentiary hearing was convened on February 3, 2014, at the Lancaster County Courthouse. The Applicant was present at the hearing and was represented by Vanessa Cason, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Michael Lifsey, Esquire. This Court had before it the records of the Chester County Clerk of Court, the guilty plea transcript, the sentencing transcript, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Chester County Clerk of Court. He was indicted for murder (2011-GS-12-0052), possession of weapon during violent crime (2011-GS-12-0053), and unlawful carrying of pistol (2011-GS-12-0055). The Applicant was



represented by Michael Lifsey, Esquire. On June 18, 2012, the Applicant pled guilty to the lesser-included offense of voluntary manslaughter and pled to the remaining offenses as indicted. On June 25, 2012, he was sentenced by the Honorable Brooks P. Goldsmith to confinement for twenty-seven (27) years for voluntary manslaughter, five (5) years for possession of a firearm during the commission of a violent crime, and one (1) year for carrying a pistol, all running concurrently. Applicant did not appeal his conviction and sentence.

In his application for post-conviction relief (PCR), Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel; and
2. Involuntary guilty plea.

At the PCR hearing, Applicant dismissed his claim of involuntary plea and proceeded solely on issues of ineffective assistance of counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP).

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

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

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



Failure to Investigate / Inadequate Preparation

Applicant felt that he did not have adequate time with his attorney prior to his plea. Applicant testified that he spoke with Counsel a few times but not as many times as he should have. Applicant recited several issues he had with evidence, including:

- Applicant received all witness statement but received only a partial statement for one witness and got the rest of the statement approximately one week before trial.
- Potential witness Sharif Sanders' statement reflects that he was only 65% sure that it was Applicant.
- Deputy Faile could not identify Applicant in a lineup but said in a statement he knew him.

Applicant nonetheless stated that he did discuss several of these issues with counsel. During the plea colloquy, Applicant affirmed that he had adequate time with counsel. (June 18, 2012, Tr. p. 15, lines 3-18.)

Counsel affirmed that there was fodder for cross-examination if the matter proceeded to trial and that he discussed these issues with Applicant. Counsel opined, however, that the insurmountable obstacle at trial would be Applicant's confession. Counsel added that Applicant's confession would confirm testimony from these witnesses as Applicant admitted hiding a gun in an accessible location and firing toward the crowd. Counsel testified that he met with Applicant "more times than [he] can count." Counsel further opined that Applicant would not receive a charge on a lesser-included offense at trial.

I find Counsel's testimony to be credible. It appears from the evidence that Counsel met with Applicant sufficiently to provide him with evidence in the case and discuss witness statements and potential inconsistencies which could be explored at trial. Having reviewed these things with Counsel, Applicant decided to take advantage of a plea offer to a lesser offense, a benefit not likely available to him at trial. Based on all the foregoing, I find that Counsel's preparation and meetings



with his client were well within reasonable professional norms. Further, Applicant has pointed to no evidence or issue not known to him before his plea which would have affected his decision to plead guilty. Therefore, I find that even if Counsel had been deficient in his preparation and consultation with Applicant, Applicant has failed to meet his burden of demonstrating prejudice therefrom. See for example Harris v. State, 377 S.C. 66, 75 - 76, 659 S.E.2d 140, 145 (2008) (Applicant failed to carry burden where it was merely speculative that there would have been a different result had counsel spent additional time with his client).

Failure to Object to Statements at Plea

Applicant also stated that Counsel was ineffective in failing to object to statements made at his plea by Sheriff Richard Smith. During the sentencing hearing, Sheriff Smith noted that the shooting occurred at a club, the type of place where "people just kind of enjoy themselves and try to get away from their hard work..." (June 25, 2012, Tr. p. 21, lines 14-16.) The sheriff stated that the act of discharging a firearm into a crowd showed "reckless disregard for life and safety for everybody." (June 25, 2012, Tr. p. 22, lines 3-4.) The sheriff mentioned briefly that Applicant's act was one in a string of incidents at the club that night and that ultimately a shooting occurred at the hospital because of incidents at the club. The sheriff added that Applicant had "picked fights with people in the jail." (June 25, 2012, Tr. p. 22, line 12.) The sheriff then noted the loss and impact for the victim's family and the need for community members to feel safe. The sheriff requested the maximum sentence, just as the solicitor did.

Counsel testified that he did not feel that there was a legal basis for objection to the sheriff's testimony. However, he noted that he was able to rebut some of the sheriff's comments. Particularly, Counsel noted that he corrected the sheriff's statement with regard to incidents at the jail. Counsel



informed the plea court that the other person involved in the fight had been charged in the fight and was therefore the aggressor, making it unfair to hold the incident against Applicant. (June 25, 2012, Tr. p. 29, line 21 – p. 30, line 4.) Counsel also reiterated during the sentencing hearing that Applicant was not involved in the other incidents at the nightclub and hospital. Counsel argued that it was unfair to blame Applicant for the other incidents. (June 25, 2012, Tr. p. 30, lines 5-20.) Counsel's statements therefore corrected any misapprehension the court may have had.

This court also notes that at the solicitor pointed out that Applicant had "nothing to do" with the other incident at the club. (June 25, 2012, Tr. p. 26, line 1.) The solicitor also argued that while Applicant was only responsible for the act he committed, the presence of numerous individuals with guns, including Applicant, led to a series of tragic events. (June 25, 2012, Tr. p. 28, line 14 – p. 29, line 5.) The solicitor also requested the maximum sentence of 30 years. As to the string of events and the request for sentence, the solicitor's remarks were largely cumulative to those of the sheriff.

With regard to sentencing,

the judge is required to listen and give serious consideration to any information material to punishment... A trial judge generally has wide discretion in determining what sentence to impose. It is also true that before making that determination, a judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider or the source from which it may come.

State v. Franklin, 267 S.C. 240, 245-246, 226 S.E.2d 896, 897-898 (1976). With the broad scope of inquiry permitted at sentencing, I find that Counsel was not deficient in failing to object to the sheriff speaking. Further, I find that Applicant has failed to establish prejudice such that but for any failure to object to the statements Applicant would have insisted on going to trial. Counsel corrected any misapprehension that the court may have had following the sheriff's statement, particularly with

regard to the incident at the jail and the fact that Applicant had no direct involvement in the other shootings that evening, and many of the sheriff's remarks were cumulative to the solicitor's. Applicant received the benefit of a plea to the lesser charge of voluntary manslaughter, a benefit which Counsel noted would have been unlikely at trial. Applicant also received a sentence less than the 30 year maximum, a sentence he understood was possible and which the solicitor requested. For all these reasons, I find Counsel was not ineffective in this regard.

CONCLUSION

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

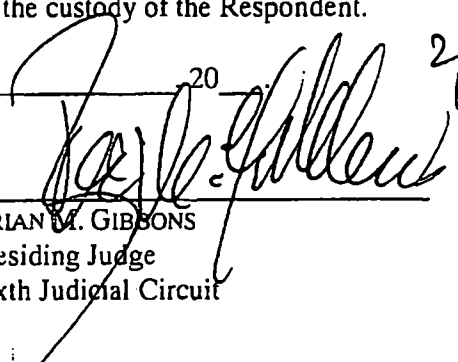
This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to Rule 243, SCACR, for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this _____ day of _____, 20_____

2/23/14



 BRIAN M. GIBBONS
 Presiding Judge
 Sixth Judicial Circuit

_____, South Carolina.

WITNESSES

W.C. Murphy (GSD) 10-9425

S. MITCHELL

DOCKET NO. 2011-GS-12-052

The State of South Carolina

County of Chester

COURT OF GENERAL SESSIONS

JANUARY TERM 2011

ARREST WARRANT NUMBER/DOA

M251479 (DOA-10-5-10)

THE STATE

VS.

ACTION OF GRAND JURY

Keith Ramon Keener

PELIT

Foreperson of Grand Jury
Date: 2-1-11

VERDICT

Indictment for

Murder

Foreperson of Petit Jury
Date:

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

Filed and correct copy of this record
in this office.
[Signature]
Clerk of Court
Chester County, SC
Date: 1/2/2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

INDICTMENT

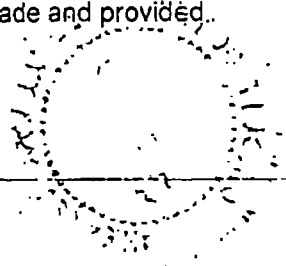
FEBRUARY 1, 2011

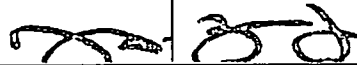
At a Court of General Sessions, convened on January 10, 2011, the Grand Jurors of Chester County present upon their oath:

MURDER

That Keith Ramon Keener did in Chester County on or about September 20, 2010, feloniously, willfully and with malice aforethought kill and murder Antonio Price by means of shooting him and that the said victim did die as a proximate result thereof, in violation of the common law of South Carolina and §16-3-10, *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.





Douglas A. Barfield, Jr., SOLICITOR

WITNESSES

W.C. Murphy (GSD) 10. 9425

F. MITCHELL

DOCKET NO. 2011-GS-12-055

The State of South Carolina

County of Chester

COURT OF GENERAL SESSIONS

JANUARY TERM 2011

ARREST WARRANT NUMBER DOA

M251484 (DOA-10-5-10)

ACTION OF GRAND JURY

Keith Ramon Keener

THE STATE

vs.

Foreperson of Grand Jury
Date: 11/4/11

VERDICT

Indictment for

Unlawful Carrying of Pistol

SC Code: § 16-23-20, § 16-23-50(A)(2)

CDR Code: 0044

Class: Misdemeanor, C

Foreperson of Petit Jury

Date:

Lee H. Carpenter
11/4/2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

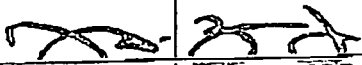
INDICTMENT

At a Court of General Sessions, convened on ~~January 10~~ ^{FEBRUARY 1}, 2011, the Grand Jurors of Chester County present upon their oath:

UNLAWFUL CARRYING OF PISTOL

That Keith Ramon Keener did in Chester County on or about September 20, 2010, carry about his person a pistol, the defendant not being authorized by law to do so pursuant to any of the enumerated exceptions set forth in § 16-23-20 of the Code of Laws of South Carolina and in violation of § 16-23-20, *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.



Douglas A. Baffield, Jr., SOLICITOR

