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**S.C. Supreme Court**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Appeal from Horry County

Steven H. John, Circuit Court Judge

---

BARBARA CHAVIS WRIGHT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000198

---

APPENDIX

---

WANDA H. CARTER  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

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Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF HORRY	)	(11-GS-26-04335)
	)	(11-GS-26-04336)
STATE	)	
	)	
VERSUS	)	TRANSCRIPT OF RECORD
	)	
BARBARA CHAVIS WRIGHT	)	
	)	April 12, 2012
	)	Conway, South Carolina

**B E F O R E:**

HONORABLE EDWARD B. COTTINGHAM, JUDGE.

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

JENNINGS SCOTT HUCKS, ESQ.  
ASSISTANT SOLICITOR FOR HORRY COUNTY  
ATTORNEY FOR THE STATE

WILLIAM EDWARD CHRISCO, ESQ.  
ASSISTANT PUBLIC DEFENDER FOR HORRY COUNTY  
ATTORNEY FOR DEFENDANT

DIXIE COX EUBANK  
CIRCUIT COURT REPORTER  
FIFTEENTH JUDICIAL CIRCUIT

1 (THE FOLLOWING TAKES PLACE ON APRIL 12, 2012.)

2 MR. HUCKS: Your Honor, before you stands Ms. Barbara  
3 Chavis Wright with her attorney of record, Mr. Chrisco.

4 It's the State's understanding, Your Honor, that Ms.  
5 Wright is present in court today before you charged under  
6 indictment (11-GS-26-04335), with the crime of murder.

7 And further before you, under indictment (11-GS-26-  
8 04346) with the crime of attempted murder.

9 The State's understanding is that she will be pleading  
10 guilty to the lesser-included offense of the murder of  
11 voluntary manslaughter, under the thirty year statute, and to  
12 attempted murder under the zero to thirty year statute, with a  
13 recommendation from the State of twenty years of active  
14 incarceration.

15 THE COURT: How old is the Defendant, please?

16 MR. HUCKS: She's sixty-four years old, Your Honor.

17 THE COURT: Sixty-four. Yes. And you negotiated a  
18 twenty year sentence?

19 MR. HUCKS: Yes sir.

20 THE COURT: Give me the factual basis for both of these  
21 indictments, please.

22 MR. HUCKS: Yes sir, Your Honor.

23 The two victims in this case were a gentleman by the  
24 name of Jeffrey Carter. He is the victim of the attempted  
25 murder, and a lady by the name of Ms. Keisha Godley, who is

1 the victim of the voluntary manslaughter.

2 THE COURT: Did the family of the victims wish to be  
3 present?

4 MR. HUCKS: Ms. Godley's family is here, Your Honor. I  
5 do not know if they wish to speak or not, but ---

6 Do you wish to say anything, at the appropriate time  
7 when the Judge will ---

8 Would you like to hear from them now, or would you like  
9 to get the facts through first?

10 THE COURT: Does somebody wish to be heard?

11 MR. HUCKS: Yes, Your Honor.

12 THE COURT: They certainly have that opportunity. But  
13 let me hear the facts first, please.

14 MR. HUCKS: Yes. Yes sir.

15 Ms. Wright had been dating Mr. Carter for an extended  
16 period of time. Mr. Carter had broken up with Ms. Wright, and  
17 she began following him, and calling him at work, and things  
18 of that nature.

19 He went to a Narcotics Anonymous and Alcoholics  
20 Anonymous class which Ms. Godley was also a participant in.  
21 And on or about September the 8th of last year Mr. Carter and  
22 Ms. Godley left the Narcotics Anonymous and Alcoholics  
23 Anonymous meeting. They got on the back of Mr. Carter's  
24 moped, where he was going to give Ms. Godley a ride back to  
25 the part of town that she stayed in, which was across Myrtle

1 Beach from the location of the meeting.

2 Ms. Wright was in the parking lot of the Santee Cooper  
3 building where they were having the meeting, and she called  
4 out several times to Mr. Carter, trying to get his attention.  
5 He told her that he didn't want to talk to her, and got on his  
6 moped with Ms. Godley and left.

7 The Defendant then followed them for some period of  
8 time, three or four blocks, and at the intersection of 11th  
9 Avenue and Joe White Boulevard, by the Myrtle Beach Police  
10 Station, she rear-ended them, while they were -- while they  
11 were riding on the moped.

12 She hit the moped, knocking Ms. Godley off pretty much  
13 immediately.

14 **THE COURT:** Was that actually a deliberate action?

15 **MR. HUCKS:** That was a deliberate action.

16 **THE COURT:** Okay.

17 **MR. HUCKS:** She intended to -- she intended to hit Mr.  
18 Carter because she was mad at him for not talking to her when  
19 she wanted to talk to him, and Ms. Godley was on the back of  
20 the moped, and Ms. Godley fell off immediately, where she was  
21 killed, and actually thrown across the street, where she  
22 rolled across the street, striking her head and hitting a curb  
23 and dying.

24 She was on life support for some period of time, but she  
25 was, for all intents and purposes, dead there.

1           Mr. Carter was on the moped and the moped fell on top of  
2 him, and he slid under the moped and managed to cut his leg,  
3 and hurt his arm to an extent, but not great -- not to the  
4 level of great bodily injury, leading to the plea today to  
5 voluntary manslaughter, and attempted murder.

6           **THE COURT:**   Was there a confession in this on behalf of  
7 the Defendant?

8           **MR. HUCKS:**   Yes, Your Honor.  She did give a post-  
9 Miranda statement where she admitted to the Myrtle Beach  
10 Police Department that she had intended, the entire time, from  
11 the time Mr. Carter scorned her advances, spurned her  
12 advances, that she intended to run him over the car to make  
13 him stop so he would talk to her.

14           And we did, Your Honor, we -- for purposes of today we  
15 did have Ms. Wright evaluated under Blair, and I believe that  
16 Mr. Chrisco will consent to the findings of the Department of  
17 Mental Health.

18           **THE COURT:**   Let's stop right there ---

19           **MR. HUCKS:**   Yes sir.

20           **THE COURT:**   ---And have a Blair hearing before we  
21 proceed.

22           **MR. HUCKS:**   Yes sir, Your Honor.

23           **THE COURT:**   The statute requires that somebody having  
24 been committed must have a Blair hearing.

25           **MR. HUCKS:**   Yes sir, Your Honor.

1           And I believe that, as we discussed in chambers, that  
2 Mr. Chrisco would consent to the findings of the Department of  
3 Mental Health.

4           **THE COURT:**   Give me the findings, please.

5           **MR. HUCKS:**   Yes sir, Your Honor.

6           They found, Your Honor, that she was competent to stand  
7 trial after a full evaluation through the Department of Mental  
8 Health, that she understood what she was doing, and understood  
9 right from wrong, and did pass the test as set forward in  
10 **Blair**, and I would pass forward the evaluation at this time,  
11 that Mr. Chrisco would consent to for purposes of Court's  
12 Exhibit for Your Honor's review.

13           **THE COURT:**   Mr. Chrisco, have you been provided a copy  
14 of this Report?

15           **MR. CHRISCO:**   I have, Your Honor.

16           **THE COURT:**   Do you have anything contra to present to  
17 me on these issues that were specifically raised in this  
18 Report?

19           **MR. CHRISCO:**   No, Your Honor.

20           **THE COURT:**   Do you have any further testimony on this  
21 issue?

22           **MR. HUCKS:**   No sir, Your Honor.

23           **THE COURT:**   All right, sir.

24           **MR. HUCKS:**   We believe the findings speak for  
25 themselves.

1           **MR. CHRISCO:** Your Honor, the Defense has no objection  
2 to making that part of the record.

3           **THE COURT:** All right, sir.

4           **THE COURT:** All right, let the record reflect that  
5 State Report is specifically made a part of the record, by and  
6 with the consent of the Defendant, and the findings therein  
7 are specifically adopted by me as my findings on this, a Blair  
8 issue.

9           And Ms. Dixie, I now make it a Court's Exhibit.

10          Thank you, Ma'am.

11                   **(REPORT OF DEPARTMENT OF MENTAL HEALTH MARKED COURT'S**  
12 **EXHIBIT NUMBER 1.)**

13           **THE COURT:** All right. Have you concluded now?

14           **MR. HUCKS:** Yes, Your Honor. Those are the facts.

15           **THE COURT:** Okay.

16           **MR. HUCKS:** If you would let me know when you wish to  
17 hear from the family of ---

18           **THE COURT:** Okay. Well, prior to sentencing obviously  
19 I'll hear from them, but I want to inquire as to her  
20 Constitutional Rights.

21           Mr. Chrisco, you represent this Defendant?

22           **MR. CHRISCO:** Your Honor, I was appointed to represent  
23 her back in September. We have sat down several times, and we  
24 have discussed all the evidence in the case.

25           I have advised her of her Constitutional Rights to have

1 a jury trial, and to pick twelve people, cross-examine  
2 witnesses, and that she could testify at trial or not testify,  
3 and if she chose not to testify the Court would instruct the  
4 jury that they couldn't hold that against her, Your Honor.

5 THE COURT: Let me ask you this. We've got to -- had a  
6 Blair hearing. We've sent her for evaluation and obviously  
7 the hearing has come back affirmatively. Have you had any  
8 difficulty in discussing the case with her?

9 MR. CHRISCO: No, Your Honor, I have not.

10 THE COURT: Okay.

11 MR. CHRISCO: At first I had some -- some feelings  
12 about it, but I understand that she just has an eighth grade  
13 education, and she's just a simple person, Your Honor.

14 THE COURT: I see.

15 Ms. Wright ---

16 A. Yes sir.

17 THE COURT: ---Do you know why you are here?

18 A. Yes sir, I do.

19 THE COURT: You are charged with two very serious  
20 matters, one, murder - they are permitting you to plead to  
21 manslaughter, and the other, attempted murder, it being  
22 alleged that you deliberately struck that motorcycle and by  
23 which one person was killed; do you understand that?

24 A. Yes sir.

25 THE COURT: And are you pleading guilty to that set of

1 facts?

2 A. Yes sir.

3 THE COURT: You deliberately struck the motorcycle?

4 A. Yes sir.

5 THE COURT: And you knew there were two people on it?

6 A. Yes sir.

7 THE COURT: And one, unfortunately, the girl, was  
8 killed; is that correct?

9 A. Yes sir.

10 THE COURT: You are pleading freely and voluntarily; is  
11 that correct?

12 A. Yes sir.

13 THE COURT: Nobody is forcing you to plead?

14 A. (NODS HEAD NEGATIVE.)

15 THE COURT: Nobody has threatened you in any way?

16 A. No sir.

17 THE COURT: You have a representation, one of the best  
18 Public Defenders, in my view, in the State of South Carolina.  
19 Are you satisfied with his services?

20 A. I sure am.

21 THE COURT: He's done everything you've asked him to  
22 do?

23 A. (NODS HEAD AFFIRMATIVE)

24 THE COURT: He tells me that he has explained to you  
25 your various Constitutional Rights; is that correct?

1 A. That's right.

2 THE COURT: In my position as Presiding Judge I am  
3 compelled too to make sure that you understand these  
4 Constitutional Rights. Your first right is a right to trial  
5 by jury; you understand that?

6 A. Yes sir.

7 THE COURT: If you had a trial by jury I would charge  
8 the jury that you are presumed innocent, and that you don't  
9 have to prove a thing. I will charge the jury that, if they  
10 convicted you at all it must be beyond a reasonable doubt; you  
11 understand that?

12 A. Yes sir.

13 THE COURT: In that trial the State would put up  
14 various witnesses against you, and you would have a right to  
15 contest their testimony. Following that you would have a  
16 right to testify in your own behalf if you chose to, and call  
17 any witnesses; you understand that?

18 A. (NODS HEAD AFFIRMATIVE)

19 THE COURT: If you elected not to testify I would  
20 charge the jury that you are presumed innocent, and you don't  
21 have to prove a thing. I would charge the jury that the fact  
22 that you didn't testify could not be used against you in any  
23 way, nor would it raise any adverse inference; you understand  
24 that?

25 A. (NODS HEAD AFFIRMATIVE)

1           **THE COURT:** In pleading guilty you are saying to me, I  
2 understand these Constitutional Rights, I waive them, and I  
3 plead guilty; is that correct?

4           A. Yes sir.

5           **THE COURT:** You are guilty?

6           A. Yes sir.

7           **THE COURT:** Do you have any questions about what I'm  
8 saying to you?

9           A. No sir. Can I say something to defend this?

10          **THE COURT:** Yes Ma'am. I'll permit that.

11          A. To whom it may concern: That I am so sorry that this  
12 happened. Thank you.

13          **THE COURT:** Prior to sentencing I'll be glad to hear  
14 from any member of the family who cares to speak to me.

15          **MR. HUCKS:** Ms. Godley's sister, Your Honor.

16          **THE COURT:** Okay. I thank you for your presence, and  
17 understand this is most difficult for you and your family, but  
18 I thank you for your presence.

19          **MS. COX:** My name is Barbara Cox, C-o-x. Keisha was my  
20 sister-in-law. It's had a really rough impact on her whole  
21 family. They were dealing with the fact that they had just  
22 lost their mother the month before, and then all of a sudden  
23 their sister was killed.

24          Nobody deserves to be put through what Keisha was put  
25 through. Nobody deserves to be killed like that. I means,

1 she will never -- they will never see their sister again.  
2 I'll never see my sister-in-law. She will never see her  
3 grand-babies, nothing like that.

4 Thank you.

5 **THE COURT:** I appreciate your comment.

6 Given the age of this Defendant, and the recommendation  
7 which I can accept, it is virtually a life imprisonment for  
8 her, and of course this is a terrible crime, was totally  
9 unnecessary. I suspect it arose out of jealousy. I sense  
10 that that's what it is. Regardless of what caused it that  
11 young woman stands dead through no fault of her own.

12 Having pled guilty freely and voluntarily, waiving your  
13 rights to trial by jury, saying to me that you are satisfied  
14 with the services of your lawyer, I find beyond a reasonable  
15 doubt that it is appropriate that I accept your plea as to  
16 manslaughter and attempted murder, and in accordance with  
17 these negotiations it is the judgment of this Court that you  
18 be confined in the State Penitentiary on each indictment,  
19 concurrent, for a period of twenty years.

20 Thank you.

21 **MR. CHRISCO:** Thank you, Your Honor.

22 **MR. HUCKS:** Thank you, Your Honor.

23 **THE COURT:** I wish to thank the family for being here.

24 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

25

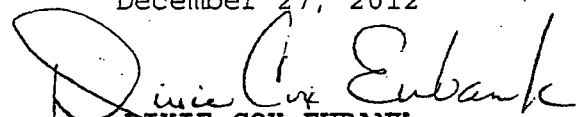
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C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the PLEA of the captioned case, relative to appeal, in the COURT OF GENERAL SESSIONS for HORRY COUNTY, SOUTH CAROLINA, on the 12th day of April, 2012.

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

December 27, 2012

  
DIXIE COX EUBANK

CIRCUIT COURT REPORTER  
FIFTEENTH JUDICIAL CIRCUIT

4

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF Horry )  
 )  
Barbara Chavis Wright 350454 )  
 Full name and prison number (if any) of Applicant. )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )

IN THE COURT OF COMMON PLEAS

12

6940

APPLICATION FOR  
POST-CONVICTION RELIEF

REC'D  
 CLERK OF COURT  
 Horry County  
 SEP 11 AM 10:15  
 MICHELE HUGGINS - PARSONS

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (either 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 each 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 Camille G. Graham Corr. Inst.
2. Name and location of Court which imposed sentence Horry County Gen. Sess.
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) 2011-GS-2604335 Voluntary Manslaughter
  - (b) 2011-GS-2604336 Attempted Murder
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) April 12, 2012 20 years Concurrent
  - (b) April 12, 2012 20 years Concurrent

(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty yes

(b) after a plea of not guilty \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

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

NO

8. If you answered "yes" to (7), list:

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

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. N/A

iii. \_\_\_\_\_

(c) the date of each such result:

i. \_\_\_\_\_

ii. N/A

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. N/A

iii. \_\_\_\_\_

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

(a) Did not know that I could appeal

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

- (a) Ineffective Counsel
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) I was pressured into taking a guilty plea and I was
- (b) told by my attorney that I would get the Attempted
- (c) Murder charge dropped if I pled.

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 "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
  - i. \_\_\_\_\_
  - ii. N/A
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. \_\_\_\_\_
  - ii. N/A
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (c) the disposition thereof:
  - i. \_\_\_\_\_
  - ii. N/A
  - iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_ *N/A*

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_ *N/A*

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

*NO*

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

(a) which grounds have been presented:

i. \_\_\_\_\_

ii. \_\_\_\_\_ *N/A*

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_ *N/A*

iii. \_\_\_\_\_

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

(a) \_\_\_\_\_

(b) \_\_\_\_\_ *N/A*

(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? \_\_\_\_\_
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_

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

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

*Edward* ~~Ernest~~ Crisco - Public Defender  
 ii. P.O. Box 1666 - Conway, SC 29526  
 iii. \_\_\_\_\_

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

i. arraignment, plea, sentencing  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_

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

New Trial

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

NO

12

6940

STATE OF SOUTH CAROLINA )  
 )  
County of Richland )

VERIFICATION

I, Barbara Wright, 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.

Barbara Q Wright

SWORN to and subscribed before me this 6<sup>th</sup>  
day of September, 2012.

Hobby L. Barner (L.S.)  
Notary Public

My Commission Expires: My Commission Expires August 12, 2015

FILED  
JUNY COUNTY  
2012 SEP 11 AM 10:15  
MELANIE HUGGINS-WARD  
CLERK OF COURT

12

6940

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

I, Barbara Wright, 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.

Barbara C. Wright
Applicant

SWORN or affirmed to and subscribed before me this 6th day of September, 2012.

Kathy R. Barnes
Notary Public

My Commission Expires: My Commission Expires August 12, 2015

FILED
2012 SEP 11 AM 10:15
MELANIE HUGGINS-ARRARO
CLERK OF COURT
HARRIS COUNTY

TATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
	)	
	)	2012-CP-26-6940
	)	
Barbara Wright, 350454	)	
	)	
Applicant,	)	
	)	RETURN
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for post conviction relief (PCR) filed May 16, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the December 2011 term of the Horry County Grand Jury for attempted murder (2011-GS-26-4336) and murder (4335). William Edward Chrisco, Esquire, represented Applicant.

On April 12, 2012, the Applicant pled guilty to the lesser included offense of voluntary manslaughter. The Honorable Edward B. Cottingham sentenced Applicant to an aggregate sentence of twenty years imprisonment on a voluntary manslaughter charge. Applicant did not appeal the conviction or sentence.

Attached herewith and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction, and Applicant's SCDC records, and the guilty plea transcript

will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. 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 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).

Respondent submits that 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, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

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

V.

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

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.


Respectfully submitted,

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Attorney General

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Chief Deputy Attorney General

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By:   
\_\_\_\_\_  
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11/29, 2012.

1	STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS NON-JURY
2	COUNTY OF Horry	)	(2012-CP-26-06940)
3		)	
4	BARBARA CHAVIS WRIGHT	)	
5	vs.	)	TRANSCRIPT OF RECORD
6		)	
7	STATE OF SOUTH CAROLINA	)	December 18, 2013
8		)	Conway, S. C.

9  
 B E F O R E:  
 10  
 HONORABLE STEVEN H. JOHN, Judge.

12 A P P E A R A N C E S:  
 13 HEATHER M. CANNON, ESQ.  
 ATTORNEY FOR APPLICANT  
 14  
 JOSHUA L. THOMAS, ESQ.  
 15 ASSISTANT ATTORNEY GENERAL  
 ATTORNEY FOR STATE  
 16

17  
 18  
 19  
 20  
 21

DIXIE COX EUBANK  
 CIRCUIT COURT REPORTER  
 FIFTEENTH JUDICIAL CIRCUIT

22  
 23  
 24  
 25



1 (THE FOLLOWING TAKES PLACE ON DECEMBER 18, 2013.)

2 THE COURT: All right. This is (2012-CP-26-06940),  
3 State of South Carolina, County of Horry, Barbara Wright,  
4 Applicant, versus the State of South Carolina.

5 All right, Mr. Attorney General.

6 MR. THOMAS: Thank you, Your Honor.

7 Ms. Wright was indicted in December of 2011, for murder  
8 and attempted murder. She was represented on that charge by  
9 William Edward Chrisco. She pled guilty on April 12th, 2012,  
10 to the lesser-included of voluntary manslaughter, and to the  
11 attempted murder charge.

12 On the voluntary manslaughter charge she got twenty  
13 years, and she got a concurrent twenty years on the attempted  
14 murder charge. She filed this P.C.R. on September 11, 2012,  
15 alleging ineffective assistance of counsel.

16 She is present in court today represented by Heather  
17 Cannon, and the State is ready to proceed.

18 THE COURT: All right. Very good.

19 All right, Ms. Cannon, be glad to hear from you.

20 MS. CANNON: Thank you, Your Honor. I will call Ms.  
21 Barbara Wright to the stand.

22 THE COURT: All right. Please come around, Ma'am. If  
23 you would meet the Clerk up here to be sworn.

24 BARBARA CHAVIS WRIGHT, being first  
25 duly sworn, testifies as follows:

1       **DIRECT-EXAMINATION BY MS. CANNON:**

2       A.       My name is Barbara Wright.   W-R-I-G-H-T.

3       **THE COURT:**   Go ahead, Ma'am.

4       **MS. CANNON:**   Thank you, Your Honor.

5       Q.       Ms. Wright, you are here today -- we are here today in  
6       regard to your request for the Court to review your conviction  
7       for the charges that you are currently serving; is that  
8       correct?

9       A.       **(NODS HEAD AFFIRMATIVE)**

10      Q.       And you filled out an Application for Post-Conviction  
11      Relief, and in that Application you have alleged that Ed  
12      Chrisco, who was your Public Defender at the time, was  
13      ineffective in being your counsel; is that correct?a

14      A.       Yes.

15      Q.       Okay. Now one of the things that you said that he did  
16      not -- or that did not happen, you didn't file an appeal; is  
17      that correct?

18      A.       Right.

19      Q.       Did you know that you had the option to file for an  
20      appeal?

21      A.       I don't think so.

22      Q.       So when you say you don't think so, explain that a  
23      little bit more for me.

24      A.       Well, it's the first time that I have ever been in  
25      trouble, so I didn't know, you know, about the law, you know.

BARBARA CHAVIS WRIGHT - DIRECT BY CANNON

5

1 Q. About the process?

2 A. Right. Until after I got in prison, and somebody told  
3 me, why don't you do this and why don't you do that.

4 Q. And so what they had said to you was, did you file an  
5 appeal, or why don't you file an appeal?

6 A. And I written Mr. Chrisco, and he write me -- I think  
7 it was around ten days after, you know -- before you appeal I  
8 think it's ten days, right?

9 Q. Correct. But I'm not asking you about the appellate  
10 process; I'm asking you if -- if you talked to Mr. Chrisco at  
11 all about appealing your guilty plea? If you will please  
12 answer yes or no, Ms. Wright, because this lady has to take  
13 down everything you say, so if you will please answer  
14 verbally.

15 A. No, I did not.

16 Q. Okay. And there was no conversation at all about an  
17 appeal?

18 A. No. Uh uh (NODS NEGATIVE)

19 Q. And would you have filed an appeal had you known you  
20 had the right to do so?

21 A. I didn't know, you know, at that time.

22 Q. But if you knew would you have filed ---

23 A. Of course. Of course.

24 Q. All right. So you believe that Mr. Chrisco should have  
25 told you about the right to an appeal; is that correct?

1 A. Yes.

2 Q. And because he did not he was not effective as your  
3 counsel?

4 A. Right. Yes. Right.

5 Q. All right. Now, in addition to that you also say that  
6 during Mr. Chrisco's representation of you he fell below the  
7 standard of what a reasonable attorney would do in counseling  
8 you. Tell this Court what Mr. Chrisco did wrong. What did he  
9 do wrong?

10 A. Well, what he done, I was going to plead not guilty,  
11 period, because -- because in a case like this I was out of my  
12 mind, and I had flip, and I did not know what I was doing,  
13 period. If I did I wouldn't have done it for nothing in the  
14 world.

15 Q. Did you tell Mr. Chrisco that?

16 A. No, I did not tell him that.

17 Q. You didn't tell Mr. Chrisco that you had flipped, and  
18 that you were out of your mind and didn't know what you were  
19 doing?

20 A. I believe I did. I believe I did.

21 Q. Well, what else did Mr. Chrisco not do as your  
22 attorney, or do wrong?

23 A. Well, in the first place he should have took -- had me  
24 to took the mental health somewhere and had me checked out.

25 Q. Uh huh (indicating positive) Well, did that not

BARBARA CHAVIS WRIGHT - DIRECT BY CANNON

7

1 happen? Didn't they do a mental health evaluation on you?

2 A. I needed help otherwise.

3 Q. But they did do a mental health ---

4 A. No, they did not do that.

5 Q. They did not do a mental health evaluation on you?

6 A. They did a mental -- they did a mental health  
7 evaluation. There was three of them. But they said, you  
8 know, that I was capable of going through trial. Actually I  
9 was not capable of doing anything.

10 Q. Okay. Well, now, in my conversation with you you had  
11 said that you felt like you were pressured into pleading  
12 guilty. Tell the court how you felt you were pressured into  
13 pleading guilty.

14 A. Well, it all planned out that I was going to pled not  
15 guilty because I was out of my mind.

16 Q. Okay.

17 A. And then at the last minute he told me to plead guilty.

18 Q. Why? Why did he tell you to plead guilty?

19 A. I think he was -- said he was going to drop the other  
20 charges, try to get the other charges dropped.

21 Q. Who was going to try to get the charges dropped?

22 A. Mr. Chris -- you know, the other two ---

23 Q. The Solicitor, the other attorney, was going to drop  
24 the charges?

25 A. Mr. Chrisco on the other, you know -- on the other hit

1 and run ---

2 Q. Okay.

3 A. ---Attempted murder, but I wasn't -- I was just out of  
4 it; I lost my mind, a person just drove me out of my mind, and  
5 then I flipped.

6 Q. Okay. Tell this Court what else you think Mr. Chrisco  
7 did wrong, or did not do when he was representing you, that  
8 led you to be in this position that you are in right now.  
9 This is your opportunity to let the Court know what all your  
10 issues are with Mr. Chrisco. If you don't tell this Court all  
11 of the issues they will never be heard. This is your day.

12 A. Well, in the first place, I don't believe he had  
13 somebody, you know, to investigate me, my -- and I am a nice  
14 lady, and what I did, I was out of it. I wouldn't have done  
15 it for nothing in this world. That's something I don't  
16 believe in. And this day has almost put me -- help -- and I  
17 almost drove myself into the middle of the ocean. And I --  
18 God is the only one stopped me, said, Barbara, please don't do  
19 it, so I turned around; but I have just -- I just -- was just  
20 out of it, and it just took me a long time to get out of it.  
21 My psychiatrist hope me, and my -- my counselor, because they  
22 knew that I didn't know what I was doing at that time.

23 Q. Is there anything else that you think you -- this Court  
24 should know about what Mr. Chrisco, how he was ineffective?  
25 Is there anything else you want to say?

1 A. I don't think so.

2 MS. CANNON: All right. I don't have any further  
3 questions, Your Honor.

4 THE COURT: Cross-examination.

5 MR. THOMAS: May it please the Court.

6 Good morning, Ms. Wright.

7 A. Good morning.

8 CROSS-EXAMINATION BY MR. THOMAS:

9 Q. I just want to go over a few background things with  
10 you. How many times did you meet with Mr. Chrisco before you  
11 pled guilty?

12 A. The last time -- it was the last time in the  
13 courthouse.

14 Q. And so -- but how many times was that? Was that your  
15 third, fourth meeting? How many times did you meet with him?

16 A. I tell you the truth, I don't remember. I'll be  
17 honest, I don't remember.

18 Q. That's all right. If you don't remember you can say  
19 you don't. Do you remember going over with him the State's  
20 evidence that they had against you?

21 A. Yes.

22 Q. And do you remember discussing with him any possible  
23 defenses you might have?

24 A. Are you talking about the things happened?

25 Q. Did you -- you discussed with him -- I guess you said

1 you were -- said you flipped. Did you discuss with him an  
2 insanity defense?

3 A. Well, in the first place -- is the way I feel about it.  
4 In the first place, when somebody drives you crazy and you  
5 flip, and lose your mind, you don't really know what in the  
6 world you are doing, and you sin, you know.

7 Q. And you -- you had that conversation with Mr. Chrisco  
8 though, right?

9 A. Sure.

10 Q. And I believe you were charged in this case also with,  
11 not just the murder and the attempted murder, but also with a  
12 couple of hit and run charges, right?

13 A. The what? Excuse me.

14 Q. You had a couple of other charges, warrants that were  
15 issued from this -- the accident you had, right?

16 A. Yes.

17 Q. And did Mr. Chrisco get those -- he got those  
18 dismissed, didn't he?

19 A. Yes, he did.

20 Q. And I know you said you talked with him about a plea  
21 offer. You pled down to voluntary manslaughter instead of  
22 murder; isn't that correct?

23 A. Yes.

24 Q. And did he explain to you the elements of voluntary  
25 manslaughter?

1 A. Yes.

2 Q. And he explained to you that that's sort of a defense -  
3 - sort of a lesser-included charge when you have an accident  
4 like this where you flip. Like you said, he discussed that  
5 with you?

6 A. Well, to be honest, I was out of my mind. Well, if you  
7 had been in my position you would know, you would know.

8 Q. I understand that, but you did discuss that with him;  
9 you told him about that ---

10 A. Yes, I did.

11 Q. ---That you flipped out ---

12 A. Yes, I did.

13 Q. ---When you saw the victim, and the other victim riding  
14 on the moped together you told him how you flipped out right?

15 A. I was already flipped out.

16 Q. All right. Ultimately you pled guilty to this charge,  
17 right? I'm sorry, that's a question you have already  
18 answered. I'm sorry.

19 When you pled guilty did you plead guilty because you  
20 wanted to plead guilty?

21 A. No, I sure didn't.

22 Q. You didn't want to plead guilty?

23 A. No, I didn't want to plead guilty. I wanted to  
24 straighten out simply because I -- I didn't know what in the  
25 world that I was doing. You know, when you flip out, and your

1 mind -- just drives you out of you mind you don't know what in  
2 the world you are doing.

3 Q. So you were ready to go to trial that day that you  
4 pled? You were ready to sit a jury in this box over here and  
5 tell them your story?

6 A. What story?

7 Q. About how you flipped.

8 A. Well, I did. Well, I'll be honest with you. This guy,  
9 he was a drug addict. You know when you love somebody it just  
10 -- even though he's not there you still worry about him, and I  
11 went to the doctor to -- to the hospital and tried to get help  
12 overnight because I was bad. I had a nervous -- a nervous  
13 breakdown, and the doctor gave me Zoloff, and the Zoloff, a  
14 psychiatrist, he changed my medicine, and my Zoloff was not  
15 working at all. That's probably why I flipped.

16 Q. I understand. But you had all this conversations with  
17 Mr. Chrisco, correct?

18 A. Yes, I did.

19 Q. Do you remember the day you pled guilty?

20 A. I was nervous, and ---

21 Q. But you did stand up and plead guilty, correct?

22 A. I stood up.

23 Q. And the Judge asked you a couple of times whether you  
24 were guilty of the charges against you, didn't he?

25 A. Well, I was out of my mind. I didn't know what in the

1 world I was saying, I'll be honest.

2 Q. Were you -- so you were still out of your mind on the  
3 day you pled?

4 A. You know, people think it's funny, but it's not funny  
5 when you lose your mind, and you don't know what you are  
6 doing.

7 Q. Ma'am, I understand. But Ma'am, my question is, were  
8 you out of your mind on the day you pled?

9 A. Yes, I was out of my mind. Of course.

10 Q. And I guess you said that -- you said you were never  
11 evaluated, but you did meet with three people who evaluated  
12 you?

13 A. Three people. But I was in bad shape. He should have  
14 put me in the mental hospital or something, and they evaluate  
15 me, period. That's what he should have done, because I was  
16 incapable.

17 Q. You also said Mr. Chrisco didn't do any investigation.  
18 What would you have liked him to investigate?

19 A. Well, what would you have done if any -- if you was in  
20 my situation and nobody investigate you? What would you have  
21 done?

22 Q. Ms. Wright, I'm really -- what investigation would you  
23 have liked for him to have done? I'm not trying to trick you.

24 A. Knowing me, my history, my back history. I never had a  
25 prison sentence or anything, been in trouble before.

1 Q. And regarding an appeal, you never asked him for an  
2 appeal, did you?

3 A. No, I did not ask him. Well, you mean -- when you are  
4 out of your mind you cannot think, period. All I wanted to  
5 get somewhere and commit suicide, and that's how I was.

6 MR. THOMAS: Thank you, Ms. Wright. I think that's all  
7 the questions I have.

8 THE COURT: Any redirect?

9 MS. CANNON: No, Your Honor.

10 THE COURT: You may step down, Ma'am.  
11 Further witnesses on behalf of the Applicant?

12 MS. CANNON: No, Your Honor.

13 THE COURT: Thank you.

14 All right, Mr. Attorney General.

15 MR. THOMAS: I would call Mr. Chrisco to the stand.

16 THE COURT: Please come around to be sworn.

17 EDWARD CHRISCO, being first duly  
18 sworn, testifies as follows:

19 DIRECT-EXAMINATION BY MR. THOMAS:

20 MR. THOMAS: Good morning, Mr. Chrisco.

21 Q. You were appointed on this case, I assume?

22 A. I was appointed September the 29th of 2011.

23 Q. And did you file standard Rule 5 Brady Discovery  
24 Motions?

25 A. That same day.

1 Q. What was the State's response to that?

2 A. They gave the discovery in the case.

3 Q. What did that discovery consist of?

4 A. It consisted of eyewitnesses that had seen the vehicle  
5 that Ms. Wright was driving hit the moped. It was -- it also  
6 included a taped interview that they had with Ms. Wright where  
7 she says it was intentional, that she was trying to kill him  
8 because he was running around on her, had a girl on the back  
9 of the moped. The girl was thrown off, hit head first into a  
10 curb, and the blunt force trauma was the cause of death.

11 Q. And did you have an opportunity to review the State's  
12 discovery on Ms. Wright?

13 A. I did.

14 Q. How many times would you say you met with her?

15 A. Probably about seven times. The first time I talked  
16 with her I immediately asked for an evaluation, and the  
17 evaluation was done on December the 11th of 2011, so that was  
18 with -- I got the evaluation and got her evaluated within two  
19 months of being appointed.

20 Q. And what were the results of that evaluation?

21 A. That she was good to go to trial. They didn't see any  
22 issues whatsoever.

23 Q. Did you ever have concerns, other than your initial  
24 concerns? Once you got the report back did you have any  
25 concerns about her ability to assist you?

1 A. I always have concerns because over the years I have  
2 sent clients to be evaluated that I thought that there was  
3 something wrong, and they come back and they are fine. You  
4 always have those second thoughts.

5 Q. But did you have any concerns about her ability to  
6 enter a plea to this charge?

7 A. No. No, I thought -- after several visits with her,  
8 and after having some in depth conversations with her I  
9 realized that she didn't get that far in school, and that  
10 there was also a speech impediment that she had, but I never  
11 thought that she was -- I don't know how to say it. I thought  
12 she was alright to go ahead with the plea.

13 Q. As far as your pretrial investi -- or your pre-plea  
14 investigation, what kind of investigation did you undertake?

15 A. Well, in this case there was not that much to  
16 investigate. You've got all the witnesses that seen the  
17 incident happen, police reports that did their investigation  
18 on where the moped was struck, how it went across into the  
19 north-bound lane, how it hit a curb over there. Then after  
20 the incident occurred Ms. Wright drove her car down -- found  
21 one of those entrances to the beach and drove it out on the  
22 beach, stuck in the sand, heading toward the beach. That's  
23 where her car was found.

24 Q. Did she ever give you anything else that she would like  
25 for you to investigate, any leads, any witnesses?

1 A. No. I always ask if there is any witnesses that she  
2 has, and if we go to trial -- I explained to her about going  
3 to trial, what she would be going to trial for, which would be  
4 murder, two separate counts of leaving the scene of an  
5 accident where there is a death, one with a death, one with  
6 bodily injury, then attempted murder - that would be on the  
7 driver of the moped - and murder on the passenger.

8 Q. What kind of plea offers did the State make?

9 A. Originally it was a thirty year. It was not in  
10 writing. They said that the -- thirty years, they would  
11 recommend thirty years, and then they came forth with a plea  
12 offer of -- after we talked, because she had no significant  
13 prior record whatsoever, of reducing it to manslaughter,  
14 twenty years, which would put her under the no-parole, eighty-  
15 five percent, but it would take her out of the -- if she went  
16 to trial and was found guilty it would take her out of that  
17 thirty years day for day. There was some light at the end of  
18 the tunnel, not much, but there was some light.

19 Q. Did you think a voluntary manslaughter was a more  
20 appropriate charge than murder?

21 A. I think under these circumstances. She had met this  
22 man prior to this. He was on drugs. She would get him off of  
23 drugs. She bought him the moped. He was some twenty plus  
24 years younger than her. He showed her attention. She felt  
25 one way, and after my investigation I think he felt the other

1 way. It was just someone that would give him money, someone  
2 that would give him shelter when he needed it, and she was  
3 jealous because she saw a female on the back of the moped.

4 Q. Did you explain to her the difference in the elements  
5 between manslaughter and murder?

6 A. I did.

7 Q. And why did you -- I'll withdraw that.

8 What happened to her other charges, the hit and run  
9 charges?

10 A. Oh, they were dismissed. That was part of the -- that  
11 was part of the agreement, if she would plead to the  
12 manslaughter and to the attempted murder they would drop those  
13 two charges, and they would also run the two concurrent,  
14 meaning at the same time.

15 Q. And you conveyed that plea offer to her?

16 A. I did.

17 Q. Whose decision was it to plead guilty ultimately?

18 A. In every case that I've ever done the decision of where  
19 someone wants to plead guilty or go to trial is always their  
20 decision. I give them advice, but I do not tell them what to  
21 do. It makes no difference to me if they want to plead or if  
22 they want to go to trial.

23 Q. So would you have been ready for a trial if she had  
24 asked for one?

25 A. Yes. And I told her that the likelihood of her being

1 successful at trial was going to be very hard because she did,  
2 in fact, give a confession, stating that she intended to try  
3 to kill him. She also the next -- the next morning, after she  
4 was arrested that night, in the municipal court, was telling  
5 the Judge that she needed a bond so she could get out and  
6 track him down to finish the job.

7 Q. Did you ever pressure her? So you never pressured her  
8 to plead or ---

9 A. No. I never pressure anybody. I lay the facts out  
10 there. I'm rather, sometimes, blunt when I say things, but I  
11 just lay all the facts out there, and let them make the  
12 decision.

13 Q. After the plea did she ever ask you about an appeal?

14 A. No, but that's one of the things that I go over. When  
15 I get the sheet -- I never sign a -- the last thing I do,  
16 before I sign my name on a sentence sheet, is to inform the  
17 client of all the Constitutional Rights, and anything that  
18 involves the plea and an appeal within ten days is always  
19 something that I -- the last thing I tell them. The next to  
20 the last thing I tell them is, if it's not been true-billed by  
21 the Grand Jury, but the last thing I tell them is about an  
22 appeal, because most Judges now will have that as a question  
23 that they ask them. Some still don't, but most do.

24 Q. And I guess, did you see any grounds for an appeal, any  
25 meritorious grounds, if you had asked for one?

1 A. I mean, she's -- was pleading guilty freely and  
2 voluntarily. I didn't see anything that the Court did that  
3 would justify an appeal, but had she called me -- and she said  
4 she wrote, but in this file there is no documentation of my  
5 office ever receiving a letter. And if she would have called  
6 from the jail there would have been a notation in the notes  
7 that she called from the jail and wanted an appeal. If she  
8 had done that I would have gladly done it.

9 MR. THOMAS: I think that's all the questions I have.

10 THE COURT: Cross-examination.

11 MS. CANNON: Thank you, Your Honor. Just a couple.

12 CROSS-EXAMINATION BY MS. CANNON:

13 Q. Mr. Chrisco, in regard to the mental evaluation that  
14 was given to Ms. Wright, did you challenge that in any way?

15 A. No. I -- from -- from what I read from the Report I  
16 didn't see anything that I could challenge.

17 Q. Well, in the Report it says -- there's a note here that  
18 says, "Despite multiple attempts the social history of  
19 collateral source could not be obtained." They requested  
20 records from Grand Strand Medical Center, records from McLeod  
21 Medical Center and Little River Medical Center, and Pee Dee  
22 Medical Center to be reviewed, and those records were not  
23 obtained when they did the medical evaluation. Did you ask,  
24 or attempt to get those medical records and have a  
25 reconsideration done in that regard?

1 A. No.

2 Q. Why? I mean, is there a reason why you would not do  
3 that?

4 A. The medical records that she spoke of were not mental  
5 records.

6 Q. Do -- how do you -- did you see the medical records?  
7 Do you know that they don't mention any ---

8 A. No. When I was talking with her she said she had some  
9 problems, and it was Zoloff, that they had given her Zoloff.  
10 I put that -- I talked with one of the doctors that -- when  
11 they were doing the evaluation, and I told them of what, you  
12 know, she had said to me. No, I did not challenge that.

13 Q. Have you ever challenged an evaluation?

14 A. Twice.

15 Q. . And what was different in that -- those evaluations  
16 than Mr. Wright's?

17 A. The people in those two instances had been  
18 institutionalized for a period of time.

19 Q. Prior to the medical evaluation?

20 A. Right.

21 Q. Now, I don't mean to beat a dead horse, but I just want  
22 to know specifically if -- you testified that you thought that  
23 Ms. Wright was mentally capable of understanding the charges  
24 against her, and capable of pleading guilty to those charges.  
25 On the day that she pled guilty did she seem to, again,

1 understand and be sane, I suppose, in her answering questions  
2 to you?

3 A. Yes.

4 Q. Unlike today in her testimony - she seemed confused -  
5 is that typical behavior that you had seen in Ms. Wright?

6 A. No. This is -- this is new here.

7 Q. So on the day she pled you had no concerns about her  
8 ability to understand what she was pleading guilty to, or ---

9 A. None whatsoever.

10 Q. ---Her mental capacity to do so.

11 And you mentioned -- do you recall - and I didn't get a  
12 clear answer from your testimony - specifically talking to Ms.  
13 Wright about an appeal?

14 A. Yes. That's one of the things that I go -- when I get  
15 a sentence sheet from the Solicitor a lot of times they'll  
16 say, you didn't sign this, and I'll say that's -- that's  
17 exactly right; I do not sign this because I have got a  
18 protocol that I go through before I sign the sheet. That way  
19 I can always say every client -- I go through their  
20 Constitutional Rights, the true-bill, and then the last thing  
21 I always hit is the appeal.

22 MS. CANNON: No further questions.

23 THE COURT: Any redirect?

24 MR. THOMAS: No, Your Honor.

25 THE COURT: You may step down, sir.

APPLICANT'S SUMMATION (CANNON)  
STATE'S SUMMATION (THOMAS)

23

1 Other evidentiary support from the State?

2 MR. THOMAS: That's all from the State, Your Honor.

3 THE COURT: Do you wish to make any arguments, Ms.  
4 Cannon?

5 MS. CANNON: No, Your Honor. Well, actually let --  
6 just for ---

7 THE COURT: Yes Ma'am. Please.

8 MS. CANNON: ---My client, just briefly.

9 It's her position, Your Honor, that she was -- didn't  
10 feel she was competent to plead guilty that day, and doesn't  
11 feel like she was in her right mind when she was involved in  
12 the incidents that got her here today.

13 Again, I -- in reviewing the information and this Court  
14 listening to her -- her testimony today I simply question  
15 that, and I do believe that Mr. Chrisco's looking into medical  
16 records that were not available for this mental evaluation, or  
17 challenging this mental evaluation certainly would have given  
18 different results, or potentially so, on behalf of Ms. Wright,  
19 but other than that I -- I don't have anything further to add.

20 THE COURT: All right. Thank you, Ma'am.

21 Mr. Thomas.

22 MR. THOMAS: Just briefly, Your Honor. We would rest  
23 on the record here. The testimony has been that -- and the  
24 record before the Court is she was evaluated. Mr. Chrisco had  
25 no reason to believe another evaluation was necessary, and we

1 would just rest on the record before the Court.

2 **THE COURT:** All right. Very good.

3 In a situation where there has been a guilty plea and  
4 that guilty plea is the subject of a Post-Conviction Relief  
5 Application, and the allegation is ineffective assistance of  
6 counsel, there is a two-prong test that exists to evaluate the  
7 claims of ineffective assistance of counsel. First, the  
8 applicant must show that their counsel's performance was  
9 deficient, such that it fell below an objective standard of  
10 reasonableness. Secondly, the defendant must establish a  
11 reasonable probability that but for counsel's unprofessional  
12 errors the result of the proceeding would have been different.  
13 The receive relief the applicant must show that counsel  
14 departed from the professional norms, resulting in prejudice.  
15 A reasonable probability is a probability sufficient to  
16 undermine the Court's confidence in the outcome of the  
17 proceedings. Where there has been a guilty plea the applicant  
18 must prove prejudice by showing that but for counsel's errors  
19 there is a reasonable probability that she would not have pled  
20 guilty, and instead would have insisted on going to trial.

21 Here the Applicant makes such a argument regarding  
22 ineffective assistance of counsel, and I'll address two issues  
23 specifically, but in the arguments I want to first state that  
24 I do not believe that the Applicant has shown to this Court  
25 that her counsel, in his performance, was deficient, that it

## COURT'S RULING

25

1 fell below any objective standard of reasonableness. I find  
2 that he did what he was expected to do, and should have done  
3 in this particular matter. Even if that occurred, which the  
4 Court does not find, the Defendant has failed to establish a  
5 reasonable probability that but for any counsel's  
6 unprofessional errors the result of the proceeding would have  
7 been different.

8 Based upon the evidence presented, her answers to the  
9 Court's questions at the time of the matter, her evaluation  
10 that was done previously, the Court conducted a Blair hearing  
11 at the time of the plea, and the Court found her to be  
12 competent. In this particular matter, in judging credibility  
13 and believability, I do find that counsel informed the  
14 Applicant of her appellate rights. The Court does note that  
15 that matter was not covered in the guilty plea colloquy with  
16 the Trial Court and the Defendant, but it's clear that the  
17 Applicant was aware, based upon her counsel's testimony, which  
18 the Court finds credible and believable.

19 I would also indicate and say that the law of this State  
20 is, absent extraordinary circumstances there is no  
21 Constitutional requirement that a defendant be informed of a  
22 right to a direct appeal from a guilty plea. That is not the  
23 law of the State of South Carolina absent extraordinary  
24 circumstances. I find no extraordinary circumstances existed  
25 in this particular matter. The bare assertion that a

1 defendant was not advised of their appellate rights is  
2 insufficient to grant relief. There must be proof of an  
3 extraordinary circumstance that existed, such that the  
4 defendant should have been advised of their right of an  
5 appeal, and I find no such grounds exist.

6 There is no evidence before this Court today of any  
7 medical records of the Applicant. The Court has no basis to  
8 examine those, or to take those into consideration. There was  
9 no request in this matter prior to today's hearing for an  
10 evaluation nor has one been done regarding her current status.  
11 That issue is not before the Court.

12 The Court finds, based upon my observation of her, that  
13 her testimony -- she responded to the questions that were  
14 asked of her. She definitely thought about them before  
15 answering them. I do not find her to be confused such that it  
16 would call in the Court's question her ability in this matter,  
17 and there's no evidence in the record to support that.

18 The Post-Conviction Relief Application is denied.

19 Mr. Attorney General, do an order to that effect,  
20 forward it to the Court by e-mail within seven days of today's  
21 date, for a copy to opposing counsel at the same time.

22 Thank you very much.

23 **MR. THOMAS:** Absolutely, Your Honor.

24 **MS. CANNON:** Thank you, Your Honor.

25 **MR. THOMAS:** Thank you.

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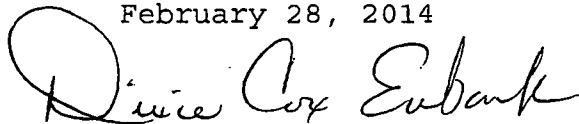
-----END OF REQUESTED TRANSCRIPT OF RECORD-----

C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the **POST-CONVICTION RELIEF HEARING** of the captioned case, relative to appeal, in the **COURT OF COMMON PLEAS for Horry County, South Carolina**, on the 18th day of December, 2013.

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

February 28, 2014



DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Barbara Chavis Wright, #350454, )

Case No. 2012-CP-26-6940

Applicant, )

v. )

**ORDER OF DISMISSAL**

State of South Carolina, )

Respondent. )

RECEIVED  
CLERK OF COURT  
JAN 10 10 12 AM '13  
HORRY COUNTY

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed September 11, 2012. Respondent made its return on or about November 27, 2012. The Court convened an evidentiary hearing into the matter on December 18, 2013, at the Horry County Government and Judicial Complex. Applicant was present at the hearing and represented by Heather M. Cannon, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on her own behalf at the PCR hearing. Applicant's plea counsel, William Edward Chrisco, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Horry County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the return. The Court finds as follows:

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant



to orders of commitment from the Horry County Clerk of Court. In December 2011, the Horry County Grand Jury indicted Applicant for murder (2011-GS-26-4335) and attempted murder (2011-GS-26-4336). Applicant was represented by William Edward Chrisco, Esquire ("plea counsel"). On April 12, 2012, Applicant pled guilty to voluntary manslaughter and attempted murder. The Honorable Edward B. Cottingham sentenced Applicant to concurrent terms of imprisonment for twenty (20) years on each charge. Applicant did not appeal her plea or sentence.

## **II. ALLEGATIONS**

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

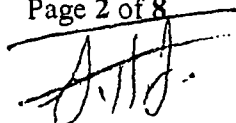
1. "Ineffective counsel"

- a. "I was pressured into taking a guilty plea and I was told by my attorney that I would get the Attempted Murder charge dropped if I pled."

At the PCR hearing, the Applicant proceeded on allegations of ineffective assistance of plea counsel for failure to investigate her mental capacity and ineffective assistance of plea counsel for failure to file an appeal.

## **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court reviewed the record in its entirety and heard the testimony and arguments presented at the PCR hearing. Further, this Court had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court weighed the

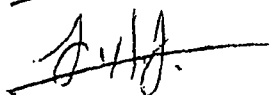


testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

**A. Summary of Testimony**

Applicant testified plea counsel was ineffective for failing to file an appeal. However, Applicant did not recall ever asking plea counsel to file an appeal on her behalf. Applicant further testified she did not want to plead guilty because she felt she was "out of her mind" at the time she committed the crime. She testified she believed she told plea counsel she "flipped out" before committing the crime. Applicant also alleged plea counsel was ineffective for failing to investigate her mental health. However, Applicant did recall having an evaluation done prior to her plea. Applicant testified she felt pressured because plea counsel advised her to plead guilty. She also testified she discussed the elements of voluntary manslaughter with plea counsel before entering her plea.

Plea counsel testified he filed discovery motions the day he was appointed to Applicant's case. He testified the State provided a full response which included eye-witness statements and a taped confession from Applicant. He testified he met with Applicant about seven (7) times and reviewed discovery with her. Plea counsel testified he immediately ordered an evaluation for Applicant. The evaluation determined Applicant was competent and plea counsel testified he had no concerns regarding Applicant's ability to enter a plea. He further testified his investigation was limited because Applicant confessed. On cross-examination, plea counsel testified he did not challenge the results of the evaluation because he had no reason to believe



Applicant was not competent to plea. He further testified he did not investigate her missing medical records because they were not related to her mental health.

Plea counsel testified the State initially offered a thirty (30) year plea. He testified he was able to negotiate a plea to voluntary manslaughter for twenty (20) years as he felt manslaughter was a more appropriate charge under the circumstances. Plea counsel testified he discussed the elements of voluntary manslaughter with Applicant before her plea. Plea counsel testified Applicant made the ultimate decision to accept the plea. He testified he would have been prepared for a trial if Applicant had asked for one, but he advised her they would likely be unsuccessful at trial. Regarding an appeal from the plea, plea counsel testified he advised Applicant of her right to appeal, but she never asked for one and he had no reason to believe one was necessary.

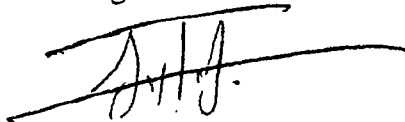
**B. Ineffective Assistance of Plea Counsel**

In a post-conviction relief action, the applicant bears the burden of proving the allegations in her application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). 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." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show there is a reasonable probability that, but for counsel's alleged errors, she would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

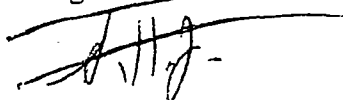
The Court finds Applicant failed to meet her burden of proof to show trial counsel ineffective. Applicant has not shown plea counsel's performance was deficient in any way. Specifically, the Court finds plea counsel adequately conferred with Applicant, conducted a

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proper investigation, and was thoroughly competent in his representation. Regarding the allegation plea counsel failed to adequately investigate Applicant's competency, the Court finds plea counsel's testimony credible and that plea counsel had Applicant evaluated and had no reason to doubt the results of the evaluation. The plea judge adopted the finding of the evaluation in finding Applicant competent. (Trial Tr. 7:4-8). Therefore, plea counsel did all that is expected of him in this regard.

Regardless, Applicant failed to show any prejudice from plea counsel's performance. The Court finds there is overwhelming evidence of Applicant's guilt. Eyewitnesses saw Applicant drive her car into the moped the victims were riding. She then gave a confession during an interview with police and at her bond hearing. Based on this evidence, Applicant cannot show she was prejudiced by plea counsel's performance See Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008) (citations omitted) (overwhelming evidence of guilt negates any claim of deficient performance). Applicant also did not present any evidence at the PCR hearing to counter the evaluation adopted at the time of her plea. Therefore, any testimony about her mental capacity or her missing medical records is merely speculative. See Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005). Furthermore, the Court's observation of Applicant at the hearing was that she provided thoughtful responses to the questions presented and was not confused such as to call into question her capacity.

Applicant's allegation plea counsel failed to file an appeal is likewise without merit. "Absent extraordinary circumstances ... there is no constitutional requirement that a defendant

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be informed of the right to a direct appeal from a guilty plea.” Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (citing Roe v. Flores-Ortega, 528 U.S. 470 (2000); Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995)). The Court finds credible plea counsel’s testimony he advised Applicant of her right to appeal and that Applicant never requested he file an appeal for her. The Court finds Applicant has not demonstrated “there are nonfrivolous grounds for appeal” or that she “reasonably demonstrated an interest in appealing[.]” Id. Therefore, Applicant has not shown plea counsel was deficient for failing to file an appeal.

### **C. All Other Allegations**

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

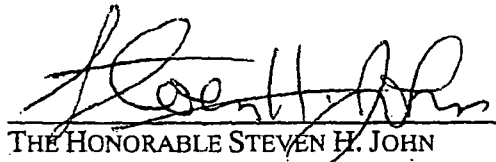
### **IV. CONCLUSION**

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

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel’s receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d

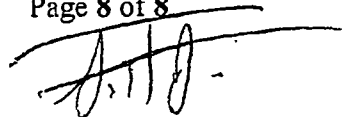
395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal. It is therefore

**ORDERED** that the Application for Post-Conviction Relief is denied and dismissed with prejudice and the Applicant is remanded to the custody of the Respondent.



THE HONORABLE STEVEN H. JOHN  
Resident Judge  
Fifteenth Judicial Circuit

January 9, 2014  
Conway, South Carolina



DOCKET NO. 2011-GS-26-04335

WITNESSES  
N Cesternino Myrtle Beach Police Department

The State of South Carolina

County of Horry

J. Scott Hucks 11H03880

COURT OF GENERAL SESSIONS

December, 2011 TERM

THE STATE

vs.

Barbara Chavis Wright  
W/ F

North Myrtle Beach, SC 29582

ATTORNEY: Chrisco, William Edward

Indictment for

MURDER

*CRIMINAL*

J. Gregory Hembree, Solicitor

ARREST WARRANT NUMBER

M349972

CDR: 0116 16-03-0010, 0020

DOA: 9/8/2011

ACTION OF GRAND JURY

TRUE BILL

Branden Combs DEC 01 2011

Foreperson of Grand Jury  
Date:

VERDICT

Foreperson of Petit Jury  
Date:



DOCKET NO. 2011-GS-26-04336

The State of South Carolina

County of Horry

11H03880

J. Scott Hicks

COURT OF GENERAL SESSIONS

December, 2011 TERM

THE STATE

vs.

Barbara Chavis Wright

W/F

Myrtle Beach, SC 29582

ATTORNEY: Chrisco, William Edward

Indictment for

ATTEMPTED MURDER

*Handwritten signature/initials*

J. Gregory Hembree, Solicitor

WITNESSES

Myrtle Beach Police Department

ARREST WARRANT NUMBER

M349973

CDR: 3410 16-03-0029

DOA: 9/8/2011

ACTION OF GRAND JURY

TRUE

DEC 11 2011

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

INDICTMENT


At a Court of General Sessions, convened on December 1, 2011, the Grand Jurors of Horry County present upon their oath:

**ATTEMPTED MURDER**

CDR: 3410 16-03-0029

That Barbara Chavis Wright did in Horry County on or about September 7, 2011 with intent to kill Jeffrey Carter, Striking the Victim with her 2001 Gold Mazda Protégé, attempt to kill the victim with malice aforethought, either expressed or implied in violation of Section 16-3-29, S. C. Code of Laws, 1976, as amended.

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

  
\_\_\_\_\_  
J. GREGORY AMBREE  
FIFTEENTH CIRCUIT SOLICITOR