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STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**S.C. Supreme Court**

Appeal from Anderson County

Alexander S. Macaulay, Circuit Court Judge

**S.C.**

LITTLE JOHNNY LEE MACKEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212877

**APPENDIX**

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*State v. Little Johnny Lee Mackey 2009-GS-04-1773*  
*Guilty Plea Hearing (2/8/2011)*

**EXHIBITS**

No	DESCRIPTION	ID	EV
	No Exhibits Were Presented During the Hearing		

1 (WHEREUPON, court convened with all parties present  
2 and the following proceedings were had commencing at  
3 approximately 11:03 a.m.)

4 THE COURT: All right. Yes, ma'am.

5 MS. BYFORD: Your Honor, may it please the  
6 Court. Before you is Little Johnny Lee Mackey, 2009-GS-  
7 04-1773, pleading guilty to murder. There is no  
8 recommendation.

9 THE COURT: All right. Mr. Mackey, if you  
10 would, raise your right hand.

11 **LITTLE JOHNNY LEE MACKEY,**

12 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

13 THE COURT: All right. You've got to really  
14 speak up because she's taking everything down, and it's  
15 important that we know what you say.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. How old are you?

18 THE DEFENDANT: Twenty-seven, sir.

19 THE COURT: Okay. And how far did you go in  
20 school?

21 THE DEFENDANT: Sir?

22 THE COURT: How far did you go in school?

23 THE DEFENDANT: I got my G.E.D.

24 THE COURT: Okay. And where did you last work?

25 THE DEFENDANT: I worked for this guy named

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1 Callahan Cable Construction.

2 THE COURT: Okay. And how long have you been  
3 in jail?

4 THE DEFENDANT: Twenty months, sir.

5 THE COURT: Yes, sir.

6 MS. JOHNSON: Since his date of arrest which  
7 was May 16, 2009, Your Honor.

8 THE COURT: All right. Have you had any drugs  
9 or alcohol within the last twenty-four hours?

10 MS. JOHNSON: No, sir.

11 THE COURT: Are you taking any kind of  
12 prescriptions or medication that might prevent you from  
13 knowing what's going on here today?

14 THE DEFENDANT: No, sir.

15 THE COURT: Okay. Have you had plenty of time  
16 to speak with your lawyer?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And are you satisfied with her  
19 services?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Do you have any  
22 questions for her now?

23 THE DEFENDANT: No, sir.

24 THE COURT: Do you understand if you want to  
25 plead guilty you have to waive your constitutional

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1 rights?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Are you waiving your right to a  
4 jury trial?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Are you waiving your right to  
7 remain silent?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Are you waiving your right to put  
10 up a defense to these charges?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You also have the right to  
13 confrontation guaranteed to you by the Constitution. You  
14 can confront the witnesses that would come in and testify  
15 against you. Are you giving up that right, too?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Has anybody promised you anything  
18 or threatened you in any way to get you to plead guilty  
19 here today?

20 THE DEFENDANT: No, sir.

21 THE COURT: And you understand what the  
22 potential sentences are?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. And just for the  
25 record, how about reading the -- what's the potentials?

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1 MS. BYFORD: It's thirty years to life, Judge.

2 THE COURT: You understand that it's thirty to  
3 life?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. And have you had plenty of  
6 time to speak to your client? Do you think he  
7 understands the waiver of constitutional rights and the  
8 elements to this crime?

9 MS. JOHNSON: Yes, sir, I do.

10 THE COURT: All right. Mr. Mackey, you want to  
11 plead guilty to murder?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Yes, sir.

14 THE DEFENDANT: And are you guilty?

15 THE COURT: Okay. Yes, ma'am?

16 MS. BYFORD: Okay. Your Honor, may it please  
17 the Court. This occurred on May 16th 2009. The victim,  
18 Wally Eugene Dawson, had gone over to the Defendant,  
19 Johnny Mackey's house. A little bit of background. The  
20 Defendant's brother's girlfriend had been shot previous  
21 to this incident. And when Mr. Dawson went over to his  
22 house, he had his two sons with him who were twelve and  
23 nine, two of his children. And they gave statements  
24 saying their dad had said they were going over there to  
25 say -- so that their dad could apologize to Mr. Mackey

1 and say that he was sorry about hearing about Billie  
2 getting shot and to show support. So they were over  
3 there for that purpose.

4 When they pulled in to the driveway, the boys said  
5 that Johnny Mackey came out of the house with a shotgun.  
6 The victim told Mr. Mackey that his kids were with him.  
7 Mr. Mackey said, I don't care, I don't care, and began  
8 firing. Mr. Dawson was hit three times. He was hit in  
9 the thigh, the back and the head. And the shotgun  
10 shells, Judge, there's one right by the car, there's one  
11 closer to the street and there's one in the street. So  
12 we can show where the three shots were as the victim was  
13 running away.

14 Mr. Mackey did call 9-1-1 shortly after and gave a  
15 statement saying that he'd shot the victim, but he  
16 alleged that he did it in self-defense. The evidence  
17 does not support that. The two statements that were  
18 collected through the forensic interview process with the  
19 children don't support that at all. They basically relay  
20 the story just as I just told it to you.

21 Additionally, the evidence at the scene does not  
22 indicate that at all. There was no gun found in Mr.  
23 Dawson's truck or on his person. The boys also say that  
24 Mr. Mackey yelled at the victim, if I ever see you around  
25 again, I'll kill you.

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1           They got out of the car and ran to their aunt's  
2 house which is located close-by. All of these people  
3 live very close to each other, Judge. And those are the  
4 facts that the State would present at trial.

5           His prior record, Judge, he has a 2001 C.D.V., a  
6 2002 prowling, contributing to the delinquency of a minor  
7 and a disorderly conduct. In 2004, malicious injury to  
8 personal property, simple possession of marijuana. In  
9 2006, hindering officers, failure to stop for a blue  
10 light and malicious injury to personal property.

11           Your Honor, there are a number of the victim's  
12 family present here today. His parents are sitting in  
13 this first row right here along with other members of the  
14 family. His cousin, Haven Thomas, would like to address  
15 the Court at the appropriate time. And this is Ms.  
16 Clarissa White.

17           Did you want to speak?

18           And she doesn't want to speak. She was Mr. Dawson's  
19 girlfriend.

20           THE COURT: Okay.

21           All right. Mr. Mackey, do you agree with those  
22 facts?

23           THE DEFENDANT: Yes, sir.

24           THE COURT: All right.

25           Yes, ma'am?

1 MS. JOHNSON: Thank you, Your Honor. Your  
2 Honor, obviously this is a difficult case. And I think I  
3 need to go a little further into the background about  
4 what had happened both the night before the murder and  
5 prior to that.

6 Mr. Mackey has a brother whose name is Anthony.  
7 They call him Ant. Ant and Mr. Dawson, the victim in  
8 this case, kind of had a prior relationship. And in  
9 Anthony's statement he talked about Mr. Dawson riding  
10 around to see the cows. And Ant's a little mentally  
11 challenged and was actually present when this offense  
12 happened.

13 A few weeks before this incident took place, Anthony  
14 and Mr. Dawson had gotten into a fight that Mr. Mackey  
15 witnessed between the two. It was a verbal altercation.  
16 He didn't really know what it was about. But then on the  
17 heels of that, Billie, Ant's common-law wife, got shot.  
18 She was taken to Greenville Hospital. And on the morning  
19 of the murder, Anthony and Mr. Mackey had actually gone  
20 together to go visit her at the hospital. They had gone  
21 back to Ant's house and they were there cleaning up the  
22 blood from the shooting when this incident took place.

23 I say that to kind of give you an understanding,  
24 whether reasonable or not, Mr. Mackey thought Mr. Dawson  
25 had been involved in the shooting of Billie the night

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1 before. He was not ever obviously charged with anything  
2 there. It was a different individual who is charged in  
3 that offense. But to let you understand what was going  
4 on.

5 On the day this happened, as was alleged, Mr. Dawson  
6 approached their home where Ant was and where Mr. Mackey  
7 was. Pulled up in the street. Kind of pulled past the  
8 house a little bit and then backed up in the street. And  
9 although he was not actually armed, Mr. Mackey made the  
10 assumption that he was. He assumed that he was there to  
11 cause trouble.

12 Now, I think they're -- as Ms. Byford pointed out,  
13 it's not a self-defense. There's no evidence whatsoever  
14 that he was armed, that he fired a weapon. There was no  
15 gunshot residue found on him. But again, I think it's  
16 important for the Court to understand the background of  
17 what was going on between these parties to understand  
18 that this was not just, I shot some guy in the street in  
19 front of my house. He had -- Mr. Mackey had actually  
20 obtained the weapon because he feared that something else  
21 would go on.

22 And again, this is not a situation where he or his  
23 brother went seeking this person. He came by the house.  
24 And I know that the children said he had come by to  
25 apologize for what happened to Billie, but it was

1 certainly not -- it was certainly perceived as a threat  
2 by Mr. Mackey.

3 Your Honor, we understand obviously the very serious  
4 nature of this offense. He has taken someone's life, and  
5 there is nothing that he can say or do before the Court  
6 to justify that. But all I can do is try to explain what  
7 his point of view, what his mind set was at the time that  
8 this happened. Again, I'm not arguing that this was in  
9 any way justified, but just to give the Court some  
10 background between these individuals as to what was going  
11 on.

12 Mr. Dawson had served a, I believe a, seven-year  
13 sentence for trafficking drugs. I think there was some  
14 trade between Mr. Dawson and Anthony, and that's what  
15 this prior argument had been about. Sometime -- and  
16 again, I don't -- you know, I don't have any way to prove  
17 that. Anthony has not had any contact with Mr. Mackey  
18 since his arrest.

19 But in any event, Your Honor, we are asking the  
20 Court to consider a sentence of thirty years. Mr. Mackey  
21 is twenty-seven years old. He is married. He has three  
22 children with his wife Cynthia, ages seven, two, and  
23 almost one year.

24 As he pointed out, his last work was with Callaham  
25 Cable Construction. He was there from approximately

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1 September 2008 to January 2009. Prior to that, he had  
2 worked changing tires for West Star. He was not sure of  
3 his dates of employment there.

4 Your Honor, he was raised by his grandmother. And  
5 on a side note, I think the Court -- I think you may have  
6 actually heard his mother was killed in 2008 by her  
7 husband, and he was recently sentenced, I believe, in the  
8 fall of this year. So it's -- just to give the Court  
9 some background. I'm not sure -- his father is present  
10 here today.

11 MS. JOHNSON: Do you wish to address the Court?  
12 Let me get you up here. You need to say your name for  
13 the record, please, okay?

14 THE COURT: Yes, sir. Give us your name just  
15 for the record.

16 MR. JOE MACKEY: My name is Joe James Mackey.

17 THE COURT: Yes, sir. Anything you want to  
18 tell me?

19 MR. JOE MACKEY: I just want to say, Your  
20 Honor, that things do happen. I know that things do  
21 sometimes get out of hand. And as me, myself, knowing  
22 like I do, we all make mistakes. And out of everything  
23 that we do, only certain ones that we can repair the  
24 damage that we're done.

25 But you know, I do want to say this, apologies to

1 the family. I do apologize for my son's action. And I  
2 do know about how they feel because his mother just went  
3 through the same kind of action with a shotgun. I feel  
4 their pain. I also feel their anger in their heart, but  
5 I ask them to have mercy and forgive us for the things  
6 that we have done. I say that because I stand here with  
7 my son. And as they have lost theirs, I feel that we're  
8 about to lose ours. And we just ask for mercy.

9 THE COURT: All right.

10 Anything you want to say, Mr. Mackey?

11 THE DEFENDANT: Yes, sir, Your Honor. I do  
12 want to say I do at the utmost apologize and know that  
13 what I done was wrong. And I just hope that they will  
14 one day have in their heart be able to forgive me for  
15 what I've done.

16 THE COURT: Okay. All right.

17 I'll be happy to hear from -- if you would, give us  
18 your name just for the record.

19 MR. THOMAS: My name is Haven Thomas.

20 THE COURT: Yes, sir.

21 MR. THOMAS: And I'm speaking for myself and  
22 the family. He left behind six kids, three by this lady  
23 right here. And to be honest, Your Honor, I don't feel  
24 no remorse because his mother over there is tore up  
25 behind this, and she can't bring her son back. I mean,

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1 he was the backbone of the family and took care of  
2 everything. And it's just a cowardly act, just senseless  
3 of what happened.

4 I'm speaking on me and the family that we ask for  
5 the max, life, because this has been a major, major blow  
6 to his family. And it's just like a red curtain to us  
7 because I lost a brother -- I know how it is -- in '03.  
8 And we just ask you for the max of life because this has  
9 just completely tore the family apart. That's all I got  
10 to say.

11 THE COURT: Okay. Is there anything you want  
12 to say?

13 MS. WHITE: I got something I want to say now.

14 THE COURT: Yeah. Just give us your name just  
15 for the record.

16 MS. WHITE: My name is Clarissa White, and I  
17 was Wally's fiancé. He has three kids by me. At the  
18 time they were fourteen, twelve and three months. And in  
19 her statement she mentioned that Mr. Mackey thought the  
20 night before that he had something to do with Billy  
21 getting shot. And that's not true because he was at  
22 home. He was in Georgia with us.

23 I just want to ask for the maximum sentence because  
24 to shoot somebody in cold blood like that when they walk  
25 up and just make it known that I don't want any trouble,

1 and you still shoot them in front of their kids, I think  
2 that you had -- you know, you should just have the max.

3 I don't feel any remorse. I don't feel any pity,  
4 you know. I'm just asking for the max because this has  
5 been really hard on my kids. It's been really hard on  
6 his mother and the rest of the family. And he has three  
7 kids. Wally had six. He had three by me. So now, you  
8 know, we don't have any support. It's hard. We're  
9 trying to do what we can do to make it. And you know, I  
10 just ask for the max.

11 THE COURT: How are the two children that were  
12 with him doing?

13 MS. WHITE: Twelve and nine.

14 THE COURT: How are they doing?

15 MS. WHITE: They're doing okay. You know,  
16 they're just having problems with it because they have to  
17 relive that. You know, they wake up having nightmares at  
18 night. My daughter Ashley, we had just dropped their dad  
19 off twenty minutes before that. You know, I had to get  
20 her counseling because she stopped eating. She was a  
21 daddy's girl. You know, it's just been really hard.

22 THE COURT: Okay.

23 All right. Y'all approach. I want to ask you  
24 something.

25 (WHEREUPON, a bench conference was held off the

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1 record.)

2 THE COURT: Well, the problem with this one is,  
3 you know, you've got those two children sitting there. I  
4 mean, with their daddy just sitting in a car. What did  
5 you think was going on? I mean, seriously, what did you  
6 think was getting ready to happen that made you go  
7 outside with a shotgun and start shooting the guy with  
8 kids in his car? I mean, you can tell me. I mean, it  
9 ain't going to hurt you now. I mean, I just wonder.

10 THE DEFENDANT: Your Honor, I didn't know  
11 whether he was armed or he wasn't armed. And at the  
12 time, I did not know that he had the kids in the car. I  
13 didn't find this out until afterwards.

14 MS. JOHNSON: He was outside of the vehicle  
15 when this happened. He was not in the truck when the  
16 shooting took place.

17 THE COURT: All right. I'm going to accept the  
18 plea and find it freely and voluntarily made and based  
19 upon advice of counsel. And I do remember. I did do the  
20 plea, and I remember that. You know, what worries me is  
21 that the first thought people have is to grab a shotgun  
22 because they're afraid somebody's armed. When we reach  
23 that point, you know, we need to pull back.

24 As I said, I'm going to accept the plea. The  
25 sentence on this is forty-five years. The reason I'm

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*GUILTY PLEA HEARING (2/8/2011)*

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1 doing that is, I'm trying to get to a certain point.  
2 Normally on something like this, it would probably be  
3 thirty. But to be honest with you, with those two  
4 children in the car and the way it was, that's as wrong  
5 as wrong can be. So I'm just calculating how old he'll  
6 be when he gets out.

7 And I wish you all the best of luck.

8 MS. BYFORD: Thank you, Judge.

9 MS. JOHNSON: Thank you, Your Honor.

10 THE COURT: Thank you.

11 (WHEREUPON, the hearing ended at approximately 11:23  
12 a.m.)

13 \*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*

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## 1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court  
3 Reporter for the Tenth Judicial Circuit of the State of  
4 South Carolina, do hereby certify that the foregoing is a  
5 true, accurate, and complete transcript of record of all  
6 the proceedings had and evidence introduced in the  
7 hearing of the captioned case, relative to appeal, in the  
8 Circuit Court for Anderson County, South Carolina, on the  
9 8th day of February 2011.

10 This transcript may contain quoted material. Such  
11 material is reproduced as read by the speaker.

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

14 June 6, 2011

15

16

17

Renee Tollison

Circuit Court Reporter

FORM 5

AT.  
MAY --5 2011  
K. Lee  
CLERK OF COURT

STATE OF SOUTH CAROLINA )

County of ANDERSON )

SCDC# 294652 (INMATE) state  
LITTLE JOHNNY LEE MACKEY )

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

v. )

State of South Carolina )

IN THE COURT OF COMMON PLEAS

FILED-CLERK'S OFFICE  
ANDERSON SC  
2011 MAY -5 A 9:50  
COURT PLEAS AND  
GENERAL SESSIONS

APPLICATION FOR

POST-CONVICTION RELIEF

2011-CP-04-01537

INSTRUCTIONS B READ CAREFULLY

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

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

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

- Place of detention KIRKLAND CORRECTIONAL INSTITUTION (SCDC) \*\*\*  
4344 BROAD RIVER ROAD, COLUMBIA, SOUTH CAROLINA. 29210-4010 (USA)
- Name and location of Court which imposed sentence ANDERSON COUNTY COURTHOUSE  
\*\*\* GENERAL SESSIONS COURT - FEBRUARY 8th, 2011, TRIAL HEARING
- Name(s) of co-defendant(s) (if any) \*(NONE)\*
- The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: \*(45) YEARS TO SERVE \*  
\*\*\* (a) 2009-GS-04-01773-16-03-0010, 0020 (MURDER/MURDER)  
CDR code: 0116  
\*\*\* TRIAL HEARING FEBRUARY 18, 2011. A/W J896993 - DATE OF OFFENSE  
5-16-2011  
\*\* CAPITAL OFFENSE \*\*

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

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

\*\*\*

(a) { FEBRUARY 8<sup>th</sup>, 2011. ANDERSON COUNTY GENERAL SESSIONS COURT  
(b) { SENTENCED TO SERVE 45 YEARS IN THE SOUTH CAROLINA  
(c) { DEPARTMENT OF CORRECTIONS (PRISON SYSTEM)

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) DEFENSE ATTORNEY, NEVER ASKED ME DURING MY TRIAL, IF  
LITTLE JOHNNY LEE MACKAY WANTED TO APPEAL MY CASE ON DIRECT APPEAL TO THE S  
If you answered Ayes@ to (7), list: CAROLINA COURT OF APPEALS OFFICE !!!!

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

i. \_\_\_\_\_  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_  
N/A

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

i. \_\_\_\_\_  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_  
N/A

(c) the date of each such result:

i. \_\_\_\_\_  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_  
N/A

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

i. \_\_\_\_\_  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_  
N/A

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

\*\*\*

(a) DEFENSE ATTORNEY, NEVER ADVISED ME OF MY LEGAL RIGHTS OF (10)  
TO FILE MY APPEAL TO THE SOUTH CAROLINA COURT OF APPEALS (DIRECT APPEAL PROC)

\*\*\* DEFENSE ATTORNEY, NEVER EXPLAIN TO ME DURING MY TRIAL THE AA OF MY LEGAL RIGHTS TO FILE MY APPEAL.!!!

\*\*\* (b) DEFENSE ATTORNEY, NEVER FILED ANY APPEAL (LEGAL PAPERWORK) FOR ME ANY LEGAL LETTERS, ASKING ME IF I WANTED TO APPEAL MY CONVICTION INTO THE SOUTH CAROLINA COURT OF APPEALS OFFICE (DIRECT APPEAL PROCESS)

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: \* (SHE) \* (PUBLIC DEFENDER) \* (A+)

\*\*\* (a) INEFFECTIVE ASSISTANCE OF COUNSEL - (TRIAL) FEBRUARY 8th, 5

\*\*\* (b) STATE OF SOUTH CAROLINA VIOLATED MY LEGAL RIGHTS TO APPOINT

\*\*\* (c) A CAPITAL OFFENSE TRIAL LAW FIRM - NOT A PUBLIC DEFENDER TO A ME FOR A MURDER CHARGE.!!!

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

\*\*\* (a) -> SEE ATTACHMENT PAGE(S) TO SUPPORT (ALL) (b) QUESTIONS (10) AND (11) ON INEFFECTIVE - (c) ASSISTANCE OF COUNSEL b/six AMENDMENT RIGHTS U.S. CONSTITUTION

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. \_\_\_\_\_  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_  
iv. \_\_\_\_\_  
N/A

(b) the name and location of the Court in which each was filed:  
i. \_\_\_\_\_  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_  
N/A

Attachment to page <sup>\*\*\*</sup> (3) <sup>\*\*\*</sup> of Post Conviction Relief Application Form

→ Page (1) ←

\* (10). State concisely the grounds on which you base your Allegation that you are being held in custody unlawfully:

\* (A). The Applicant/Defendant WAS denied effective assistance of counsel in violation of the sixth Amendment to the United States Constitution and Article I, section 14 of the South Carolina Constitution. (USA)

\* (11). State concisely and in the same order the facts which support each of the grounds set out in (10): (INEFFECTIVE ASSISTANCE OF COUNSEL)

\* (A). The Applicant/Defendant WAS provided with deficient performance representation by His Public Defender in that the conduct of His Public Defender <sup>\*(SHE)\*</sup> WAS objectively unreasonable under the circumstances.

(See) Strickland v. Washington, 466 U.S. 668 (1984). The outcome of the Applicant's/Defendant proceeding WAS "prejudiced", and it is reasonable probable that the outcome would have been different had Public Defender performance not been deficient! Strickland v. Washington, 466 U.S. 694  
Public Defender WAS ineffective based on one or more of the following

\* (1). My Public Defender <sup>\*(SHE)\*</sup> FAILED to conscientiously discharge (Her) Legal Responsibilities while (She) WAS Handling My TRIAL, and Allow A Lawyer who Handles capital offenses) of MURDER to properly Represent Me So I would get a FAIR TRIAL!

\* (2). My Public Defender <sup>\*(SHE)\*</sup> FAILED to effectively challenge the Police Sheriff's office of my ARREST and the Investigation Process

\* \* Attachment to page <sup>\* \* \*</sup> (3) of the post conviction-  
Relief Application Form

→ page (2) ←

- \* (3). My Public Defender <sup>\*(SHE)\*</sup> failed to Act As my diligent, conscientia  
Advocate, and NEVER discussed ANY Plea BARGAINS (OR) Plea DEALS,  
that would be FAIR to me as A FIRST TIME conviction of MUR
- 
- \* (4). My Public Defender <sup>\*(SHE)\*</sup> failed to give me Her complete Loyalty,  
AND explain to me every step in Her Investigation Defense  
of my case, so that I would receive a FAIR TRIAL!
- 
- \* (5). My Public Defender <sup>\*(SHE)\*</sup> did not have my Best interest in mind while  
while (she) was suppose to be investigating and preparing my  
Case for TRIAL, and (she) NEVER gave me a copy of my motion  
of Discovery Legal paperwork (OR) motions (she) filed on my  
Behalf concerning the CRIMINAL investigations!
- 
- \* (6). My Public Defender <sup>\*(SHE)\*</sup> failed to serve my cause in good faith,  
(she) Had me take A Plea of (15) years in PRISON, and NOT  
Settle a Plea BARGAIN with the Solicitor's office, that  
would have been FAIR to me as a FIRST TIME offender of  
A CAPITAL offense of MURDER!
- 
- (7). My Public Defender <sup>\*(SHE)\*</sup> Neglected the Necessary investigation.  
AND the preparation of my case, NOR did (she) Allow me all the  
Police-Sheriff's office pictures)-evidence - motion of  
Discovery MATERIALS, WHICH the State of SOUTH CAROLINA  
Had /used Against me, to Have me ARRESTED FOR MURDER!

\*\* Attachment to page (3)\* of the post conviction<sup>25</sup>  
Relief Application form.

→ Page (3) ←

\* (8). My Public Defender <sup>\*(SHE)\*</sup> did not do the necessary (actual investigations, nor was I allowed to have a conference meeting me, my public defender, and the police - sheriff's office to discuss about the murder crime - evidence. Against me, and to work out a plea bargain/plea deal to be fair to me as a first time offender of the charge of murder!

\* (9). My Public Defender <sup>\*(SHE)\*</sup> did not do the necessary legal research to ask for a private law firm to be appointed that can properly handle (all) capital offense charge(s) of murder

\* (10). My Public Defender <sup>\*(SHE)\*</sup> did not conscientiously gather any information to protect my legal rights/human rights/civil rights, to call witnesses(s) - family members(s), friends, (or) any person who could testify to the court/judge that I should have been appointed by law a private law firm who handles (all) capital offenses) during trial(s), so that it would be fair for my defense!

\* (11). My Public Defender <sup>\*(SHE)\*</sup> did not try to have my case settled in a fair manner/matter that would have been to (my) best advantage, and to take stress/depression away from (all) my family members(s), friends etc!

\*\* Attachment to page (3)\* of the post conviction  
 Relief form  
 → page (4) ←

\* (12). MY PUBLIC DEFENDER <sup>\*(SHE)\*</sup> did not advise me of All my legal rights as a citizen of the State of South Carolina, or take ANY of the Actions that were Necessary to protect preserve them; Knowing that I was not versed in the CRIMINAL Law Procedures, nor did my Public Defender send me ANY Law-CASE(S) information to explain to me that I could get ~~30 years~~ instead of (45) years, which is a HARSH, HARSH, HARSH, HARSH, CRUEL sentence of (45) years for A First-time offender of MURDER!

\* (13). MY PUBLIC DEFENDER, <sup>\*(SHE) (KNEW)\*</sup> Knowing I was illiterate in the  
 ○ NEVER properly Ascertained whether (or) not I actually understood (or) comprehended (all) of the legal issues) that were involved in my case. My Public Defender, was NOT prepared to Handle my capital offense of MURDER, AND ~~Refused to Step down, and Ask the Clerk of court~~ AND the trial Judge to Appoint me a PRIVATE Law firm who has years, years, years of experience Handling these types of High profile CRIMINAL cases) etc!

\* (14). MY PUBLIC DEFENDER <sup>\*(SHE)\*</sup> NEVER properly consulted with me (or) kept me informed with information of what was going on AS FAR AS my CRIMINAL case WAS concerned.  
 ○ MY PUBLIC DEFENDER, NEVER sent me any legal letters that could explain to me in full details of How long my CRIMINAL case, would take to get into trial, and

\*\* Attachment to page <sup>27</sup>(3)\* of the past conviction  
Relief Application Form

→ page (5) ←

○ MY PUBLIC DEFENDER <sup>\*(SHE)\*</sup> NEVER Fought/Advocated to ANY  
Judges/Solicitor(s) to Have My Bond Set (OR) to Have  
A Conference Meeting to Explain My Side of the story,  
OF Why this crime Happened!

\* (15) MY PUBLIC DEFENDER <sup>\*(SHE)\*</sup> NEVER Explained to me (OR) NEVER  
discussed with me any of the elements of the  
crime charged in full details etc.

\* (16) MY PUBLIC DEFENDER <sup>\*(SHE)\*</sup> NEVER MADE ANY Attempt  
to Ascertain whether (OR) NOT I Actually knew  
what the elements for the crime charged were  
OR whether (OR) NOT I understood exactly what the  
term "CRIMINAL Element" Actually meant.

\* (17) MY PUBLIC DEFENDER <sup>\*(SHE)\*</sup> NEVER Explained to me (OR) discussed  
with me how the elements of the crime charge and  
the evidence that the prosecution planned to now  
introduce into evidence against me Related to one  
Another and did not discuss How the sentencing would  
be done especially as it Related to the elements of  
the crime as in State v. Boyd.

○ \*(18) MY PUBLIC DEFENDER <sup>\*(SHE)\*</sup> NEVER informed me of ANY of  
the Defense(s) that were Available to me (OR)  
Provide me my copy of the Motion of Discovery Legal-

\*\* Attachment to page (3) \* of the postcard  
Relief Application Form

→ page (6) ←

paperwork, that would have showed me (all) the evidence/statements (pictures), Police - Sheriff's - Reports etc!

\* (SHE) \* (inmate)  
\* (19). My Public Defender had too many other clients who are indigent, to properly have enough time to focus fully on my capital offense case of murder, and (she) should have requested a motion to allow a private law firm to step in, so that I would have been properly represented in my trial hearing, instead of being totally railroaded, because I'm a indigent person of color - a Black man, NO CRIMINAL HISTORY OF A CAPITAL OFFENSE OF MURDER!

\* (SHE) \*  
\* (20). My Public Defender NEVER explained to (me) or my family members) any kind of defense strategy, All my Public Defender would do is very, very, very, very, <sup>little</sup> defense work to collect the \$500.00 Public Defender fee etc!

\* (SHE) \*  
\* (21). My Public Defender NEVER explained to me (or) discussed with (me) any of the factual choices that (she) either made (or) were planning to make.

\* (SHE) \*  
\* (22). My Public Defender dictated to me exactly how

\* Attachment to page \* (3) \* of the post conviction  
Relief Application Form

→ Page (7) ←

MY CRIMINAL CASE WAS GOING TO BE HANDLED AND OFFERED NO ALTERNATIVE OPTIONS, TO SETTLE MY CASE, BY PLEA BARGAINS (OR) HAVING THE MURDER CHARGE - REDUCED TO A MANSLAUGHTER CHARGE, WHICH WOULD HAVE BEEN FAIR TO ME, AS A FIRST TIME OFFENDER OF MURDER!

\* (23) MY PUBLIC DEFENDER <sup>\*(SHE)\*</sup> FAILED TO PROPERLY ACQUAINT THEMSELVES (HER) WITH THE LAWS OF THE STATE OF SOUTH CAROLINA, AND THE FULL FACTS SURROUNDING MY CASE, AND AS A DIRECT RESULT OF THEIR (HER) INTENTIONAL NEGLIGENCE, THERE WAS A VERY SERIOUS ERROR IN THEIR ASSESSMENT OF BOTH THE LAW AND THE FACTS. AND MY PUBLIC DEFENDER NEVER PROVIDED ME A COPY OF MY MOTION OF DISCOVERY MATERIALS.

\* (24) MY PUBLIC DEFENDER GROSS NEGLIGENCE AND (HER) MANY LEGAL ERRORS, NO CRIMINAL DEFENSE AT ALL, WAS PUT IN ISSUE FOR ME! DURING THE TRIAL - COURT PROCEEDINGS, WHICH I WAS RAHROCKED INTO ACCEPTING (45) YEARS IN PRISON, AND (I) DIDN'T KNOW ANYTHING ABOUT THE LAWS OF THE STATE OF SOUTH CAROLINA. AND I <sup>COULDN'T</sup> REQUEST A RETRIAL, BECAUSE MY PUBLIC DEFENDER NEVER FILED A MOTION FOR RECONSIDERATION TO HAVE MY CRIMINAL TRIAL RETHEARD AGAIN, BY A NEW JUDGE WHO WOULD BE FAIR TO ME!

\* (25) MY PUBLIC DEFENDER DID NOT SUBJECT THE SOLICITOR <sup>\*(SHE)\*</sup>

\*\* Attachment to page (3) of the post conviction Relief Application Form

→ page (8) ←

PROSECUTION'S CRIMINAL CASE AGAINST (ME) TO ANY, ANY, ANY, ADVERSARIAL TESTING!

\* (26) \* MY PUBLIC DEFENDER <sup>\*(SHE)\*</sup> FAILED TO OPPOSE THE SOLICITOR - PROSECUTION'S CRIMINAL CASE WITH ANY ADVERSARIAL LITIGATION!

\* (27) \* MY PUBLIC DEFENDER <sup>\*(SHE)\*</sup> FAILED TO FULLY FUNCTION AS THE GOVERNMENT'S ADVERSARY IN ANY SENSE OF THE WORD, AND NEVER ASKED ME IF I WOULD LIKE A PRIVATE LAW FIRM APPOINTED, WHO HANDLES CAPITAL MURDER CASES, ETC!

\* (28) \* MY PUBLIC DEFENDER <sup>\*(SHE)\*</sup> FAILED TO PURSUE ANY OF THE LEGAL RECOURSE - RECOURSE THAT WERE AVAILABLE TO (HER) AT THAT TIME, WHEN I WAS AWAITING MY TRIAL HEARING, AND I WAS CONFINED IN THE ANDERSON COUNTY JAIL.

\* (30) \* MY PUBLIC DEFENDER THAT REPRESENTED ME ON THIS CHARGE OF MURDER IN COURT <sup>\*(SHE)\*</sup> FAILED TO FULLY FUNCTION AS THE COUNSEL THE CONSTITUTION'S SIXTH AMENDMENT GUARANTEES, AND (SHE) NEVER ADVISED ME THAT I HAD LEGAL RIGHTS TO REQUEST FOR A PRIVATE LAW FIRM TO HANDLE MY CAPITAL MURDER CASE!

\* (31) \* MY PUBLIC DEFENDER <sup>\*(SHE)\*</sup> FAILED TO APPEAL MY CRIMINAL CASE, AFTER I WAS CONVICTED WHEN I WANTED TO APPEAL

Attachment to page 3 of the Post conviction<sup>31</sup> Relief Application Form

→ Page 9 ←

○

\* The Applicant/Defendant's Representation WAS NOT within the range and scope of competence demanded by STRICKLAND V. WASHINGTON and its progeny!

PUBLIC DEFENDER(SHE)\*

\* A convicted Applicant/Defendant's claim that Public-Defender Assistance was so defective AS TO REQUIRE REVERSAL/Remand of a conviction requires that the defendant show first, that the deficient performance prejudiced the defense so AS TO DEPRIVE the Applicant-Defendant OF A FAIR TRIAL!

○ \* See Sosebee v. Leeke S.C. 362, F.2nd 221 (1987), Citing STRICKLAND V. WASHINGTON 46 S.E. 2D 813 (1984).

\* See ALSO BUTLER V. STATE, 286 S.C. 441, 334 S.E. 2d 813, (1985), ALSO HILL V. LOCKHART, 474 U.S. 88 (1985).

\* APRIL 20, 2011.

" Little Johnny Lee Mackey " \* Respectfully Submitted \*

" (PRO SE) Applicant-DEFENDANT (State Inmate) " Little JOHNNY Lee MACKey

\* Sworn to and subscribed, before me this 20<sup>th</sup> day of 2011

SCDC # 294652, F2-A-123 KIRKLAND CORRECTIONAL INSTITUTION 4344 BROAD RIVER ROAD.

[Signature]  
NOTARY PUBLIC OF SOUTH CAROLINA

COLUMBIA, SOUTH CAROLINA.

29210-Volo(USA)

○ My Commission Expires on 10/8/2014

My Commission Expires October 8, 2014

\*\*\*

iv. N/A

(c) the disposition thereof:

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

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

\*\*\*

iii. N/A

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

(d) the date of each such disposition:

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

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

\*\*\*

iii. N/A

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?

\*\*\*

N/A

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) { EXHAUSTION State Remedies }
- (b) { POST CONVICTION RELIEF COURT - }
- (c) { COMMON PLEAS }

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

\*\*\*

(a) your arraignment and plea: \* YES \*

\*\*\*

(b) your trial, if any? \* YES \*

\*\*\*

(c) your sentencing? \* YES \*

\*\*\*

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \* NO \*

(e) preparation, presentation or consideration of any petitions, motions or application with respect to this conviction, which you filed? \* NO \*

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. ANDERSON COUNTY PUBLIC DEFENDER'S OFFICE
- ii. ANDERSON, SOUTH CAROLINA. 29622 (USA)
- iii.

\*\*\*

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

- i. FEBRUARY 8<sup>th</sup>, 2011, (TRIAL HEARING) \*\*\*
- ii. ANDERSON COUNTY GENERAL SESSIONS COURT
- iii. ANDERSON, SOUTH CAROLINA. 29622 (USA)

19. State clearly the relief you seek in filing this application:
- \*\*\* ① <sup>(Reverse) ultimately</sup> REMAND/OVERTURN CONVICTION FOR NEW TRIAL (HEARING) <sup>COURT</sup> GO <sup>SES</sup>
  - \*\*\* ② SENTENCE Reduction - FAIR Judgement (FIRST TIME CON
  - \*\*\* ③ NEW TRIAL Judge / CAPITAL OFFENSE <sup>\* PRIVATE \*</sup> LAW FIRM APPOINTED - REPRESENT ME IN COURT!!!!

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

Revised 3/200

STATE OF SOUTH CAROLINA )  
 County of ANDERSON ) VERIFICATION

\* SCDC # 294652 (inmate) state \*

I, LITTLE JOHNNY LEE MACKAY, 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.

Little Johnny Lee Mackay

SWORN to and subscribed before me this 25<sup>th</sup> day of April, 2011.

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

My Commission Expires: October 8, 2014

FILED-CLERK'S OFFICE  
 ANDERSON SC  
 2011 MAY - 5 A 9:50  
 COPIES FOR PLEAS AND  
 GENERAL SESSIONS

A TRUE COPY  
 MAY - 5 2011

APPLICATION TO PROCEED WITHOUT PAYMENT  
\* State (Inmate) \* OF COSTS AND AFFIDAVIT  
SCOC# 294652 IN SUPPORT THEREOF

I, LITTLE JOHNNY LEE MACKAY, 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.

Little Johnny Lee Mackay  
Applicant

SWORN or affirmed to and subscribed before me this  
25<sup>th</sup> day of April, 2011.

[Signature]  
Notary Public

My Commission Expires: My Commission Expires  
October 8, 2014

FILED-CLERK'S OFFICE  
ANDERSON SC  
2011 MAY -5 A 9:50  
COURT ROOM PLEAS AND  
GENERAL SESSIONS

ATRUE COPY  
MAY - 5 2011

STATE OF SOUTH CAROLINA )  
 COUNTY OF ANDERSON )  
 )  
 Little Johnny Lee Mackey, #294652, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE TENTH JUDICIAL CIRCUIT

2011-CP-04-1537

RETURN

The Respondent, making its Return to the application for post conviction relief (PCR) filed May 5, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. Applicant was true bill indicted at the July 2009 term of the Anderson County Grand Jury for Murder and Possession of a Weapon During the Commission of a Violent Crime (2009-GS-04-1773). He was represented by Jennifer Johnson, Esquire, on the charges. On February 8, 2011, Applicant appeared before the Honorable J. Cordell Maddox, Jr., where he pled guilty Murder. Applicant was to forty-five (45) years imprisonment. The Applicant did not appeal her guilty plea or sentence.

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

## II.

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

1. Ineffective assistance of counsel.
  - a. "Never advised me of my legal rights of 10 days to file my appeal (direct appeal)/Never filed appeal/Never explained appeal."
  - b. "Public defender was objectively unreasonable under the circumstances."
  - c. "Failed to conscientiously discharge her legal responsibilities when she was handling my trial and allow a law firm who handles capital offenses of murder to properly represent me."
  - d. "Failed to effectively challenge the police-sheriff's office of my arrest and the investigation process."
  - e. "Never discussed plea bargains that would be fair to me."
  - f. "Failed to give me her complete loyalty and explain to me every step in her investigation."
  - g. "Did not have my best interest in mind, never gave me copy of motion for discovery."
  - h. "Neglected the necessary investigation and preparation in my case nor did she allow me all the police-sheriff's office pictures – evidence."
  - i. "Did not do the necessary factual investigations, nor was I allowed to have a conference meeting me, my public defender and the police-sheriff's office to discuss about the murder crime evidence."
  - j. "Did not do the necessary legal research."
  - k. "Did not conscientiously gather any information...or call witnesses."
  - l. "Never properly consulted with me or kept me informed with information of what was going on."
  - m. "Never fought to have my bond set."
  - n. "Never discussed the elements of the crime charged."

- o. "Never informed me of any of the defenses that were available to me...Never explained any kind of defense strategy."

### III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he

would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

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

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


Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

KAELON E. MAY  
Assistant Attorney General

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

January 13, 2012

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF ANDERSON )  
 )  
 )  
 )  
 )  
 LITTLE JOHNNY LEE MACKEY, #294652) )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

2011-CP-04-1537

AFFIDAVIT OF SERVICE BY MAIL

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

**Rodney W. Richey, Esquire**  
**Post Office Box 10916**  
**Greenville, SC 29603**

DATED this 13<sup>th</sup> day of January, 2012

*Lena Pelishenko*  
 \_\_\_\_\_  
 Lena Pelishenko, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

Little Johnny Lee Mackey,  
S.C.D.G. No. 294652,  
Applicant,

Case No.: 2011-CP-04-1537

vs.

AMENDMENT TO POST-CONVICTION  
RELIEF APPLICATION

State of South Carolina,  
Respondent.

Applicant, Little Johnny Lee Mackey, submits this amendment to be amended to his pending PCR Application through underlined counsel of record Rodney Richey. However, if counsel refuse to verify the amendment of this issue, the PCR Court has the authority to accept and review the issue. Because the issue involves the Plea Court's jurisdiction to accept and sentence Applicant.

### ISSUE

Lack of jurisdiction because charging document was returned under the use of fraud. (Fraudulent Document).

Fraud upon the Court is a "serious allegation involving corruption of the judicial process itself." It is that which subverts the integrity of the Court itself, or is a fraud perpetrated by officers of the Court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.

Therefore, after a careful analysis of the facts and laws presented within this issue/matter, this Court will find a deliberately planned and carefully executed scheme to defraud not only the Applicant but the Circuit Court as well, which in the setting denied the Court its authority to adjudicate such matter.

## DISCUSSION

It has been well-established that an indictment from a grand jury is the charging document of the state. State v. Tumbleston, 654 S.E.2d 849 (2007). Thus, if in fact the charging document in this case is premised ~~on fraud, the Applicant~~ has never been charged with a crime which fail to confer jurisdiction to the trial court.

Here, South Carolina Constitution requires a person to be indicted by a grand jury before entering a plea or a valid waiver thereof. Pelzer v. State, 672 S.E.2d 798 (2009). Moreover, it has been held that a defendant has a constitutional right to demand that his case be considered by a grand jury which is properly established and constituted under the laws of this state. EVANS v. State, 611 S.E.2d 510 (2005).

While acknowledging the fact that South Carolina afford its citizens the process of being held to answer for a crime upon a presentment of an indictment by a grand jury pursuant to the S.C. Const. Art. I, §11, we are forced to look to the laws of this state that governs such procedure.

S.C. Code Ann. §14-9-170, mandates as follows:

... the grand jury as drawn in accordance with the law for service upon the Court of General Sessions in each of the counties shall constitute the grand jury for the County Court and shall meet with the County Court at each of its terms...

S.C. Code Ann. §14-9-210, mandates in relevant part:

... the County Solicitor shall prepare and, through the presiding judge of the Court of General Sessions, submit to the grand jury, while in attendance upon the Court of General Sessions, bills of

indictments in all cases pending in the County Court,  
when such cases have not been previously acted on by  
the grand jury ...

It is clear by utilizing the literal construction of §14-9-210  
and reviewing the Court Term Calendar for July of 2009 for Anderson  
County, we find that the Court of General Sessions did not convene on  
July 28, 2009, in Anderson County as indicated on Applicant's indictment.

"At a Court of General Sessions, convened on Jul 28 2009, the Grand Jurors  
of Anderson County present upon their oath." Therefore, this document  
purporting to be an indictment was returned by a grand jury that was  
not legally in session by law and this document operates as a fraud  
which fail to confer jurisdiction to the Court.

Furthermore, it has been held that if an Applicant's conviction is not  
based on a lawfully sworn-to indictment, which is tantamount to  
Aggravated Kidnapping; it is a bar to all prosecution, in accordance  
to the Constitution. Hamilton v. McCarter, 792 F.2d 171 (1985).

### CONCLUSION

This issue was amended to secure relief from a void judgment.  
Therefore, if the PCA Court refuse or otherwise do not address  
this issue on a point-for-point basis in its order concerning this  
action, shall constitute the honoring of the points of this issue  
being accepted as truth in the public record, will also entitle  
Applicant to relief in any higher court proceedings, and shall  
constitute the forfeiture of the position as a judge.

Respectfully Submitted,

s/ Little Jimmy Lee Mackey  
Little Jimmy Lee Mackey

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

Little Johnny Lee Mackey,  
S.C.D.C. No. 294652,  
Applicant,

Case No. 2011-CP-04-1537

vs.

CERTIFICATE OF SERVICE

State of South Carolina,  
Respondent.

I, Little Johnny Lee Mackey, certify that a true and correct copy of this Amendment to Post-Conviction Relief Application has been forwarded to Attorney of Record Rodney Richey at P.O. Box 10914, Greenville, S.C. 29603, Karlene E. May, Assistant Attorney General at P.O. Box 11549, Columbia, S.C. 29211 and the original was filed with Anderson County Clerk of Court at P.O. Box 8002, Anderson, S.C. 29622, by way of United States mail through Perry Correctional Institution's mailroom.

S/Little Johnny Lee Mackey  
Little Johnny Lee Mackey,  
Applicant.

Perry Correctional Institution  
430 Oaklawn Rd.  
Pelzer, S.C. 29669

SWORN TO and SUBSCRIBED before me  
this 7th day of May, 2012

Steve T. McEntley  
Notary Public

My Commission Expires: June 7, 2016

State of South ) In the Court of Common Pleas  
 Carolina )  
 County of Anderson ) Case No: 2011-CP-04-01537

Little Johnny Lee )  
 Mackey, )  
 Applicant, )  
 -vs- ) Transcript of Record  
 State of South ) Post-Conviction Relief  
 Carolina, ) Hearing  
 Respondent. )

June 5, 2012  
 Anderson, South Carolina

B e f o r e:

The Honorable Alexander S. Macaulay, Judge.

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

Rodney Richey, Esq.  
 Attorney for the Applicant

Kaelon E. May, Esq.  
 Attorney for the Respondent

Robin Sue Hild, FCRR, RPR  
 Circuit Court Reporter

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Exhibits

No.	Description	Id.	Ev.
	No Exhibits were introduced.		

1 \*\* Start of Requested Certified Transcript of Record \*\*

2 THE COURT: Is the State ready to proceed?

3 MS. MAY: Yes, sir.

4 THE COURT: Applicant ready to proceed?

5 MR. RICHEY: Yes, sir.

6 THE COURT: Is there anything from the State before  
7 we do proceed?

8 MS. MAY: No, Your Honor.

9 THE COURT: Anything from the Applicant?

10 MR. RICHEY: No, sir. We're ready to proceed.

11 THE COURT: Very well. You may call your first  
12 witness.

13 MR. RICHEY: I would call Mr. Mackey.

14 THE COURT: Oh, I'm sorry. Let me announce the  
15 case. This is Little Johnny Lee Mackey versus the State  
16 of South Carolina, 2011-CP-04-1537. Mr. Richey on  
17 behalf of the Applicant, Ms. May on behalf of the State.

18 (Whereupon, the Witness was sworn by the Clerk of  
19 Court.)

20 Whereupon,

21 Little Johnny Lee Mackey,  
22 having first been duly sworn, was examined and testified  
23 as follows:

24 Direct Examination by Mr. Richey:

25 THE COURT: Let me ask you, Mr. Richey, what are

1 the grounds for your application?

2 MR. RICHEY: Your Honor, Counsel did not adequately  
3 investigate the case; two, she never discussed any  
4 potential plea deals with the client.

5 Client alleges the indictment was insufficient, and  
6 Counsel should have made a motion to quash the  
7 indictment; that, too, Counsel should have requested the  
8 Court to be relieved and that outside counsel should  
9 have been appointed to the client.

10 Counsel declined to make a motion to have the Court  
11 reconsider the sentence; and then that he was never  
12 explained the elements of the crime or discussed with  
13 Counsel.

14 That would be it, Your Honor.

15 THE COURT: All right. As I understand, the  
16 grounds are not adequate investigation, failure to  
17 discuss plea deals or opportunities, failure to quash  
18 the Indictment; Counsel didn't seek to be relieved so  
19 another outside attorney could be appointed; and no  
20 motion to reconsider the sentence; and finally, no  
21 explanation of the elements of the charge.

22 Is that right?

23 MR. RICHEY: That's correct, Your Honor.

24 THE COURT: Very good. You may proceed.

25

1 By Mr. Richey:

2 Q. Sir, would you state your name, please.

3 A. Little Johnny Lee Mackey.

4 Q. And, Mr. Mackey, are you currently incarcerated  
5 right now?

6 A. Yes, sir.

7 Q. And where are you incarcerated?

8 A. Perry Correction.

9 Q. And what charges have you been incarcerated for at  
10 this time?

11 A. Murder.

12 Q. What was that?

13 A. Murder.

14 Q. And what type of sentence did you receive?

15 A. 45 years.

16 Q. Okay. And this was pursuant to a conviction in  
17 Anderson County; is that correct?

18 A. That's correct.

19 Q. And you have now filed an application for  
20 Post-Conviction Relief; is that correct?

21 A. That's correct.

22 Q. And on these charges you are incarcerated for, who  
23 represented you?

24 A. Jennifer Johnson.

25 Q. Okay. And was she appointed to represent you

1 through the Public Defender's Office?

2 A. Yes, sir.

3 Q. Okay. When she got appointed to represent you, did  
4 you have any discussions with her about your case?

5 A. I spoke with her about two, I think two times, once  
6 she came and she had the motion, I guess, but I didn't  
7 look at it at that point in time; and the second time  
8 she came she had a laptop and she showed me some  
9 pictures of the autopsy and stuff.

10 Q. Okay. So you were incarcerated the whole time; is  
11 that correct?

12 A. Yes, sir.

13 Q. You did not make bond?

14 A. No, sir.

15 Q. And you allege that she came to the jail to see you  
16 the first time?

17 A. Yes, sir.

18 Q. And the first time we believe she had discovery  
19 information. Is that what you are trying to say?

20 A. Yes, sir.

21 Q. Okay. Did you all go over that discovery?

22 A. No, sir.

23 Q. I mean, did she just leave it in the file or take  
24 it out?

25 A. The only thing she pulled out was a disc that was

1 supposed to have been the police call.

2 Q. The 9-1-1, probably, it sounds like?

3 A. Yes. That's what she told me. But she didn't have  
4 nothing to play it on so she said she'd bring it back at  
5 a later time.

6 Q. Okay. So she had a file similar to this yellow  
7 file or something with papers in it?

8 A. Yes.

9 Q. And it's your testimony that she didn't show you  
10 any of the papers?

11 A. Not at that time.

12 Q. Did she ever show you the papers?

13 A. Yes.

14 Q. When was that?

15 A. When she brought the laptop she showed me a couple  
16 papers. But I asked her about the motion. And she was  
17 like, she said, If you want to know what your motion is,  
18 your motion is this. But then -- you know what I'm  
19 saying -- that's all I seen at that point in time. I  
20 don't even know what that paper had on it.

21 Q. Okay. Did you know what investigation she had done  
22 towards your case?

23 A. No, sir.

24 Q. Okay. When you all discussed the case, I mean, did  
25 you tell her what you believe happened, did you tell her

1 that?

2 A. Yes.

3 Q. And then in response to that, did she then in turn  
4 talk to you about what the State would prove or any  
5 response about what you said?

6 A. Well, she was telling me that what I was saying,  
7 that they didn't have no evidence to base, to  
8 substantiate that or whatnot.

9 Q. Okay. She didn't have any evidence to substantiate  
10 a conviction? Is that what you're saying?

11 A. Say that again, sir?

12 Q. Let me ask you this way.

13 A. Okay.

14 Q. When she came to the jail and y'all discussed your  
15 case -- right?

16 A. Yes, sir.

17 Q. To some extent, right?

18 A. Yes, sir.

19 Q. When y'all discussed your case, did she discuss  
20 with you, after you told her your version, did she have  
21 a discussion with you as to what the evidence would  
22 show?

23 A. Not exactly.

24 Q. Okay. So when you said "I did this," she just said  
25 okay, that's it?

1 A. No, it wasn't like that. I said -- you know what  
2 I'm saying -- that I wanted to know exactly how this was  
3 gonna go out, what potential things I could get done.

4 She basically said that it was 30 to life, either  
5 that or go to trial. So, I mean -- you know what I'm  
6 saying -- I felt like I didn't have much of an option  
7 there.

8 Q. The facts of this case, alleged facts were that a  
9 gentleman -- that you were at home, correct?

10 A. Yes, sir.

11 Q. And a gentleman came over and then you shot him; is  
12 that...

13 A. Yes, sir.

14 Q. Okay. And you were at home at the time this  
15 happened?

16 A. Yes, sir.

17 Q. Okay. Were there any plea deals in the case that  
18 you were aware of?

19 A. No, sir.

20 Q. Did your attorney talk to you and say "I'm gonna go  
21 talk to the State and try to get some type of plea  
22 deal"?

23 A. No, sir.

24 Q. Did you ask her about it?

25 A. Yes, sir.

1 Q. And what did you ask her?

2 A. I asked her, I said, so what kind of plea deal  
3 discussions are there? She said there ain't no plea  
4 deal discussions. The only thing you got is 30 to life  
5 for straight-up murder, 30 to life or go to trial is the  
6 only thing you got.

7 Q. Did you ever ask her to make a deal to the State or  
8 ask the State to accept it?

9 A. Yes.

10 Q. And what was that offer?

11 A. I was trying to get something better than what was  
12 on that. The only thing they were gonna do is 30 to  
13 life or go to trial. She said those were the only  
14 options I had.

15 Q. And you were indicted by this Indictment in 2009, I  
16 believe July 20, 2009. Do you believe this Indictment  
17 was proper?

18 A. No, sir.

19 Q. And why is that?

20 A. Because I got my court calendar and on my court  
21 calendar it said there was no CR needed, and I had  
22 talked to some people about it in the law library. They  
23 say that meant there was no court reporter that was  
24 there recording anything, that the General Sessions  
25 grand jury didn't convene on that day.

1 Q. Okay. Your position is the grand jury did not  
2 meet; therefore, you could not get indicted?

3 A. Yes, sir.

4 Q. Okay. Let's talk about Counsel -- in this case you  
5 had sought to have outside private counsel hired; is  
6 that correct?

7 A. Yes, sir.

8 Q. And did you talk to your attorney about that?

9 A. Excuse me?

10 Q. Did you talk to her about that?

11 A. About a private attorney?

12 Q. Yes.

13 A. No, sir.

14 Q. Okay. Did you believe that would have been proper  
15 in your case?

16 A. Yes, sir.

17 Q. Why is that?

18 A. Because I felt like that I might have been able to  
19 get a better sentence if I had had somebody that was  
20 more suited to represent me in this defense.

21 Q. When you say more suited, what does that mean?  
22 Explain that.

23 A. Well, that I felt like it was kind of one-sided.  
24 You know what I'm saying? I wasn't getting the right --  
25 you know what I'm saying -- representation. I felt

1 like -- you know what I'm saying -- that it wasn't in my  
2 best benefit, my best interests.

3 Q. Okay. And you, after you were sentenced, you  
4 believe it was proper for your attorney to make a motion  
5 to reconsider your sentence; is that correct?

6 A. Yes, sir.

7 Q. Did you talk to your lawyer about doing that? Did  
8 you have any discussions with her about doing that?

9 A. No, sir. At that time I didn't know anything about  
10 that, that I could appeal or nothing. I didn't know  
11 anything about anything like that.

12 Q. By saying that you got 45 years, you believe it was  
13 proper for her to have it reconsidered?

14 A. Yes, sir.

15 Q. The elements, did you all go through the elements  
16 of murder? Did you and your attorney discuss the  
17 elements of murder?

18 A. That's what I'm saying. They said it was 30 to  
19 life.

20 Q. No, no. I'm not saying the sentence.

21 A. Oh.

22 Q. Did you all discuss the elements of murder, what  
23 the State would have to prove?

24 A. No.

25 Q. Okay. You didn't have any discussion at all the

1 State had to prove that, the elements they would have to  
2 prove, you had no discussions at all with your lawyer?

3 A. None, no, sir.

4 Q. Do you believe if your attorney had done the things  
5 that you have alleged, that the outcome of your case  
6 would have been different?

7 A. Yes, sir.

8 Q. Do you believe that you would have received a  
9 lesser sentence?

10 A. Yes, sir.

11 Q. Is this a case that you wanted to have a trial on?

12 This is not a case you wanted to have a trial on, was  
13 it?

14 A. No, sir.

15 Q. Okay. You essentially wanted to try to get the  
16 best deal you could get, correct?

17 A. Exactly.

18 Q. And you just don't believe your attorney advocated  
19 to the extent to allow you to get that, correct?

20 A. Yes, sir.

21 MR. RICHEY: Thank you. Answer any questions the  
22 Attorney General may have for you.

23 THE COURT: Cross-exam.

24 MS. MAY: May it please the Court, Your Honor.

25

1 Cross-Examination by Ms. May:

2 Q. Mr. Mackey, did you ever ask Ms. Johnson to be  
3 relieved?

4 A. No. No, ma'am.

5 Q. You never asked her that she relieve herself?

6 A. No, ma'am.

7 Q. Okay. And do you recall at your guilty plea  
8 hearing telling the Plea Court that you were satisfied  
9 with her services?

10 A. Yes, ma'am, I did.

11 Q. Okay. Was that the truth?

12 A. The reason why I said that, ma'am, was because I  
13 felt she felt she had me under the influence that she  
14 was gonna be able to get me 30 years, so that's why I  
15 said I was satisfied with her.

16 Q. Okay. And do you recall at your guilty plea  
17 hearing the Solicitor say that there were no  
18 recommendations?

19 A. Yes, ma'am.

20 Q. And do you recall the Judge informed you that the  
21 potential sentence was 30 years to life?

22 A. Yes, ma'am.

23 Q. And you said to the Court that you wanted to plead  
24 guilty to murder, correct?

25 A. Yes, ma'am.

1 Q. And you admitted that you were guilty?

2 A. Ma'am?

3 Q. You admitted that you were guilty; is that correct?

4 A. Yes, ma'am.

5 Q. Do you still maintain that you are guilty?

6 A. (Pause.) Could you ask that question again,  
7 please?

8 Q. At your guilty plea hearing the Plea Judge asked if  
9 you were guilty and you answered yes. Do you still  
10 maintain that you were guilty?

11 A. I wouldn't say I was guilty of murder, but, I mean,  
12 of a lesser offense I would say yes.

13 Q. And do you recall the Solicitor reading out the  
14 facts of your case at your plea hearing?

15 A. The facts?

16 Q. Do you have a transcript up there with you?

17 A. Yes.

18 Q. If you want to refresh your memory, it's on Pages 7  
19 through 9.

20 A. Hold on one second. What page?

21 Q. Seven through 9.

22 A. What are you asking me?

23 Q. After the Solicitor finished reciting the facts,  
24 the Judge asked you, Do you agree with this? And you  
25 answered yes.

1 A. (Reads guilty plea). Okay. Now, what did you say  
2 again?

3 Q. At the time you agreed with those facts, correct?

4 A. Yes.

5 Q. Do you still agree with those facts?

6 A. Yes.

7 MS. MAY: Okay. I have no further questions of  
8 this Witness.

9 THE COURT: Re-exam?

10 MR. RICHEY: No more questions.

11 THE COURT: All right. You may step down. Thank  
12 you, sir.

13 THE WITNESS: Thank you.

14 (Witness leaves stand.)

15 MR. RICHEY: I call Ms. Johnson.

16 (Whereupon, the Witness, Jennifer Johnson, was  
17 sworn by the Clerk of Court.)

18 THE CLERK: And once you are seated, please give us  
19 your full name for the record.

20 THE WITNESS: It's Jennifer Johnson.

21 Whereupon,

22 Jennifer Johnson,

23 having first been duly sworn, was examined and testified  
24 as follows:

25

1 Direct Examination by Mr. Richey:

2 Q. Ms. Johnson, where are you employed?

3 A. The Tenth Circuit Public Defender's Office.

4 Q. And how long have you been employed there?

5 A. About nine and a half years.

6 Q. Do you recall representing Mr. Mackey?

7 A. Yes, sir, I do.

8 Q. And what charges did you represent him for?

9 A. Murder and possession of a weapon during a violent  
10 crime.

11 Q. Okay. I'm gonna go through this list. Can you  
12 tell me a little bit about him --

13 Well, first of all, do you recall meeting with him?

14 A. Yes, sir.

15 Q. And do you recall talking with him?

16 A. Yes, sir.

17 Q. Okay. Do you recall the meeting he referred to  
18 where you came to the jail initially to see him?

19 A. Yes.

20 Q. And did you have discovery at that time?

21 A. I believe I did, yes, sir.

22 Q. Did you show him the discovery or discuss the  
23 discovery with him?

24 A. Yes. Generally what I do, I'm not gonna say I read  
25 every document word for word, but my practice is

1 particularly related to any sort of witness statements,  
2 police reports. I don't go into booking items and that  
3 sort of thing, but I actually read them to my client,  
4 because I found a lot of them do have difficulty  
5 reading, and so if I read them, I know that we're on the  
6 same page regarding material.

7 Q. Okay. Do you have any reason to believe why he  
8 would think you didn't show him discovery?

9 A. Maybe because I didn't hand the stack of papers to  
10 him and leave them there. I don't know.

11 Q. Now, the Indictment in this case --

12 MR. RICHEY: Your Honor, may I approach the  
13 Witness, please?

14 THE COURT: Certainly.

15 By Mr. Richey:

16 Q. I want to hand that up to you, the Indictment.  
17 Does that appear to be a copy of the Indictment in this  
18 case?

19 A. It does appear to be so.

20 Q. And prior to trial did you make a motion to squash  
21 [sic] the indictment?

22 A. I did not.

23 Q. And do you believe that motion would be proper?

24 A. No, I do not.

25 Q. Did you do any investigation into whether the grand

1 jury actually met?

2 A. No.

3 Q. Okay.

4 A. I mean, there's a signed true-bill. To be  
5 perfectly honest, I don't go back and look to see what  
6 dates the grand jury met.

7 Q. You heard Mr. Mackey testify in terms of having you  
8 relieved as counsel. Do you believe that this is a case  
9 where you should have been relieved or made a motion to  
10 be relieved?

11 A. No. I was not aware of any problems either between  
12 us or any reason why I shouldn't handle the case.

13 Q. There was no tension during your representation  
14 that you can recall?

15 A. Not any more than is ordinarily there with a client  
16 who is unfortunately facing the circumstances that he  
17 was. I mean, he was certainly between a rock and a hard  
18 place.

19 Q. The motion -- did you consider -- your motion to  
20 reconsider -- let me go back.

21 Y'all were trying to get 30 years, correct?

22 A. Yes, sir.

23 Q. And then you discussed with him about having a  
24 chance of getting 30 years, correct?

25 A. Yes. And specifically in my notes one of the

1 questions that he asked me was: Does it mean 30 or life  
2 or is it 30, 40 or 50, and I wrote that down and I noted  
3 that we had specifically discussed that it could be a  
4 term of years anywhere between 30 and life.

5 Q. And so, when he got 45, is it safe to say that  
6 y'all were disappointed a little bit?

7 A. Very much so, yes.

8 Q. Okay. And so was there any discussion about doing  
9 a reconsideration, or do you believe a reconsideration  
10 would have helped him at all?

11 A. I don't recall that we discussed any motion to  
12 reconsider in this case. I only held a few of those in  
13 my legal career, and generally it's where information  
14 was not presented at the plea hearing that came to my  
15 attention either during the hearing or sometime shortly  
16 thereafter that was not presented to the Court that I  
17 think would have impacted the sentence, and that was not  
18 the case in Mr. Mackey's case.

19 Q. Okay. You heard Mr. Mackey testify that you did  
20 not go over the elements of the crime with him. Can you  
21 explain to me if or when you did?

22 A. Yes. I mean, we, I can't tell you the specific  
23 date, but as part of not only reviewing the discovery  
24 materials, but we also were talking about, you know, we  
25 started talking about options such as trial, what the

1 State would have to prove. In this case of course the  
2 statement that he had given to law enforcement sort of  
3 raised the self-defense issue, so we discussed that.  
4 And I believe in his testimony he said something about  
5 we didn't -- I forget what it was, but I think he was  
6 referring to I didn't think that we could prove  
7 self-defense, not prove that necessarily, but that  
8 self-defense would not be a successful defense in this  
9 case.

10 Q. And let me go back just briefly to the facts. The  
11 facts he was at home and a gentleman pulls up and he  
12 shoots the guy and kills him?

13 A. He was actually at his brother's home, but he was  
14 an invited guest at his brother's home, and there's, the  
15 decedent in this case pulled up in his vehicle. I  
16 believe Mr. Mackey said that he initially pulled past  
17 their house in the road and then stopped and backed up  
18 so he was directly in front of his brother's home.

19 There had been some prior difficulties between his  
20 brother and the decedent, and the night before his  
21 brother's common-law wife had been shot and was actually  
22 still in the hospital, so there was back story, if you  
23 will.

24 Q. So there was some bad blood floating around in this  
25 whole kind of family deal?

1 A. Yes.

2 Q. And in your investigation, do you believe that the  
3 Castle Doctrine could apply in this case?

4 A. That is the one thing that in hindsight I did not  
5 do an analysis of the Castle Doctrine and its  
6 applicability to Mr. Mackey's case. I analyzed under  
7 the traditional self-defense point of view, and I did  
8 not as part of his defense review that statute with him  
9 and sort of look at his case in the light of that  
10 doctrine.

11 Q. And then when you have plea negotiations, you have  
12 to have something to, for lack of a better phrase, scare  
13 the other side into moving a little bit. And do you  
14 believe that that doctrine would, he was at home,  
15 there's some self-defense there, do you believe that  
16 could have helped in lessening this recommendation?

17 A. It may have. It's hard to say. And the reason  
18 that the Castle Doctrine even sort of came up, I was  
19 helping Andy Potter in our office a few weeks ago with a  
20 case with somewhat similar facts and we were reviewing  
21 that statute regarding his case, and I actually knew  
22 that I had Mr. Mackey's case coming up, and it was like,  
23 it occurred to me at that time that, I checked the date  
24 of enactment of the statute, it was active at the time  
25 of Mr. Mackey's case, and that that's something that

1 perhaps, you know, had I brought that up at the time,  
2 then maybe it would have assisted with plea  
3 negotiations.

4 MR. RICHEY: Thank you. No other questions. Thank  
5 you, ma'am.

6 THE COURT: Cross-exam?

7 MS. MAY: May it please the Court, Your Honor.  
8 Cross-Examination by Ms. May:

9 Q. Ms. Johnson, can you briefly discuss how the Castle  
10 Doctrine might have applied to Mr. Mackey's case?

11 A. Yes. It's set forth in Section 16-11-420 and  
12 subsequent sections. Specifically 16-11-440(c) is  
13 basically the stand your ground, for lack of a better  
14 word, law that if a person is lawfully where he has a  
15 right to be and feels reasonably under threat, they have  
16 the right to use lethal force.

17 In this case Mr. Mackey was at his brother's home  
18 where he did have a lawful right to be. He was an  
19 invited guest there. Ultimately I don't know if we  
20 would have been successful because the way that doctrine  
21 plays out is that it's a pretrial motion regarding  
22 whether he is immune from prosecution, although I think  
23 the case it was determined on, I think that came out  
24 after this plea was entered.

25 But, in any event, I think that it, I should have

1 at least looked at it.

2 Q. Do you think there's a likelihood of success at  
3 pretrial motion based on that case?

4 A. Ultimately I don't think we would have been  
5 successful in that motion. As I recall, from my  
6 investigation of the facts, the decedent in this case  
7 never actually came onto the brother's property, he was  
8 in the road. There was evidence that he was in retreat  
9 during this.

10 There was further information from two of his  
11 children who were actually present at the shooting that  
12 he had gone over there to basically apologize. He had  
13 heard about what had happened to Mr. Mackey's brother's  
14 common-law wife, that she was in the hospital.

15 Ultimately I don't know that we would have been  
16 successful. My concern is that it, in not raising that  
17 point during negotiations, I'm concerned that I may have  
18 left something on the table.

19 Q. And, even had you raised that, still, I believe it  
20 was Ms. Phifer (phonetic) who was the Solicitor on the  
21 case, do you still have an impression whether she was  
22 willing to make a recommendation and come down?

23 A. Absolutely. And she was adamant in terms of our  
24 plea negotiations. She never offered me a term of  
25 years, so there was never any offer on the table other

1 than a straight-up plea to murder. You know, she was  
2 particularly affected by the fact that the decedent's  
3 children were present when this happened.

4 Q. And I believe you brought out at the guilty plea  
5 kind of your analysis of self-defense; is that correct?

6 A. Yes.

7 Q. And did you ever promise Mr. Mackey a certain term  
8 of years that he was going to receive?

9 A. No. I mean, I told him, and I believe I  
10 specifically asked for a term of 30 years during the  
11 guilty plea and I told him that that's what I would ask  
12 for and try to get, but I think he understood that it  
13 was up to the Judge to make the determination.

14 Q. Okay. And did you ever discuss filing an appeal  
15 with Mr. Mackey?

16 A. I honestly don't recall whether I did, but it's  
17 extremely rare that I would file an appeal for a guilty  
18 plea.

19 Q. I'm sure you had a chance to review the transcript.

20 A. Yes.

21 Q. Did you see any legal or factual basis for an  
22 appeal?

23 A. No, I was not aware of any factual basis for an  
24 appeal.

25 Q. And I believe with regard to the Indictment, you

1 stated that it was true-billed; is that correct?

2 A. Yes. The copy I was presented appeared -- I have  
3 no recollection of it, but the copy that Counsel  
4 presented to me appears to have been a true-billed  
5 Indictment.

6 Q. And do you recall how many times you were able to  
7 meet with Mr. Mackey?

8 A. I would say three to four. I also met with his  
9 father to discuss the case in an attempt to -- one  
10 witness who I was not able to speak with was his  
11 brother, because Mr. Mackey had not had any contact with  
12 him since he had been locked up. And his father, I  
13 brought him in, both so he could help assist with  
14 mitigation, but also to see if he could help me find  
15 Mr. Mackey's brother, and he couldn't provide me  
16 information on that front.

17 Q. And in regard to the plea negotiations, I believe  
18 Mr. Mackey has alleged that he asked you to try to get  
19 as low as you could or that you didn't thoroughly engage  
20 in plea negotiations?

21 A. Right. I mean, I guess we knew going into the plea  
22 that the only thing the State -- and I already said they  
23 offered -- they never offered anything. The only choice  
24 was whether he wanted to go to trial on the charge of  
25 murder or whether he wanted to enter a plea on the

1 charge of murder.

2 Q. And you discussed the pros and cons of going to  
3 trial versus him pleading guilty?

4 A. Correct.

5 MS. MAY: I have no further questions. Thank you,  
6 ma'am.

7 THE COURT: Re-exam?

8 MR. RICHEY: No other questions.

9 THE COURT: Very well. You may step down.

10 MS. MAY: Your Honor, if I may, I just wanted to  
11 let the Court know the victims of this case are here in  
12 the lobby.

13 THE COURT: Thank you very much.

14 MS. JOHNSON: May I be excused?

15 MR. RICHEY: No objection.

16 THE COURT: You may be excuse without objection.  
17 Thank you, ma'am.

18 (Whereupon, the Witness was excused.)

19 MS. MAY: Nothing from the State, Your Honor.

20 THE COURT: All right. Argument, Mr. Richey?

21 Closing Argument on behalf of Applicant:

22 MR. RICHEY: Thank you, Your Honor. Your Honor, we  
23 are not waiving all the issues, but I think I would just  
24 want to argue this core issue. It's our position that  
25 in this case it was a case that was not gonna be tried,

1 a negotiating case, a case that would have to be  
2 negotiated.

3 And I believe that when Counsel testified that the  
4 Castle Doctrine the counsel did not interject in this  
5 case, the counsel was ineffective because the  
6 traditional self-defense would have been tougher to  
7 prove that, but on the Castle Doctrine he does have  
8 another card in the game. And it's our position that  
9 had Counsel actually invoked that card in the game, it  
10 could have potentially helped my client get a lesser  
11 sentence. I will say that.

12 But as to the other issues my client is not waiving  
13 those issues, but I do believe the transcript and  
14 testimony can resolve those issues. But Castle  
15 Doctrine, I believe my client could have got a more  
16 favorable sentence had it been invoked in the case.

17 Thank you, Your Honor.

18 **THE COURT:** Ms. May?

19 Closing Argument on behalf of the State:

20 **MS. MAY:** I've been relying on the guilty plea  
21 transcript, and it was thoroughly covered.

22 With regard to the Indictment, the Indictments were  
23 true-billed by the grand jury. I know the grand jury  
24 can meet outside of what is listed on the website for  
25 Court Administration, so I submit that allegation should

1 fail.

2 THE COURT: There is no proof that they didn't meet  
3 then or that the Indictment was not valid on its face,  
4 so I find insufficient evidence for challenge to the  
5 Indictment.

6 MS. MAY: All right. And with regard to  
7 ineffective assistance of counsel, I'll address the  
8 Castle Doctrine.

9 THE COURT: Plus, I think if he takes a plea, that  
10 waives any imperfections in the indictment.

11 MS. MAY: Well, non jurisdictional, yes.

12 And with regard to ineffective assistance of  
13 counsel, I'll address the Castle Doctrine. Ms. Johnson  
14 explained that it would not have been successful as a  
15 pretrial motion and that she would have mentioned it in  
16 negotiations; however, it's up to the Solicitor at the  
17 Solicitor's discretion whether they're going to offer a  
18 deal or do a recommendation. And we don't have any  
19 evidence that anything would have been different with  
20 that recommendation or less years would have been  
21 offered, and I believe Judge Maddox in his discretion it  
22 was left up to. And we think that even if Counsel was  
23 not sufficient, and even if it might have been, there  
24 was no prejudice to that end.

25 THE COURT: Anything else, Mr. Richey?

1 MR. RICHEY: No, sir.

2 The Court's Ruling:

3 THE COURT: Well, as I say, I think that there's  
4 insufficient evidence of any impropriety in the  
5 Indictment, plus I think that once it either goes to  
6 trial or a plea is entered, then any imperfection of the  
7 Indictment is waived.

8 And I have to give the Applicant credit for candor  
9 because he's very, all throughout the plea and his  
10 testimony today is that to the effect that he knew what  
11 he did was wrong, that he wished that he did not have as  
12 serious a sentence as he did receive.

13 And, as far as the question about the Castle  
14 Doctrine, I think the underlying question, of course, is  
15 whether or not that would be applicable first, and  
16 obviously they did consider self-defense, which is a  
17 form of common law.

18 And the Defendant in the plea on page 6, lines 9  
19 through 11, the Court asked, Are you waiving your right  
20 to put up a defense to these charges? And the Defendant  
21 says, Yes, sir. And then it goes on further and says he  
22 hasn't been promised or threats made to enter a plea.

23 As far as the sentence, I read what the Trial Judge  
24 said, and I'm afraid that pretty much sums it up. The  
25 Court's dilemma here on page 17, starting on line 2:

1 Well, the problem with this one, this case, is, you  
2 know, you got those two children sitting there, I mean,  
3 with their daddy just sitting in a car. What did you  
4 think was going on? I mean, seriously, what did you  
5 think was getting ready to happen that made you go  
6 outside with a shotgun and start shooting the guy with  
7 kids in the car?

8 Even though you go on to say, Well, I didn't know  
9 whether he was armed or whether he wasn't armed. I did  
10 not know that he had his kids in the car.

11 Of course, they were in the vehicle, and which is a  
12 fact that he admitted to.

13 The point is that even if this Court could change  
14 your sentence, I don't think it could have been any  
15 other sentence than the one that the facts and  
16 circumstances was. We do know that the range is from 30  
17 years to life, and this certainly wasn't on the low end.  
18 So I think the sentence was appropriate under the facts  
19 of this case and, therefore, I find that the Applicant  
20 has failed in his burden of proof in establishing that  
21 there was ineffective assistance of counsel, and I  
22 dismiss the application with prejudice.

23 Very good. Thank you, sir.

24 MR. RICHEY: Thank you, Your Honor.

25 THE COURT: All right. Mr. Mackey, good luck to

1 you, sir.

2 \*\* End of Requested Certified Transcript of Record \*\*

3

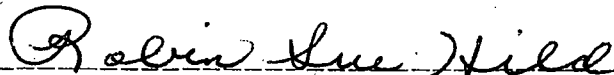
4

Certificate of Court Reporter

I, the undersigned, Robin Sue Hild, FCRR, RPR,  
Official Court Reporter for the Tenth Judicial Circuit  
of the State of South Carolina, do hereby certify that  
the foregoing is a true, accurate and complete  
Transcript of Record of the proceedings had and the  
evidence introduced in the hearing of the captioned  
case, relative to appeal, in the Court of Common Pleas  
for Anderson County, South Carolina, on the 5th day of  
June, 2012.

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

November 12, 2012



Robin Sue Hild, FCRR, RPR  
Circuit Court Reporter

STATE OF SOUTH CAROLINA FILED - CLERK'S OFFICE IN THE COURT OF COMMON PLEAS  
ANDERSON SC TENTH JUDICIAL CIRCUIT

COUNTY OF ANDERSON

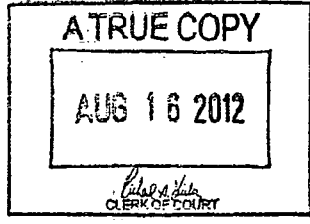
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Little Johnny Lee Mackey, #294652  
Applicant, )  
COMMON PLEAS AND )  
GENERAL SESSIONS )

**ORDER OF DISMISSAL**

v. )

State of South Carolina, )  
Respondent. )



This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed May 5, 2011. Respondent made its Return on January 13, 2012. An evidentiary hearing into the matter was convened on June 5, 2012, at the Anderson County Courthouse. The Applicant was present at the hearing and was represented by Rodney W. Richey, Esquire. The Respondent was represented by Kaelon E. May of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. The State offered the testimony of Jennifer Johnson, Esquire (Ms. Johnson) Applicant's plea counsel. This Court also had before it the records of the Anderson County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

**I. PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. The Applicant was indicted at the July 2009 term of the Anderson County Grand Jury for Murder and Possession of Weapon During the Commission of a Violent Crime (2009-GS-04-1773). He was represented by Jennifer Johnson, Esquire. On February 8, 2011, the Applicant pled guilty to Murder. The

Honorable J. Cordell Maddox, Jr., sentenced the Applicant to confinement for a period of forty-five (45) years. The Applicant did not appeal his guilty plea or sentence.

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

1. Ineffective assistance of counsel.
  - a. "Never advised me of my legal rights of 10 days to file my appeal (direct appeal)/Never filed appeal/Never explained appeal."
  - b. "Public defender was objectively unreasonable under the circumstances."
  - c. "Failed to conscientiously discharge her legal responsibilities when she was handling my trial and allow a law firm who handles capital offenses of murder to properly represent me."
  - d. "Failed to effectively challenge the police-sheriff's office of my arrest and the investigation process."
  - e. "Never discussed plea bargains that would be fair to me."
  - f. "Failed to give me her complete loyalty and explain to me every step in her investigation."
  - g. "Did not have my best interest in mind, never gave me copy of motion for discovery."
  - h. "Neglected the necessary investigation and preparation in my case nor did she allow me all the police-sheriff's office pictures - evidence."
  - i. "Did not do the necessary factual investigations, nor was I allowed to have a conference meeting me, my public defender and the police-sheriff's office to discuss about the murder crime evidence."
  - j. "Did not do the necessary legal research."
  - k. "Did not conscientiously gather any information...or call witnesses."
  - l. "Never properly consulted with me or kept me informed with information of what was going on."
  - m. "Never fought to have my bond set."
  - n. "Never discussed the elements of the crime charged."
  - o. "Never informed me of any of the defenses that were available to me...Never explained any kind of defense strategy."
  - p. Failure to quash indictment.
2. Involuntary Guilty Plea

## II. SUMMARY OF EVIDENCE AND TESTIMONY PRESENTED AT THE PCR

### EVIDENTIARY HEARING

#### Applicant's Testimony

At the PCR hearing, Applicant testified that Ms. Johnson was appointed to represent Applicant, that Applicant spoke with counsel 2 times, and that Applicant was never granted a bond. Applicant testified that counsel reviewed the discovery materials with Applicant on her laptop, that counsel did not conduct an investigation, and that Applicant told counsel his version of the events. Applicant testified that counsel informed Applicant that the state did not have evidence to substantiate the charges against Applicant testified that counsel informed Applicant that Applicant's options were to plead guilty with a sentence possibility of 30 years to life or go to trial.

Applicant testified that he was not given any plea deals, that Applicant asked counsel about a possible plea deal, and that counsel told Applicant that the solicitor would not offer any plea deals. Applicant testified that his indictment was not proper because the court calendar showed that the grand jury did not meet on the day Applicant's indictment was signed and true-billed. Applicant testified that he wanted representation by an outside private attorney because Applicant felt like he was not getting adequate representation, but that Applicant never indicated this to counsel. Applicant testified that he did not ask counsel to file a motion to reconsider his sentence, but that counsel should have filed said motion to reconsider. Applicant testified that counsel did not discuss the elements of murder or what the state would have to prove at trial with Applicant. Applicant testified that he was not guilty of murder but guilty of a lesser offense.

*Ms. Johnson's Testimony*

At the PCR hearing, counsel testified that she met with Applicant three to four times and met with Applicant's father. Counsel testified that she and Applicant discussed the elements of the charges, what the state was required to prove, and the Applicant's version of the facts. Counsel testified that she filed a discovery motion, received the discovery materials, and reviewed the discovery materials with Applicant. Counsel testified that it was her general practice when reviewing discovery with clients to read the discovery materials, including witness statements and police reports to her clients.

Counsel testified that she did not make a motion to quash or challenge the indictment because such action would not have been proper, that the indictments were true-billed, and that counsel did not investigate whether the grand jury met on the true-billed date. Counsel testified that she was not aware of any problems between her and Applicant such that she should have made a motion to be relieved from Applicant's representation. Counsel testified that she did not discuss a motion to reconsider Applicant's sentence and that counsel generally uses such a motion if certain information was not presented to the court. Counsel testified that she discussed possible defenses with Applicant, including self-defense, but that a self-defense claim was not likely to be successful. Counsel testified that she did not analyze Applicant's case under the castle doctrine and that such an argument may have helped in plea negotiations, although the decision to offer a plea deal is in the discretion of the solicitor. Counsel testified that the castle doctrine involves a pre-trial motion, that counsel did not believe such a motion based on the castle doctrine would have been successful in Applicant's case because there was evidence that the victim was in retreat when the Applicant shot the victim.

Counsel testified the solicitor did not make any plea offers, that counsel attempted to negotiate a plea offer with the solicitor, that counsel and Applicant discussed the benefits and drawbacks of pleading guilty versus proceeding to trial, and that counsel never promised Applicant a specific sentence. Counsel testified that Applicant did not ask counsel to file an appeal and that in reviewing Applicant's guilty plea counsel did not think there was any factual or legal basis to appeal.

### III. APPLICABLE LAW

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable



probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

##### **Ineffective Assistance of Counsel**

###### **a. Failure to investigate**

Applicant alleges that counsel was ineffective for failing to investigate Applicant's case. At the PCR hearing both counsel and Applicant testified that they reviewed the discovery materials together and Applicant's version of the facts. Counsel testified that she and Applicant discussed possible defenses, including self-defense but that self-defense was not likely to be successful at trial. Although, counsel testified that she did not analyze Applicant's case under the castle doctrine

counsel explained that she believed any pre-trial motion based on the castle doctrine was not likely to be successful. Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result. Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990). Here, the Applicant could not point to any specific matters counsel failed to discover which would have caused him to proceed with a jury trial instead of pleading guilty. The Applicant offered no evidence at the PCR hearing that counsel could have found that would have been likely to have any outcome more favorable to the Applicant. The Applicant did not produce any witnesses or offer any other evidence from which this Court could conclude that the outcome of the case would likely have been different, had that evidence been developed. Therefore, this Court finds that this allegation is denied and dismissed.

**b. Failure to negotiate plea deal with Solicitor**

Applicant alleges that counsel was ineffective for failing to engage in plea negotiations on Applicant's behalf and obtain a plea offer from the solicitor. This Court finds this allegation is without merit. At the PCR hearing counsel testified that she tried to negotiate a plea offer with the



solicitor, but that the solicitor did not make any plea offers. Defense attorneys cannot force plea deals out of solicitors. Whether to offer a plea deal is in the sole discretion of the solicitor. It is easy as a lawyer to reflect back on a particular case and see that she could have raised certain additional arguments and/or defenses; and this Court appreciates counsel's honesty in stating that she was concerned that she did not analyze the facts of Applicant's case under the castle doctrine and that arguing the castle doctrine may have helped in plea negotiations. There is no evidence to suggest that had counsel made an argument using the castle doctrine that the outcome of Applicant's case or plea negotiations would have been any different. This Court finds that counsel's performance in attempting to secure a plea deal for Applicant was not deficient and Applicant failed to show resulting prejudice; therefore, this allegation is denied and dismissed.

**c. Failure to quash indictment**

Applicant alleges that counsel was ineffective for failing to quash Applicant's indictment because Applicant's indictment was not properly true-billed. Applicant argues that a court administration calendar showed that the Anderson County Grand Jury did not meet on the day Applicant's indictment was signed and true-billed. A knowing and voluntary guilty plea acts as a waiver of all non-jurisdictional defects and defenses. Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981).

A presumption of regularity attaches to proceedings in the Court of General Sessions. Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986). Absent evidence to the contrary, the courts will presume that a properly returned indictment is valid. "Thus, if the record does not reveal any irregularity in the proceedings affecting the indictment, this court must presume the trial court had subject matter jurisdiction." State v. James, 321 S.C. 75, 79, 472 S.E.2d 38, 40 (Ct. App. 1996). This

Court finds that Applicant's indictment for Murder (2009-GS-04-1773) was signed by the foreperson of the Anderson County Grand Jury and stamped true-billed on July 28, 2009. "Speculation about "potential" abuse of grand jury proceedings cannot substitute for evidence of actual abuse as grounds for quashing an otherwise lawful indictment." James, Id. This Court finds that Applicant has failed to show that counsel's performance in failing to challenge the indictment was deficient and any resulting prejudice; therefore, this allegation is denied and dismissed.

**d. Failure to motion to be relieved**

Applicant alleges that counsel was ineffective for failing to motion that she be relieved from Applicant's representation because Applicant wanted to obtain an outside private attorney due to Applicant's belief he was not being represented adequately. This Court finds Applicant's allegation is without merit. Applicant testified that he never informed counsel of his alleged desires to obtain private and to have counsel relieved from his representation. Counsel testified that she was not aware of any problems between her and Applicant that necessitated counsel to make a motion to relieve herself from Applicant's representation. This Court finds that Applicant failed to show counsel was deficient and any resulting prejudice; therefore, this allegation is denied and dismissed.

**e. Failure to make motion to reconsider Applicant's sentence**

Applicant alleges that counsel was ineffective for failing to make a motion to reconsider Applicant's sentence. At the PCR hearing Applicant testified that he did not ask counsel to file a motion to reconsider his sentence, but that counsel should have filed such a motion anyways. Counsel testified that she generally uses such a motion if certain information was not presented to the court and that this did not occur at Applicant's guilty plea hearing. Even if a motion to reconsider the sentence was made this Court does not believe that any other sentence under the facts of this case

could have been more fair. This Court notes that the plea judge explained in detail his reasoning for the sentence imposed upon Applicant. (Tr. p.17-18). This Court finds that Applicant failed to show counsel's performance was deficient and any resulting prejudice; therefore, this allegation is denied and dismissed.

**f. Failure to advise Applicant of the elements of the crime**

Applicant alleges that counsel was ineffective for failing to advise Applicant of the elements of the crime of murder. At the PCR hearing, counsel testified that she and Applicant discussed the elements of the charges, what the state was required to prove, and the Applicant's version of the facts. This Court does not find Applicant's testimony credible. This Court does find counsel to be credible. This Court notes that the guilty plea transcript reflects that the plea judge asked counsel if she thought Applicant understood the elements of murder and counsel indicated that she did believe Applicant understood the elements of murder. (Tr. p.7, lines5-9). This Court finds that Applicant was advised of the elements of murder. Applicant failed to show counsel was deficient and any resulting prejudice; therefore, this allegation is denied and dismissed.

**Involuntary Guilty Plea**

Applicant asserts that his guilty plea was involuntary. This Court finds that Applicant has failed to meet his burden of proof in showing that his guilty plea was involuntary. This Court has already found that Applicant was advised of the elements of murder, therefore any failure by the plea court to advise Applicant of the elements of murder does not render Applicant's guilty plea involuntary or unintelligent. At the guilty plea hearing, the Applicant indicated that he had plenty of time to speak with counsel and was satisfied with counsel's services. (Tr. p.5, lines15-20). The plea judge asked Applicant whether Applicant understood that if he wanted to plead guilty that Applicant

would have to waive his constitutional rights and Applicant indicated that he understood, and waived his right to a jury trial, his right to remain silent, and his right to put up a defense to the charge. (Tr. p.5, line24 – p.6, line11). Applicant informed to the plea court that he had not been promised anything or threatened by anyone to plead guilty. (Tr. p.6, lines17-20). Applicant stated to the plea judge that Applicant wanted to plead guilty to murder and that Applicant was guilty of murder. (Tr. p.7, lines10-14). This Court finds the overwhelming evidence in the record and presented through the testimony of the witnesses at the hearing reflects that the plea was knowingly and voluntarily entered. Boykin v. Alabama, 395 U.S. 238 (1969); Vickery v. State, 258 S.C. 33, 186 S.E.2d 827 (1972). Therefore, this Court finds that this allegation is denied and dismissed.

#### **All Other Claims**

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

#### **V. CONCLUSION**

Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his

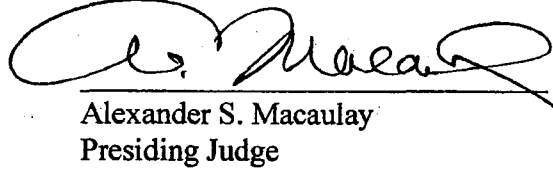
application for post conviction relief. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

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

**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 27<sup>th</sup> day of July, 2012.

  
 Alexander S. Macaulay  
 Presiding Judge

Co. 1616, South Carolina

FILED - CLERK'S OFFICE  
 ANDERSON SC  
 2012 AUG 16 A 8:41  
 COMMON PLEAS AND  
 GENERAL SESSIONS

STATE OF SOUTH CAROLINA

County/  Municipality of

Anderson

THE STATE against: 2009-26324  
19 MAY 19 P 2:02

Little Johnny Lee Mackey

one [redacted] SSI [redacted]  
Race: B Height: 5 7 Weight: 165  
State: SC DL #: 011287009  
Agency ORI #: SC0040000

Securing Agency: Anderson County Sheriff  
Securing Officer: A G Tribble - 237  
Offense: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death  
Offense Code: 0549  
Offense/Ordinance Sec: 16-23-0490

This warrant is CERTIFIED FOR SERVICE in the  County/  Municipality of Anderson. The accused Little Johnny Lee Mackey to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Signature of Constable/Law Enforcement Officer

RETURN

A copy of this arrest warrant was delivered to defendant Little Johnny Lee Mackey on May 17, 2009

Richard [Signature]  
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions  
100 South Main Street  
Po Box 8002  
Anderson, SC 29622

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

County/  Municipality of  
Anderson

AFFIDAVIT

Personally appeared before me the affiant A-G Tribble who being duly sworn deposes and says that defendant Little Johnny Lee Mackey did within this county and state on or about 05/16/2009 violate the criminal laws of the State of South Carolina (or ordinance of  County/  Municipality of Anderson) in the following particulars:

DESCRIPTION OF OFFENSE Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

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

That on May 16, 2009 in the county of Anderson, one Little Johnny Lee Mackey did knowingly and willfully possess and display what appeared to be a firearm during the commission of a violent crime. Defendant has been convicted of a violent crime.

Signature of Affiant

Anderson G Tribble

STATE OF SOUTH CAROLINA  
 County/  Municipality of  
Anderson

Affiant's Address 305 Camson Road  
Anderson, SC 29625-  
Affiant's Telephone \_\_\_\_\_

ARREST WARRANT

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

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

on or about 5/16/2009 defendant Little Johnny Lee Mackey

did violate the criminal laws of the State of South Carolina (or ordinance of  County/  Municipality of Anderson) as set forth below.

DESCRIPTION OF OFFENSE: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

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

on 05/17/2009  
James Albert Cox (L.S.)  
Signature of Issuing Judge  
James Albert Cox  
Judge Code: 5850

Judge's Address 219 County Home Road  
Anderson, SC 29625-  
Judge's Telephone (864)222-6637

Issuing Court:  Magistrate  Municipal Court

ATTEST  
MAY 19 2009  
CLERK OF COURT

ORIGINAL

ORIGINAL

ORIGINAL

BAIL set by

Judge \_\_\_\_\_  
on \_\_\_\_\_  
Type and Amount: \_\_\_\_\_  
Name of Surety \_\_\_\_\_

PRELIMINARY HEARING held by

Judge Murphy  
on 07/10/2009  
Defendant Attorney: P D Johnson  
Decision: Probable Cause

DISPOSITION before

Judge \_\_\_\_\_  
on \_\_\_\_\_  
by \_\_\_\_\_  
(indicate jury trial, bench trial, plea, nol. pros., etc.)  
Disposition: \_\_\_\_\_  
Sentence: \_\_\_\_\_

JURORS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WITNESSES

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

CODEFENDANTS

\_\_\_\_\_  
\_\_\_\_\_

91

J-896993

STATE OF SOUTH CAROLINA

County/

Municipality of

Anderson

THE STATE OF SOUTH CAROLINA  
against

Little Johnny Lee Mackey

Address:

Phone: \_\_\_\_\_ SSN: \_\_\_\_\_  
Sex: M Race: B Height: 5 7 Weight: 165  
DL State: SC DL #: 011287009  
DOB: \_\_\_\_\_ Agency ORI #: SC0040000  
Prosecuting Agency: Anderson County Sheriff  
Prosecuting Officer: A G Tribble - 237  
Offense: Murder / Murder

Offense Code: 0116  
Code/Ordinance Sec: 16-03-0010, 0020

This warrant is CERTIFIED FOR SERVICE in the  
 County/  Municipality of \_\_\_\_\_  
The accused  
is to be arrested and brought before me to be  
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to  
defendant Little Johnny Lee Mackey  
on May 17, 2009

Richard H. [Signature]  
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions  
100 South Main Street  
Po Box 8002  
Anderson, SC 29622

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

County/  Municipality of )  
Anderson )

AFFIDAVIT

SC-14-514

Personally appeared before me the affiant A G Tribble who  
being duly sworn deposes and says that defendant Little Johnny Lee Mackey  
did within this county and state on or about 05/16/2009 violate the criminal laws of the  
State of South Carolina (or ordinance of  County/  Municipality of Anderson)  
in the following particulars:

DESCRIPTION OF OFFENSE Murder / Murder

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

That on May 16, 2009 in the county of Anderson, one Little Johnny Lee Mackey did, with malice and aforethought, cause the death  
of victim Waliyyudden Dawson by shooting several times with a shotgun. (This occurred on \_\_\_\_\_)

Signature of Affiant

Andrew H. Tribble

STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
Anderson )

Affiant's Address 305 Camson Road  
Anderson, SC 29625-

Affiant's Telephone \_\_\_\_\_

ARREST WARRANT

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

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

on or about 5/16/2009 defendant Little Johnny Lee Mackey  
did violate the criminal laws of the State of South Carolina (or ordinance of  
 County/  Municipality of Anderson) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Murder

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

on 05/17/2009  
James Albert Cox (L.S.)  
Signature of Issuing Judge  
James Albert Cox  
Judge Code: 5850

Judge's Address 219 County Home Road  
Anderson, SC 29625-

Judge's Telephone (864)222-6637

Issuing Court:  Magistrate

CLERK OF COURT  
Andy M. [Signature]  
Circuit

ORIGINAL

ORIGINAL

ORIGINAL

BAIL set by

Judge \_\_\_\_\_  
on \_\_\_\_\_  
Type and Amount: \_\_\_\_\_  
Name of Surety: \_\_\_\_\_

PRELIMINARY HEARING held by

Judge Murphy  
on 07/10/2009  
Defendant Attorney: P D Johnson  
Decision: probable cause

DISPOSITION before

Judge \_\_\_\_\_  
on \_\_\_\_\_  
by \_\_\_\_\_  
(indicate jury trial, bench trial, plea, nol. pros., etc.)  
Disposition: \_\_\_\_\_  
Sentence: \_\_\_\_\_

JURORS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WITNESSES

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

CODEFENDANTS

\_\_\_\_\_  
\_\_\_\_\_

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

JUL 28 2009

Term

THE STATE

vs.

Little Johnny lee Mackey

EJB

Indictment for

Murder / Murder

SC Code: 16-03-0010, 0020

CDR Code: 0116

Weapons / Poss. weapon during violent crime

SC Code: 16-23-0490

CDR Code: 0549

ARREST WARRANT NUMBER

J-896993, J-896994

TIC

ACTION OF GRAND JURY

TRUE BILL

JUL 28 2009

*[Signature]*

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

COMMITMENT

2/8/11 RT

A TRUE COPY

MAY - 5 2011

Dismissed  
TIC w/ plea  
JBJ



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF Anderson )

INDICTMENT

JUL 28 2009

At a Court of General Sessions, convened on \_\_\_\_\_, the Grand Jurors of Anderson County present upon their oath:

**Murder / Murder**

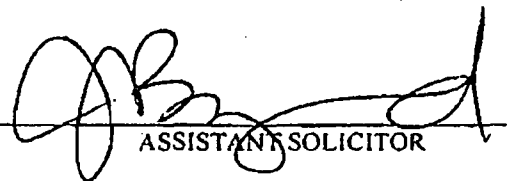
That Little Johnny lee Mackey did in Anderson County, on or about the May 16, 2009, unlawfully and with malice aforethought kill Waliyyudden Eugene Dawson by means of shooting, and that Waliyyudden Eugene Dawson died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

**Weapons / Poss. weapon during violent crime**

That Little Johnny lee Mackey did in Anderson County on or about May 16, 2009, while committing the crime of Murder, a crime of violence, have in his possession a shotgun, all in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

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

A TRUE COPY  
MAY - 5 2011

  
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA  
COUNTY OF Anderson  
STATE

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS0401773

VS.  
Little Johnny Lee Mackey

AW#: J896993

AKA: \_\_\_\_\_  
Race: B Sex: M Age: 27

Date of Offense: 5/16/2009

DOB: \_\_\_\_\_ SS#: \_\_\_\_\_

S.C. Code §: 16-03-0010, 0020

Address: \_\_\_\_\_

CDR Code #: 0116

City, State, Zip: \_\_\_\_\_  
DL# 011287009 SID# SC01392010

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

CONVICTED OF or  PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Murder / Murder

In violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandabry GPS (CSC w/minor 1<sup>st</sup> or Lewd Act)  §17-25-45

The charge is:  As indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (def.'s initials)  
The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTORNEY: *[Signature]* SC Bar # *68227* Defendant *Little Johnny Lee Mackey* *[Signature]* Attorney for Defendant SC Bar # *14224*

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center, for a determinate term of 45 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_  
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. *5/16/09*  
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:  
 RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP

Total: \$ \_\_\_\_\_ plus 20% fee: \_\_\_\_\_ \$ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS

Obtain GED   
Attend Voc. Rehab. Or Job Corp.

Recipient		
*Fine:	\$	
§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$ 5.00
§44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling   
Random Drug/Alcohol Testing   
Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ Beginning \$ \_\_\_\_\_

Paid to Public Defender Fund  
**A TRUE COPY**  
**FEB - 8 - 2011**

Other: \_\_\_\_\_  
 Conditional Discharge, §44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition  
 Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk: *Richard S. Shirley*  
Court Reporter: *R. Talisa*  
SCCA217 (06/2010)

Presiding Judge: *[Signature]*  
Judge Code: #2131  
Sentence Date: 2-8-11