

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

RECEIVED

NOV 25 2014

S.C. Supreme Court

CRAIG ROLAN,

PETITIONER,

RECEIVED

NOV 24 2014

S.C. Supreme Court

V.

STATE OF SOUTH CAROLINA,

RESPONDENT,

APPELLATE CASE NO. 2014-000677

APPENDIX

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I N D E X

(SW) - Denotes State's Witness
(DW) - Denotes Defense Witness
(IC) - Denotes In Camera

CRAIG ROLEN:

Examination by the Court.....
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E X H I B I T S

There were no Exhibits.

1 MR. GODFREY: May it please the Court, my client would
2 move to change his plead from not guilty to guilty.

3 THE COURT: All right. He signed up?

4 MS. HODGE: Yes, sir.

5 MR. GODFREY: Yes, Your Honor.

6 THE CLERK: Raise your right hand, please.

7 Craig Rolen, after being duly sworn testified
8 as follow:

9 EXAMINATION

10 BY THE COURT:

11 Q All right, you are Craig Shane Rolin or Rolen?

12 A Rolen.

13 Q And how old are you, sir?

14 A 38.

15 Q How much education do you have?

16 A 8th grade.

17 Q Do you know how to read and write?

18 A Yes, sir.

19 Q And have you ever worked?

20 A Yes, sir.

21 Q What kind of work have you done?

22 A I'm a truck driver.

23 Q Okay. Now, Mr. Godfrey is your lawyer?

24 A Yes, sir.

25 Q Have you talked with him as often and for as long as you

1 feel necessary for him to properly represent you?

2 A Yes, I do.

3 Q And when you've talked with him have you understood your
4 talks with him?

5 A Yes, sir.

6 Q Has he done everything for you that you've asked him to
7 do?

8 A Yes, sir.

9 Q Has he done anything at all that you don't like?

10 A No, sir.

11 Q So are you fully and completely satisfied with him
12 representing you?

13 A Yes, sir.

14 Q No complaints to make against your lawyer?

15 A No, sir.

16 Q Now, has anyone used any force or made any threats
17 against you in order to get you to plead guilty?

18 A No, sir.

19 Q Has anybody promised you a lighter sentence if you pled
20 guilty?

21 A No, sir.

22 Q Has anybody promised you anything for pleading guilty?

23 A No, sir.

24 Q Are you pleading guilty voluntarily, that is of your own
25 freewill?

1 A Yes, sir.

2 THE COURT: Now, is this life or 30 years?

3 MS. HODGE: Your Honor, we did reduce the charge to
4 voluntary manslaughter. He's pleading guilty straight up to
5 voluntary manslaughter.

6 THE COURT: Okay.

7 BY THE COURT:

8 Q Now you understand the maximum sentence is up to 30 years
9 in prison?

10 A I do, sir.

11 Q Now, do you also understand, sir, that you don't have to
12 plead guilty, you've got a perfect right to stand trial by
13 jury, do you understand that?

14 A Yes, sir.

15 Q Indeed a jury's been selected for your case. You've got
16 a perfect right to go ahead and continue with that jury
17 trial; do you understand that?

18 A Yes, sir.

19 Q If you continue with your trial Mr. Godfrey can
20 cross-examine all witnesses who testify against you, you will
21 not have to take the stand and testify or present evidence
22 because that's your Constitutional right. The burden remains
23 on the State to prove you guilty beyond a reasonable doubt.
24 Do you understand all those rights?

25 A I do, sir.

1 Q And you give all those rights up when you plead guilty;
2 is that what you want to do?

3 A Yes, sir, I do.

4 Q Are you under the influence of any alcohol, drugs or any
5 other substance right at this moment?

6 A Not at this moment.

7 Q You're sober?

8 A I am very sober.

9 Q You know what you're doing?

10 A Yes, sir.

11 Q You want to plead guilty?

12 A Yes, sir.

13 THE COURT: All right, Solicitor, you want to tell me
14 about the plea.

15 MS. HODGE: Yes, sir, Your Honor. On August 18th of 2001
16 the victim in this case, Kedrick Mahon was reported missing
17 by his girlfriend. He was supposed to pick her up from work
18 early in the afternoon of the 17th around 3:00 or 4:00 and he
19 never showed up. He did not come home that night or the
20 following day. On October the 4th of 2001 his body was found
21 in the defendant's car at the bottom of a ravine off of
22 Cheryl Court here in Greenville County.

23 The body was very badly decomposed and in an autopsy Dr.
24 Ward could not identify manner of death but did not rule out
25 homicide due to the circumstances surrounding the victims

1 disappearance and death. And the fact that he had no
2 skeletal fractures or evidence of any natural disease
3 process.

4 Investigator Smith of the sheriff's office worked this
5 case for approximately two years. He followed up with
6 several witnesses who stated that the victim was last seen
7 with this defendant. And that they were also seen fighting
8 in an area near where the victim was found. That the victim
9 was bleeding. An additional witnesses said that the
10 defendant made statements to them after the fact that he had
11 in fact stabbed the victim and then the victim had jumped
12 into a car and he had run him off the road into this ravine.

13 The defendant was formally charged and arrested for
14 murder of the victim on July 16th of 2003. On September the
15 9th of 2004 the defendant voluntarily came forward, contacted
16 Investigator Smith and gave a full confession stating that he
17 did, in fact, kill the victim by stabbing him several times
18 and running him off the road where his car landed in the
19 ravine that it was found in.

20 BY THE COURT:

21 Q Now you've heard the facts related to me; is that what
22 happened, sir?

23 A Yes, sir.

24 Q All right. Now, I understand you turned yourself in, you
25 made a statement to the police, when you did that, did they

1 make you sign that confession?

2 A No, sir.

3 Q You did so freely and voluntarily?

4 A Yes, sir.

5 Q No one put any pressure on you to do that, is that what
6 you're telling me?

7 A That's right.

8 Q And what you said in that confession is true?

9 A That's right.

10 THE COURT: All right. I will accept the plea as being
11 voluntarily made and as having a substantial, factual basis.

12 Now, Solicitor, I see the plea includes a recommendation
13 by the State as to sentence. What is that recommendation?

14 MS. HODGE: Your Honor, I apologize, there is no
15 recommendation, that should not be checked. And I'll be glad
16 to initial the change on that.

17 THE COURT: So it is without---

18 MS. HODGE: Recommendation.

19 THE COURT: Negotiation.

20 MS. HODGE: Yes, sir.

21 THE COURT: All right. Mr. Godfrey.

22 MR. GODFREY: May it please the Court. Judge, first my
23 client would like to sincerely apologize to Kedrick Mahon's
24 family for what happened. He is indeed remorseful about
25 this. Your Honor, my client is here in court today with his

1 sister, Renee Owen, his ex-wife, Cindy Williams and his
2 ex-mother-in-law, Peggy Talent. Your Honor, Craig doesn't
3 have a record that would make you expect or even have any
4 prediction that anything like this could happen. Craig's
5 number one problem has been the use of drugs. The use of
6 cocaine. In fact the use of intravenous cocaine.

7 When he was married to Cindy Williams he was working as a
8 truck driver, he had a CDL. There was a six year period that
9 he was not on drugs. He was making a good living. He was
10 going home, he was helping take care of his children and he
11 was doing everything that he was supposed to do. Then drugs
12 got a hold of him again, Judge, and the reason we're standing
13 here today is drugs.

14 MR. ROLEN: My health got bad and I lost a \$42,000 a year
15 job and I really ain't bounced back since then.

16 MR. GODFREY: Judge, he did contact a officer at the jail
17 and he told the officer at the jail that he wanted to speak
18 to Investigator Wesley Smith. The officer at the jail
19 contacted Investigator Smith. Investigator Smith then pulled
20 out Craig so he could talk with him at Investigator Smith's
21 office. When Craig got to Investigator Smith's office,
22 Investigator Smith told Craig said, You know, your attorney
23 Bill Godfrey is not here.

24 And Craig said, I don't really need him right now. And
25 when he filled out the advice of rights form, Craig in his

1 own handwriting said that he knew I was his attorney and that
2 he did not want me present. That he doesn't need me. At
3 that point in time, Judge, Craig sat there and told
4 Investigator Smith the facts of this case as have been
5 relayed to you. He fully confessed.

6 It's a tragic event. It's extremely horrible for the
7 Mahon family. It's also horrible for Craig and his family.
8 It's been a tremendous burden on his sister, Renee Owen. And
9 right now Craig's mother is at Roger C. Peace trying to
10 recover from a stroke and a heart attack. It's been very
11 difficult on the entire family.

12 Your Honor, Craig would ask you to please take into
13 account the fact that he did voluntarily contact Investigator
14 Smith and confessed to what happened. Your Honor, Craig
15 knows that he is facing time and that's just one of the
16 things that's really been eating him up. And it's also been
17 eating him up that how much hurt he has caused Kedrick
18 Mahon's family and how much hurt that he's caused his own
19 family.

20 MR. ROLEN: Kedrick was my friend.

21 MR. GODFREY: Judge, in the beginning and obviously the
22 recommendation is not present now because we're at trial
23 level. There was initially a recommendation of 20 years.
24 Judge, I would ask you to please take into account the fact
25 that he did fully and voluntarily confess. And he's trying

1 to make things as right as he can now. Obviously he can
2 never make them right because he can never bring back
3 Kedrick. But he's trying to do everything that he can do to
4 bring everyone closure. And we would beg for the mercy of
5 the Court. We would beg that the Court be merciful and
6 impose a 20 year sentence. Your Honor, I believe that his
7 sister would like to address the Court.

8 THE COURT: Certainly. What's your name?

9 THE SISTER: Renee Owen.

10 THE COURT: You can come up. Come up, please. Name
11 please, ma'am.

12 MS. OWEN: My name is Renee Owen. And this is my
13 brother. And I've loved him every since he was little.
14 And---

15 MR. ROLEN: She helped raise me.

16 MS. OWEN: Part and my grand children love him so much.
17 And they miss him. And I know -- I just -- it's just
18 unbelievable to me. And please have mercy on us. Please.

19 THE COURT: Thank you.

20 MR. GODFREY: Cindy, did you want to address the Court?
21 You don't have to, do you want to?

22 May it please the Court, Cindy Williams and Peggy Talent
23 his former wife and mother-in-law do not wish to address the
24 Court but they are here. Again, Judge, we would beg for
25 mercy.

1 THE COURT: All right, son. Now, you have the perfect
2 right at this time to address the Court concerning
3 sentencing, anything you'd like to say, sir, before I
4 sentence you?

5 MR. ROLEN: Yes, sir. I just ask that you, please, have
6 mercy on me. Because I'm not a bad person. Me and Kedrick
7 was good friends and things just went bad between us.
8 Kedrick was a good man. A real good man. He wasn't like
9 most drug dealers. He was nice. He wasn't no mean type
10 person. He was a good man.

11 THE COURT: Okay.

12 MS. HODGE: Your Honor, there is a member of the victim's
13 family, I believe, that would like to address to Court.

14 THE COURT: Sure, come on around, please.

15 MS. HODGE: Is it Monic?

16 THE COURT: Your name please, ma'am.

17 VICTIM'S FAMILY: Monic Mahon.

18 THE COURT: All right. You can come up closer.

19 MS. HODGE: So he can hear you.

20 MS. MAHON: I've done this five times. Our mother is
21 dead not knowing what happened, why it happened. Nothing.
22 You have taken my brother away from me. My best friend. I
23 have nothing else. And for you to sit up here and say that
24 he was a good friend to you and you did him the way that you
25 did makes no sense at all. I will never, ever forgive you

1 for this. Nor will I forget it.

2 And our family ask that you give him the maximum sentence
3 possible. So he can have time and sit and realize what he's
4 done to my family.

5 THE COURT: Thank you.

6 Give your name, please. Give us your name, please.

7 MS. HODGE: You'll have to speak a little louder.

8 VICTIM'S FAMILY: Moneka Mahon. I'm just glad that my
9 momma can rest in her grave, now peaceful. Because she was
10 not going to rest not knowing what happened to her son. And
11 I wish he would have came to the offer before he decomposed
12 his body and let my momma look at her son one more time
13 before she buried him.

14 THE COURT: Thank you.

15 VICTIM'S FAMILY: Monica Camp. I want to say to you I
16 don't know why you took Kedrick away from us. You know what
17 we was going through.

18 MR. ROLEN: All right, this has went on far enough, I
19 didn't kill this man. This has went too far, I ain't doing
20 this. I didn't kill your brother.

21 MS. CAMP: You just said it.

22 MR. ROLEN: Yeah because I'm thinking I'm going to get a
23 life sentence. I can't do this.

24 I can't do it, Renee. I didn't kill this man, I can't do
25 this.

1 THE COURT: Well, sir, you've already done it.

2 MR. ROLEN: Well, I've already done it.

3 Tawan, you know I didn't do this to your brother. I
4 loved your brother. Your brother took naps in my room. Me
5 and your brother drank beer in my back yard, smoked blunts.
6 I didn't do this to Kedrick. I don't know who did, I wish I
7 did. I'll found out soon. I'm going to ask God himself.

8 THE COURT: All right.

9 MS. HODGE: Nothing else from the State, Your Honor.

10 MR. ROLEN: You know I didn't do this Tawan. I didn't do
11 it, man. I really didn't do it.

12 THE COURT: Is this appointed or retained?

13 MR. GODFREY: Retained.

14 MR. ROLEN: I swear to God I didn't do it.

15 THE COURT: Now he's entitled to credit for time?

16 MS. HODGE: Yes, sir, he served 353 days total on this
17 charge.

18 MR. ROLEN: Should have never pled guilty, I didn't do
19 this.

20 You got your man, Wesley. Too bad you couldn't got the
21 right one. It's a shame.

22 MR. GODFREY: Craig---

23 MR. ROLEN: I don't care, man. This is wrong, this is
24 wrong.

25 THE COURT: All right, sir, the sentence of the Court is

1 you be committed to the Department of Corrections for a
2 period of 25 years. And you are given credit for the time
3 that you've been in jail.

4 MR. ROLEN: Thank you.

5 THE COURT: Which I understand is 353 days.

6 MR. ROLEN: Yes, sir. Thank you. Thank you.

7 MS. HODGE: Thank you, Your Honor.

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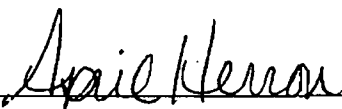
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, April Herron, Official Court Reporter for the 13th
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 evidence
introduced in the trial of the captioned case, relative to
appeal, in the Court of General Sessions for Greenville
County, South Carolina, on the 11th day of April, 2005.

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

October 5, 2005



April Herron, Court Reporter
My Commission Expires:11-17-07

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF GENERAL SESSIONS
2003-GS-23-8222

STATE OF SOUTH CAROLINA,)

vs.)

TRANSCRIPT OF RECORD

CRAIG ROLEN,)

DEFENDANT.)

COPY

April 5, 2010
Greenville, South Carolina

B E F O R E:

THE HONORABLE C. VICTOR PYLE, JR., JUDGE.

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

KRIS B. HODGE, ESQ.
Assistant Solicitor

EVERETT P. GODFREY, JR., ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

1
2 THE COURT: Mr. Godfrey, I understand you have a
3 motion.

4 MR. GODFREY: Yes, Your Honor.

5 May it please the Court.

6 On behalf of Craig Rolen, I would respectfully move
7 that he be allowed to withdraw his guilty plea in this
8 case.

9 Judge, I need to provide you with a little background
10 information regarding this motion. As far as the element
11 of knowingly entering a plea, I want to tell you that
12 Mr. Rolen did, in fact, know that murder carried 30
13 calendar years to natural life. In the very beginning of
14 this case, we perceived the case to be a very weak case.
15 And the first offer that we had received from the State
16 was for 10 years on voluntary manslaughter.

17 Judge, at that point in time, Mr. Rolen was out on
18 bond on the Home Incarceration Program. He had some
19 things going on in his life. Not only was he getting over
20 a drug addiction, but there was some family matters. His
21 children were being taken away from him in Family Court.
22 He ended up losing it one night and broke his Home
23 Incarceration Program and, actually, went to the hospital
24 to try to get help. And he was arrested at the hospital.

25 At that point in time, there was still an offer on

1 the table for 10 years. At that point in time, I talked
2 to Craig Rolen again when he was in the jail after being
3 arrested on the HIP violation. He told me that he was
4 innocent of the charge and he had no interest in the
5 10-year deal.

6 Judge, as things progressed, the Family Court matter
7 got worse. They did, in fact, remove his children from
8 him. I think he was TPR'd, actually. He became very
9 depressed. He was placed on some medication. Although
10 Craig knew that he should not talk to the police, he told
11 the officer at the jail one day that he wanted to see
12 Investigator Wes Smith. And, in fact, Wes Smith did go
13 down to the jail to get Craig Rolen.

14 Craig, at that point in time, was very bad off
15 mentally. And he met with Wes Smith. Wes Smith said, We
16 need to get your attorney over here. Craig Rolen says, I
17 don't want my attorney. After the advice of rights was
18 given to him, Craig Rolen, in his own handwriting, put on
19 the Advice of Rights form, I do not want my attorney, Bill
20 Godfrey, present, and signed his name.

21 At that point in time --

22 DEFENDANT ROLEN: Wes asked me to do that.

23 MR. GODFREY: Okay. Wes asked him to do that.

24 At that point in time, he went ahead and confessed to
25 the murder. I received a phone call at my office the next

1 morning from his sister saying, Oh, Craig has done
2 something really bad. She didn't know what it was, but
3 she said, He's done something really bad.

4 I went to the jail to see Craig Rolen and found out
5 that he did, in fact, confess to the charge. I asked him,
6 Why would you do such a thing? And he told me that he
7 just wanted to die, that if he could, he wanted the death
8 penalty. And he appeared to be suicidal. I notified the
9 jail personnel about his mental status, talked with
10 Ms. Hodge about the fact that a McNaughton order would be
11 appropriate in this matter. A McNaughton order was signed
12 and he was sent down for evaluation at the state hospital.
13 The state hospital found him criminally responsible and
14 competent, and returned him to the jail.

15 Craig Rolen kept stating to me that he was not
16 guilty, even after he had signed the confession. And he
17 kept telling me that he wanted to have a trial. Because
18 of the new information, it put a different complexion on
19 the case for the State. And instead of a 10-year offer,
20 we received a 20-year offer. I talked with Craig Rolen
21 about that. He told me that he would never take a 20-year
22 offer.

23 We talked about the fact that if we had a trial, his
24 statement, in all likelihood, was going to come into
25 evidence before the jury. And we talked about his right

1 to testify and not testify, and the fact that it was his
2 Constitutional right and nobody else's. Craig told me that
3 he wanted to go forward with the trial and that he wanted
4 to testify and recant his statement. And he said, I
5 believe that the jury will understand that I was lying on
6 that statement. I told Craig Rolen that, based on my
7 experience before the Court, defendants who recant
8 statements rarely are believed. He told me that he
9 preferred to go forward with the trial.

10 On the day of the trial, we struck a jury. And I
11 don't remember what the occasion was after the jury was
12 struck, we went back into the room here and Craig Rolen
13 asked me, he said, What do you think my chances are? And
14 I said, Craig, you signed a statement and you put on the
15 statement that you didn't want me there. And I said,
16 There is a very strong likelihood that the jury is going
17 to find you guilty. And he said, Well, if that's the
18 case, then I think I'm just going to go ahead and plead.

19 From there, we came out here and he entered a plea.
20 After the plea was accepted by the Court, and after the
21 victims family had talked, Craig Rolen decided he did not
22 want to plead.

23 So, Judge, as to the element of knowingly, there is
24 no question that Craig Rolen knew what the penalties were
25 for not only murder, but manslaughter. He very, clearly,

1 knew them. On the elements of entering a plea freely and
2 voluntarily, although the McNaughton report came back
3 saying he was competent, there's absolutely no question in
4 my mind that Craig was making some decisions that a
5 reasonable person would not make. And part of that was
6 because he was wanting to hurt himself because of the loss
7 of his children.

8 I mean, if you look at the bare facts of this thing,
9 he was out on bond on HIP on a murder charge. He violates
10 HIP. He gets put in jail. He knows that the worst he's
11 looking at is a 10-year offer on voluntary manslaughter.
12 He gets word about his family, his children. He starts
13 taking medication from the jail. And he said at the PCR
14 hearing that he had hoarded a number of pills. And on the
15 day that he, actually, talked to Investigator Smith that
16 he took all of those pills. I don't know what he was like
17 on the day that he confessed. I know what he was like the
18 next day. And he very clearly told me that he wanted to
19 die.

20 So, as far as the free and voluntary, I don't know if
21 anyone will ever know or if anyone could ever determine
22 whether his free will was overcome by the circumstances
23 surrounding his family and the loss of his children. And,
24 as far as the voluntary, based on what happened from him
25 from the time that he got out on bond, he was making snap

1 decisions that only hurt him, which is unlike what anybody
2 does. Everybody is always protective of themselves. And
3 he was doing only things that hurt himself.

4 Judge, I know that with the standard of review, this
5 is in your discretion.

6 THE COURT: So your motion is to withdraw the plea?

7 MR. GODFREY: My motion is to withdraw the plea,
8 Judge, based on these facts.

9 THE COURT: All right. Solicitor.

10 MS. HODGE: Thank you, Your Honor.

11 The State would respectfully request that you deny
12 the motion.

13 As Mr. Godfrey told you, we had already selected a
14 jury in this case. There had been --

15 THE COURT: Who was the trial judge?

16 MS. HODGE: You were.

17 THE COURT: I was the trial judge?

18 MS. HODGE: Yes, sir.

19 THE COURT: I don't recall this.

20 MS. HODGE: You probably don't recall this one. But
21 I, clearly, recall this case.

22 THE COURT: When was this?

23 MS. HODGE: It was April 11th of 2005. So it was
24 five years ago.

25 And the actual murder in the case occurred in 2001.

1 It was investigated for two years. They, finally,
2 arrested Mr. Rolen. And then a year after that is when he
3 came forward and confessed. And then we were about a year
4 to 18 months to a trial after that.

5 So there was plenty of time during this process for
6 Mr. Rolen to figure out what he wanted to do. And as of
7 April 11th, 2005, he wanted a jury trial. We struck a
8 jury. We had a Neil v. Biggers motion. And you found the
9 photo lineup admissible. I believe we had a Jackson v.
10 Denno and the statement was going to be allowed to be
11 introduced. After this point -- and, again, I'm not privy
12 to their conversation -- but I was approached -- the State
13 was approached that the Defendant wanted to plead guilty
14 if I would reduce the charge to voluntary manslaughter,
15 which I agreed to do with no recommendation.

16 Your Honor, I know, has a transcript of the plea.
17 You've probably read through your plea colloquy. And you
18 completely and thoroughly questioned him about, Are you
19 happy with Mr. Godfrey? Are you understanding that you
20 have a jury out here right now that's ready to try your
21 case? And you went through all the questions. Do you
22 know what rights you have, you know, your right to
23 cross-examine witnesses, confront. You went through all
24 that. It's in the transcript.

25 He said he was satisfied with Mr. Godfrey. He was

1 answering all of your questions competently, coherently.
2 It wasn't like some pleas that we have all been a part of
3 where you're trying to figure out if they really want to
4 do this or not and are hemming and hawing in answers. He
5 was very clear in his responses to the Court. He stated
6 he did freely, voluntarily, knowingly, and intelligently
7 waive the rights. He wanted to plead guilty.

8 The State then recited the facts of the case where he
9 had confessed. And he was in agreement with the facts.
10 You asked him, Do you agree with those facts? He states
11 that he does agree with those facts, and that he is the
12 one that had contacted the investigator to confess.

13 At this point, Your Honor did accept the plea as
14 being voluntarily made with a substantial basis. Then
15 Mr. Godfrey did his part where he apologized, stated that
16 the Defendant wanted to apologize to the family, and that
17 he was remorseful. Again, if this was not true, I don't
18 know why that would be said. The Defendant even addressed
19 the Court and went on to talk about what a nice guy
20 Mr. Mahone was, who was the victim, and that things just
21 went bad with them. So he even made his own somewhat
22 confession here during the plea.

23 It was not until family members of the victim wanted
24 to address the Court and, of course, were extremely
25 emotional -- Mr. Godfrey and the Defendant, I think, were

1 asking you to impose a 20-year sentence, even though there
2 was no recommendation. Then, of course, the victim's
3 family members wanted you to impose the maximum. And it
4 was at the point where he decided he did not want to do
5 this anymore. And I was not able to be in Mr. Rolen's
6 thought process. But I would assume it's because he felt
7 that you were going to impose a tougher sentence than he
8 was wanting to accept, based on what the victims were
9 going to say -- or what the victim's family had said.

10 At that point, he said, I don't want to do this. And
11 Your Honor replied, You have done it. I've accepted your
12 plea. And you went on to sentence him. Even though
13 Mr. Godfrey did not formally move, at that point, I think
14 that it was very clear the Defendant didn't want to do it.
15 He continued to say he didn't want to do it anymore. And
16 Your Honor, knowing all the facts, the circumstances, and
17 everything that was happening at the time, essentially,
18 did deny that motion that the Defendant himself made.

19 I would ask that you would go along with what your
20 initial feeling was at the time using your discretion and
21 opposing -- or denying that motion as -- I, again, can't
22 speak for the Court -- but as it appeared that you would
23 have done on that day five years ago.

24 If you are inclined to grant the motion to withdraw
25 the plea, Your Honor, the State would be severely

1 prejudiced. The case already was five years old almost at
2 the time of the trial. There were many -- this was a drug
3 transaction-type thing. And the main witness in the case
4 was a crack-addict prostitute who was an eyewitness. We
5 had a very hard time finding her five years ago. And, at
6 this point, I'm not sure that she could be found, if she's
7 even alive. I've been told she was HIV positive two or
8 three years ago when she was involved in another case. We
9 would be substantially prejudiced, at this point, if Your
10 Honor would choose to let him withdraw his guilty plea.

11 DEFENDANT ROLEN: Your Honor --

12 THE COURT: All right, sir.

13 DEFENDANT ROLEN: I know it sounds insane. It is
14 insane. But I gave a false confession to a murder I had
15 no part in because I wanted to hurt myself. I wanted to
16 hurt my sister. And I wanted to hurt my momma. I just
17 went crazy over there in the county jail abusing drugs.
18 And it's not so much the abusing drugs as it is just I
19 flipped out. I'm in here for a murder I didn't commit.

20 My friend, Kevin Mahone, got himself killed by
21 messing with a married woman. I have figured it all out.
22 That's why I included the real killer in that false
23 confession because I wanted him to suffer. I wanted to
24 get him caught. Actually, I -- in a way, in the back of
25 my mind, I thought I'd get him caught and then the truth

1 would come out. They arrested him and his wife too, whose
2 charges was dismissed. And it's -- the truth is I've lost
3 six years of my life for something I didn't do. And I'm
4 innocent, Your Honor.

5 I have alibi witnesses I've found out that are still
6 alive. I thought one was dead. I don't even know who
7 these people are, this crack whore. I don't know nothing
8 about them. I've never met them before in my life. I
9 don't know them. I've never met them.

10 Jimmy Arder [phonetic], Cathy Deal, and
11 Lamar [phonetic] Thomas, I was with these three people the
12 whole week of this incident. Jimmy Arder is still alive.
13 I hear he's on dialysis. So he can be found. He knows I
14 was with him the whole week of this thing. Cathy Deal, I
15 hear she's in North Carolina in a place for Huntington's
16 Disease. She's still alive and she can be found. Lamar
17 Thomas, I have no idea where he's at. But I just know
18 this, I'm innocent. I didn't do this. Yes, I told them I
19 did. I was an idiot. I'm still an idiot. I do stupid
20 things.

21 The other day, what did I say when you come in?

22 MR. GODFREY: When I talked to him on Thursday of
23 last week, Judge, he told me that he did not want me to be
24 his attorney and that he would confess to other charges if
25 they would let him because he wanted the death penalty.

1 DEFENDANT ROLEN: I do say stupid things. I mean,
2 this -- that morning, I'm pacing the floor high on pills.
3 And I'm telling my two roommates the morning of the false
4 confession, I said, I'm fixing to go over there and tell
5 them I've done this and they can do whatever with me,
6 because I can't stand not knowing what they're -- what's
7 going to happen to me. And I can't stand it now not
8 knowing what's going to happen to me. It's driving me
9 insane.

10 And the dude -- one is a Mexican and one is a white
11 guy. I ended up seeing the white guy at prison. But,
12 anyway, they tried to talk me out of it, No, man, you're
13 crazy, don't do that. I said, I don't care no more. I
14 don't care no more. I know it sounds crazy, but it's
15 true. You know, people that's down there at prison are
16 cutting themselves and you can't understand, Why do y'all
17 cut yourselves? But they have reasons for that, for
18 hurting themselves like that. Well, I just done mine in a
19 different way. And I done it in a big way.

20 THE COURT: I understand that, sir.

21 But, I mean, at the time, I went through the
22 procedure and asked you all these questions. And I made
23 the factual finding that your plea was freely and
24 voluntarily made. And I don't see that you've given me or
25 shown me any reason why I should change my opinion now.

1 DEFENDANT ROLEN: Your Honor, please, I'm innocent.
2 I'm innocent, please.

3 That morning, I'm sitting right there and Bill is
4 telling me, Craig, they're going to find you guilty and
5 Judge Pyle is --

6 THE COURT: I understand that, sir, but I deny your
7 motion.

8 *****END OF TRANSCRIPT OF RECORD*****

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CERTIFICATE OF REPORTER

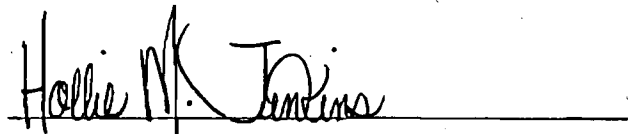
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth 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 captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 5th day of April, 2010.

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

June 30, 2010



Hollie M. Jenkins, Court Reporter

My Commission Expires: 11-17-10

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 State of South Carolina,)
)
 v.)
)
 Craig Rolen,)
)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS
 2003-GS-23-8222

ORDER
 (Denying Motion to Withdraw Guilty Plea)

2010 JUN - 3 PM 3:27
 CLERK OF COURT
 GREENVILLE CO. S.C.

This matter came before me on April 5, 2010 on motion of Defendant, pursuant to Rolen v. State, 384 S.C. 409, 683 S.E.2d 471 (S.C. 2009), for an order allowing Defendant to withdraw his guilty plea.


Present at the hearing were Kris B. Hodge, assistant solicitor, E.P. Bill Godfrey, counsel for Defendant, and the Defendant, Craig Rolen.

After carefully considering all of the arguments of counsel and the statements of Defendant, I find that the motion to withdraw Defendant's guilty plea should be denied.

IT IS ORDERED,

- (a) that the motion to withdraw Defendant's guilty plea is denied;
- (b) that the sentence imposed on Defendant of twenty-five years in the Corrections Department is affirmed; and
- (c) that the Defendant be returned to the custody of the Corrections Department to serve his sentence.

IT IS SO ORDERED.


 C. Victor Pyle, Jr.
 Presiding Judge

June 3, 2010
 Greenville, South Carolina.

WITNESSES

WESLEY SMITH

15

GCSC

07/16/03

ARREST WARRANT NUMBER

H 359724

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Coreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2003-GS-23- 008222

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2003

THE STATE

vs.

CRAIG SHANE ROLEN

PLEAD GUILTY
Vol. Mans. 10/1/03

Indictment for

MURDER

VIOLATION § 16-3-10

ENTERED

ACCT

INDEXED

258

0416
217

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on NOVEMBER 18, 2003 the
Grand Jurors of Greenville County present upon their oath:

That CRAIG SHANE ROLEN did in Greenville County, on or about the 18th day of August, 2001,
unlawfully and with malice aforethought kill Kedrick Tyson Mahone by means of assaulting him, and
that Kedrick Tyson Mahone died as a proximate result thereof. This is in violation of §16-3-10 of the
South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF Greenville)
 STATE VS.)
Craig Rolan)
 AKA: _____)
 Race: _____ Sex: _____ Age: _____)
 DOB: _____)
 Address: _____)
 DL#: _____ SID#: _____)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2003GS2308222
 A/W#: H359724
 Date of Offense: 08-18-2001
 S.C. Code § : 16-03-0010.0020
 CDR Code #: 0116

CASE RESTORED SENTENCE
 PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: VOLUNTARY MANSLAUGHTER

in violation of § 16-3-50 of the S.C. Code of Laws, bearing CDR Code # 0217
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] Solicitor: [Signature] Defendant: [Signature] Attorney for Defendant: [Signature]

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 25 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. 353 days in jail

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 set by SCDPPPS _____

PTUP _____ days/hours Public Service Employment
 Obtain GED _____
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling _____
 Random Drug/Alcohol testing _____
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

Recipient: _____	
*Fine: _____	\$ _____
§ 14-1-206 (Assessments 107.5 %)	\$ _____
§ 14-1-211(A)(1) (Conv Surcharge)	\$100 \$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
§ 56-5-2995 (DUI Assessment)	\$12 \$ _____
§ 35.13 (Public Def/Prob)	\$500 \$ _____
§ 73.3, 1B TP (Law Enforce. Funding)	\$25 \$ <u>25.00</u>
§ 33.7, 1B TP (Drug Court Surcharge)	\$100 \$ _____
§ 50-21-114(BUI Breath Test Fee)	\$50 \$ _____
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
3% to County (if paid in installments)	\$ _____
TOTAL	\$ _____

Appointed PD or appointed other counsel, § 35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE [Signature]
 Judge Code: 1 1 2106
 Sentence Date: 4/11/05

Paul B. Wickham
 Clerk of Court/ Deputy Clerk
 Court Reporter: April Herron

FORM 5

STATE OF SOUTH CAROLINA)
)
COUNTY OF Greenville)
)
Craig Rolan 257993)
Full name and prison number (if any) of Applicant.)

IN THE COURT OF COMMON PLEAS

2012-CP-23- 0238

FILED - CLERK OF COURT
GREENVILLE, SC
APR - 5 PM 1:07

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS - 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 fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Mc Cormick CI ^{March} 3-17-2012
2. Name and location of Court which imposed sentence Greenville
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2003 GS 2308222
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 4-11-2005. 25 years
 - (b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

Yes

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

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

i. PCR

ii. Supreme Court

iii. Court of Appeals

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

i. PCR ~~was~~ denied

ii. Supreme Court reversed the PCR back to lower court.

iii. Lower courts denied my case again and I did a direct appeal and it was denied.

(c) the date of each such result:

i. 7-10-06

ii. 6-29-09

iii. 2-22-12

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

i. _____

ii. My case was reversed to a motion hearing to

iii. with draw my plea. Opinion # 26678. My lawyer Bill Godfrey was found ineffective by the Supreme Court.

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

(a) _____

(b) _____

(c) _____

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

I gave ^{ENV} Wesley Smith a false confession to a murder I knew nothing about, then I let ^{Att} Bill Godfrey talk me in² to a plea because he wasn't paid enough to do my trial. I'm innocent

(a) ~~At the plea I talk the family of~~
 (b) ~~the victim the truth, I didn't do it.~~
 (c) ~~My lawyer failed to make Motion to withdraw at plea. He failed again at Motion hearing when new issue →~~

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

(a) Ineffective lawyer
 (b) Failed to Make Motion to withdraw at plea
 (c) Failed to object to new issue at the remanded motion hearing

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

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

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

(a) the specific nature thereof:
 i. Motion hearing in Greenville Motion to withdraw
 ii. _____
 iii. _____
 iv. _____

(b) the name and location of the Court in which each was filed:
 i. Greenville
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:
 i. Denied
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
 - i. April, 5th, 2010
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

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

Yes

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

(a) which grounds have been presented:

- i. where my lawyer failed to make motion to withdraw
- ii. _____
- iii. _____

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

- i. PCR and Supreme Court
- ii. _____
- iii. _____

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

- (a) where my lawyer failed to object to
- (b) new issue of case being too old
- (c) at the Motion hearing. →

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

Yes,

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

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

- (a) the name and address of each attorney who represented you:
 - i. ~~Bill~~ Bill Godfrey 10 East Ave Greenville, SC 29601
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Plea, April, 2005
 - ii. Motion hearing, April, 2010. Even though the
Supreme^{court} ruled him to be ineffective.
 - iii. _____

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

To be released, I'm innocent

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

No.

STATE OF SOUTH CAROLINA)
)
County of)

VERIFICATION

I, , 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.

Greg Rolan

SWORN to and subscribed before me this 19
day of March, 2012

James J. Young (L.S.)
Notary Public

My Commission Expires: 10 11 2021

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

I, _____, 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:

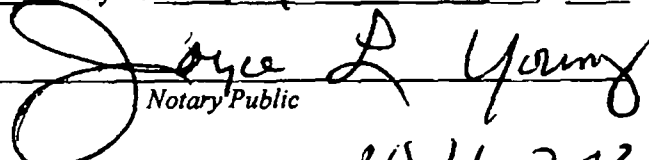
(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



 Applicant

SWORN or affirmed to and subscribed before me this
 19 day of March, 2012



 Notary Public

My Commission Expires: 10 11 2021

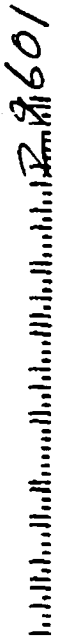
Craig Rolan 257993
MCI F-1 285A
386 Redemption Way
McCormick, S.C.
29899



UNITED STATES POSTAGE
METRY BOXES
\$ 00.20⁰⁰
02 1M MAR 19 2012
00800 7260 MAILED FROM ZIP CODE 29835



Clerk of Court
Greenville County Courthouse
305 East North St
Greenville, S.C.



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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2012-CP-23-4930
COUNTY OF GREENVILLE)	
)	
Craig S. Rolen,)	
S.C.D.C. No. 257993,)	
)	
Applicant,)	
)	RETURN AND PARTIAL MOTION TO DISMISS
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

In response to the post-conviction relief (PCR) application filed April 5, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Applicant was indicted at the November 2003 term of the Greenville County Grand Jury for murder (2003-GS-23-8222). E.P. "Bill" Godfrey, Esquire represented the Applicant.

Guilty Plea

On April 11, 2005, the Applicant pled guilty to voluntary manslaughter. The Honorable C. Victor Pyle, Jr. sentenced the Applicant to twenty-five (25) years imprisonment. The Applicant did not appeal his conviction or sentence.

Post-Conviction Relief

The Applicant filed a PCR application on August 5, 2005 (2005-CP-23-4930). An evidentiary hearing was convened at the Greenville County Courthouse on April 19, 2006. The Applicant was represented by Caroline Horlbeck, Esquire. The Honorable James E. Lockemy

denied relief in an order dated July 6, 2006.

The Applicant filed a notice of appeal at the South Carolina Supreme Court. Wanda H. Carter, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Supreme Court granted the petition for writ of certiorari and both parties submitted briefs. On June 29, 2009, the Supreme Court reversed Judge Lockemy's order and remanded the case to the plea judge to a place in time after the plea had been accepted and at "the point in the guilty plea proceeding in which counsel should have sought to withdraw the plea." Rolen v. State, 384 S.C. 409, 683 S.E.2d 471 (2009).

Remand to Plea Judge

On April 5, 2010, the matter was back before the original guilty plea judge, the Honorable C. Victor Pyle, Jr. As in the original guilty plea hearing, the Applicant was represented by E.P. "Bill" Godfrey, Esquire. After counsel moved to withdraw the plea, Judge Pyle denied the motion. On June 3, 2010, Judge Pyle issued a formal written order in which he denied the Applicant's motion to withdraw his guilty plea and affirmed the prior sentence of twenty-five (25) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. The appeal was perfected by LaNelle C. DuRant, Esquire of the South Carolina Office of Appellate Defense. The Court of Appeals affirmed Judge Pyle's denial of the Applicant's motion to withdraw his guilty plea. State v. Rolen, Op. No. 2012-UP-085 (S.C. Ct. App. filed Feb. 22, 2012).

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the April 5, 2010 hearing transcript, and the prior PCR and

appellate records.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

- I. Ineffective assistance of counsel:
 - a. Failed to move to withdraw the guilty plea at the April 11, 2005 guilty plea hearing.
 - b. Failed to “object to new issue of case being too old” at the April 5, 2010 hearing on the motion to withdraw his guilty plea (upon remand from the Supreme Court).

III.

The Respondent submits issues related to the April 11, 2005 guilty plea hearing must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held the statute of limitations shall apply to all applications filed after July 1, 1996. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant pled guilty to the offense he challenges in this application on April 11, 2005. The Applicant was therefore required to file his application before April 11, 2006. This PCR application was filed on April 5, 2012, which was almost six (6) years after the statutory filing

period had expired.¹

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

IV.

Regarding issues of the effectiveness of counsel at the April 5, 2010 hearing on the Applicant’s motion to withdraw his guilty plea, the Respondent submits these allegations are without merit. The Respondent asserts the Applicant’s attorney rendered effective assistance well within the standard of “reasonableness within professional norms” for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

¹ The Respondent would also note the Applicant had the ability to raise all issues related to the guilty plea hearing at the first PCR hearing held on April 19, 2006. See Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) (“[A]n applicant is entitled to a full adjudication on the merits of the original petition, or ‘one bite at the apple.’”).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

V.

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

VI.

WHEREFORE, having made its Return and Partial Motion to Dismiss, the Respondent requests: (1) all issues related to the April 11, 2005 guilty plea hearing be summarily dismissed, (2) that a hearing be held only on issues related to the April 5, 2010 motion hearing, and (3) counsel appointed to represent the Applicant solely on issues related to that April 5, 2010 motion hearing.

Respectfully submitted,

ALAN WILSON
Attorney General

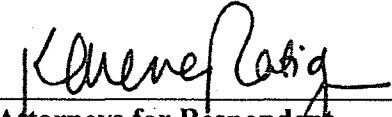
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By:


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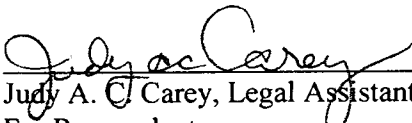
August 10, 2012

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	
)	
)	2012-CP-23-4930
)	
CRAIG S. ROLEN, 257993)	
)	
Applicant,)	
)	
vs)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	

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

Craig S. Rolen, 257993
McCormick Correctional Institution
386 Redemption Way
McCormick SC 29899

DATED this 10th day of August, 2012.


 Judy A. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

CRAIG ROLAN,)
)
 PLAINTIFF,)
)
 -VS-)
)
 STATE OF SOUTH CAROLINA,)
)
 DEFENDANT.)
 _____)

2012-CP-23-02385

FEBRUARY 19, 2014

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

MILLS ARIAIL
ATTORNEY FOR THE PLAINTIFF

KAREN RATIGAN
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

1

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PLAINTIFF' S/ EXHIBITS

NO	DESCRIPTION	ID	EV
	(NONE)		

DEFENDANT' S EXHIBITS

	(NONE)		

COURT' S EXHIBITS

	(NONE)		

1 remanded back to the plea judge for that limited
2 purpose.

3 On April 5th of 2010, they were back before Judge
4 Pyle. Again, Mr. Rolen was represented by Mr. Godfrey.
5 Mr. Godfrey moved to withdraw the plea. Judge Pyle
6 denied the motion.

7 On June 3rd of 2010, Judge Pyle issued a formal
8 written order to that effect and reaffirmed the prior
9 twenty-five year sentence. Mr. Rolen then filed an
10 appeal from that matter. That was perfected by the
11 Office of Public Defense. The Court of Appeals
12 affirmed Judge Pyle's denial of the motion to withdraw
13 the guilty plea in February of 2012.

14 So this PCR application was filed shortly
15 thereafter. Your Honor, the state has filed a return
16 of partial motion to dismiss. We would argue that any
17 issues related to the April 11th, 2005 guilty plea are
18 successive and untimely. Clearly it's been more than
19 one year since that guilty plea hearing before Judge
20 Pyle. He could have raised any issues related to that
21 plea at the first PCR hearing. So the state would
22 argue he is barred from doing so at this time. The
23 state would contend that the only issue that should go
24 forward today are issues related to the April 5th, 2010
25 remand hearing before Judge Pyle.

Craig Rolen -vs- State of South Carolina (2012-CP-23-02385)
PCR Hearing

6

1 THE COURT: Mr. Ariail.

2 MR. ARIAIL: Yes, Your Honor. In regards to
3 this, I've talked with Mr. Rolen. I was not his
4 counsel at the time of his first PCR. I know he filed
5 that. I think Ms. Horlbeck was his attorney at that
6 time. I am not privy to what went on in regards to
7 that matter. I know they are going to bar that. I
8 think the issue in this case, which is kind of
9 different from any of the ones I've done. This case
10 was remanded to go back to deal with the motion to
11 withdraw that the Supreme Court said should have been
12 raised by Mr. Godfrey.

13 I think the issues are so intertwined with how we
14 got there and he has certain issues he wants to raise
15 in regards to that. And I have no knowledge what he
16 raised in the first PCR. It was my hope that we could
17 go into those items, have those addressed, because I
18 don't think I've dealt with a situation where we've
19 gone back to where the guilty plea has been accepted
20 and we're only dealing with a motion to withdraw. I
21 would like to be able to go into why we got to that
22 situation and what he was understanding. Why, half way
23 during his plea, he made the statements that he did or
24 wanting to withdraw, and what things that he discussed
25 with Mr. Godfrey to get to that point.

1 MS. RATIGAN: And Your Honor, the state would
2 argue that if you look at Judge Lockemy's order, which
3 should be in your packet and would be in the clerk's
4 file, the applicant testified about a great number of
5 issues related to his guilty plea at the original
6 hearing. He talked about failure to investigate,
7 failure to interview witnesses. He talked about the
8 fact that he was medicated. He talked about the fact
9 his statement was false. He talked about the fact that
10 he was told to plead guilty and didn't understand. He
11 talked about misapprehension about the sentence he had
12 received. So, Your Honor, we would state he has had a
13 full and fair opportunity to raise all these guilty
14 plea issues.

15 MR. ARIAIL: Your Honor, if I could just make
16 one point to this. I know -- and I'm not sure what
17 he's going to get into today in regards to the issues
18 that he wanted to raise. I know he raised a lot of
19 things in front of Judge Lockemy.

20 One thing that he has just told me while we're
21 sitting here, is there was a witness that he believed
22 was going to testify on his behalf or had information
23 and was located at the detention center or somewhere
24 and he had the location for him. He had asked for Mr.
25 Godfrey to interview him or to go and find information

Craig Rolen -vs- State of South Carolina (2012-CP-23-02385)
PCR Hearing

8

1 about him. He has just learned that and wanted to
2 provide that information. I'm not exactly sure how
3 he's going to get into that, but he wanted to basically
4 say that that was one issue that should have been
5 reviewed or should have been brought up by Mr. Godfrey
6 or looked at by Mr. Godfrey.

7 THE COURT: It wasn't raised the first time?

8 MR. ARIAIL: I don't think he raised that at
9 the first hearing. At least from what he's telling me.

10 THE COURT: Well, let me -- I won't rule yet.
11 Let's just proceed and see. I haven't had a chance to
12 read either of the Appellate Court orders, but
13 obviously, you know, I have to be, and I will be,
14 cognizant of the statute of limitations.

15 You can call your witness, Mr. Ariail.

16 MR. ARIAIL: Thank you, Your Honor. I call
17 Mr. Craig Rolen to the stand.

18 THE CLERK: Mr. Rolen, please place your left
19 hand on the bible and raise your right hand.

20 You do solemnly swear that the testimony you're
21 about to give in this case will be the truth, the whole
22 truth and nothing but the truth, so help you God?

23 THE WITNESS: I do.

24 THE CLERK: Thank you. Please state your
25 full name for the record.

1 THE WITNESS: Craig Shane Rolen.

2 THE CLERK: Thank you. You may be seated.

3 **CRAIG SHANE ROLEN,**

4 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

5 **DIRECT EXAMINATION**

6 **BY MR. ARIAIL:**

7 Q. Craig, we've talked a lot about your case in
8 regards to it's a little different than most PCR cases.

9 You previously had a PCR hearing; is that correct?

10 A. Yes, sir.

11 Q. Okay. And you were represented by Caroline
12 Horlbeck; right?

13 A. Yes, sir.

14 Q. Okay. And Mr. Godfrey represented you on this
15 charge that you are here today facing; is that correct?

16 A. Yes, sir.

17 Q. Serving time on right now?

18 A. Yes, sir.

19 Q. And you pled guilty to voluntary manslaughter; is
20 that right?

21 A. I did.

22 Q. Okay. And you got twenty-five years in front of
23 Judge Pyle?

24 A. Yes, sir.

25 Q. Now, I guess the issue -- tell me a little bit

Craig Rolen -vs- State of South Carolina (2012-CP-23-02385)
Craig Shane Rolen - Direct Examination by Mr. Ariail

10

1 about -- I mean, you had a PCR hearing and you argued a
2 lot of things happened. The judge has that order.
3 What things are you now saying Mr. Godfrey -- or you've
4 learned about that should be addressed or you want
5 addressed by the court?

6 A. Well, going over my transcript, the transcript of
7 the PCR hearing, I see where Caroline questioned Bill
8 about Jimmy Arter, one of my alibi witnesses. And he
9 said, Jimmy Arter, I was unable to find; right here on
10 page 78. And Jimmy Arter was across the street in the
11 county jail with me. And I called Bill, I said, please
12 come get him so you can get this statement. Because,
13 you know, it's very important. It's these little
14 things that drove me to losing it in the county jail.
15 I gave a false confession. But this is serious; this
16 is my life. I've lost ten years. I gave a false
17 confession to a murder I didn't commit. I know it
18 sounds crazy, but it's the truth. Even if someone
19 would just look at it carefully. The New York
20 Innocence Project is supposed to be helping me, but if
21 someone would just look at it carefully. Even the
22 statement, the false confession, don't even match the
23 evidence, the so-called evidence.

24 Q. Did you raise that issue at your first PCR?

25 A. I guess. I don't ---

1 Q. My question, I want to elaborate a little bit on
2 the Jimmy Arter issue, and you spell that A-R-T-E-R;
3 right?

4 A. Yes, sir.

5 Q. Okay. Now, where was he located?

6 A. He was in the county jail with me when I was
7 waiting to go to trial.

8 Q. Okay. You're talking about at the law
9 enforcement center?

10 A. Yes, sir.

11 Q. Okay. So he was there with you and you let Mr.
12 Godfrey know about that?

13 A. Yes, sir.

14 Q. And he said ---

15 A. And he said, Mr. Rolen, Jimmy Arter -- he said,
16 I'll come over. I've come over, Mr. Rolen. That's how
17 he said it.

18 Q. And what would Mr. Arter -- what was he going to
19 testify to?

20 A. That I was with him and Tamara Thomas and Cathy
21 Dill when this dude got killed.

22 Q. So he was an alibi witness?

23 A. Yes, sir.

24 Q. Okay. Where is he today?

25 A. I have no idea. I don't even know if he's still

1 alive. I heard he was on dialysis, last I heard. I
2 don't know.

3 Q. Okay. What about these other individuals, did
4 you raise them or use them as witnesses and talk to him
5 about them?

6 A. One, they couldn't find -- they couldn't find,
7 they couldn't find nobody. I mean, these were people
8 that were like me, wild, and warrants on them. And you
9 can't -- you know, that's why I said, come and get
10 Jimmy, please, out of this jail while we've got him
11 over here. Because these people's hard to find.

12 Q. Okay. Is that -- the other issue we talked -- I
13 guess that's one of the issues we wanted to raise based
14 on the previous PCR. Any other things you wanted to
15 bring up for the court? Because I know he's got the
16 order from the previous one and can look at that.

17 A. Well, I just felt like the Supreme Court ruled
18 him ineffective for not making the motion to withdraw
19 after my outburst. Have you read that? I would like
20 to read the outburst, if that's okay.

21 Q. Is it in the transcript?

22 A. Yes, sir.

23 Q. Well, the judge has a copy of that if you want
24 him to read that. He can certainly read that.

25 A. It's real quick. When the girl come and spoke,

1 when the girl spoke, I knew this wasn't right, I said,
2 all right. This has went on far enough. I didn't kill
3 this man. This has went too far. I ain't going this.
4 I didn't kill your brother. And Ms. Camp said, you
5 just say that. I said, yeah, because I think I'm going
6 to get a life sentence. I turned to my sister, I said,
7 I can't do it, Renee. I didn't kill this man. I can't
8 do it. Pyle said, Judge Pyle, Your Honor, I'm sorry,
9 said, sir, you already done it. I said, well -- and
10 I'm so confused. I said, well, I've already done it.
11 And I said, Tawan, I didn't kill this man. I'm sorry,
12 Tawan, I didn't kill your brother. I loved your
13 brother. Your brother took naps in my room. Me and
14 your brother drank beer in my backyard, smoked blunts.
15 I didn't do this to Kedrick. I don't know who did. I
16 wish I did. I'll find out soon. I'm going to ask God
17 himself. That part about asking God himself was just
18 kind of an outburst. This whole thing's about drove me
19 crazy; I know that. And I just, I just want to go
20 home. I didn't do this.

21 Q. Okay. And that's why we're trying to get some
22 information. In regards to what Bill did at that
23 hearing, I mean, clearly it went back for a motion to
24 withdraw a guilty plea?

25 A. Yes, sir.

1 Q. It was your understanding the judge said in the
2 opinion that your guilty plea was already accepted, so
3 the only question was, in the discretion of the judge,
4 whether he could withdraw the guilty plea. You
5 understood that?

6 A. Yes, sir.

7 Q. Okay. So after it was remanded, what
8 conversations did you have with Bill in regards to --
9 Mr. Godfrey, in regards to the motion to withdrawn or
10 your view of that or his representation of you?

11 A. When he first talked to me I said, I don't know,
12 you know, about him representing me at this motion
13 hearing. I said, I don't know right now. I'm confused
14 that he's even come. Because he said, I just got a
15 call from Kris Hodge. She said you was over here at
16 the jail. I'm looking at him; I'm real confused. I'm
17 thinking, you know, surely I'm not going to have the
18 same lawyer that the Supreme Court has done ruled
19 ineffective. And so I said, I don't know. And he
20 said, well, we're going in January. And so that was
21 the end of that. I go back to my cell and January goes
22 by and February goes by and March goes by. And then I
23 think it was the first of April or so, he comes back to
24 the county jail to see me and I'm having a fit. I
25 can't believe he's back. I'm thinking they done, you

1 know, was taking this long to appoint me a new lawyer
2 and all this. I don't have nothing against Bill
3 Godfrey personally. I don't -- I just want the truth
4 to be known.

5 Q. But you're asking him to file a motion to be
6 relieved or withdraw from your case?

7 A. Well, I said during the motion hearing to
8 withdraw, I said, Bill, please tell the judge what I
9 told you yesterday. And he did. And that was that you
10 didn't want me to represent you.

11 Q. Okay. Did he do anything outside of that that, I
12 guess you asked him to do, or did he not do something
13 you wanted him to do in regards to the motion to
14 withdraw?

15 A. Not in regards to that. Just ---

16 Q. Is there anything else -- and I'm trying to
17 concentrate on the motion to withdraw, because that's
18 what's in front of the court.

19 A. Okay. Got it.

20 Q. Was there anything else that you're saying he
21 didn't do in regard to that that you wanted him to do?

22 A. Yes. I felt like -- okay. The Supreme Court
23 ruled that we come back just like it was; Judge Pyle,
24 Kris Hodge, Bill Godfrey. Was that like -- was it like
25 we're back into the point of the hearing to where I

1 made my outburst and now I'm going to make the motion
2 to withdraw, like when we went back to 2005? Or what?
3 I mean, I don't understand it. Because she says, Your
4 Honor, you can't grant the motion to withdraw, you
5 can't grant the motion to withdraw; the case is too
6 old. Well, I don't understand how she can say the case
7 is too old when we're back like it was -- I mean, I'm a
8 truck driver. I'm not a lawyer, you know. I don't
9 know this stuff. I just know I'm innocent. I gave a
10 false confession. I'm innocent. That's all I know.

11 MR. ARIAIL: Your Honor, I have no further
12 questions.

13 THE COURT: You may cross examine the
14 witness.

15 **CROSS EXAMINATION**

16 **BY MS. RATIGAN:**

17 Q. Mr. Rolen, you testified about Mr. Arter, Ms.
18 Thomas and Ms. Dill at the first PCR hearing; right?

19 A. Yeah.

20 Q. And that you had asked Mr. Godfrey to talk to
21 them?

22 A. Yes.

23 MS. RATIGAN: Okay. That's all I have, Your
24 Honor.

25 THE COURT: Thank you, sir. You may step

1 down.

2 MR. ARIAIL: Your Honor, that's our case.

3 THE COURT: Anything from the state?

4 MS. RATIGAN: Yes, Your Honor, we would call
5 Mr. Godfrey.

6 THE CLERK: Mr. Godfrey, please place your
7 left hand on the bible and raise your right hand.

8 You do solemnly swear or affirm that the testimony
9 you're about to give in this case will be the truth,
10 the whole truth and nothing but the truth, so help you
11 God?

12 THE WITNESS: I do.

13 THE CLERK: Thank you. Please state your
14 full name for the record.

15 THE WITNESS: E.P. Godfrey. Everybody calls
16 me Bill.

17 THE CLERK: Thank you.

18 **E. P. GODFREY,**

19 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

20 **DIRECT EXAMINATION**

21 **BY MS. RATIGAN:**

22 Q. Mr. Godfrey, do you recall this matter having
23 been remanded back to Judge Pyle back in 2009?

24 A. Yes.

25 Q. In your opinion what was the purpose of that

1 hearing before Judge Pyle?

2 A. The purpose of the hearing was to have a motion
3 to withdraw the guilty plea that Mr. Rolen put in.

4 Q. And did you attempt to withdraw Mr. Rolen's plea?

5 A. Yes.

6 Q. Now, at some point during the hearing, the
7 assistant solicitor stated that some of these witnesses
8 could not be found and therefore they would urge the
9 judge -- the state would urge the judge not to withdraw
10 the plea; is that correct?

11 A. Correct.

12 Q. Now, were these witnesses that would have been
13 available back in 2005 during the original matter?

14 A. We couldn't find them then; neither the state nor
15 me. Tamara Thomas I did talk to her one time. I
16 talked about that, I think, at the first PCR. Tamara
17 Thomas also talked to the solicitor.

18 Q. In your opinion was there any prejudicial effect
19 from the assistant solicitor making the statement
20 during the subsequent hearing before Judge Pyle?

21 A. No.

22 MS. RATIGAN: That's all I have, Your Honor.

23 THE COURT: You may cross examine.

24 **CROSS EXAMINATION**

25 **BY MR. ARIAIL:**

1 Q. Mr. Godfrey, in regards to Mr. Arter, you've
2 heard Mr. Rolen testify about him. Did you have a
3 conversation with him in regards to Mr. Arter?

4 A. I don't remember anything about that. Unless
5 there's something in the transcript from the first PCR,
6 but at this point so much time has passed, I have no
7 idea..

8 Q. Did he tell you anything you can remember about
9 what Mr. Arter was going to testify to or how he could
10 help his case?

11 A. Well, I know what he -- Arter was with Tamara
12 Thomas. They were all up there at that motel, and they
13 got a room for free and they were getting high. You
14 know, the alibi would have been that at the time of the
15 murder that Craig Rolen would have been with them.
16 Trouble is, both I and at a separate time, the
17 Solicitor, talked to Tamara Thomas and Tamara Thomas
18 said there was a period of time when he was not in the
19 room.

20 Q. Okay. So all you know is that Arter would have
21 been with all of them at the same time and she would
22 have given, I guess, testimony consistent with Ms. --
23 or he would have given testimony consistent with Ms..
24 Thomas?

25 A. I don't know what his testimony would have been.

1 Hopefully his testimony would not have been consistent
2 with Ms. Thomas because Ms. Thomas hurt Craig.

3 Q. Right. But you never were able to find him to
4 talk to him?

5 A. No.

6 Q. Okay. Now, in regards to this motion to
7 withdraw, it came back, I guess it was remanded. Did
8 you have any discussions with him in regards to you
9 continuing as his counsel?

10 A. Yeah. I didn't want to continue. In fact, I
11 talked with Judge Pyle and the solicitor about it. And
12 I was advised to go over and talk with Craig to see if
13 Craig wanted me to represent him or whether he wanted
14 to have somebody else. And one time when I talked to
15 Craig, he said, yeah, you're okay. I went back on
16 another occasion two or three weeks later, he said, no,
17 I don't want you.

18 At that point in time, I contacted both Solicitor
19 Hodge and Judge Pyle and advised them what Craig said.
20 They said, go back and talk to him again. I went back
21 and talked to him again. Craig says, well, I wasn't
22 thinking right. You know, I want the death penalty for
23 this case. You know, the truly sad thing about all of
24 this is that Craig is not right. I had him evaluated
25 at the state hospital. There's something wrong with

1 his thinking. And you know, he may well have made a
2 statement that is not true. That is -- I believe him.
3 He started off looking at -- the first offer we got
4 from the solicitor's office was voluntary for ten
5 years. Their case was very bad. Craig knew their case
6 was very bad. He was out on bond. He cut his monitor
7 off and ends up in jail. After he's in jail for a
8 couple -- well, several weeks, he contacts Wes Smith
9 and gives a statement. When I asked him why he did it,
10 he said it was because his sister didn't put money into
11 his canteen and he wanted to die. Then on another
12 occasion he told me it was because his children were
13 taken from him in family court. There's something
14 wrong with Craig's thinking and I don't know what it
15 is. But this Jimmy Arter thing, I can't tell you now
16 -- I never located Jimmy Arter. I know what he should
17 have testified to. But Craig is right. Everybody that
18 was supposed to be a witness in this case just about,
19 for the state and for the defense, were wicked drug
20 addicts. I mean, wasted.

21 Q. Okay. So at no time did you feel it was
22 necessary to file a motion to withdraw or be relieved
23 as his counsel?

24 A. Well, I even checked with Craig the day that we
25 did the motion hearing and he told me before we went in

Craig Rolen -vs- State of South Carolina (2012-CP-23-02385)
E.P. Godfrey - Cross Examination by Mr. Ariail

22

1 there it was okay for me to represent him.

2 MR. ARIAIL: I have no further questions,
3 Your Honor.

4 THE COURT: Anything on redirect?

5 MS. RATIGAN: No redirect, Your Honor. The
6 state would rest. And we would renew our partial
7 motion to dismiss.

8 THE COURT: Thank you, Mr. Godfrey. You may
9 be excused.

10 All right. I'll review the file and issue an
11 order and send notice out to one of you to prepare an
12 order within the next couple of weeks.

13 MS. RATIGAN: Thank you, Your Honor.

14 MR. ARIAIL: Thank you, Your Honor.

15

16 END OF REQUESTED TRANSCRIPT OF RECORD

1

CERTIFICATE OF REPORTER

2

I, the undersigned Danette P. Hanks, Official
3 Court Reporter for the Thirteenth Judicial Circuit of
4 the State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and complete transcript
6 of record of all the proceedings had and evidence
7 introduced in the trial/hearing of the captioned case,
8 relative to appeal, in the Court of Common Pleas for
9 Greenville County, South Carolina, on the 19th day of
10 February, 2014.

11

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

13

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

15

June 17, 2014

16

17

18

19

20



Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Craig S. Rolen,)
 S.C.D.C. No. 257993,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2012-CP-23-~~4930~~ 23.85

ORDER OF DISMISSAL

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMMER
 2014 MAR 25 PM 12 35

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 5, 2012. The Respondent made its return and partial motion to dismiss on August 10, 2012. An evidentiary hearing into the matter was convened on February 19, 2014 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, E.P. "Bill" Godfrey, Esquire. The Court had before it: the transcript of April 5, 2010 hearing, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return and partial motion to dismiss, the order of dismissal from the first PCR action, and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the November 2003 term of the Greenville County Grand Jury for murder (2003-GS-23-8222).

He was represented by E.P. "Bill" Godfrey, Esquire.

Guilty Plea

On April 11, 2005, the Applicant pled guilty to voluntary manslaughter. The Honorable C. Victor Pyle, Jr. sentenced the Applicant to twenty-five years imprisonment. The Applicant did not appeal his conviction or sentence.

Post-Conviction Relief

The Applicant filed a PCR application on August 5, 2005 (2005-CP-23-4930). An evidentiary hearing was convened at the Greenville County Courthouse on April 19, 2006. The Applicant was represented by Caroline Horlbeck, Esquire. The Honorable James E. Lockemy denied relief in an order dated July 6, 2006.

The Applicant filed a notice of appeal at the South Carolina Supreme Court. Wanda H. Carter, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Supreme Court granted the petition for writ of certiorari and both parties submitted briefs. On June 29, 2009, the Supreme Court reversed Judge Lockemy's order and remanded the case to the plea judge to a place in time after the plea had been accepted and at "the point in the guilty plea proceeding in which counsel should have sought to withdraw the plea." Rolen v. State, 384 S.C. 409, 683 S.E.2d 471 (2009).

Remand to Plea Judge

On April 5, 2010, the matter was back before the original guilty plea judge, the Honorable C. Victor Pyle, Jr. As in the original guilty plea hearing, the Applicant was represented by E.P. "Bill" Godfrey, Esquire. After counsel moved to withdraw the plea, Judge Pyle denied the motion. On June 3, 2010, Judge Pyle issued a formal written order in which he denied the Applicant's motion to withdraw his guilty plea and affirmed the prior sentence of

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twenty-five years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. The appeal was perfected by LaNelle C. DuRant, Esquire of the South Carolina Office of Appellate Defense. The Court of Appeals affirmed Judge Pyle's denial of the Applicant's motion to withdraw his guilty plea. State v. Rolan, Op. No. 2012-UP-085 (S.C. Ct. App. filed Feb. 22, 2012).

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. Failed to move to withdraw the guilty plea at the April 11, 2005 guilty plea hearing.
 - b. Failed to "object to new issue of case being too old" at the April 5, 2010 hearing on the motion to withdraw his guilty plea upon remand from the Supreme Court.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Partial Motion to Dismiss

The Respondent argued any issues related to the Applicant's original guilty plea hearing should be dismissed as untimely and successive. This Court agrees.¹ The Applicant pled guilty

¹ This Court notes the Applicant testified plea counsel was deficient in failing to locate potential witnesses Jimmy Arder, Tamara Thomas, and Kathy Deal. This issue (regarding these specific witnesses) was addressed at both the original PCR hearing and in the subsequent order of dismissal.

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and was sentenced on April 11, 2005. As this action was filed on April 5, 2012, it was clearly filed outside the expiration of the one-year statute of limitations. See S.C. Code Ann. § 17-27-45(a) (Supp. 2003). This is the Applicant's second application for post-conviction relief. Successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). This Court finds the Applicant had the opportunity to litigate all issues related to his original guilty plea hearing at the evidentiary hearing for his first PCR application on April 19, 2006. See Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) (“[A]n applicant is entitled to a full adjudication on the merits of the original petition, or ‘one bite at the apple.’”).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002). For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006).

At the April 5, 2010 hearing, counsel moved to withdraw the Applicant's guilty plea and then provided some background information about the case and his representation. (Transcript, pp.3-8). The assistant solicitor asked the judge to deny the motion. (Transcript, pp.8-12). During her remarks, the assistant solicitor stated:

If you are inclined to grant the motion to withdraw the plea, Your Honor, the State would be severely prejudiced. The case already was five years old almost at the time of the trial. There were many – this was a drug transaction-type thing.

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And the main witness in the case was a crack-addict prostitute who was an eyewitness. We had a very hard time finding her five years ago. And, at this point, I'm not sure that she could be found, if she's even alive. I've been told she was HIV positive two or three years ago when she was involved in another case. We would be substantially prejudiced, at this point, if Your Honor would choose to let him withdraw his guilty plea.

(Transcript, p.12). The Applicant spoke on his own behalf and proclaimed his innocence.

(Transcript, pp.12-15). The judge denied the motion to withdraw the guilty plea. (Transcript, p.15).

The Applicant stated he told counsel at the April 5, 2010 hearing to advise the judge that he did not want counsel to represent him. The Applicant stated counsel should have objected when the assistant solicitor told the judge that the case was too old to bring to trial.

Counsel testified the purpose of the April 5, 2010 hearing was for him to move to withdraw the Applicant's guilty plea. Counsel confirmed the Applicant did not originally want him to represent him at this hearing. Counsel stated the Applicant changed his mind from wanting his representation to not wanting his representation. Counsel stated on the day of the hearing, however, that the Applicant had changed his mind again and agreed to have counsel represent him. Counsel stated the witness named by the assistant solicitor at this hearing could not be found by either the State or counsel in 2005. Counsel stated there was no prejudicial effect from the assistant solicitor's statement.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding counsel's testimony is credible.

This Court finds the Applicant failed to meet his burden of proving counsel should have objected to the assistant solicitor's comment during the April 5, 2010 hearing. The Applicant

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has failed to demonstrate that the assistant solicitor's comment was so improper that counsel was deficient in failing to object. Regardless, this Court also finds the Applicant has failed to demonstrate the assistant solicitor's comment prejudiced his case. Counsel testified the witness referenced by the solicitor could not be found back in 2005, when the Applicant originally pled guilty. Counsel testified there was no prejudicial effect from the assistant solicitor's comment. This Court agrees. This Court finds there is nothing in the record to suggest the judge took the solicitor's comment into consideration in denying the motion to withdraw the guilty plea in this case. The Applicant failed to meet his burden of proving otherwise and this Court will not engage in speculation. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (holding that in a PCR proceeding, the applicant bears the burden of proving the allegations in their application).

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations.

Accordingly, this Court finds the Applicant has abandoned any such allegations.

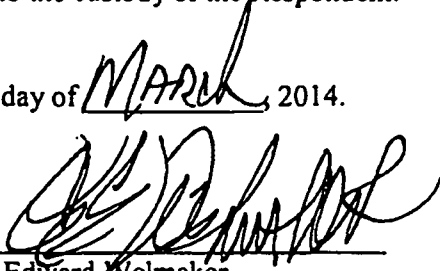
CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice. This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.


IT IS THEREFORE ORDERED:

1. That the Respondent's partial motion to dismiss is granted and all issues related to the April 11, 2005 guilty plea hearing are denied as untimely and successive.
2. That the allegation in the PCR application related to counsel's representation at the April 5, 2010 hearing is denied and dismissed with prejudice.
3. That the Applicant be remanded to the custody of the Respondent.

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



G. Edward Welmaker
Presiding Judge
Thirteenth Judicial Circuit



South Carolina.