

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Florence County

William H. Seals, Jr., Circuit Court Judge

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AUG - 7 2014

S.C. Supreme Court

ANTHONY TOMMY WILSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2014-000068

APPENDIX

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STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE)	CASE NO. 2009-GS-21-882
)	
STATE OF SOUTH CAROLINA,)	
)	
Plaintiff,)	
)	
-vs-)	TRANSCRIPT OF RECORD
)	
ANTHONY TOMMY WILSON,)	
)	
Defendant.)	
)	

March 12, 2012
 Florence, South Carolina

B E F O R E:

THE HONORABLE THOMAS A. RUSSO, Judge

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

E.L. CLEMENTS, III, Solicitor
 Attorney for the Plaintiff

E. GUY BALLENGER, Esquire
 Attorney for the Defendant

KRYSTAL J. SMITH
 Official Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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1 MARCH 12, 2012

2 (WHEREAS this matter was presented for a guilty plea, the
3 defendant appeared along with his counsel of record. The
4 hearing began at 9:55 a.m.)

5 THE COURT: Yes, sir, Solicitor.

6 MR. CLEMENTS: If it please the Court, Your Honor. Your
7 Honor, we're here on indictment number 2009-GS-21-882.
8 Standing before you is Mr. Anthony Tommy Wilson, also known as
9 Amp. Your Honor, he's represented by Mr. Guy Ballenger. This
10 is a negotiated plea.

11 Mr. Wilson, as you recall, testified for the State in the
12 last trial we tried against State versus David Gerrard Johnson
13 for the murder of Ms. Willie Mae Hayes. At the time of this
14 offense, Your Honor, Mr. Wilson was a 14-year-old juvenile.
15 He was under the influence of 22-year-old -- at that time 22-
16 year-old David Gerrard Johnson.

17 You heard him testify, Your Honor, for the State. He
18 testified we believe truthfully. He was truthful about
19 everything about it. He was also truthful in the fact that he
20 actually did participate in stabbing Ms. Hayes.

21 He's entering this plea, Your Honor, on the murder under
22 North Carolina versus Alford, Your Honor, because he does not
23 know which wound actually was the wound that caused Ms. Epps'
24 [sic.] death and, Your Honor, we don't as well. The
25 pathologist said you couldn't tell which one, but he stabbed

1 her one time and she was actually stabbed seven times and we
2 don't know which one was it. So ---

3 THE COURT: Well, the hand of one is the hand of all.

4 MR. CLEMENTS: Yes, sir.

5 THE COURT: So ---

6 MR. CLEMENTS: Yes, sir.

7 THE COURT: Under that theory, he's guilty.

8 MR. CLEMENTS: Yes, sir. So he's entering that under
9 Alford. Also, Your Honor, he's entering a plea I believe to
10 burglary ---

11 MR. BALLENGER: First.

12 MR. CLEMENTS: --- first degree, Your Honor ---

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

14 MR. CLEMENTS: --- which carries ---

15 THE COURT: Okay.

16 MR. CLEMENTS: --- fifteen years to life.

17 THE COURT: Now, the remaining counts are being nolle
18 prossed pursuant to his plea; is that correct?

19 MR. CLEMENTS: Yes, sir.

20 THE COURT: All right.

21 MR. CLEMENTS: Which would be the armed robbery and
22 possession of a weapon during a violent crime and conspiracy.

23 THE COURT: Okay, all right. Have you got the sentencing
24 sheets there?

25 MR. CLEMENTS: Your Honor, they're right here. Your

1 Honor, in the courtroom also we have investigators, Sergeants
2 Larry Drayton and Melvin Godwin. We also have in the
3 courtroom, Your Honor, the children of Ms. Epps [sic.]. I
4 mean, excuse me, the children of Ms. Hayes, Wilma Epps and
5 David Hayes. Also, her two brothers, Curly and Ernest
6 Dalford, and her sister, Olivia ---

7 THE COURT: Viola.

8 MR. CLEMENTS: Excuse me, Viola Lavelle and Mr. Marion
9 Dalford lives in Texas. He couldn't be here today, but I
10 talked to him over the phone about this and he is the
11 gentleman that spoke for the family, Your Honor, at the
12 sentencing ---

13 THE COURT: Okay.

14 MR. CLEMENTS: --- of Mr. Johnson. I think you remember
15 Mr. Dalford.

16 THE COURT: Sure.

17 MR. CLEMENTS: He was a very eloquent gentleman.

18 THE COURT: Absolutely. All right.

19 MR. CLEMENTS: And, Your Honor, if you need me to go
20 through the -- the facts of this to qualify this plea, I will
21 ---

22 THE COURT: Well ---

23 MR. CLEMENTS: --- in a minimal amount because I know
24 you've heard -- you've tried the case.

25 THE COURT: Sure. Right, I was the trial judge and I'm

1 familiar with the facts, but for the record I'll let you put
2 those on there briefly when we -- we get to that, okay?

3 MR. CLEMENTS: Yes, sir, Your Honor.

4 THE COURT: And, sir, you're -- again, you're Anthony
5 Wilson; is that correct?

6 DEFENDANT: Yes, sir.

7 THE COURT: Mr. Wilson, I'm going to go over some
8 questions with you regarding this plea. If you would, do me a
9 favor, sir. If you would, speak loudly when you respond to my
10 questions and, if you would, when you do respond to my
11 questions, if you would, do that verbally because if I ask you
12 a question and you shake your head no or you nod your head
13 yes, I understand what you mean, but the court reporter has to
14 take down everything that's being said and sometimes she's not
15 watching me and you so she would not get that response. So
16 make sure everything that you respond to you is -- is verbal
17 or out loud; okay?

18 DEFENDANT: Yes, sir.

19 THE COURT: All right. Thank you, sir. Mr. Wilson,
20 indictment 2009-GS-21-882 is a multiple count indictment, true
21 billed indictment. Count one of that indictment is a charge
22 of murder; count two of that indictment is a charge of
23 burglary in the first degree; count three is armed robbery;
24 count four is possession of a weapon during the commission of
25 a violent crime; and count five is conspiracy.

1 It is my understanding, sir, that you're before the Court
2 on count one and count two of that indictment and that the
3 other three remaining counts are going to be dismissed
4 pursuant to your plea. Now, count one is a charge of murder.
5 That charge, sir, carries a penalty of not less than 30 years
6 up to life in prison; you understand that?

7 DEFENDANT: Yes, sir.

8 THE COURT: And it is my understanding -- and please
9 correct me if I'm wrong -- that on that charge you are
10 pleading guilty under North Carolina versus Alford; is that
11 correct?

12 DEFENDANT: Yes, sir.

13 THE COURT: And you've discussed that with Mr. Ballenger?

14 DEFENDANT: Yes, sir.

15 THE COURT: All right, sir, thank you. Now, count two --
16 and -- let me again for purposes of the plea -- that the
17 charge of -- murder charge is classified as a violent offense
18 and a most serious offense under our Code of Laws and that
19 most serious classification has a lot of significance because
20 you -- it is considered a strike on your record and the South
21 Carolina law provides that if an individual receives either
22 three serious convictions or two most serious convictions that
23 on that third one for the serious, on that second one for the
24 most serious, if a person is convicted -- for example, if you
25 were to receive a second most serious offense, then the State,

1 regardless of what the charge carries, the State could seek
2 life without parole. Do you understand that?

3 DEFENDANT: Yes, sir.

4 THE COURT: Have you talked with Mr. Ballenger about the
5 strike rule and how that works?

6 DEFENDANT: Yes, sir.

7 THE COURT: All right, sir. Now, count two of the
8 indictment is a burglary in the first degree charge. That
9 carries a penalty of not less than 15 years up to life in
10 prison as well. Do you understand that, sir?

11 DEFENDANT: Yes, Your Honor.

12 THE COURT: Okay and -- and let me go back to the -- the
13 murder charge. Also, that murder charge, Mr. Wilson, is a
14 non-paroleable offense. It is a day for day sentence; you
15 understand that, sir?

16 DEFENDANT: Yes, sir.

17 THE COURT: Okay. Understanding the nature of the
18 charges that you're before the Court on and the possible
19 punishment that is associated with these offenses, how do you
20 plead to these -- Well, let me back up. You're pleading under
21 Alford to murder; is that correct?

22 DEFENDANT: Yes, sir.

23 THE COURT: And on the burglary charge, are you pleading
24 guilty or not guilty?

25 DEFENDANT: Guilty.

1 THE COURT: All right, sir. Now, Mr. Ballenger, you
2 represent Mr. Wilson on these matters?

3 MR. BALLENGER: I do, Your Honor.

4 THE COURT: Have you reviewed with him each of these
5 charges, the way the charges are classified under our Code of
6 Laws, the significance of that, as well as his constitutional
7 rights to a trial?

8 MR. BALLENGER: I have, Judge.

9 THE COURT: All right.

10 MR. BALLENGER: I went over all those matters at length
11 on several occasions and, in fact, the Court should have a
12 copy of the original affidavit that Mr. Wilson signed. We
13 went through that which sets forth all his constitutional
14 rights and he understands exactly what he's doing today.

15 THE COURT: All right.

16 MR. BALLENGER: And the murder is a day for day sentence.

17 THE COURT: Mr. Wilson, this Affidavit of Defendant for a
18 Guilty Plea that I have, do you recall going over this with
19 Mr. Ballenger?

20 DEFENDANT: Yes, sir.

21 THE COURT: All right and the answers that you gave in
22 this affidavit -- Well, let me ask you first: Did you
23 understand all the questions that were contained in this
24 affidavit?

25 DEFENDANT: Yes, sir.

1 THE COURT: You reviewed those with Mr. Ballenger?

2 DEFENDANT: Yes, sir.

3 THE COURT: And the answers that you gave on this
4 document, are those answers correct, sir?

5 DEFENDANT: Yes, sir.

6 THE COURT: And are these your answers to these
7 questions?

8 DEFENDANT: Yes, sir.

9 THE COURT: All right, sir. I'm going to make this a
10 part of the -- the record and -- and mark it for purposes of
11 the record.

12 (WHEREUPON, the Affidavit of Defendant for a Guilty Plea
13 is marked as Court's Exhibit Number 1.)

14 THE COURT: Mr. Wilson, and I -- and I know you've gone
15 over this extensively with Mr. Ballenger, which is also
16 indicated on that affidavit, but I'm going to review -- more
17 briefly, I'm going to review your constitutional rights with
18 you. If at any time during our conversation you have any
19 question about anything that I go over -- it doesn't have to
20 be about the rights, anything -- if you need to stop me and
21 speak with Mr. Ballenger, you let me know and I'll stop and
22 I'll let you and Mr. Ballenger talk; okay?

23 DEFENDANT: Yes, sir.

24 THE COURT: All right. Sir, you have the right to remain
25 silent. You have the right to a jury trial, but when you

1 plead guilty or plead under Alford, either way you give up
2 both of those important constitutional rights. Do you
3 understand that?

4 DEFENDANT: Yes, sir.

5 THE COURT: Associated with that right to a jury trial
6 are other rights that you have. For example -- and you
7 somewhat witnessed it in -- in the earlier trial against Mr.
8 Johnson. If you had a jury trial, you would be presumed
9 innocent of these charges and the burden of proof would be on
10 the State. They'd have to prove your guilt and the way they
11 would attempt to do that is during a trial they would bring
12 witnesses into court; those witnesses would testify.

13 Through your lawyer, Mr. Ballenger, you would have the
14 right to confront those witnesses, cross examine them,
15 question them about their testimony. In this country, the --
16 the Constitution says that anybody who is charged with a
17 criminal offense has the right to confront or to face their
18 accusers and that would be your opportunity to question those
19 witnesses. Do you understand that?

20 DEFENDANT: Yes, sir.

21 THE COURT: Well, when you plead guilty or you plead
22 under Alford, for purposes of -- of the plea your presumption
23 of innocence is waived, you relieve the State of their burden,
24 and since they no longer have to prove your guilt, they're not
25 required to bring their witnesses into court and so you give

1 up or you waive the right to question or confront the State's
2 witnesses. Do you understand that?

3 DEFENDANT: Yes, sir.

4 THE COURT: Now, the State is not the only one that could
5 call witnesses. You could call witnesses in your defense if
6 you had a trial or you yourself could take the witness stand
7 and you could testify. You're not required to do those
8 things, but you could do those things. You could do either
9 one of those or you could do both of those, but you could also
10 exercise your constitutional right to remain silent and if you
11 chose to do that, when I instruct the jury on the law, I would
12 tell the jury that the fact that you chose to remain silent
13 could not be used against you in any way. I would instruct
14 the jury that the State has the burden of proof and that you
15 don't have to prove anything and that the fact that you chose
16 to remain silent that that could not be discussed in the jury
17 room at all. Do you understand that?

18 DEFENDANT: Yes, sir.

19 THE COURT: Now, as I said, the State has the burden of
20 proof and they have to prove your guilt beyond a reasonable
21 doubt and to a unanimous decision. In other words, all 12
22 members of the jury would have to agree that you are guilty or
23 they could not convict you of these charges. If you did have
24 a jury trial, however, and if you were convicted, you could
25 appeal that conviction to a higher court if you felt that that

1 was appropriate. Do you understand that, sir?

2 DEFENDANT: Yes, sir.

3 THE COURT: And finally, Mr. Wilson, you have an
4 appellate right with regards to today's proceeding. In other
5 words, if at the end of this hearing here today you wish to
6 appeal my decision here today, you may do so, but you must
7 file that notice of intent to appeal within 10 days of today's
8 date. Do you understand that?

9 DEFENDANT: Yes, sir.

10 THE COURT: Okay. Now, Mr. Wilson, understanding that
11 you have these rights but that you waive them or you give them
12 up when you plead guilty under Alford or straight up,
13 understanding that do you still wish to go forward with your
14 pleas?

15 DEFENDANT: Yes, sir.

16 THE COURT: All right, sir. Solicitor, the negotiations
17 are?

18 MR. CLEMENTS: Thirty on the murder, Your Honor, and on
19 the burglary.

20 THE COURT: All right and to run concurrent?

21 MR. CLEMENTS: Yes, sir.

22 THE COURT: Essentially, Mr. Wilson, the solicitor --
23 they've negotiated that and if I -- if I listen to the plea
24 and accept the plea, then I would -- I would sentence you to
25 30 years on each of these charges and run them concurrent or

1 together. In other words, it would be a 30 year sentence
2 combined and the remaining charges would be dismissed. Is
3 that your understanding of the negotiations?

4 DEFENDANT: Yes, sir.

5 THE COURT: Other than those negotiations, has anybody
6 promised you anything, held out any hope of reward or
7 threatened you in any way?

8 DEFENDANT: No, sir.

9 THE COURT: Are you satisfied with the representation and
10 the advice that Mr. Ballenger has provided?

11 DEFENDANT: Yes, sir.

12 THE COURT: Do you have any complaints against him or any
13 member of his office?

14 DEFENDANT: No, sir.

15 THE COURT: Have you told Mr. Ballenger everything that
16 you know about this case so that he could look into these
17 matters for you, talk to witnesses and explore any possible
18 defenses you may have?

19 DEFENDANT: Yes, sir.

20 THE COURT: Okay. As you stand before the Court today,
21 Mr. Wilson, are you under the influence of any substance that
22 would affect your ability to understand what you're doing?

23 DEFENDANT: No, sir.

24 THE COURT: Are you pleading guilty on these two charges
25 of your own free will?

1 DEFENDANT: Yes, sir.

2 THE COURT: And - and -- and let me say just so that we
3 don't have any confusion and I want to make the record clear,
4 any time I say pleading guilty, what I -- what I mean and I'll
5 try to remember, but what I mean is you're pleading guilty
6 under Alford on the murder charge.

7 DEFENDANT: Yes, sir.

8 THE COURT: And -- and guilty on the burglary charge, but
9 are you entering those pleas of your own free will?

10 DEFENDANT: Yes, sir.

11 THE COURT: All right, sir, and on the burglary charge,
12 are you pleading guilty on that charge because you are guilty
13 of that?

14 DEFENDANT: Yes, sir.

15 THE COURT: Okay. Sir, I'll get you to listen carefully
16 and I know that you were here when we tried the earlier case.
17 I'm going to get the solicitor to give me a brief rundown of
18 the facts and then I'll get back with you in a moment.

19 MR. CLEMENTS: Your Honor, this occurred on August 24th,
20 2008. At that time, Your Honor, Anthony Wilson was 14 years
21 old. We waived him up through the Family Court system and the
22 Family Court judge ordered that he be waived up and tried as
23 an adult on these charges. But for that, he'd only have been
24 facing incarceration until the time he turned 21 years old.
25 Your Honor, also at that time -- and this came up on a jury

1 question, but we did not put it into evidence -- but the size
2 of Mr. Wilson at that time was he was around 5'4" and around
3 125 pounds.

4 What happened is at the behest of David Johnson, who was
5 the leader who had these young boys with him, he asked Mr.
6 Wilson to go through Ms. Hayes' window because he was the
7 smallest one. They put him through the window and he went to
8 the front door, unlocked the front door, they came in. They
9 were going to steal things out of the house, found Ms. Hayes
10 asleep in her bed.

11 Johnson went in the room; Wilson went in the room.
12 Johnson sat on her, had a pillow over her head part of the
13 time, and gave a knife to Mr. Wilson and said show me you're
14 not a punk. Show you're not a punk. He used some other bad
15 language and told him to stab her. As Mr. Wilson testified
16 under oath, he stabbed her one time, handed the knife to -- to
17 Mr. Johnson, and he saw the blood and he left and then later,
18 Johnson came back and got him out of the porch swing and said
19 help me put this body in the car and he rode with him where
20 they put Ms. Hayes' body out in the ditch on Malloy Street or
21 near Malloy Street.

22 Your Honor, but for Mr. Johnson, we don't believe Mr.
23 Wilson would've been involved in this. However, he was, but
24 he did testify truthfully. He backed up everything that we
25 knew. What he testified to actually led to another arrest.

1 much later because we had some DNA that was unknown at the
2 time and he told us about Gregory Montgomery who was
3 subsequently arrested a couple years later and confronted and
4 also confessed and his story corroborated what Mr. Wilson
5 said.

6 As you know from hearing Mr. Johnson's statement that he
7 gave law enforcement, Mr. Johnson tried to put all the blame
8 on -- on the 14-year-old when he was 22 years old. Mr. Wilson
9 has cooperated in every way that we've asked him to do so.
10 Without his testimony, we would have been to the point where
11 all we'd have had on Mr. Johnson was some DNA and fingerprints
12 off of her car because there was nothing in the house to show
13 it and we needed Mr. Wilson's truthful cooperation to
14 successfully prosecute Mr. Johnson and he gave that to us,
15 some defense attorneys would probably argue to his own
16 detriment, but -- but he was truthful and honest and -- and
17 also honest about what he did.

18 The reason this is an Alford plea is because he does not
19 know and the State agrees that he does not know which actual
20 wound killed Ms. Hayes. So that's why he asked to plead under
21 Alford which subsequently, Your Honor, the ultimate outcome is
22 the same whether you plead guilty straight up or plead guilty
23 under Alford so that's why the State is allowing that.

24 Your Honor, I have Sergeant Godwin and Sergeant Drayton
25 here. I'd ask for them to make any comments that they wish to

1 make and also if there is any facts I left out or didn't quite
2 relate accurately, I would defer to them on this and also, Mr.
3 Jepertinger needs to tell me something.

4 (WHEREUPON, the solicitors confer.)

5 MR. CLEMENTS: There's never been any propensity for
6 violence in Mr. Wilson's record. All he had was where he went
7 to the arbitration program for shoplifting and then to the
8 mentoring program where he had something where he disturbed
9 school, but he had never shown any propensity for violence in
10 the 14 years before he got into this trouble.

11 THE COURT: All right. I'll be happy -- if anyone would
12 like to address the Court, I'd be happy to hear from them.

13 SGT. GODWIN: My name is Melvin Godwin of the Florence
14 Police Department, Your Honor. I concur with the solicitor in
15 the description of the facts in this case. He did testify and
16 gave us evidence to lead to the conclusion of this case, Your
17 Honor. All right.

18 THE COURT: Thank you, anything further, sir?

19 SGT. DRAYTON: Larry Drayton of the Florence Police
20 Department. I also concur with the solicitor as to the facts
21 as he stated. Also, as far as the plea recommendation, we
22 offer no objection.

23 THE COURT: All right. Thank you very much, gentlemen.
24 I appreciate y'all's hard work on this case. I know this was
25 not an easy case to investigate.

1 MR. CLEMENTS: Your Honor, and I would also commend the
2 Florence Police Department for the investigative and the
3 forensic units did an outstanding job on this case.

4 THE COURT: They did an excellent job, right.

5 MR. CLEMENTS: At the appropriate time, Your Honor, the
6 victims are here. If they wish to address the Court, Your
7 Honor, I'd ask that you hear from them.

8 THE COURT: Sure and -- and I will be happy to do that.
9 Let me ask first: Mr. Wilson, the -- the facts that the
10 solicitor gave as they relate to the burglary charge, are
11 those facts essentially correct, sir?

12 DEFENDANT: Yes, sir.

13 THE COURT: And on the murder charge, are those facts
14 correct as far as -- in other words, I know you're pleading
15 guilty under Alford and let me -- let me review that really
16 quickly with you because I -- I don't think I covered that
17 earlier. I'm going to tell you what my understanding is of an
18 Alford plea and then you tell me if that's what you
19 understand; okay?

20 TO FENDING: Yes, sir.

21 THE COURT: When someone pleads guilty under Alford,
22 they're -- they're -- and in this case I think you admit that
23 you stabbed the victim but not -- but don't know whether or
24 not that was the fatal wound or, in other words, the wound
25 that killed her. So basically when you plead under Alford,

1 you're saying, Judge, I'm not sure. I don't know and -- and
2 I'm not admitting that my action killed her, but the State has
3 made me this offer. They've made me this offer to reduce my
4 exposure. They've made me this offer to dismiss some charges
5 and for me to assist them and so in exchange for that, I am
6 pleading guilty even though I don't know that I -- that my
7 action was the one that actually killed the victim.

8 That's basically what you do under Alford. You admit
9 that you are pleading guilty, but you do not admit the
10 allegation. But you're taking advantage of the opportunity
11 the State has given you. Is that your understanding?

12 DEFENDANT: Yes, sir.

13 THE COURT: Okay. Now, Mr. Wilson, do you understand
14 that when someone pleads under Alford that the sentence --
15 whatever sentence the Court imposes that you would serve that
16 sentence just the same as if you had pled guilty straight up?
17 Do you understand that?

18 DEFENDANT: Yes, sir.

19 THE COURT: It doesn't change anything about the sentence
20 and as far as your record goes, the record doesn't reflect
21 that it was an Alford plea. It just reflects that it was a
22 guilty plea. So it doesn't reflect on your record that it was
23 an Alford plea; you understand that?

24 DEFENDANT: Yes, sir.

25 THE COURT: Okay. Now, understanding those things, do

1 you still wish to go forward your plea?

2 DEFENDANT: Yes, sir.

3 THE COURT: Okay. Well, I find that the State has
4 provided a substantial factual basis to support the charges
5 that Mr. Wilson has pled guilty to. I find that his decision
6 to enter these pleas has been done freely, voluntarily, and
7 intelligently. He's had the advice and counsel of an
8 outstanding lawyer in Mr. Ballenger and Mr. Wilson has
9 indicated to the Court he is satisfied with the representation
10 and the advice that Mr. Ballenger has provided.

11 I've discussed with Mr. Wilson his -- his plea. I've
12 received into -- into evidence and received into the record
13 his Affidavit of Guilty Plea and I've also reviewed with him,
14 as Mr. Ballenger has, his plea under Alford and I think he
15 understands that and the ramifications of entering these pleas
16 and I'm going to accept his pleas. Mr. Ballenger, I'd be
17 happy to hear from you, sir.

18 MR. BALLENGER: Thank you, Your Honor, may it please the
19 Court. Judge, I'll be brief given the fact this is a
20 negotiated sentence. Your Honor is already aware that Mr.
21 Wilson is 18 years of age. He does have the benefit of a
22 ninth grade education.

23 Judge, ever since we first met back in August of 2008,
24 he's expressed his remorse for the entire situation and I
25 truly believe it's not that he's sad he got caught; he's truly

1 sad that this event happened and I really do believe that,
2 Judge, and to corroborate that he's done everything that he
3 could possibly do to make the situation better and it can't
4 ever be resolved and the past can't be changed. The only
5 thing he could do was provide the assistance that was
6 requested moving forward. Judge, he's done that. The
7 Solicitor's Office recognizes that. I think the negotiated
8 sentence reflects that, Judge.

9 He would, again, offer through me any and all apologies
10 which, again, don't change the situation, but I truly believe
11 he is remorseful, Your Honor, and if he could change the past,
12 he would. But unfortunately, we can't and we just ask the
13 Court to please accept the negotiated sentence.

14 THE COURT: All right. Thank you very much, Mr.
15 Ballenger, I appreciate that and, Mr. Wilson, anything
16 further, sir?

17 DEFENDANT: No, sir.

18 THE COURT: All right. Solicitor, if there is anyone
19 that would like to address the Court, I'd be happy to hear
20 from them.

21 MR. CLEMENTS: Yes, Your Honor.

22 DAVID HAYES: There is something I'd like to say.

23 THE COURT: All right.

24 MR. CLEMENTS: This is David Hayes, Your Honor.

25 THE COURT: All right. Yes, sir, Mr. Hayes, I'll be

1 happy to hear from you, sir. Thank you.

2 DAVID HAYES: Okay. I'm glad justice was done to a
3 certain extent, but what me and my family have to deal with
4 every day of our lives, what the grandkids have to deal with,
5 my only son came up to me and said, well, Daddy, my
6 grandmother will never get to see her grandkids. I mean what
7 he did I know he was forced to do, he was pushed and I mean
8 that's no excuse. We all know right from wrong, but I just
9 thank the Court.

10 THE COURT: Yes, sir.

11 DAVID HAYES: I thank everybody that was involved in
12 solving this and I mean my mother is never coming back. Every
13 day I have nightmares; every day of my life I'm going to have
14 to deal with that.

15 THE COURT: Yes, sir.

16 DAVID HAYES: But I just want to say I hope this never
17 happens again. I hope that people in the community actually
18 do better, the kids being raised up by their mothers and their
19 fathers need to be in their life to make things better, but
20 that's all I have to say.

21 THE COURT: Well, Mr. Hayes, thank you so much for being
22 here and I'm -- I can't tell you how sorry I am that you've
23 had to go through this and your whole family and experience
24 this loss. It should have never happened and I'm just sorry
25 that y'all have had to -- to be here and deal with this.

1 Hopefully, this will help bring some closure to the case for
2 you. Anything further, Solicitor?

3 MR. CLEMENTS: No, Your Honor. Just -- I would just like
4 to again thank the Florence Police Department on behalf of the
5 Solicitor's Office and on behalf of the Hayes family and I
6 concur totally with what Mr. Hayes just said and I just hope
7 parents do better raising their children and, Your Honor, also
8 I'd like to state on the record that this is one of the finest
9 families that we've ever encountered in the Solicitor's
10 Office. I think Mr. Jepertinger and I would agree and our
11 heart breaks for them, but they are one fine family.

12 SENTENCE OF THE COURT

13 THE COURT: All right. Thank you very much, sir. I'm
14 not going to belabor the point. I'm -- I'm going to accept
15 the negotiations and on indictment 2009-GS-21-882 on the
16 charge of murder, the sentence of the Court is that you be
17 committed to the State Department of Corrections for a period
18 of 30 years.

19 On the charge of burglary in the first degree, the
20 sentence of the Court is that you be committed to the State
21 Department of Corrections for a period of 30 years.

22 Those two sentences are to run concurrent with each other
23 and you're to be given credit for any time that you have
24 served. Good luck to you, sir.

25 MR. BALLENGER: Thank you, Judge.

1 MR. CLEMENTS: Thank you.

2 (Whereupon, the hearing ends at 10:23 a.m.)

3 --- END REQUESTED TRANSCRIPT ---

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STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

CERTIFICATE

I, the undersigned, Krystal J. Smith, Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Florence County, South Carolina, on the 12th day of March, 2012.

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

Krystal J. Smith
Court Reporter

Florence, South Carolina
August 28, 2012

County of Florence

2012 CP 21 2048

Anthony Tommy Wilson S.C.D.C.# 350120
Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEF

CERTIFIED: A TRUE COPY
Connie Reel Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention Kirkland B-1-E
2. Name and location of Court which imposed sentence Florence County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Rashawn Jerome Bailey, Hakim Cornel Floyd, David Gerrard Johnson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 09-65-21-882

FILED
2012 AUG -9 PM 3:03
CONNIE REEL SHEARIN
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Mailed 8/17/12
cc: Wilson
(cc: AS Packet)

- 5. The date upon which sentence was imposed and the term of the sentence:
 - (a) March 12th, 2012
 - (b) 30 years
 - (c) _____

- 6. Check whether a finding of guilty was made: *Do not understand question*
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO

- 8. If you answered Ayes@ to (7), list:
 - (a) the name of each Court to which you appealed:
 - i None. I've never filed for an appeal.
 - ii _____
 - iii _____
 - (b) the result in each such Court to which you appealed:
 - i None
 - ii _____
 - iii _____
 - (c) the date of each such result:
 - i None
 - ii _____
 - iii _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i None
 - ii _____
 - iii _____

- 9. If you answered No@ to (7), state your reasons for not so appealing:
 - (a) Because i did not understand the full process.

- (b) of speaking
- (c) lack of knowledge

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

- (a) On March 12th 2012 I took a guilty plea on an violation of
- (b) section 16-03-0010; 16-03-0020 and 16-11-0311 which
- (c) is not the correct violation.

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

- (a) Section 16-03-0010; 16-03-0020 is incorrect due to
- (b) the fact that the crime was committed unwillfully
- (c) and without intent.

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

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

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

- (a) the specific nature thereof:
 - i. None
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. None
 - ii. _____
 - iii. _____

- iv. _____
- (c) the disposition thereof:
 - i. None
 - ii. _____
 - iii. _____
 - iv. _____
- (d) the date of each such disposition:
 - i. None
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. None
 - ii. _____
 - iii. _____
 - iv. _____

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

No

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

- (a) which grounds have been presented:
 - i. None. I haven't filed any petitions, motions or applications prior
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. None
 - ii. _____
 - iii. _____

10. If any grounds were presented in (A) and not previously presented...

Federal, set forth the ground and state concisely the reason why such ground has not previously been presented:

- (a) Wasn't sure about appealing or the effects of
- (b) appealing
- (c) _____

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? did not have trial
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
Did not file for an appeal until now
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? None filed

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

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

- i Everett Guy Ballenger
P.O. box 107, 205 North Gray St, Florence, SC 29503
- ii _____
- iii _____

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

- i Waiver Hearing, Bond Hearing, and during
Sentencing
- ii _____
- iii _____

19. State clearly in what you seek in using this application:

I'm seeking to have my charges corrected and sentence reduced.

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of Florence)

VERIFICATION

I, Anthony Tommie Wilson, 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.

Anthony Tommie Wilson

SWORN to and subscribed before me this 26th day of July, 2011.

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

October 8, 2014

My Commission Expires: _____

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

I, Anthony Tommie Wilson, 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.

Anthony Tommie Wilson
Applicant

SWORN or affirmed to and subscribed before me this

26th day of July, 2012.

[Signature]
Notary Public

My Commission Expires

My Commission Expires: October 8, 2014

CERTIFIED: A TRUE COPY
[Signature]
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

2012 AUG -9 PM 3:03
CORINNE WELLS, CLERK
CCCP & GS
FLORENCE COUNTY, S.C.

FILED

CERTIFIED: A TRUE COPY

Connie Reel Shearin

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

CLERK OF COURT IN THE COURT OF COMMON PLEAS
FLORENCE COUNTY, S.C.

2012-CP-21-2048

Anthony Tommy Wilson, 350120

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

FILED
2012 OCT -8 AM 11:38
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

Respondent, making its Return to the Application for post conviction relief (PCR) filed August 9, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted by the Florence County Grand Jury for murder and burglary (2009-GS-21-882). Everette Ballenger, Esquire, represented Applicant.

On March 3, 2012, Applicant pled guilty as indicted and was sentenced by the Honorable Thomas A. Russo to thirty years imprisonment on both charges to run concurrently. Applicant did not appeal.

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

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

II.

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

1. "“On March 12th 2012 I took a guilty plea on an violation of section 16-03-0010; 16-03-0020 and 16-11-0311 which is not the correct violation.”

The State interprets Applicants allegations as ineffective assistance of counsel.

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

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

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

10/5, 2012.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
)
)
 ANTHONY TOMMY WILSON, #350120)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS


2012-CP-21-2048

AFFIDAVIT OF SERVICE BY MAIL

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

Charlie James Blake, Jr., Esquire
P.O. Box 1317
Florence, SC 29503

DATED this 5TH day of October, 2012.


 Norma Bigbee, Legal Assistant
 For Respondent

FILED

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

2013 SEP -5 PM 4:07

Anthony Tommy Wilson, # 350120,

Case Number: 2012-CP-21-2048

CONNIE REEL-SHEARIN
CCCP & GS
Applicant FLORENCE COUNTY, SC

AMENDED APPLICATION FOR
POST-CONVICTION RELIEF

-vs-

State of South Carolina,

Respondent.

1. Applicant is detained at the Lee Correctional Institution, 990 Wisacky Highway, Bishopville, South Carolina 29010.
2. The sentence was imposed by the Florence County Court of General Sessions.
3. Applicant's Co-Defendants were Rashawn Bailey, Rakim Floyd and David Johnson.
4. Applicant was indicted pursuant to indictment number 2009-GS-21-00882 for Murder, Burglary First Degree, Armed Robbery, Possession of Weapon During Commission of Violent Crime and Conspiracy.
5. Applicant was sentenced on March 12, 2012 to thirty years in prison for Murder and thirty years in prison for Burglary First Degree to run concurrent.
6. A finding of guilty was made after a plea of guilty.
7. Applicant did not appeal his conviction or sentence.
8. (a) The Court to which Applicant appealed:
 - (1) Not applicable.
- (b) The result in each Court to which Applicant appealed:
 - (1) Not applicable.
- (c) The date of each result:

CERTIFIED: A TRUE COPY
Connie Reel-Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Marked 9/9/13
M. THOMAS

(1) Not applicable.

(d) Citations of any written opinion or orders entered pursuant to such results:

(1) Not applicable.

9. Applicant did not have an appealable issue.

10 & 11

GROUND FOR RELIEF WITH SUPPORTING FACTS

10(a). Applicant was denied the effective assistance of counsel guaranteed by South Carolina law and the Sixth and Fourteenth Amendments to the United States Constitution in that plea counsel failed to adequately investigate and move to suppress Applicant's confession.

11(a). At the time of Applicant's arrest, Applicant was fourteen (14) years old. On or about August 27, 2008, the Applicant was interrogated and provided the Florence Police Department with a recorded statement detailing his involvement in the crimes alleged. After being informed of his rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1966), Applicant was specifically asked "[d]o you understand these rights as I have explained them to you?" In response, Applicant stated "[a] little bit."

Applicant asserts that he did not knowingly and intelligently waive his constitutional right to counsel as required by the Fifth Amendment of the United States Constitution. Applicant contends that plea counsel failed to investigate the personal background and history of the Applicant. Applicant further contends that plea counsel failed to properly advise Applicant of the applicable law pertaining to a suppression hearing pursuant to Jackson v. Denno, 378 U.S. 368 (1964). Applicant states that had he been aware that he could have challenged his statement pursuant to Jackson v. Denno, Applicant would have insisted that plea counsel file said motion and requested a hearing. Further, Applicant is informed and believes that the information

pertinent to the factors enumerated in Fare v. Michael C., 442 U.S. 707 (1979) and the totality of circumstances analysis as adopted in South Carolina would have resulted in Applicant's confession being suppressed. Applicant asserts that he would have proceeded to trial upon the suppression of his confession. Pursuant to Strickland v. Washington, 466 U.S. 668 (1984), plea counsel's performance was deficient. Further, plea counsel's deficient performance prejudiced the Applicant as he did not knowingly and intelligently enter said plea. Therefore, Applicant's guilty plea and sentence should be vacated and remanded for trial.

12. (a) Petitions filed in State Court under South Carolina Law:

(1) None.

(b) Petitions in State or Federal Courts for habeas corpus or post-conviction relief:

(1) None.

(c) Petitions to the United States Supreme Court for certiorari:

(1) None.

(d) Any other petitions, motions or applications in this or any other Court:

(1) None.

13. Not applicable.

14. None of the grounds set forth in Question Number Ten (10) has been previously presented to this or any other Court, State or Federal.

15. Not applicable.

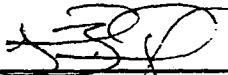
16. These grounds rely on additional facts outside the record which was before the previous courts and this is Applicant's first opportunity to collaterally attack his conviction and sentence.

17. Applicant was previously represented by counsel at his arraignment, guilty plea, and sentencing. Applicant did not appeal his conviction and/or sentence.
18. Applicant was represented at his arraignment, guilty plea and sentencing by E. Guy Ballenger, Esquire, 205 North Irby Street, Florence, South Carolina, 29501.
19. Applicant seeks the vacation of his convictions and sentences.
20. Applicant is not under sentence of another court.

Respectfully submitted,

September 4, 2013

Florence, South Carolina



JOSHUA A. BAILEY
Attorney for the Applicant

Finklea Law Firm
814 West Evans Street
Post Office Box 1317
Florence, SC 29503
(P): (843) 317-4900
(F): (843) 317-4910
(E): jbailey@finklealaw.com

State of South Carolina)	In the Court of Common Pleas
)	Twelfth Judicial Circuit
County of Marion)	2012-CP-21-02048

Anthony Tommy Wilson,)	
)	
Applicant,)	
)	
Vs.)	Transcript of Record
)	
State of South Carolina,)	
)	
Defendant.)	
)	
)	

October 9, 2013
Marion, South Carolina

B e f o r e :

The Honorable William H. Seals, Jr., Judge

A p p e a r a n c e s :

Joshua Bailey, Esquire
Attorney for the Applicant

Josh Thomas, Esquire
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
A-1	11-page transcript document	4	25

1 (Pre-marked Applicant's Exhibit No. 1, 11-page
2 transcript document.)

3 THE COURT: Let's go ahead and swear the ...

4 (The applicant is sworn.)

5 THE COURT: All right. Yes, sir.

6 MR. THOMAS: Thank you, Your Honor. Last case today
7 is *Anthony Wilson vs. the State of South Carolina*. It's
8 case No. 2012-CP-21-2048.

9 Mr. Wilson was indicted in June of 2009 for murder,
10 burglary first degree, armed robbery, conspiracy, and
11 possession of a weapon during a violent crime. He was
12 represented on those charges by Guy Ballenger.

13 He entered a negotiated plea on March 12, 2012, and
14 entered an *Alford* plea to murder and burglary first
15 degree. The other charges were nolle prossed. The
16 Honorable Thomas A. Russo sentenced him to 30 years on the
17 murder charge, and a concurrent 30 years on the burglary
18 charge.

19 This PCR was filed in August, 2012. He's present in
20 court today, represented by Joshua Bailey.

21 THE COURT: Okay.

22 MR. THOMAS: The State's ready to proceed.

23 THE COURT: Anytime you're ready.

24 MR. BAILEY: Thank you, Judge. May it please the
25 Court.

DIRECT EXAMINATION BY MR. BAILEY - ANTHONY TOMMY WILSON 5

1 THE COURT: Sure.

2 DIRECT EXAMINATION BY MR. BAILEY:

3 Q Mr. Wilson, will you please state where you're
4 currently housed in the Department of Corrections.

5 A Lee County.

6 Q Lee County?

7 A Yes, sir.

8 Q And how long of a sentence are you serving?

9 A 30-year sentence.

10 Q And how many charges did you plead guilty to in
11 connection with this case?

12 A Two.

13 Q And what two charges were those?

14 A Murder and first-degree burglary.

15 Q And what sentence did you receive on each one of
16 those?

17 A 30-year sentence.

18 Q Thirty years on each.

19 A Yes, sir.

20 THE COURT REPORTER: You need to speak up for me just
21 a little bit.

22 Q Concurrent?

23 A Yes, sir.

24 Q Okay. At your original trial level, prior to your
25 guilty plea, were you represented by Mr. Ballenger?

1 A Yes, sir.

2 Q You entered a guilty plea in connection with this
3 case, right?

4 A Yes, sir.

5 Q And you filed an application for post-conviction
6 relief, stating that Mr. Ballenger provided you with
7 ineffective assistance of counsel?

8 A Yes, sir.

9 Q We filed an amended application on your behalf,
10 correct?

11 A Yes, sir.

12 Q And you want to challenge the confession that you gave
13 to law enforcement, correct?

14 A Yes, sir.

15 Q Okay. Do you recall what day you gave your
16 confession?

17 A It was August 27, 2008.

18 Q Okay. Who was present at the time you gave that
19 confession?

20 A Sergeant Godwin.

21 Q Sergeant who? I'm sorry?

22 A Godwin.

23 Q Godwin. Was anybody else present?

24 A No, sir.

25 Q Okay. When the investigator began discussing this

DIRECT EXAMINATION BY MR. BAILEY - ANTHONY TOMMY WILSON 7

1 case with you, did he read you your Miranda rights?

2 A Not at the beginning, not when he first started
3 mentioning the case.

4 Q Okay. When he first started talking with you about
5 this case, where were you located?

6 A Florence County Complex.

7 Q Okay. At what point did he read you your Miranda
8 rights?

9 A Right before I gave the recorded statement.

10 Q Okay. So what you're saying is that you gave two
11 statements.

12 A He -- he explained to me what he needed me to tell
13 him.

14 Q Okay.

15 A And then he gave me the recorded statement.

16 Q And then he gave you a recorded statement.

17 A (No audible response.)

18 Q When he started that recorded statement, Mr. Wilson,
19 did he read you your Miranda rights?

20 A Reporting statement -- recorded statement.

21 Q Okay. And you went on and gave a detailed confession
22 as to your involvement ---

23 A Yes, sir.

24 Q --- in this case. Now, when he specifically asked you
25 if you understood your rights as he read them to you, do

1 you recall what your response to that question was?

2 A A little bit.

3 Q Your response was what?

4 A A little bit.

5 Q Okay. What rights did you not understand when he read
6 them to you?

7 A My right to remain silent.

8 Q Okay. Now, he told you that you had the right to
9 remain silent, correct?

10 A Yes, sir.

11 Q Mr. Wilson, what did you interpret that to mean?

12 A I really didn't understand what it meant.

13 Q Okay.

14 A I could have tell [sic] him what he just told me, but
15 I -- I didn't know that I didn't have to talk to him.

16 Q Okay. If you would have understood the right to
17 remain silent, would you have talked to him that day?

18 A No, sir.

19 Q Okay. Now, Mr. Wilson, you and I have discussed what
20 the burden of proof is and to -- suppressing a statement,
21 correct?

22 A Yes, sir.

23 Q Okay. How old were you when you gave that statement?

24 A 14.

25 Q Had you ever been in trouble before you gave this

DIRECT EXAMINATION BY MR. BAILEY - ANTHONY TOMMY WILSON 9

1 statement?

2 A Yes, sir.

3 Q What kind of trouble had you been in?

4 A I got arrested in 2005 for shoplifting.

5 Q 2005 for shoplifting. How old were you in 2005?

6 A Like 12.

7 Q Okay. Were you arrested for that shoplifting?

8 A They took me to the complex.

9 Q Okay. Did they interview you?

10 A Not the police.

11 Q Okay. Did anyone read you your Miranda rights when
12 you were arrested for that shoplifting charge?

13 A No, sir.

14 Q Okay. Mr. Wilson, how far did you go in school?

15 A Seventh grade.

16 Q Did you complete the seventh grade?

17 A Yes, sir.

18 Q Okay. Why did you not go into the eighth grade?

19 A I got locked up.

20 Q Had you ever been tested for any type of learning
21 disability?

22 A Yes, sir.

23 Q And what kind of test do you recall undergoing for
24 that learning disability?

25 A I did evaluation at DJJ.

DIRECT EXAMINATION BY MR. BAILEY - ANTHONY TOMMY WILSON 10

1 Q Okay. And do you recall what the results of that
2 evaluation were?

3 A I can't remember.

4 Q Okay. At the time that Detective Godwin interviewed
5 you for this confession, how long were you at the complex
6 with Investigator Godwin?

7 A From like 11:30 to 3:30/4 o'clock.

8 Q Okay. So about a five-hour period.

9 A Yes, sir.

10 Q Okay. Did they give you any food during that period?

11 A No, sir.

12 Q How bout any water? Did they give you some water?

13 A Yes, sir.

14 Q They gave you some water?

15 A Gave me a cup of water.

16 Q Okay. How bout any soda pop?

17 A No, sir.

18 Q Okay. Any juice?

19 A (No audible response.)

20 THE COURT REPORTER: Is that a "no"?

21 A No, sir.

22 Q Have you ever been evaluated for mental competency?

23 A Yes, sir.

24 Q Do you recall what the results of that competency
25 evaluation were?

DIRECT EXAMINATION BY MR. BAILEY - ANTHONY TOMMY WILSON 11

1 A No, sir.

2 Q Now, during the time that these charges were pending,
3 Mr. Wilson, were you ever released on bond?

4 A No, sir.

5 Q Okay. Where were you housed from the time you were
6 arrested until you pled guilty?

7 A In 2008, 2009, 2010 I was at DJJ. 2011 I was in the
8 county.

9 Q Okay. How many times would you say you had the
10 opportunity to meet with Mr. Ballenger to discuss your
11 case?

12 A About 12/13 times.

13 Q Okay. Did you guys have the opportunity to discuss
14 your confession?

15 A Yes, sir.

16 Q Okay. Did you guys discuss his filing of a motion to
17 suppress on your behalf?

18 A Yes, sir.

19 Q Are you aware if a motion to suppress was ever filed
20 for you?

21 A It wasn't.

22 Q Okay. Did Mr. Ballenger explain to you why he never
23 filed a motion to suppress?

24 A No, sir.

25 Q Did you make a specific request that that motion be

DIRECT EXAMINATION BY MR. BAILEY - ANTHONY TOMMY WILSON 12

1 filed?

2 A Yes, sir.

3 Q Okay. Mr. Wilson, had a motion to suppress been filed
4 and granted, would you have pled guilty to murder and
5 burglary first degree?

6 A No, sir.

7 Q What would you have insisted upon doing?

8 A Going to trial.

9 Q Okay. And you understand today that, if the Court
10 grants your PCR relief, you're going to be awarded a new
11 trial.

12 A Yes, sir.

13 Q And you understand that you would go back and you'd
14 face the murder charges as if it happened today.

15 A Yes, sir.

16 Q Okay. And that's what you want to do today.

17 A Yes, sir.

18 Q And you want this Court to grant you the new trial.

19 A Yes, sir.

20 Q Okay. Now, Mr. Wilson, these -- this last question
21 I've got for you is regarding this PCR process: Is there
22 anything else that you would like the Court to consider in
23 granting you a PCR?

24 A No, sir.

25 Q Okay. Please answer any questions that Mr. Thomas of

CROSS-EXAMINATION BY MR. THOMAS - ANTHONY TOMMY WILSON 13

1 the Attorney General's Office may have.

2 CROSS-EXAMINATION BY MR. THOMAS:

3 Q Hey, Mr. Wilson. How are you doing?

4 A (No audible response.)

5 Q You said you met with Mr. Ballenger 12 or 13 times?

6 A Somewhere around there.

7 Q During those meetings, did you have an opportunity to
8 review the State's discovery responses with him?

9 A Some of them.

10 Q What did you review?

11 A The DNA. And there was some more stuff, too. I can't
12 remember.

13 Q Did you review any witness statements or any co-
14 defendant's statements?

15 A Yes, sir.

16 Q Did you get an opportunity to tell him your version of
17 what happened?

18 A Yes, sir.

19 Q Did you discuss any possible defenses you may have
20 with him?

21 A Yes, sir.

22 Q Do you recall any plea discussions, any plea offers he
23 got from the State?

24 A The 30.

25 Q And he relayed that information to you?

1 A Yes, sir.

2 Q Did you discuss with him the options you had regarding
3 the plea or going forward -- going to trial?

4 A Can you repeat that?

5 Q Did you discuss with him the possibility of going to
6 trial?

7 A Yes, sir.

8 Q Did you ever tell him you wanted a trial?

9 A If he would file for the motion to get the statements
10 suppressed.

11 Q You told him that?

12 A Yes, sir.

13 Q But you ultimately decided to plead guilty; isn't that
14 correct?

15 A Yes, sir.

16 Q Now, was that your decision to plead guilty?

17 A For the most part.

18 Q Was it your decision to plead guilty even though you
19 knew that no motion to suppress had been filed?

20 A That's why I pled guilty.

21 Q Because no motion to suppress had been filed, that's
22 why you pled guilty?

23 A I ain't felt comfortable going into trial with that
24 confession.

25 Q Do you remember talking to the judge at your plea, you

CROSS-EXAMINATION BY MR. THOMAS - ANTHONY TOMMY WILSON 15

1 were telling the judge you were guilty?

2 A Yes, sir.

3 Q Do you remember agreeing with the facts that the
4 solicitor presented at the plea hearing?

5 A Yes, sir.

6 Q Do you recall waiving all your constitutional rights?

7 A Yes, sir.

8 Q Do you remember telling the judge that you were
9 satisfied with Mr. Ballenger's representation?

10 A Yes, sir.

11 Q And why didn't you tell the judge about the
12 suppression hearing that you never got?

13 A I ain't felt it was important. I was confused.

14 Q In regards to the statement that you made, your mother
15 was there right before you gave the statement, wasn't she?

16 A Yes, sir.

17 Q And she was there with you when he went over your
18 rights for the first time.

19 A The first time.

20 Q And then she left, and Detective Godwin went back over
21 your rights with you a second time?

22 A Yes, sir.

23 MR. THOMAS: I think that's all I have. Thank you.

24 THE COURT: Anything further?

25 MR. BAILEY: No further questions.

1 THE COURT: Any more witnesses?

2 MR. BAILEY: Nothing from the petitioner, Your Honor.

3 THE COURT: You -- you can stand up and go over there
4 and sit by your lawyer, if you'd like.

5 (The applicant exits the stand.)

6 THE COURT: All right. The State would call your
7 first witness.

8 MR. THOMAS: We call Guy Ballenger at this time.

9 GUY BALLENGER, having been first
10 duly sworn, testifies as follows:

11 DIRECT EXAMINATION BY MR. THOMAS:

12 Q Good afternoon, Mr. Ballenger.

13 A Afternoon.

14 Q Just some brief background. How long have you been
15 practicing law?

16 A Close to eight years now.

17 Q And were you retained or appointed ---

18 A I ---

19 Q --- in this case?

20 A I was appointed to represent Mr. Wilson shortly after
21 the incident occurred, in late August of 2008 or early
22 September of 2008.

23 Q And after you were appointed, did you file the
24 standard Rule 5 and *Brady* motions?

25 A I did.

1 Q And did you feel like the State gave you a complete
2 response to all those?

3 A I did. There's actually two stages of -- of this kind
4 of -- Family Court stage was the first portion of the
5 case. There was a waiver hearing to determine, based on
6 Mr. Wilson's age, whether or not he was going to be tried
7 in General Sessions as an adult.

8 So *Brady* and Rule 5 responses were provided at the
9 Family Court stage; and when the Family Court waived Mr.
10 Wilson up to General Sessions, the State complied with
11 additional *Brady* and Rule 5 requests.

12 Q And I guess, prior to the waiver hearing, did you have
13 an opportunity to go over the discovery material with him?

14 A I did. I went to -- to DJJ. Mr. Wilson testified
15 that he was there for about three years. And I probably
16 saw him three times there prior to the waiver hearing.
17 The waiver hearing was held in May of 2009, May 14, 2009.
18 So a little less than a year from the time the case was
19 initially made.

20 Q And did you also have an opportunity to discuss with
21 him the elements of the charges and what the State was
22 going to use to prove those elements?

23 A I did.

24 Q And could you just briefly, I guess, give us an
25 overview of what the State's evidence was against him.

1 A Well, there were several co-defendants: three. Two
2 were going to testify that Mr. Wilson went in the house in
3 the nighttime, by opening the window with a crowbar; that
4 he was in the house and in the room when the murder
5 occurred; that the intent was to burglarize, not
6 necessarily harm anyone, but that the intent was to, in
7 fact, burglarize the house.

8 I mean, the whole crux of Mr. Wilson's case was that
9 he felt he was innocent of the murder because he was under
10 duress at the time that it occurred.

11 But candidly, he was guilty of the burglary. The
12 burglary carried a life sentence just as the murder did.
13 So he pled under *Alford* to the murder, which he did not
14 admit his guilt to the murder.

15 He actually didn't plead under *Alford* to the burglary.
16 He pled guilty to the burglary. The mandatory minimum on
17 burglary first is 15 years; again, the maximum is life.
18 So even if you believed Mr. Wilson's theory of the case
19 that he was not guilty of the murder but guilty of the
20 burglary, then that 30-year sentence was in the midway
21 range of what he was facing.

22 And faced with that or going to trial and looking at
23 life, it's my opinion that he made a conscience decision
24 to plead guilty, took the 30 years.

25 Q Did you sort of go over with him any possible defenses

1 he might have to the murder charge?

2 A I did. Duress would not fall in -- in a category of a
3 defense to a murder charge. So again, I think he was just
4 incorrect as -- as to his theory of the case. I mean, I
5 know he thought he was innocent under the duress theory,
6 but under the law, that -- that defense was not available
7 to him.

8 And again, there was no issue of duress as to the
9 burglary charge.

10 Q And there was a waiver hearing in this case?

11 A There was. And -- and looking at my notes from that
12 hearing, especially as to the statement that Mr. Wilson
13 gave Investigator Godwin, I questioned Investigator Godwin
14 extensively on that issue; asked him the same questions
15 that Mr. Bailey asked Mr. Wilson as far as, you know: How
16 long was the interrogation; whether or not he was provided
17 food and water. Got into Mr. Wilson's age, his young age.
18 You know, his potentially lower intelligence quota as
19 reflected in some of the DJJ reports.

20 Again, all -- all that was addressed on the record, in
21 cross-examination at the waiver hearing, and obviously Mr.
22 Wilson was present there watching. And I mean, the Family
23 Court found the statement admissible, if I recall
24 correctly.

25 Family Court used that statement in making their

1 determination as to whether or not he should be waived to
2 General Sessions Court. I can say that -- that with
3 certainty.

4 Q And in terms of the confession, did you have an
5 opportunity to listen to the actual CD of the confession?

6 A I did.

7 Q And did you have any concerns with the voluntariness
8 of it from your review?

9 A Clear -- I mean, when he says he understands his
10 rights a little bit, that gives him an argument before the
11 Court as to whether or not his statement should be
12 suppressed. That -- that was really the most compelling
13 part of Mr. Wilson's argument.

14 But again, I still don't think it -- it rose to the
15 level where that statement would -- would have been
16 suppressed.

17 Again, in reviewing my notes, I see on four separate
18 occasions where I specifically spoke with Mr. Wilson about
19 his statement and about his rights regarding his
20 statement. Again, 5/14/2009, that was the waiver hearing.
21 On 6/10/2009 we had another conference, probably at DJJ.
22 And I've got specifically in my notes "*Jackson vs. Denno*,
23 suppress statement." So clearly, we talked about
24 suppressing his statement at that point in time.

25 And this would have been -- that conference would have

1 been just after the waiver hearing. So he had not even
2 technically been waived up to General Sessions at that
3 point. I mean, they were in the process of preparing his
4 indictments and things of that nature.

5 So I couldn't have filed it at that point in time,
6 because again, the case didn't even have an indictment in
7 General Sessions.

8 In April of 2011, again we discussed his statement.
9 Specifically my notes reflect that, and the contents of
10 his statement. And then finally on 10/25/2011, we
11 discussed his statement again. So -- and that's just the
12 four times I specifically wrote down in my notes that we
13 discussed his statement.

14 I mean, there were probably numerous other occasions.
15 I mean, whenever we would talk about his case, we would
16 talk about, you know, his statement and whether or not it
17 was admissible and what effect it would have on his case.

18 Q And in terms of those meetings and discussions, did he
19 ever indicate to you that he wanted you to file a
20 suppression motion?

21 A If it -- if it got that far, if we were going to have
22 a trial, clearly, I would file that motion on his behalf.

23 But after David Johnson's trial, the State indicated
24 that it was getting close to a resolution of Mr. Wilson's
25 case, and if he was inclined to plead guilty, he needed to

1 go ahead and do that and obtain the benefit of the 30-year
2 sentence. Now, if he didn't want to plead guilty, then
3 the State was going to schedule it for trial, and they
4 would proceed in that regards.

5 So when the State told me we needed a decision, that's
6 when Mr. Wilson and I talked at length at the courthouse,
7 filled out his affidavit regarding his guilty plea.
8 Again, I believe he made a conscience decision that, even
9 if you believed his theory of the case, he's still looking
10 at a possible life sentence on the burglary even if he's
11 acquitted of the murder. So again, I believe that was the
12 basis of the guilty plea.

13 Q Did he ever indicate to you that he wanted to go to
14 trial?

15 A He did not.

16 Q Would you have been prepared for trial if he had
17 wanted one?

18 A Certainly. And if it was a situation where I could
19 file the motion to suppress, be heard on a motion to
20 suppress, and then if the motion was denied, then Mr.
21 Wilson could enter a guilty plea, I'd have done it that
22 way. But I don't control that.

23 You know, if I'd have filed that motion, the State
24 could have potentially said all deals are off, the 30 is
25 off. It doesn't matter whether or not this motion is

1 granted or denied, if he files this motion, he is going to
2 trial. And that could have been a result of me filing
3 that motion.

4 Q And did you discuss with him -- well, let me back up
5 and ask you this: Was it -- what kind of plea was it?
6 Was it recommended? negotiated?

7 A It was negotiated, meaning that everybody knew that
8 that was -- he was going to get 30 years, assuming the
9 Court accepted the negotiated sentence. But there was no
10 hope of getting any less time than that, and there was no
11 risk of getting any more time than 30 years.

12 Q Did you explain that to him?

13 A At length. And again, that's in his plea affidavit.

14 Q And the plea affidavit you keep referring to, did you
15 enter that as a Court's record at the plea?

16 A I did. And it deals with all that and as to his
17 statement, it says specifically, on page 4, paragraph 9
18 (as read): "You may have given an incriminating statement
19 in the case. You understand that if you plead guilty, you
20 waive or give up the right to contest or challenge whether
21 such a statement was freely and voluntarily given in
22 accordance with your constitutional rights." He said,
23 "Yes."

24 I went through each and every question on this
25 affidavit with him just to make sure that he was

1 absolutely clear what he was doing, and that there
2 wouldn't be any complaints if he didn't have a trial at a
3 later date; that he knew, without a shadow of a doubt,
4 that he was getting a 30-year sentence if we went in front
5 of the judge on that particular date.

6 Q So ultimately, whose decision was it to plead guilty?

7 A Mr. Wilson's decision.

8 Q Thank you, and I'm going to let you answer any
9 questions Mr. Bailey has.

10 MR. BAILEY: Thank you, Josh.

11 CROSS-EXAMINATION BY MR. BAILEY:

12 Q Mr. Ballenger, good to see you.

13 A Thank you, Mr. Bailey. How are you?

14 Q Doing well. In the response to your *Brady* motion, the
15 State provided you with certain material related to the
16 case; correct?

17 A They did.

18 Q One of the items was an audio CD of the confession ---

19 A Correct.

20 Q --- correct? And did they also provide you with at
21 transcribed version of that statement?

22 A They did.

23 Q Let me show this to you, Mr. Ballenger, and see if
24 that's the transcript that was given to you in the
25 discovery.

1 (Mr. Bailey hands a document to the witness.)

2 A That appears to be the transcript that I was provided
3 with.

4 Q It -- it was 11 pages long.

5 A That's correct.

6 Q Okay.

7 MR. BAILEY: Judge, I would move to admit this as an
8 exhibit.

9 THE COURT: Any objections?

10 MR. THOMAS: No objections.

11 THE COURT: Applicant's No. 1 in evidence, without
12 objection.

13 MR. BAILEY: Thank you.

14 (Applicant's Exhibit No. 1, 11-page transcript
15 document, in evidence.)

16 CROSS-EXAMINATION BY MR. BAILEY (continues):

17 Q Mr. Ballenger, you would admit that no suppression
18 motion was filed in this case.

19 A Correct.

20 Q And Mr. Wilson has testified that he wanted you to
21 file that motion. Do you agree with that?

22 A He never specifically told me, "You file that motion
23 immediately."

24 Again, we discussed the possibility of filing that
25 motion if it went that far in the proceeding.

1 Again, when I was notified by the State that they want
2 a decision on the guilty plea or they were going to
3 schedule it for trial, that would be the point in the time
4 that the motion needed to be filed. That was the point in
5 time where Mr. Wilson and I discussed what he wanted to
6 do.

7 We determined that the guilty plea was in his best
8 interest. He determined that. I -- and I told him, I
9 said, "I think this guilty plea's in your best interest."

10 Did I pressure him or put him under any duress to --
11 to make him plea? Not at all. But him going to trial,
12 looking at life, just did not seem to be in his best
13 interest based on all the evidence that was available.

14 So we had that joint discussion, and again, once he
15 decided to plead guilty at that point in time, the motion
16 to suppress was moot and not filed.

17 Q And you testified on direct that you raised the
18 confession issue in the Family Court waiver proceeding ---

19 A I did.

20 Q --- correct? And you would agree with me that that
21 does not preclude you from bringing that in General
22 Session.

23 A It does not, correct.

24 Q And in order for Mr. Wilson to plead guilty, based on
25 the voluntariness of his confession, that would have to be

1 determined by a judge ---

2 A It would.

3 Q --- correct? Okay.

4 MR. BAILEY: Judge, I have no further questions ---

5 THE COURT: All right. Thank you.

6 MR. BAILEY: --- for Mr. Ballenger.

7 THE COURT: Anything further, Mr. Thomas?

8 MR. THOMAS: No redirect, Your Honor.

9 THE COURT: All right. Any other witnesses?

10 MR. THOMAS: That's all from the State.

11 THE COURT: All right.

12 MR. BAILEY: Nothing further.

13 THE COURT: I'll take the matter under advisement, and
14 let you know something soon.

15 MR. THOMAS: Thank you, Your Honor.

16 MR. BAILEY: Thank you, Judge.


17 THE COURT: Thank you

18 -- END OF TRANSCRIPT RECORD --

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Twelfth Circuit Court for Marion County, South Carolina, on the 9th day of October, 2013.

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



Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

February 28, 2014

FLORENCE POLICE DEPARTMENT

INDIVIDUAL GIVING STATEMENT: Anthony Wilson
 DETECTIVE TAKING STATEMENT: Det. M. Godwin
 REFERENCE: 2008-008466
 DATE AND TIME OF STATEMENT: August 27, 2008
 PAGE #: 1



Godwin: Today's date is August the 27th. We're here at the Florence Police Department. I am Detective Melvin Godwin; Detective Dray, Larry Drayton stepped out for a minute. This is concerning case 2008-008466, a Homicide that occurred at here in the city of Florence. With me is Mr. ...

Wilson: Anthony Wilson.

Godwin: Mr. Anthony Wilson. Sir, what I'm going to do here is I'm going to read you your Miranda Warnings and once I complete em I need you to answer whether you understand or not; okay. You got the right to remain silent. Anything you say can and used against you in a court of law. You have the right to talk to an attorney and have him or her present with you while you're being questioned. If you cannot afford to hire an attorney, one will be appointed to represent you before any questioning if you want. You can decide at any time to exercise these rights and not answer any questions or make statements. Do you understand these rights as I have explained them to you?

Wilson: A little bit.

Godwin: Okay. Having these rights in mind do you wish to talk to us now? I need the answer, not shaking your head.

Wilson: Yes sir.

Godwin: Okay. Your mother was in here when you signed this Waiver of Rights Form. Is that correct?

Wilson: Yes sir.

Godwin: What's your mother's name?

Wilson: Joyce Wilson.

Godwin: And she was in there, correct?

Wilson: Yes sir.

Godwin: Okay and your, this Waiver of Rights was read to you when she was in here.

Wilson: Yes sir.

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SC OFFICE OF APPELLATE DEFENSE

Godwin: Okay. She said she had to leave; is that correct?

Wilson: Yes sir.

Godwin: We ask her to stay but she said she had to go. Uh what, what I need you to do sir; what you just told me when you signed the Waiver of Rights uh we talked about this incident at
Once again sir, tell me in your words what happened over there at
and when and how and what you did.

Wilson: That, late that night; it was about twelve o'clock. They was like 'come on, let's go over there'...

Godwin: Who is they?

Wilson: Me and David, Rakeem and Rashawn.

Godwin: Do you know their whole names?

Wilson: I just know their first names.

Godwin: Okay; go ahead.

Wilson: And they was like 'come on'. And since I was the smallest one they ask me to go through the window and go and open the front door. So I did.

Godwin: How did y'all get the window open?

Wilson: The window was already unlocked; we just push it up.

Godwin: With what??

Wilson: Nothing.

Godwin: Who pushed it up?

Wilson: Me and David.

Godwin: You and David pushed the window open. Okay; go ahead.

Wilson: He started pushing it up and he can't get it all the way up to I finished pushing it up. And that when he was like 'jump through the window'. So I tried to jump through the window but the grill was in the way. And I accidently knocked it over.

Godwin: You knocked the grill over that was sitting up there by the window; you knocked that over. Okay; go ahead.

Wilson: And that when I went in the house and opened the front door and everybody ran around the house and came in. And that when I started

walking around the house and then they was like 'hold up'. And they was like 'the old lady in there sleep'. And that when we all went round there, we peeped through the crack. And the was when me and David went there. Everybody else had went round somewhere else in the house. We closed the door and then David sat on her head. So he gave me a knife and told me to stab her in the throat. And I say 'man I ain't want to do this'. But he was like 'man, come on man; you say you ain't no punk. You say you ain't no punk; do it'. And I just did it. After I did that I left out the room. And that when Rashawn came in.

Godwin: How many times did you stab her in the throat?

Wilson: I stab her once and gave the knife back to David.

Godwin: What kind of knife was it?

Wilson: A pocket knife.

Godwin: Can you describe how big it was or ...

Wilson: Bout, bout that long.

Godwin: Okay that's, that's, that's open completely, right?

Wilson: Yeah.

Godwin: Okay how long the blade was?

Wilson: Probably bout like, like that.

Godwin: Okay, you know what color the knife was; the handle?

Wilson: Black and gray.

Godwin: Black and gray. Okay and you say you stabbed her once and then what was she doing?

Wilson: (inaudible)

Godwin: She was trying to kick up?

Wilson: No she wasn't trying to kick. She was just like wiggling her foot...

Godwin: Uh-huh.

Wilson: And that when I left out of the room and Rashawn came in.

Godwin: When you, you, what...

Wilson: (inaudible)

Godwin: What, what, what did she say; did she say anything before or after you stabbed her?

Wilson: Before I stabbed her they was like 'where the pocketbook at, where the keys at'.

Godwin: Who was saying that?

Wilson: David.

Godwin: Okay.

Wilson: And she was like 'let me up and I'll show you'. She was like 'nah'. That when he took the knife out and gave it to me. He was like 'stab her'. I say I ain't want to do this. He was like 'man, go ahead man; come on, you say you ain't no punk - do it, do it'. That when I did it. After I did it I looked at her. I seen all the blood come out her neck so I left out the room And then Rashawn came in.

Godwin: So you stab her in the neck, you pulled it out and saw all the blood coming out?

Wilson: I left it in.

Godwin: You left the knife in her neck?

Wilson: And then after a while I pulled it out and I gave it back to David.

Godwin: Oh okay.

Wilson: And then that when I left the room.

Godwin: Did you get any blood on you?

Wilson: I don't think so.

Godwin: Okay you didn't wash up on nothing in the house?

Wilson: Not at the house.

Godwin: Where you wash up at?

Wilson: At my house.

Godwin: Okay where is that at?

Wilson: Royal Street.

Godwin: You know the address?

Wilson: 405 Royal Street, Apartment A.

Godwin: Apartment A?

Wilson: Yes sir.

Godwin: Okay, alright continue; what happened in the house after you stabbed her. What everybody else was doing?

Wilson: Walking around the house. And then I left out the room, that when Rashawn came in the room. So after that...

Godwin: Who, after you left out, who came in the room?

Wilson: Rashawn.

Godwin: Rashawn; okay.

Wilson: And then I started walking round the house and I went in the room beside the front door. And I was up in the room and then when I started...

Godwin: You know Rashawn whole name?

Wilson: I just met him recently after he got out of jail.

Godwin: Okay. Rashawn Bailey, that sounds familiar?

Wilson: I think that it.

Godwin: Where does he live at?

Wilson: He live, he live uh on (inaudible).

Godwin: And what's her name?

Wilson: Uh Ms. Laelie.

Godwin: Okay you know her address right there?

Wilson: I know it uh Apartment B on uh, on (inaudible) street.

Godwin: Okay. And you say David; do David Johnson sound like ... describe David.

Wilson: He bout a little bit taller than me and got braids.

Godwin: Got braids? What's his skin complexion like?

Wilson: Light skin.

Godwin: Light skin. Where he live at?

Wilson: Live somewhere in West Florence on uh Sumter Street.

Godwin: On Sumter Street. Do he live in the middle of a bunch of houses, he live on a corner, or he live ... you know where exactly he live at on Sumter Street?

Wilson: I ain't never been to his house. After uh, after uh I moved out of West Florence.

Godwin: Okay cause he lives in West Street on Sumter Street. Okay. Alright Rashawn went into the room. Who else was in the house?

Wilson: Me, Rashawn, and Rakeem.

Godwin: Rakeem. What's Rakeem last name?

Wilson: Uh Floyd.

Godwin: Floyd. Okay where do he live at?

Wilson: Uh on Liberty Street.

Godwin: In those apartments. What's his mother's name?

Wilson: Tashia Brown.

Godwin: Tashia. Okay. He was in the house too. Alright go ahead, tell me what happened.

Wilson: (inaudible) that it happened. That when I left out the house. And then David came out the house and then Rashawn and Rakeem came out the house going the opposite way. David came over there and the he was like 'come help me move the body'. So I went back over there. She was already wrapped up in sheets and covers and stuff. I guess they helped him did that. And then...

Godwin: Cause you wasn't in the house at that time; you went out.

Wilson: Yes sir. I left out the back door. That how the back door got opened cause I opened it.

Godwin: How did you open it? Was there something unusual about the back door?

Wilson: It was a board in front of it.

Godwin: What kind of board?

Wilson: Like a 2 by 4.

Godwin: Okay. It was on the door and you took it off.

Wilson: I took it off. That when I left out the back door.

Godwin: Okay.

Wilson: And they came out. He was like 'come help me move the body'. So I move, I moved the body; help em put it in uh the trunk.

Godwin: Trunk of what?

Wilson: The car.

Godwin: Describe the car.

Wilson: A green four door car.

Godwin: Who, who car was it?

Wilson: The lady car.

Godwin: It was the lady car. Did you know Ms uh, the victim? You didn't know her name?

Wilson: I ain't know nobody on Liberty Street except for Terrence and uh Rakeem them.

Godwin: The fellows that you went in and did the Burglary with in the murder. Alright um did you get; you didn't get anything out the house. You didn't take anything?

Wilson: I got a piece of candy.

Godwin: Out of where, which...

Wilson: Out of the uh the little jar that was on the table.

Godwin: On the kitchen table. How many pieces of candy did you get?

Wilson: One.

Godwin: One. Was anybody smoking in the house?

Wilson: Not while we was in there.

Godwin: None of y'all was smoking. What did, did they tell you what they got from the house?

Wilson: All I know was a plasma TV and a DVD player.

Godwin: What happened to that stuff?

Wilson: I (inaudible) David got it.

Godwin: Okay, Alright he came and got you and told you to come help him get the body out of the house. So you went back to the house and she was what?

Wilson: Wrapped up in some sheets and cover.

Godwin: She was wrapped up in sheets and cover. Alright then what happened?

Wilson: That when we dropped the body off. He was like I'll go to my baby's momma house. So I told him to drop me off at Terrence house.

Godwin: Wait a minute now. Before you, back up now; before you, you went back over, he was wrapped up in sheets. Which way did y'all take her out of the house?

Wilson: Over by the uh, towards the church.

Godwin: No, no I mean out of the house.

Wilson: Out the back door.

Godwin: Oh y'all went back, took her out the back door. Nobody helped y'all? Where everybody else was?

Wilson: They had already left. When David came out the house, everybody else came out the house. And they was walking down the street. He came over there, he was like 'come on, I already got her tied up and stuff. All I need for you to do is help me move the body'.

Godwin: Help, help him move the body. Okay. Sergeant Drayton just stepped back into the room. Okay y'all got her out and opened the trunk; is that where you put her at. Okay. Once she was in the trunk, then what?

Wilson: We rode uh and he was like 'let's take her on the dirt road.

Drayton: Can you speak up please?

Wilson: We rode on the dirt road and we got half on the dirt road. He was like 'you think this good enough'. I was like 'I don't know'. That when he stopped the car and we both got out the car. I help him, I help him uh lift her out the car and put her in the ditch.

Godwin: Uh-huh.

Wilson: And we got back in the car and we both looked over there. It was like you still can see the body. So we got out the car, I help him get some leaves and stuff to put over her.

Godwin: And that was you and who?

Wilson: Me and David.

Godwin: You and David put her in the ditch?

Wilson: Yes sir.

Godwin: And then y'all limbs down and put over her. Okay and then what?

Wilson: Then he was like 'I got go to my baby momma house'. So I told him to drop me back off at Terrence house.

Godwin: Who was driving?

Wilson: David.

Godwin: David was driving the car. Okay so he dropped you back over at Terrence house. Did, did y'all go back to the house any after you went back to Terrence house? You did...okay what happened there?

Wilson: When I got back to Terrence house, everybody was in the house sleep so I knocked on the window to wake him up but he ain't never got up. Rashawn got up and went for the door. So that when I went in.

Drayton: Speak up for me please sir.

Wilson: I got on the couch and laid down.

Godwin: No, okay you went back to (inaudible); I'm talking about went back to the victim's house.

Wilson: I ain't never went back over there.

Godwin: You never went back over to the victim's house?

Wilson: Cause David dropped me off and I told him to drop me off at Terrence house. So I went to Terrence house; I knocked on the door. Ain't nobody came to the door. That when I went to the side window where the air conditioner at and I knocked on the window.

Godwin: Uh-huh.

Wilson: And that when Rashawn got up and open the door for me.

Godwin: Okay but you didn't go back over to the victim's house. Okay you were saying something about a bag, a trash bag. Can you tell me something bout that?

Wilson: After me and uh David, we came back from West Florence that morning. We left, he came and got me; it was about ten or eleven

o'clock. We came back and Terrence was like 'it's a bag in my back yard'. The dog had pulled it out the woods or whatever so I went back (inaudible) to see what was in the bag. I looked in the bag; it was a pillow with blood and stuff all over it. So I got the bag, I tied it up and I walked back to the woods. And I put it in the woods. And that when I went back around the house and Rakeem ask me what was in the bag and I told him.

Godwin: Uh-huh. Could you remember what she had on when y'all went into her room?

Wilson: She was covered up.

Godwin: She was under the covers?

Wilson: She was covered up.

Godwin: Okay. Did anybody have a gun or pistol?

Wilson: It was only the knife.

Godwin: Just a knife. Nobody had a gun?

Wilson: No sir.

Godwin: Okay. I asked you did you have anything particular against this lady or did you know her. You said something happened earlier that day.

Wilson: Yes sir.

Godwin: Tell me, tell me again what happened.

Wilson: We went, well all of us was standing right in front of Terrence house and we look (inaudible). And she was something like, she say something bout some bastard or something like that. And that was when Rakeem was like 'they talking to you uh she talking to y'all. And then that was when David was like 'I know she ain't talking to me so she must be talking to one of y'all'. And after that that when I went in Terrence house. And we ain't came back out til later on that night, bout five o'clock that night. And I went home, I washed up and I came back.

Godwin: Did her saying that made y'all mad or anything?

Wilson: It ain't make me mad.

Godwin: She ever did anything ...

Wilson: Cause I don't know...

2008-008466
Anthony Wilson

Godwin: She ever did anything to y'all or to you... other than what you just said?

Wilson: I ain't never knew her.

Godwin: And she didn't direct that directly to you, did she?

Wilson: I don't know who she was talking to.

Godwin: Okay, okay. Uh alright. Are you sorry for what you done son?

Wilson: Yes sir.

Godwin: Okay this concludes this statement. It is now four minutes after four.

Signature of Person Giving Statement

____/____/____
Date

Witness

____/____/____
Date

Witness

____/____/____
Date

SWORN TO BEFORE ME THIS

____ DAY OF _____, 2001

NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA.

MY COMMISSION EXPIRES: _____

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Anthony T. Wilson, #350120,)
Applicant,)

Case No. 2012-CP-21-2048

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

FILED
2013 DEC 10 PM 12:25
CORNIE REEL-SHEPHERD
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed August 9, 2012. Respondent made its Return on or about October 5, 2012. The Court convened an evidentiary hearing into the matter on October 9, 2013, in Marion County. Applicant was present at the hearing and represented by Joshua A. Bailey, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, Everett G. Ballenger, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Florence County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the amended application, the return, and the hearing exhibits.¹ The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Florence County Clerk of Court. In August 2008, Applicant was arrested for murder, first degree burglary, and armed robbery. A juvenile petition was

¹ Applicant's Exhibit Number 1 was a transcript of his interview with the Florence Police Department.

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Cornie Reel-Shepherd
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

issued in the Florence County Family Court, and Applicant's charges ultimately were waived up to circuit court. In June 2009, the Florence County Grand Jury indicted Applicant for murder, first degree burglary, and armed robbery (2009-GS-21-882, Counts One through Three). He was represented by Everett G. Ballenger, Esquire ("plea counsel"). On March 12, 2012, Applicant entered a negotiated plea to murder and first degree burglary. Applicant pled guilty to the murder charge pursuant to North Carolina v. Alford.² The Honorable Thomas A. Russo sentenced Applicant to thirty (30) years for murder and a concurrent thirty (30) years for first degree burglary. Applicant did not appeal his plea or sentence.

II. ALLEGATIONS

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

1. "On March 12th 2008 I took a guilty plea on an violation of section 16-03-0010; 16-03-0020 and 16-11-0311 which is not the correct violation."
 - a. "Section 16-03-0010; 16-03-0020 is incorrect due to the fact that the crime was committed unwillingly and without intent"

On September 5, 2013, Applicant filed an amended application for PCR, in which he alleged plea counsel was ineffective for failing to adequately investigate and move to suppress Applicant's statement to police. Applicant alleged he did not knowingly and intelligently waive his right remain silent and to have counsel present when he gave the statement. At the PCR hearing, Applicant proceeded on only the allegations of ineffective assistance of plea counsel relating to the statement.

² 400 U.S. 25 (1970)

III. SUMMARY OF TESTIMONY

Applicant testified he was taken to the police station on August 27, 2008, to be interviewed about his involvement in a murder in Florence County. Applicant was fourteen (14) years old at that time. He testified the only people present in the interview room were himself and Sergeant Godwin of the Florence Police Department. Applicant testified Sergeant Godwin did not read him his Miranda rights at first, but he read them to Applicant right before beginning to record the statement and again during the recorded statement. Applicant testified he responded that he understood the rights read to him by Sergeant Godwin "a little bit." He further testified he did not understand he did not have to talk to the police and he would not have spoken to them had he understood his right to have counsel present.

Applicant testified he was at the police complex about five hours when the statement was given and the officers offered him no food or drink during that time. He was fourteen when questioned and had completed the seventh grade. Applicant also had a prior record involving a shoplifting charge in 2005 when he was twelve. On cross-examination, Applicant admitted his mother was with him at the police complex just prior to his statement.

Applicant testified he met with plea counsel twelve or thirteen times before the plea. He testified they reviewed discovery and discussed possible defenses to the charges. Applicant and plea counsel discussed the State's offer of thirty years, and it was Applicant's decision to accept the offer. Applicant also testified he told plea counsel he wanted to file a motion to suppress.

Plea counsel testified was appointed to Applicant's case in August 2008. He filed for and received discovery from the State. He testified the State's theory of the case was Applicant and some co-defendants entered the victim's house with a crowbar with the intent to burglarize the

home. While inside, a co-defendant pressured Applicant to stab the victim. Plea counsel testified Applicant though he was innocent because he stabbed the victim under duress. However, plea counsel explained the defense of duress was not available to a murder charge.

Plea counsel reviewed the State's discovery with Applicant before Applicant's juvenile waiver hearing. That evidence included Applicant's statement, DNA evidence, witness statements, and the statements of his co-defendants. He also had Applicant evaluated by the Department of Juvenile Justice. Plea counsel testified they reviewed discovery again after the State made further disclosures after the waiver hearing. Plea counsel testified he reviewed Applicant's statement and agreed Applicant saying he only understood his rights "a little bit" gave him an argument for the statement's suppression. However, he did not believe it was sufficient to show the waiver of Applicant's rights was not knowing and intelligent. Further, plea counsel testified he attempted to have the statement suppressed at the juvenile waiver hearing. He testified he questioned the investigators about the statement and argued the conditions of the interview and Applicant's age indicate the waiver of Applicant's rights was not knowing and intelligent. However, the family court judge found the statement admissible.

Plea counsel testified his notes indicate he met with Applicant to discuss the statement at least four times: May 2010, June 2010, April 2011, and October 2011. He testified they discussed filing a motion to suppress the statement if the case went to trial. However, Applicant never wanted a trial and ultimately chose to enter a plea of guilty. Plea counsel testified he would have filed a motion to suppress the statement if Applicant had wanted a trial. Plea counsel testified that at the time Applicant prepared the plea affidavit, he discussed with Applicant the fact Applicant would waive a suppression hearing by pleading guilty.

On cross-examination, plea counsel re-iterated Applicant never wanted a suppression hearing before pleading guilty. Rather, plea counsel testified he could not file a motion to suppress until the State indicated the case would be called for trial. At that time, the offer for thirty years would likely have been withdrawn. Because Applicant chose to plead guilty, plea counsel did not have the opportunity to file a motion. Further, plea counsel admitted he advised Applicant the plea was in his best interest because the other evidence, even if the statement was excluded, was enough for a conviction.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

A. Ineffective Assistance of Plea Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

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

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

The Court finds Applicant's allegation plea counsel was ineffective for failing to suppress the statement to be without merit. Regarding this allegation, the Court finds plea counsel's testimony to be very credible, and Applicant's to be not credible. Plea counsel met with Applicant and discussed the statement numerous times. Although Applicant alleges he only pled because the statement was not suppressed, he never indicated to plea counsel that a motion to

suppress had to be filed before he would enter a guilty plea. Furthermore, plea counsel unsuccessfully challenged the introduction of the statement at the waiver hearing. Thus, Applicant was aware of the likelihood of success of a motion to suppress in the circuit court.

Applicant was also aware of the possibility the negotiated offer of thirty years would likely be unavailable if a motion to suppress was filed. Because plea counsel was concerned the offer would be withdrawn, he has articulated a valid reason for employing the strategy of not immediately filing a motion to suppress. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992). Therefore, the Court finds plea counsel acted reasonably in addressing Applicant's statement.

Furthermore, the Court finds Applicant cannot show prejudice because the motion to suppress would likely have been denied. The voluntariness of a juvenile's statement is "reviewed under the totality of the circumstances." State v. Parker, 381 S.C. 68, 86, 671 S.E.2d 619, 628 (Ct. App. 2008). Factors to be considered include: "the background, experience, and conduct of the accused; age; length of custody; police misrepresentations; isolation of a minor from his or her parent; threats of violence; and promises of leniency." Id. at 87, 671 S.E.2d at 628-29 (citing State v. Miller, 375 S.C. 370, 652 S.E.2d 444 (Ct. App. 2007)). Here, Applicant had a prior juvenile record and experience with police investigations. Furthermore, he was 14 years old and was advised of his right to remain silent twice. Applicant has presented no evidence he was of limited intelligence and didn't understand he could refuse to talk to police. See State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 166 (2007) (allowing introduction of statement where juvenile did not show he "did not understand his rights or was of such low intelligence that he could not have understood his rights"). The length and conditions of

Applicant's detention were not unusual or unreasonable. Likewise, the questioning in the transcript does not indicate any misrepresentations, threats of violence, or promises of leniency. Id. at 568, 647 S.E.2d at 165 (“[C]ourts generally do not find a juvenile's confession involuntary where there is no evidence of extended, intimidating questioning or some other form of coercion.”). Finally, Applicant's mother was present with Applicant up to the time he gave his statement, including during the first recitation of his rights. Therefore, based on the totality of the circumstances, the Court finds Applicant's statement was freely and voluntarily made after a knowing and intelligent waiver of his constitutional rights.

Finally, the court finds plea counsel was not ineffective because he advised Applicant that suppression of the statement did not guarantee a victory at trial. The State possessed eyewitness statements from the co-defendants indicating Applicant stabbed the victim. Plea counsel testified an acquittal was unlikely because of the statements of the co-defendants and the forensic evidence. Furthermore, although Applicant believed he was less culpable in the murder, plea counsel correctly advised Applicant the first degree burglary charge would likely result in a conviction and maximum exposure of life imprisonment. See Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (applicant must show “something that would have affected counsel's advice to [the applicant] to accept the plea bargain offered or that would have caused [the applicant] to decline to accept it”). Therefore, Applicant had not shown any prejudice from plea counsel's decision not to file a suppression motion.

B. 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, the Court finds Applicant failed to present

sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION


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

The Court notes that Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on the applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:


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

AND IT IS SO ORDERED this 27 day of Nov., 2013.



THE HONORABLE WILLIAM H. SEALS, JR.
Presiding Judge

Man, South Carolina

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED
2013 DEC 10 PM 12:25
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

WITNESSES
DET. JAMES RODGERS
FPD

GAUWIE

PROS: ELC

D/O: 08-24-2008

ARREST WARRANT NO.

- CAW09E002 (1), CAW09E007 (1),
- J398709 (1), J398716 (1), CAW09E003 (2),
- CAW09E008 (2), J398710 (2), J398713 (2),
- CAW09E004 (3), CAW09E009 (3),
- J398711 (3), J398717 (3), J398714 (4),
- J398719 (4), J398712 (5), J398718 (5).

ACTION OF GRAND JURY

TRUE BILL

Barry M. Schaffer
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury Date

DOCKET NO. 2009 - GS - 21 - 00882

The State of South Carolina,

County of FLORENCE
ELC

COURT OF GENERAL SESSIONS

JUNE TERM 2009

THE STATE
vs.

- RASHAWN JEROME BAILEY
- RAKIM CARNEL FLOYD
- DAVID GERRARD JOHNSON - 9-16-09
- ANTHONY TOMMY WILSON

*Nolle Proes D. Johnson
def uses re-indicted
under 09-1564 ELC/ccl*

Indictment for

MURDER,
BURGLARY (FIRST DEGREE),
ARMED ROBBERY,
POSSESSION OF WEAPON DURING
COMMISSION OF VIOLENT CRIME
AND
CONSPIRACY

FILED

2009 JUN -4 PM 1:39

CONNIE REEL-SHEARIN
CLERK OF COURT
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Connie Reel Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

INDICTMENT FOR

STATE OF SOUTH CAROLINA)	MURDER, BURGLARY (FIRST DEGREE), ARMED
)	ROBBERY, POSSESSION OF WEAPON DURING
COUNTY OF FLORENCE)	COMMISSION OF VIOLENT CRIME AND CONSPIRACY

At a Court of General Sessions, convened on JUNE 04, 2009, the Grand Jurors of FLORENCE

County present upon their oath:

COUNT ONE - MURDER

That RASHAWN JEROME BAILEY, RAKIM CARNEL FLOYD, DAVID GERRARD JOHNSON AND ANTHONY TOMMY WILSON did in FLORENCE County on or about August 24, 2008, violate Sections 16-03-0010, 0020 and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that they did feloniously, wilfully and with malice aforethought kill one Willie Mae Hayes, by means of stabbing her with a knife, and that the said Willie Mae Hayes did die as a proximate result thereof.

COUNT TWO - BURGLARY FIRST DEGREE

That RASHAWN JEROME BAILEY, RAKIM CARNEL FLOYD, DAVID GERRARD JOHNSON AND ANTHONY TOMMY WILSON did in FLORENCE County on or about August 24, 2008, violate Sections 16-11-0311 and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that they did enter the dwelling of Willie Mae Hayes, located at _____ street, Florence, SC, without consent and with the intent to commit a crime therein; and/or said defendant entered or remained in said dwelling in the nighttime; and/or when effecting entry or while in the dwelling or in immediate flight therefrom, they or another participant in the crime were armed with a deadly weapon or explosive; and/or caused physical injury to a person who is not a participant in the crime; and/or used or threatened the use of a dangerous instrument; and/or displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm.

COUNT THREE - ARMED ROBBERY

That RASHAWN JEROME BAILEY, RAKIM CARNEL FLOYD, DAVID GERRARD JOHNSON AND ANTHONY TOMMY WILSON did in FLORENCE County on or about August 24, 2008, violate Sections 16-11-0330(A) and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that while armed with a deadly weapon, or while alleging, either by action or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: a knife, did feloniously rob Willie Mae Hayes, by means of force or intimidation, goods or monies of the said Willie Mae Hayes.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR MURDER, BURGLARY (FIRST DEGREE), ARMED ROBBERY, POSSESSION OF WEAPON DURING COMMISSION OF VIOLENT CRIME AND CONSPIRACY WITH THE AFORESAID NAME(S) OF RASHAWN JEROME BAILEY, RAKIM CARNEL FLOYD, DAVID GERRARD JOHNSON AND ANTHONY TOMMY WILSON SHOWN THEREON:

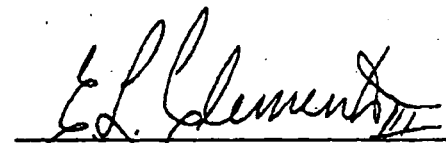
COUNT FOUR - POSSESSION OF WEAPON DURING THE COMMISSION OF VIOLENT CRIME

That RASHAWN JEROME BAILEY AND DAVID GERRARD JOHNSON did in FLORENCE County on or about August 24, 2008, violate Section 16-23-0490 of the Code of Laws of South Carolina (1976), as amended, in that they were in possession of and did visibly display a weapon, to wit: a knife, during the commission of a violent crime, to wit: Burglary First Degree, Armed Robbery, and/or Murder.

COUNT FIVE - CONSPIRACY

That RASHAWN JEROME BAILEY AND DAVID GERRARD JOHNSON did in FLORENCE County on or about August 24, 2008, violate Section 16-17-0410 of the Code of Laws of South Carolina (1976), as amended, in that they did unlawfully, wilfully, knowingly, wickedly and feloniously unite, combine, conspire, confederate, agree between and among themselves. and have tacit understanding with each other and with divers other persons whose names are unknown to the Grand Jurors for the purpose of committing the crime of Burglary First Degree, Armed Robbery, and/or Murder.

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



SOLICITOR

94 STATE OF SOUTH CAROLINA)
 COUNTY OF Florence)
 STATE VS.)
 Anthony Tommy Wilson)
 AKA:)
 Race: B Sex: M Age: 18)
 DOB: SS#:)
 Address:)
 City, State, Zip: FLORENCE, SC 29506)
 DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 09-GS-21-882
 A/W#: CAW09E007
 Date of Offense: ~~5/14/2009~~ 8-24-08
 S.C. Code § : 16-03-0010; 16-03-0020
 CDR Code #: 0116

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
 TO: MURDER (30-life) pursuant to N.C. v. Alford

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

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

ATTEST: E.L. Clements III 15295 SC Bar# Anthony T. Wilson 30 Defendant [Signature] Attorney for Defendant 72499 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 30 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: Burglary 1st Charge
 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. Credit for 1419 days Time Served
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
 Payment Terms: _____
 Set by SCDPPPS _____

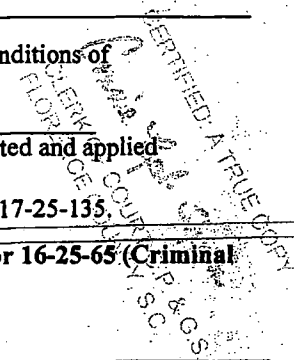
Recipient: _____
 *Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$
TOTAL		\$105.00

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: _____
 Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk K. Smith
 Court Reporter: [Signature]
 SCCA/217 (03/2011)

Presiding Judge [Signature]
 Judge Code: 2141
 Sentence Date: 3-12-2012



COUNTY OF Florence
 STATE VS.
Anthony Tommy Wilson
 AKA: _____
 Race: B Sex: M Age: 18
 DOB: _____ SS#: _____
 Address: 1
 City, State, Zip: FLORENCE, SC 29506
 DL#: _____ SID#: _____

INDICTMENT/CASE#: 09-GS-21-882
 A/W#: CAW09E008
 Date of Offense: 5/14/2009 8-24-08
 S.C. Code §: 16-11-0311
 CDR Code #: 0079

SENTENCE SHEET

*CDE Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was
 TO: Burglary / Burglary (After June 20, 1985) - First degree (15-112) CONVICTED OF or PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

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

ATTEST: [Signature] 15295 Anthony T Wilson [Signature] 71 72499
 Clements, III, E. L. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 30 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: Murder charge
 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. Credit for 1419 days Time Served.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 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	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ <u>100.00</u>
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
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§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$
TOTAL		\$ <u>105.00</u>

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: [Signature]
 Court Reporter: [Signature]
 SCCA/217 (03/2011)

Presiding Judge: [Signature]
 Judge Code: 2141
 Sentence Date: 3-12-2012