

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Lancaster County
J. Ernest Kinard, Jr., Circuit Court Judge

S.C. Supreme Court

RODNEY THOMPSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001171

APPENDIX

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1 State of South Carolina
2 Court of General Sessions
3 County of Lancaster
4 2010-GS-29-838
5

6 State of South Carolina
7 VS.
8 Rodney Thompson
9

10 Lancaster, South Carolina
11 March 28, 2011
12 Before the Honorable Brooks P. Goldsmith
13

14 APPEARANCES
15 For the State: Doug Barfield
16 For the Defendant: Mike Lifsey
17 REPORTED BY: Michael C. Watkins
18 Official Court Reporter
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NO EXHIBITS

1 MR. BARFIELD: Your Honor, this is State vs. Rodney
2 Thompson represented by Mike Lifsey. The indictment number
3 is 2010-GS-29-838, the charge is murder, it's a case that
4 was scheduled for trial today. We have reached an
5 agreement concerning the guilty plea. The guilty plea will
6 be to the lesser-included offense of voluntary
7 manslaughter, the negotiated sentencing agreement is 20 to
8 30 years.

9 THE COURT: Mr. Lifsey, you represent Mr. Thompson?

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

11 THE COURT: Have you explained to your client the
12 charges contained in the indictment, the possible
13 punishment and explained to your client his constitutional
14 rights?

15 MR. LIFSEY: I have, Your Honor.

16 THE COURT: Do you believe Mr. Thompson has understood
17 the discussions that you've had with him?

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

19 THE COURT: Do you agree with his decision to enter a
20 plea in this case to the charge of voluntary manslaughter?

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

22 THE COURT: With a negotiated, I guess, sentence range
23 of 20 to 30 is what it is called?

24 MR. LIFSEY: That's our agreement. I wish it was less
25 than that but it was our agreement and --

1 THE COURT: Based on your investigation of the facts
2 and circumstances of this case, do you believe it likely
3 that if Mr. Thompson were to go to trial on the charge the
4 jury would find him guilty of this charge beyond a
5 reasonable doubt?

6 MR. LIFSEY: Yes, sir. I actually believe -- I
7 believe he would be convicted of this or the murder charge,
8 yes, sir.

9 THE COURT: Mr. Thompson, how old are you, sir?

10 THE DEFENDANT: Forty-two.

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

12 THE DEFENDANT: I worked for PHP Locker Company out of
13 Lake Wylie, and I've done construction work.

14 THE COURT: Have you ever been in criminal or general
15 sessions court before?

16 THE DEFENDANT: Yes, I have, but it has been a little
17 while. I was a lot younger then.

18 THE COURT: What happened to you as a result of you
19 being in court whenever that was?

20 THE DEFENDANT: I was put on probation.

21 THE COURT: Did you complete your probation?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Mr. Thompson, have you ever been treated
24 for the abuse of alcohol or abuse of drugs, or ever treated
25 for any mental illness?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Tell me about that.

3 THE DEFENDANT: I was just out there in the world and
4 I got addicted to crack cocaine and all kind of drugs. I
5 went to it was like a mental institution in Columbia and,
6 then they sent me to a drug rehab place after I left the
7 place and I just completed my time down there, did
8 everything they told me to do.

9 THE COURT: How long ago was that approximately?

10 THE DEFENDANT: It was like in 2000.

11 THE COURT: And how did that treatment go?

12 THE DEFENDANT: I completed it and I got back to the
13 same thing. Just got a real bad drug problem and addiction
14 to the drugs.

15 THE COURT: Let me ask you this: In the past 24 hours
16 have you taken any medication, drugs or have you consumed
17 any alcohol?

18 THE DEFENDANT: No. I have been incarcerated for a
19 year now.

20 THE COURT: Are you aware of any physical or mental or
21 emotional problem that would interfere with your ability to
22 understand what is happening here today?

23 THE DEFENDANT: No, sir.

24 THE COURT: Mr. Thompson, your attorney and the
25 solicitor both tell me they believe you wish to plead

1 guilty to the charge of voluntary manslaughter; is that
2 correct?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Solicitor is going to tell me about the
5 facts in the case, I will ask you to please listen to what
6 he says.

7 MR. BARFIELD: Your Honor, I will tell you about his
8 record first. It does go way back but it's not the worst
9 record in the world, it's just a lot of entries on it. '89
10 he had a blue light. '90 disorderly conduct. '91
11 disorderly conduct. '92 assault and battery. '95
12 disturbing the peace. '95 driving under suspension. '97
13 simple possession of marijuana and open container. 2000
14 malicious injury to property less than 1,000 and petty
15 larceny. 2000 disorderly conduct. 2005 simple assault and
16 battery. And then in 2008 he had two drug charges which
17 were convictions. Your Honor, this case occurred on March
18 27th of 2010 which was a Saturday, it occurred some time
19 between 8:30 and 9:00 in the evening, dispatch time was
20 8:48 p.m. law enforcement arrived within a couple of
21 minutes. It occurred at [REDACTED] which is on
22 the Mill Village just outside the Town of Kershaw. The
23 victim in the case was Quintal Nehemiah James who at the
24 time was 28 years old, it occurred at Mr. James' residence.
25 Mr. James and the defendant were acquaintances. Your

1 Honor, the investigation by the Lancaster County Sheriff's
2 Office and my discussions with the witnesses indicate that
3 Mr. James had been taken to work by his girlfriend early
4 that day, he worked at McDonald's in Camden. They had some
5 car trouble and he needed a ride home so his mom went to
6 get him after his shift was over and she ended up dropping
7 him off at his house I think she told me 7:30 to 7:45 that
8 evening. Of course, this is in March and I believe it is
9 probably kind of getting dark at that time. Your Honor,
10 before Mr. James had gotten home some folks came over
11 including the defendant, he came over there in a car with a
12 couple of other fellows, well, they were there basically
13 sitting in his yard when James got home. James got home
14 and apparently did not want them there and basically ran
15 Mr. Thompson off. Your Honor, some time after that, of
16 course, Mr. James had gone in, a witness named William
17 Michael Moore who was an acquaintance all of these fellows
18 was over at Mr. James' house, a fellow by the name of
19 Tazeki (phonetically) Izzard whose brother or half brother
20 lives directly across the road was over at James' house,
21 all three of them are inside, hear a knock at the door.
22 There's some dispute about how actually the door got open
23 but it is undisputed that the door came open, we don't
24 allege that Thompson busted the door open, but the door got
25 opened and he came in, and, of course, there had been some

1 previous dispute. It's hard to say exactly how much time
2 elapsed between the prior dispute and the shooting, but
3 certainly more than five or ten minutes, it might have been
4 as much as an hour, I'm not real sure about that. When you
5 go inside the mobile home that James lived in, Your Honor,
6 the front door -- you go up a little set of steps and you
7 go into the front door, and as soon as you go in the front
8 door there's sort of a partial wall that jets out on the
9 left side of the door for three or four feet and then you
10 go beyond that door and there's the main living area of the
11 house, the kitchen is on the right, the living room, TV is
12 on the left. Thompson comes in and apparently has a .22
13 caliber semiautomatic pistol in his possession when he
14 comes in, Moore and Izzard are both inside when this occurs
15 and he at some point has a vantage point where he can see
16 James and begins firing shots. Again, it is undisputed --
17 it's unknown exactly how many shots were fired but the
18 sheriff's office crime scene team picked up three fired
19 cartridge cases which were .22 caliber. Your Honor, James
20 was struck I think three times and the wounds -- I think
21 two of them were listed as fatal wounds, one was a shot
22 through his arm and he died. He was alive for a brief
23 period there at the house, sheriff's office and EMS came,
24 they attended to him, they actually loaded him into an
25 ambulance and were going to fly him out but he expired

1 before all of that occurred. He was carried to Springs
2 Hospital where he was pronounced dead by Glen Crawford with
3 the coroner's office and an autopsy was ordered. Your
4 Honor, at the autopsy, of course, the wounds were dissected
5 and two fired bullets were removed from his body. The
6 bullets were examined by SLED -- we don't have a gun, I'll
7 tell you about that in a minute -- but the bullets were
8 examined by SLED and they were determined to have both been
9 fired through the same barrel. Your Honor, when the
10 sheriff's office got to the scene Thompson's name
11 immediately was given as a suspect and the search was
12 commenced to try to find him in a couple of places that he
13 was thought maybe to have been in around the Town of
14 Kershaw but he was not located. Within a fairly short
15 period of time Lancaster County deputies got a call that
16 Kershaw County deputies were out with Thompson, or at a
17 location that Thompson was believed to be at in the Buffalo
18 Community, six or seven miles outside Kershaw but inside
19 Kershaw County. Lancaster deputies went there, joined up
20 with the Kershaw County deputies and Thompson was taken
21 into custody in a mobile home on Buffalo Creek Road in
22 Kershaw County. He was brought back to Lancaster County
23 and incarcerated in our jail. That was all on March 27th.
24 On the 31th of March Thompson gave an interview to Billy
25 Hilton of the Lancaster County Sheriff's Office. Thompson

1 and Billy Hilton grew up together, knew each other, Billy
2 Hilton talked to him and he said he wanted to get his heart
3 right and he gave a written statement. In the statement,
4 Your Honor, without getting into all the detail he does
5 admit that he carried a gun to James' house, went inside
6 and fired the shots and committed the offense. He gave us
7 some information about where the gun was, we searched,
8 could not find the gun. We did get a search warrant for
9 Thompson's clothing after his arrest which was in the
10 custody of the jailers at the detention center, sent that
11 clothing to SLED and a SLED trace evidence examiner lifted
12 led particles from it which are consistent with components
13 of gunshot powder. I think that's it.

14 THE COURT: Mr. Thompson, you heard the solicitor's
15 statement of the facts concerning these charges, do you
16 agree with the facts as stated by the solicitor?

17 THE DEFENDANT: Yes.

18 THE COURT: Is that yes?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Are you guilty of the charge
21 of voluntary manslaughter?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Has Mr. Lifsey explained to you you have a
24 right to have a trial by jury on this charge if you wanted
25 one?

1 THE DEFENDANT: Yes, sir.

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

3 THE DEFENDANT: No, sir.

4 THE COURT: Bear with me just a minute. As you know
5 even as you stand there now you are still entitled to have
6 that jury trial, you know, the jury is outside.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: If you were to have that jury trial among
9 other things the Court would instruct the jury that you're
10 presumed innocent and the burden would be upon the State to
11 prove your guilt to the jury beyond a reasonable doubt.
12 You would have the right -- you or your lawyer would have a
13 right to cross examine any witnesses that the State might
14 call to testify against you, and, of course, you could have
15 your own witnesses testify for you. You yourself could
16 testify if you wished to, but on the other hand you don't
17 have to testify and you would have the right not to
18 testify. And if you decided not to testify the Court would
19 tell the jury that they couldn't hold that against you.
20 You would have the constitutional right not to testify.
21 And if you had made any incriminating statements,
22 confessions such as the solicitor mentioned a moment ago
23 you would actually have a right to challenge the State's
24 right to introduce that statements. But, of course, you
25 would have the right to challenge the State's right to use

1 any evidence. Do you understand you do have all of those
2 rights?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand by pleading guilty to
5 these charges you will be giving up those rights as to
6 these charges?

7 THE DEFENDANT: Yes, sir.

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

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Have you had enough time to discuss these
11 matters with your attorney?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Are you satisfied with his services?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Has he answered all of your questions?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Has he done everything you've asked him to
18 do or everything you would expect him to do in representing
19 you?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Has anyone threatened you or coerced you
22 in any way, Mr. Thompson, to make you or cause you to plead
23 guilty?

24 THE DEFENDANT: No, sir.

25 THE COURT: Has anyone promised you anything or held

1 out any hope of reward as an inducement to get you to plead
2 guilty?

3 THE DEFENDANT: No, sir.

4 THE COURT: Other than the negotiated sentence, is
5 that the only agreement?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Are you pleading guilty freely and
8 voluntarily?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Are you pleading guilty to this charge
11 because you are guilty?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Mr. Thompson, the Court finds
14 there is a substantial factual basis for this plea and the
15 decision to enter the plea has been made freely and
16 voluntarily with the advice of an attorney with whom
17 Mr. Thompson states he is satisfied and the Court accepts
18 the plea. Mr. Lifsey?

19 MR. LIFSEY: Thank you. Your Honor, let me begin --
20 I'm not going to speak forever now, but let me begin by
21 sort of dividing what I want to say in sort of two parts.
22 I want to speak initially in my representation of
23 Mr. Thompson and my view of the facts of this case and then
24 I will tell you about Mr. Thompson himself. And I know
25 that the victim's family is in the courtroom and I

1 certainly -- this is a traumatic event for them as well and
2 I hope that nothing I say will be offensive to them, but I
3 feel like there is some things I need to say about the
4 case. It doesn't change the plea, it doesn't change the
5 tragedy of where we are today, I just tell that to you and
6 to the family. I began representing Mr. Thompson shortly
7 after his arrest. He's been in jail -- he was basically
8 taken into jail a year ago. This incident happened on the
9 27th, it was probably after midnight before they got him
10 back to the detention center and he was taken into custody,
11 so he has been in jail for a year. Of course, I would ask
12 the Court to give him credit for the year he has been in
13 jail. I reviewed the file and discovery I was provided by
14 the solicitor, I believe that Solicitor Barfield has given
15 me full discovery in this case. I've handed up to the
16 Court and asked to be marked as a Defendant's Exhibit an
17 affidavit of guilty plea that my client filled out further
18 elaborating the constitutional rights you asked him about,
19 that I would ask that that be made part of the record in
20 this case.

21 THE COURT: It will be.

22 MR. LIFSEY: He and I have discussed this case at
23 length. I don't really quibble with what -- in major part
24 what the solicitor said about the facts of this case. I
25 would add to you that like -- I only would add like so many

1 of the cases we see in this courtroom, I think drugs played
2 a large part in this case, and I think this was a
3 dispute -- you know, there is multiple causes for disputes
4 but I think the sale of crack cocaine was the origin of
5 this. I think there was an argument over -- I think the
6 initial argument was over whether or not drugs would be
7 sold and that's what led to this, and I think ultimately my
8 client's drugs addiction led to him doing this terrible
9 violent act. He and I discussed this case at length. He
10 gave -- I guess the two main focuses in my inquiry
11 representing him from a legal standpoint were the
12 admissibility of the statement and then whether or not this
13 constituted self-defense. We did have a challenge to the
14 admissibility of the statement, it's my belief that we
15 ultimately would have lost those challenges at a Denno
16 hearing and the statement would have been admitted. Even
17 if we were able to triumph and have the statements -- the
18 statement excluded at a Denno hearing the problem then
19 became in that order to get -- I think it was pretty
20 conclusive evidence from the witnesses and the physical
21 evidence, the he fired shots. So I think even if we were
22 able to get the statement suppressed initially he probably
23 has to take the stand to tell the self-defense story at
24 which point the statement comes in in cross examination
25 even if it was constitutionally excluded initially, which I

1 don't know that it would have been. But the witnesses at
2 the scene -- obviously I explained to him that no client
3 ever has to testify, but there are very few witnesses, in
4 fact, no one in this case that would have told the
5 self-defense story except, of course, him. And the problem
6 is, of course, the statement in this case does amount to
7 self-defense. I think that Your Honor would have charged
8 it to a jury probably but I don't think that based on the
9 physical facts that are undisputed, the location of the
10 incident, the coming back to the scene combined with the
11 statement, which was very much not a self-defense
12 statement, I just don't think it would have been
13 successful. But he and I talked at length about the
14 elements of self-defense and the problems of making that.
15 And in our view that while nothing is hopeless, of course,
16 and in some sense you never know what a jury will do in a
17 case, it was my legal opinion that the odds of any success
18 on a self-defense argument was very, very slim in this case
19 so that's why he entered the guilty plea. I think he is
20 guilty of it. I think the charge is appropriate, I think
21 the charge reduction to voluntary manslaughter is
22 appropriate. The negotiated plea in this case is the best
23 we could do because that's the best that they could offer
24 in the case. I think I talked until I was blue in the face
25 trying to convince the solicitor to do better than that. I

1 wish you could give him less than 20 years but I think
2 under the circumstances that the plea is what the plea is
3 and I agree with his decision to plead guilty, I think it's
4 in his best interest to do that. So that's sort of my view
5 of the legal facts in this case. Let me tell you a little
6 bit about Rodney Thompson. He's 42 years old, well, almost
7 43, he has lived in Kershaw the bulk of his life. He lived
8 I think two years in Winston-Salem but for almost all of
9 his life he's lived in the Town of Kershaw. There's a
10 great singer/song writer Tom Russell who does a song and
11 there's a line in it that says first a man takes the drink
12 and then the drink takes the man, and I was reminded of
13 that when I talked to Rodney about this case. He is one of
14 these guys -- I have seen him and I have known him when he
15 has been locked up and he has been sober, he's as pleasant
16 to talk to as anybody I've ever represented. And you look
17 at his criminal history and he has got while lengthy as the
18 solicitor pointed out, it's a criminal history of someone
19 with a chronic substance abuse problem. I think what
20 happens to him was -- and like everything, there is
21 multiple substantial, I think he drank too much, I think he
22 used marijuana, I think crack and powder cocaine are
23 involved, and I think what happens is when this otherwise
24 pleasant hard working guy gets to drinking and using drugs
25 I think he loses self-control and behaves in ways not

1 consistent with the way people that know him outside that
2 environment see him. He has a lot of family and people who
3 are here for him. Before I introduce them I would just
4 point out that that in and of itself is unfortunately not
5 all of that common. I have plenty of cases it's all I can
6 do to find one relative to come up here and say something
7 for them, but I have got a number of people here. Some of
8 them want to speak, a lot of them don't want to speak, a
9 lot of them are just too emotional about this thing. But I
10 do want to tell you who they are, they're all in the first
11 row. When I say your name raise your hand, I will give you
12 an opportunity to speak in just a minute. Daniel Thompson
13 is his brother. His sister, Gayle Harris, that's
14 Ms. Harris. His son, Rodney Thompson. His daughter, Ava
15 Thompson. Pamela Kirkley is his two children's mother, his
16 two oldest children, he has two additional children I'll
17 tell you about in a minute as well. Maria Caferet
18 (phonetically), she's a friend of the family is here and
19 wanted to be here. Kiera Felder, also a friend of the
20 family. Jayon Thompson is his nephew, Shaun Trusedale is a
21 nephew. Mike Cato, a friend of the family who wanted to be
22 here. I think that's everybody I wanted to identify. Your
23 Honor, several of them wanted to speak in a little bit.
24 But he has in addition -- you met his two children, he has
25 two other children, nine and six years old. What does the

1 Court do in regard to sentencing in a case like this?
2 Well, I would ask you to take a few things into account.
3 And once again, I say this not to lessen the loss of the
4 victim because it's an awful loss that they face and a
5 tragedy they're facing. But I would like you to take into
6 account his age, he is 42 years old. Whatever sentence you
7 impose by law he'll have to do at least 85 percent of it
8 which by my calculations would put him probably close to 60
9 at a minimum if you gave him the 20 year sentence, anything
10 more than that would put him well into his sixties. He's
11 got two children, they love him and care about him, they're
12 here, he's got two other little children. It would be --
13 he's got to pay a price for what he did and there's no
14 getting around that, but it -- I know it would be important
15 to him if he were able to receive a sentence that at some
16 point would allow him to be involved in his children's life
17 at some point. I would ask you to take into -- he does
18 have a criminal record, he's not standing up here without a
19 criminal record, but I will tell you that the rest of his
20 criminal record is not of the magnitude of this offense.
21 As I said, I think it is part of a pattern of substance
22 abuse related offenses, but he is not someone that has two
23 or three different violent crimes on his record. He's not
24 someone who is up here three or four times and bonded out
25 on three or four offenses before we get around to having

1 resolved it. He is just basically a hard working guy who
2 did a terrible thing. I would ask you to hear from his
3 family, I may have a word or two after they speak. Anybody
4 that wants to speak sort of one at a time come up, that
5 microphone right there would be the one you use.

6 THE WITNESS: Your Honor, my name is a Daniel
7 Thompson, I am Rodney's brother. First I just wanted to
8 say to Ms. James I am so sorry. Your Honor, this is a hard
9 thing for me to do because I really love my brother and I
10 loved Ms. James' son, and because of the outcome of this
11 things -- because of drugs and all of this stuff this is
12 what happens sometimes in this world. Rodney, I've known
13 him all of my life, I'm a lot older than him, he was like
14 my twin brother to me, they always got us mixed up. He's a
15 good man but he made a bad decision, sir. I tried all of
16 my life to help him but sometimes we get hardheaded and we
17 allow things to happen. One of the things in my life, I
18 was on drugs 15 years ago and the Lord delivered me, healed
19 me and I started going out and helping other people. I
20 helped a lot of people but the one I really wanted to help
21 I couldn't help. So I ask you, Your Honor, I ask Ms. Jane,
22 forgive my brother and know that he's not the person that
23 happened a year ago. I truly believe in the long run
24 Rodney is going to be able to help some young kid and let
25 them know what drugs and guns can turn out to be. Thank

1 you.

2 THE WITNESS: April Thompson, I'm Rodney's daughter.
3 First of all I want to say I am so sorry for what happened,
4 I really am. We love our daddy, he was a good daddy to us.
5 I have always known my daddy as someone to help other
6 people. He would always say, "Hey man, don't be like that,
7 y'all need to be better." I would never in my life thought
8 that my daddy would do something like that. Everybody does
9 make mistakes. She lost someone that she loves and I -- by
10 no means am I saying it's okay, but we love our daddy. My
11 little sister and my brother, they don't understand, you
12 know, and it's a hard situation. And I just want you to
13 know that he is a really good person and he loves his
14 family and a lot of people love him. And we really, we
15 just -- it's just a sad situation. I am sorry, I am really
16 sorry.

17 THE COURT: Thank you, ma'am.

18 THE WITNESS: I'm Pamela Kirkley, my two older
19 children belong to Mr. Thompson. I just want to say this
20 was very out of character for him, to have done such a
21 thing. I was just totally in shock. And I also want to
22 say that I'm sorry for the victim's family. Everybody
23 makes mistakes.

24 MR. LIFSEY: I know the rest of them love him, they're
25 all pretty emotional. I'm going to let Rodney speak. I'll

1 just ask the Court consider a 20 year sentence in this
2 case. I know that will never compensate the victim's
3 family for the loss they suffered but no amount is going to
4 compensate them for the loss they've suffered. If you
5 impose -- whatever sentence you impose today these
6 negotiations will put him in prison until he's a much older
7 man and we would ask you to take all of that into
8 consideration. I would ask you to hear from him. He told
9 me he wanted to apologize to the victims in the case and I
10 know we usually address the Court but with your permission
11 he would ask to address the victim's family.

12 MR. BARFIELD: I spoke with Ms. James, she has no
13 objection to Mr. Thompson addressing her directly.

14 THE DEFENDANT: Ms. James, I'm sorry and I just hope
15 that one day you can find it in your heart to forgive me.
16 I am so sorry, I wish I could take this back. I just want
17 to tell my family I'm sorry and I love y'all.

18 MR. LIFSEY: Thank you, Judge. Thank you for hearing
19 from us.

20 THE COURT: Solicitor?

21 MR. BARFIELD: Your Honor, let me tell you a little
22 bit about Mr. James' family. First of all his mom is Betty
23 Morris James whose present, Ms. James, raise your hand.
24 He's got a sister, Yolanda James, and a brother Stephon
25 James. His daddy, Willie P. James Jr. is deceased. I have

1 spent a lot of time with Ms. James and Yolanda in
2 particular and the stepfather and they've all been at the
3 bond hearings, been faithful, I sat with them in my office,
4 I sat with them in their home and they've had a great
5 interest in this case and certainly are very heart broken
6 over it. I have fully explained to them why we are, what
7 we're doing and I believe everybody is okay. I would to
8 invite Ms. Betty James to step up to the microphone, she
9 has been here for bond hearings, she knows how it works.

10 THE DEFENDANT: My name is Betty Morris James, I'm the
11 mother of Quintal Nehemiah James. I forgive Rodney but be
12 it drugs, be it over a woman, you cannot walk in someone's
13 house and shoot them and kill them unarmed. In my heart I
14 would like to see Rodney serve a life sentence, but I know
15 it's in the Court's hands to what you give him. Rodney's
16 family can touch him, they can go to prison and touch him,
17 they can talk to him but we can't talk to Nehemiah anymore.
18 And it's not an eye for an eye, but in society with this
19 killing and this murdering and shooting someone unarmed, it
20 has to stop somewhere, and until we give the kind of
21 sentences that should be done on murder cases like this,
22 murdering will continue. But Nehemiah was shot the first
23 time unarmed and he raised his arm to guard himself, he got
24 the first bullet in his arm then the next three bullets hit
25 him in his side which he was a very thin guy, and those

1 three bullets tore his insides up and he hemorrhaged to
2 death. No, Nehemiah was not perfect. No, Rodney is not
3 perfect, but I just want justice done, because I have to go
4 to the cemetery to talk to Nehemiah and Rodney's family can
5 still see him and talk to him. So I ask you to give Rodney
6 the sentence that -- not a light sentence because he took
7 something that he can't give back and that's a life. Thank
8 you, Your Honor.

9 THE COURT: Thank you, ma'am.

10 MR. BARFIELD: Your Honor, just a couple of other
11 things from me. I would just like to point out two or
12 three of the things that really concern the State in this
13 case. One is Thompson knew some time before the shooting
14 that he was not welcome at James' home and he left after
15 the first confrontation and presumably during that absence
16 armed himself and he returned and apparently did not
17 hesitate to fire that gun once he got inside the door and,
18 it did occur in Nehemiah James' home. Your Honor, it
19 probably was fueled by substance use that day and I think
20 the statement bears that out, those things concern me.
21 This was not an argument face to face with Thompson being
22 armed during the initial argument, he pulled it out in a
23 rage and shot, he obviously -- if he wanted to think about
24 it he could have thought about it and could have just
25 stayed wherever he went when he left. But he didn't, he

1 went back. Your Honor, certainly your sentence needs to
2 address this crime and this defendant and I am sure that it
3 will. This though, again, is as we have all said in this
4 proceeding and in many, many others like it, another tragic
5 case of drugs and guns and disputes and dead people. These
6 folks have just got to know that there is serious
7 consequences to doing this kind of stuff and I would ask
8 you to take that into consideration also. Thank you.

9 THE COURT: Anything else, Mr. Lifsey?

10 MR. LIFSEY: Your Honor, the only thing I would add is
11 I don't disagree with the seriousness of this charge, I
12 would just ask the Court to take into account that most of
13 the gun crime, murder, shooting cases we have involve young
14 men in their mid-twenties who have a had history of violent
15 crime. He is different than that. And I would just ask
16 you to take into account that a 20 year sentence to this
17 young man -- this man is different than a 20 year sentence
18 to another man who is 20 years old or whatever the Court
19 thinks. I would just ask you to take into account that
20 broader picture as well when you impose sentence. Thank
21 you.

22 THE COURT: The Court is going to do that. The Court
23 does take into consideration all of the factors, all of the
24 things mentioned by the solicitor as well as Mr. Thompson's
25 attorney. The sentence I'm going to impose, Mr. Thompson,

1 will result in you being incarcerated until a time that you
2 will be over 60 years of age, but I'm not going to require
3 you to stay in jail until you're 70. Mr. Thompson, I
4 sentence you to the department of corrections for a period
5 of 24 years, give you credit for time served. Good luck to
6 you, sir.

7 (End of proceedings.)


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1 I, the undersigned, Michael C. Watkins, Official
2 Court Reporter for the Sixth Judicial Circuit of the State
3 of South Carolina, do hereby certify that the foregoing is
4 a true, accurate and complete transcript of record of the
5 proceedings had and evidence introduced in the trial of
6 the captioned case, relative to appeal, in the Court of
7 General Sessions for Lancaster County, South Carolina, on
8 the 28th day of March, 2011.

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

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April 25, 2012.


Michael C. Watkins
Court Reporter

(64)

STATE OF SOUTH CAROLINA)
County of Lancaster)

IN THE COURT OF COMMON PLEAS

Rodney Thompson 345452)
Full name and prison number (if any) of Applicant)

2012 CP 29 00004

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

FILED
CLERK OF COURT
2012 JAN -3 AM 10:26
LANCASTER SC

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 South Carolina Dept of Corrections
Kirkland Rd, Columbia, SC, 29210
2. Name and location of Court which imposed sentence Court of General Sessions - Lancaster County, South Carolina
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) A/W K173890 Indictment/case 2010-05-29-838

(b) _____ 29
(c) _____

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

(a) March 28, 2011
(b) 24 Years - Voluntary Manslaughter
(c) 16-3-50 - CDR Code 0257 - Violent - Most Serious

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____
(b) after a plea of not guilty _____
(c) after a plea of nolo contendere _____

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

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

(a) the name of each Court to which you appealed:
i. _____
ii. _____
iii. _____
(b) the result in each such Court to which you appealed:
i. _____
ii. _____
iii. _____
(c) the date of each such result:
i. _____
ii. _____
iii. _____
(d) if known, citations of any written opinion or orders entered pursuant to such results:
i. _____
ii. _____
iii. _____

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

(a) Plead to - Voluntary Manslaughter

- (b) _____
- (c) _____

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

- (a) Ineffective assistance of Counsel
- (b) Attorney did not interview any witnesses
- (c) Attorney had large case load. Could not represent defendant.

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

- (a) He had Tactical and Strategy disagreements with Attorney
- (b) The Case went to trial with unwanted Counsel
- (c) Did not make motion or request Sub. Attorney

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

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

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

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____

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

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

No

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

- (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Mike Sifney - Somerville S.C. 29770
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____

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

PCR - Time reduction
Reverse Sentence
New Trial

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 Spartanburg, SC)

VERIFICATION

I, Rodney Thompson, 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.

Rodney Thompson

SWORN to and subscribed before me this 20th day of December, 2011.

[Signature] (L.S.)
Notary Public

My Commission Expires October 8, 2014

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

I, Rodney Thompson, 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.

Rodney Thompson
Applicant

SWORN or affirmed to and subscribed before me this
20th day of December, 2011.

[Signature]
Notary Public

My Commission Expires

My Commission Expires: October 8, 2014

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

FILED
OFFICE OF CLERK
OF COURT THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT
2012 JUL 27 PM 3:19

CLERK OF COURT
LANCASTER, SC 2012-CP-29-0004

Rodney Thompson #345452,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

The Respondent, making its Return to the application for post conviction relief (PCR) filed January 3, 2012 would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. The Applicant was indicted at the June 2010 term of the Lancaster County Grand Jury for murder (2010-GS-29-0838). He was represented by Mike Lifsey, Esquire. On March 28, 2011, the Applicant pled guilty to the lesser included offense of voluntary manslaughter. He was sentenced by the Honorable Brooks P. Goldsmith to confinement for a period of twenty-four (24) years. The Applicant did not appeal his guilty plea or sentence.

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

II.

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

1. Ineffective Assistance of Counsel, in that;
 - a. "Attorney did not interview any witnesses,"
 - b. "Attorney had large case load [and] could not represent [Applicant],"
 - c. Applicant had tactical and strategic disagreements with Counsel, and
 - d. Counsel failed to request substitute 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, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

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

Further, Respondent submits that "[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648 (1984); U.S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990). Additionally, Applicant alleges ineffective assistance of trial counsel due to tactical disagreements. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992).

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

IV.

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

V.

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


Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

June 25, 2012

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

FILED
OFFICE OF CLERK
6th JUDICIAL CIRCUIT
2012 JUN 27 PM 3:20

THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Rodney Thompson,

CLERK OF COURT
LANCASTER, SC

2012-CP-29-0004

Applicant,

v.


State of South Carolina,

Respondent.

CERTIFICATE 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 Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Elizabeth H. Black, Esquire
Haynsworth Sinkler Boyd, PA
P.O. Box 11889
Columbia, South Carolina 29211



Anne A. Mueller
Legal Assistant for the Respondent

DATED this 25th day of June, 2012.

I-N-D-E-X

WITNESSES:	Direct	Cross	Re-Direct	Re-Cross
Rodney Thompson				
By Mr. Shaffer	5			
By Ms. White		16		
By Mr. Shaffer			21	
Mike Lifsey				
By Mr. Shaffer	22			
By Ms. White		35		

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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NO EXHIBITS

1 MS. WHITE - Thank you, Your Honor. This is the
2 case of Rodney Thompson versus the State. It's case number
3 2012-CP-29-0004. Mr. Thompson's represented by Tristan
4 Shaffer today. He was indicted June of 2010 on a murder
5 charge and ultimately pled to voluntary manslaughter March
6 28th, 2011, was represented by Mr. Mike Lifsey at that
7 guilty plea. It was a negotiated plea with a range of 20
8 to 30 years for the voluntary manslaughter. He received a
9 sentence of 24. He's raised various allegations of
10 ineffective assistance of counsel in that counsel did not
11 interview any witnesses, counsel had a large case-load,
12 could not effectively represent the applicant, applicant
13 tactical strategic disagreements with counsel and counsel
14 failed to request substitute counsel, and at this time I
15 can turn it over to Mr. Shaffer.

16 THE COURT - All right, Mr. Shaffer.

17 MR. SHAFFER - Thank you, Your Honor. We'll go
18 ahead and call the applicant.

19 THE COURT - All right.

20 RODNEY THOMPSON, AFTER BEING FIRST DULY SWORN,

21 TESTIFIES AS FOLLOWS -

22 MS. WHITE - He needs to be on the witness stand,
23 Your Honor.

24 THE COURT - Sure.

1 (Whereupon, Mr. Thompson takes the stand.)

2 MR. SHAFFER - I apologize. I haven't been to
3 Lancaster yet, so ---

4 DIRECT EXAMINATION

5 BY MR. SHAFFER -

6 Q Good morning, Mr. Thompson. Can you please state your
7 name?

8 A Rodney Thompson.

9 Q Okay. You're currently serving how many years?

10 A Twenty-four.

11 Q And that's for what?

12 A Involuntary manslaughter.

13 Q You mean voluntary manslaughter. Right?

14 A Yes, voluntary manslaughter, my bad.

15 Q What was your original charge?

16 A Murder.

17 Q Okay. Briefly give us a factual background of what
18 happened during the -- concerning the charge you were --
19 you're alleged to have committed.

20 A You want to know what happened the night of the
21 murder?

22 Q That's correct.

23 A What all -- the night -- well, that day ---

24 Q Well, what are the allegations? I apologize.

RODNEY THOMPSON - DIRECT BY MR. SHAFFER

6

1 A The day that all of this happened, that they say this
2 happened, that I was -- me and a couple more guys was at a
3 fellow's house and um we was standing in his yard and when
4 -- well, I found out later on that he came home -- he
5 wasn't already in the house; he came home and that he
6 walked past us. He didn't say nothing to nobody and then
7 he went in his house and then he come directly out of his
8 house and he had a big pipe and a big branch in this hand
9 and he was coming off his porch and he was like, you m-f-
10 er, I'm going to kill you, I'm going to kill you and all
11 that. I thought he was talking to one of the other guys
12 that was in the yard, but as he kept coming towards us, he
13 was coming directly towards me and he was like, I'm going
14 to kill you, you mother, you know, m-f, I'm going to kill
15 you and I'm going to do this and I was like, yes, yo, man,
16 what is wrong with you, I haven't nothing to you, you know,
17 why are you out here saying something about you going to
18 kill me, so I asked him, I said, yo man, if you got a
19 problem with me, let's just -- put your weapons down and
20 we'll just handle this, you know, fist to fist, like mans,
21 you know, and he was like, no, I'm going to kill you, I'm
22 going to kill you, you know, I'm going to kill you, and I
23 was like, man, what is wrong with you, dude, and he kept
24 saying -- so I left, so me and the guys -- well, I left; I
25 went, so later on ---

1 Q Well, tell me this -- before you go any further.

2 While you were there, did y'all have a dispute about any --
3 a woman?

4 A No. Wasn't no dispute. Like I say he had -- he had
5 just come home. I thought he was already in his house but
6 later on I found out that he come home from work. His mom
7 let him out, but he come past us. But we didn't have no
8 dispute. Me and him like Thursday we was together hanging
9 out, because I know him; we knew each other from past tense
10 (sic). We knew each other. Friday we was together. We
11 had no disputes on nothing. Everything was alright with
12 us; then that Saturday, this when all this happened. So
13 like I was saying, when I left -- I kept trying to call
14 this guy because I wanted to talk to him to find out, you
15 know, why in the world do you want to kill me and I done
16 nothing to you, so I kept calling him; I kept calling him;
17 I kept calling him. He never would pick his phone up, so I
18 went back to his house to try to talk to him again, and the
19 guy that's opened the door, he said, man, I don't want no
20 trouble. I said, man, it ain't going to be no trouble; I
21 just want to talk to him and find out what's wrong, you
22 know, to find out what's wrong; this man want to kill me,
23 why; so by that time, the dude opened the door, the guy
24 come again running from like out of his living room to the
25 door where I was standing at with the weapons in his hand

RODNEY THOMPSON - DIRECT BY MR. SHAFFER

8

1 again hollering, I'm going to kill you, I told you I'm
2 going to kill you, so at that time ---

3 THE COURT - So what's - what's all this about?

4 MR. SHAFFER - Your Honor, I -- I apologize. I'm
5 just trying to lay -- lay a factual basis for -- for the --
6 -

7 THE COURT - Well, that -- all that's well and
8 good, but here's the thing. I'm -- as you don't know, but
9 everybody else in here that's been in front me does, I'm a
10 speed reader. He didn't say any of that in front of Judge
11 Goldsmith, so I'm not re-trying the case.

12 MR. SHAFFER - Yes, Your Honor. I understand.

13 THE COURT - He had -- he had an absolute
14 opportunity to have a jury trial if he wanted one, and none
15 of that is in the facts that were relayed by the Solicitor
16 or Judge Goldsmith, and Judge Goldsmith asked him on page
17 whatever, 9, 10 or 11 -- I passed it a while back -- if he
18 agreed and he said yes. So now he's trying to say
19 something else. You can tailor your things to him about he
20 had a self-defense maybe and he didn't pursue it, but I'm
21 not interested in all of that stuff. That doesn't have
22 anything to do with his post conviction. Could've been
23 quite pertinent in a trial.

24 MR. SHAFFER - Yes, Your Honor, and I apologize.

25 What I'm essentially getting at is the basis for one of the

1 claims regarding -- regarding essentially ineffective
2 assistance of counsel during the plea negotiation stage,
3 and I was about to ask him questions to illicit some of the
4 information that he gave his attorney regarding the charge.

5 THE COURT - You can do that, but what happened
6 that night and all that, you know, that's -- that has no
7 bearing here, ---

8 MR. SHAFFER - Yes, Your Honor, ---

9 THE COURT - --- other than he told Lifsey that he
10 should've investigated this and put forth a self-defense I
11 guess is what you're getting at.

12 MR. SHAFFER - No, Your Honor, it's ---

13 THE COURT - Or something.

14 MR. SHAFFER - Yes, Your Honor. Essentially I'm -
15 - I was going to question him about the part that never got
16 into the transcript which he did tell Mr. Lifsey about, and
17 I'm pretty sure he will -- he'll also say that.

18 THE COURT - All right. Go ahead, but I mean, you
19 know, just reciting everything that ---

20 MR. SHAFFER - Thank you, Your Honor. I apologize
21 ---

22 THE COURT - --- what was not covered at the plea,
23 but that's no basis for me to consider. So go ahead.

24 MR. SHAFFER - I apologize, Your Honor, and I -- I
25 appreciate your reading the factual background.

RODNEY THOMPSON - DIRECT BY MR. SHAFFER

1 Q In between the time you left and the time you came
2 back, you went -- you went over to someone's house.

3 Correct?

4 A Yes.

5 Q And did that someone give you a gun?

6 A Yes, he did.

7 Q And did that someone have a problem with the victim?

8 A Yes, him and the victim had had problems.

9 Q And did that someone get you high?

10 A Yes, he did.

11 Q Okay. And then he -- he essentially sent you back
12 over to the victim's house. Correct?

13 A Yes, he did.

14 Q Okay. What happened afterwards, after the shooting
15 occurred?

16 A After the shooting occurred I went back to his house,
17 gave him the gun and then I left.

18 Q Okay. So you gave the gun back to the person who had
19 a problem with the victim.

20 A Yes.

21 Q Okay. Now -- now getting to -- when's the first time
22 you met Mike Lifsey?

23 A When I was at the county jail.

24 Q And he represented you on these charges?

25 A Yes, sir.

1 Q About how long after the -- your arrest did you first
2 meet him?

3 A Maybe -- I can't really exact say. It's -- a few days
4 I guess after I -- I was arrested.

5 Q Okay. And how many times did you see him in between
6 the time you were first arrested and the time you were
7 scheduled for trial?

8 A One time. I just seen him one time when he came to
9 the county jail to talk to me.

10 Q Okay. And what did he talk to you about at that
11 point?

12 A Just about what had happened, you know, what had went
13 on with the -- what had happened the night that I was
14 arrested. He was asking me questions about what had
15 happened and stuff like that, and he was asking me why did
16 I talk to the officer, but like what I was telling --
17 trying to tell him -- I was telling the officer that I
18 wanted to speak to a lawyer. When I asked the lawyer --
19 when I asked the officer for a lawyer, they gave me a
20 cigarette and a cell phone instead of, you know, -- then
21 they was like coming at me with all kind of questions. You
22 know, at this time, man, I was -- I was a drug addict. I
23 was addicted to crack cocaine, cocaine, all kind of stuff.
24 Man, I was -- I was messed up, and I wasn't in my right
25 mind at the time, and the officer that was questioning me,

1 he knew me and he knew what kind of person I was, so he
2 used that against me knowing that I wasn't in my right
3 mind, knowing that I was half crazy, you know, so I
4 might've said some things to him that I shouldn't have
5 said, but it's a lot of things that was wrote that I said I
6 didn't say. You know, like I asked Mr. Lifsey why he
7 didn't ask them why didn't they let me write this out; when
8 they was talking to me, they did it on they own. You know,
9 they did -- then they was saying stuff that I didn't say.
10 Still, like I'm saying, I'm a drug addict; I'm not in the
11 right spot in my mind at this time and a lot of things
12 happened and uh, you know.

13 Q And this was -- this was all contained in that one
14 conversation at the county jail?

15 A Yes, sir.

16 Q And did you tell him -- well, first of all, you told
17 the police that the gun was hidden. Right?

18 A Yes, sir.

19 Q Did you tell them where -- where they could find it?

20 A Yes, sir, but it wasn't true.

21 Q Okay. You did not tell them where you actually put
22 the gun?

23 A No, sir.

24 Q Did you tell Mr. Lifsey where you actually put the
25 gun?

1 A I don't think I did.

2 Q Okay. Did you tell them about who gave you the gun?

3 A No, sir.

4 Q You didn't?

5 A No.

6 Q Okay. When you got called to Court, what -- did he --
7 did he discuss with you the possibility of pleading?

8 A Yes, he did, and we -- we had talked about going to
9 trial. We was talking about -- I was telling him I thought
10 I had a better chance going to trial than pleading, but
11 then he called and was saying stuff like, yo, man, they
12 going to give you a life sentence, all this and that if you
13 don't plea, if you don't take this plea, this is what's
14 going to happen, this is the best deal you can get was no
15 less than 20, no more than 30, and like the day before we
16 was going to trial -- we -- I thought I was going to trial
17 but then he come up and saying that -- was talking about
18 taking this plea bargain.

19 Q Okay. And what was the plea bargain?

20 A No less than 20, no more than 30.

21 Q And what did he tell you about your chances at trial?

22 A He didn't really talk about it. He was just saying
23 like, you know, if you go trial and you're found guilty,
24 they're going to give you a life sentence.

25 Q Okay. And why did you end up pleading guilty?

RODNEY THOMPSON - DIRECT BY MR. SHAFFER

14

1 A Because I didn't -- to tell you the truth, when he
2 said that life sentence thing, that changed a whole lot of
3 different things in my mind, you know, because I -- for me
4 I felt like I was -- I was not guilty of killing, just
5 madously (sic) killing this man; this man threatened my
6 life, but when I was thinking about, you know, okay, if I
7 go to Court, the Court's don't see it my way, I'm going to
8 jail for the rest of my life, well, I don't know, and I
9 just -- that changed a lot.

10 Q And when preparing for this PCR, I informed you that
11 if you win this PCR, you're likely going to go back and you
12 could face a murder charge.

13 A Yes, sir.

14 Q Do you want to proceed forward anyways?

15 A Yes, sir.

16 Q Are you aware that you could get a life sentence by
17 succeeding on this PCR?

18 A Yes, sir.

19 Q Okay. And how many times total have you met Mr.
20 Lifsey?

21 A Couldn't have been no more than one or two times. It
22 wasn't that many times that I seen him ---

23 Q Okay.

24 A --- from the time that I was in jail to the time I
25 went to Court.

1 Q How many months was that?

2 A Then what you mean in months in what?

3 Q How long was that? How long of a period of time?

4 A When I seen him for when I went to Court?

5 THE COURT - He was in jail about a year.

6 A Yes, I was in jail for ---

7 MR. SHAFFER - Thank you, Your Honor.

8 A I didn't understand what you were saying.

9 Q And had he -- had he discussed trial strategy with you
10 more, would you have gone -- gone forward with your trial?

11 A Yes, I would've. If -- if he was like -- to me, if he
12 was like he was trying to be on my side, if he was trying
13 to help me, I would've did -- it just seemed like he wasn't
14 my attorney; he was -- they appointed me this person and
15 for him to just do whatever he could to get me to do and
16 that was basically what I thought he was doing, just trying
17 to get me to get onto Court and get this over with. I
18 didn't seem (sic) like he was trying to be a lawyer to me,
19 to tell me things that was going to happen, tell me this,
20 tell me that, but it was just like, going to do this, going
21 to do this, you take this and you plead to this and then it
22 was over.

23 MR. SHAFFER - No further questions, Your Honor.

24 THE COURT - All right.

25 MS. WHITE - Just briefly, Your Honor.

RODNEY THOMPSON - CROSS BY MS. WHITE

1 CROSS EXAMINATION

2 BY MS. WHITE -

3 Q Mr. Thompson, you testified that you only met with
4 counsel a few days after your arrest and only one more time
5 before your trial?

6 A Yes, ma'am.

7 Q Or before your plea?

8 A (No response)

9 Q You said that the statement you gave you thought that
10 you could've attacked that statement; you could've argued
11 that you were high when you made the statement. Is that
12 true?

13 A I don't understand what you're saying.

14 Q You were saying that you gave a statement to police, a
15 confession.

16 A Yes, ma'am.

17 Q And you were saying that they -- you were asking for
18 an attorney but you didn't really know what was going on
19 because you were high?

20 A Yes, ma'am, in a way I -- yes, I was high.

21 Q Isn't it true that the statement was given on the 31st
22 of March and this incident happened on the 27th?

23 A I don't -- I think it was the day before -- the day
24 after when I signed it, the 20th (sic) 29th. This would've

1 either been on the 30th -- either the 29th or the 30th,
2 because it was like the next day.

3 Q Okay.

4 MS. WHITE - If I can approach, Your Honor?

5 THE COURT - Sure.

6 Q I'm going to show you -- do you recognize that
7 document? Is that your initials and your signature?

8 A Yes, ma'am.

9 Q Okay. And it says suspect's warnings and Miranda
10 right -- Miranda warnings?

11 A Where are you asking?

12 Q It says that that -- this was your rights and Miranda
13 warnings that they read to you and where you initialed and
14 signed. Do you recall doing that?

15 A No, ma'am, I don't recall them reading ---

16 COURT REPORTER - He needs to speak up.

17 A I don't remember them giving me -- reading me nothing.
18 I remember signing it. Yes, I signed it. That's my
19 initials.

20 Q Okay. And the date does say March 31st, 2010?

21 A Yes, it does.

22 Q Okay. So this does indicate that you gave a statement
23 to police and waived your rights to have an attorney
24 present when you gave that statement on March 31st, four
25 days after the incident. Is that right?

1 A Yes, ma'am.

2 Q Okay. Now, you said that Mr. Lifsey didn't talk with
3 you about the possibility. He just told you that you had a
4 chance of getting life at trial?

5 A Yes, ma'am.

6 Q So you ever discussed with him the facts of the case
7 and whether or not you could pursue self-defense or if this
8 was a voluntary manslaughter case versus a murder?

9 A No, ma'am. What me and Mr. Lifsey only talked about
10 was just be going to Court for -- I told Mr. Lifsey that I
11 wanted to go to trial with this, not just take no plea or
12 nothing like that; I wanted to go to trial, and that's when
13 he said, you know you're facing a life sentence if you take
14 this trial. He didn't say nothing else about this or
15 nothing about that. He just -- that's just what he told
16 me.

17 Q And he was telling you that, because at the time you
18 were facing a murder charge. Is that right?

19 A Yes, ma'am.

20 Q And so did he explain to you that you could get 30 to
21 life, day-for-day?

22 A He just said a life sentence.

23 Q Okay. And you -- when you heard that you could get a
24 life sentence, you decided you wanted to plead guilty so
25 you didn't face that. Is that right?

1 A Well, it wasn't that. I was just trying to think of a
2 way I could get out of jail without going to jail for the
3 rest of my life.

4 Q Okay. And you signed a document that was entered into
5 the Court at your guilty plea acknowledging that you had
6 talked with your attorney about a lot of these items. Is
7 that not right?

8 A Miss -- I'll tell you again, Miss, I was -- I was
9 addicted to drugs for over 10 or 15 years of my life,
10 heavily addicted to drugs. At the time of this crime, I
11 wasn't me. I wasn't Rodney. I wasn't a person that stand
12 here before you today. This is not the person who was
13 standing before Mike Lifsey back then. It was a whole
14 total different person. I was fully out of my mind, so I -
15 - I could've done anything; I might've done anything
16 without even knowing it, but I -- not knowing it because
17 I'm not me, because I'm not the person that stands here
18 before you today. If I was the person that stood here
19 before you today at that time, it would've been a whole
20 total outcome of this trial.

21 Q And so do you agree that you did sign a statement
22 acknowledging that your attorney had gone over with you
23 your constitutional rights and right to a trial?

24 A I don't remember. I might've done it, but I don't
25 remember.

1 Q Okay. You don't remember the Court going over that
2 with you at the plea?

3 A No, ma'am.

4 Q And the plea was about a year after the incident. Was
5 it not?

6 A I think it was. I think it was. Might've been a year
7 sometime, somewhere in there. I don't really remember.

8 Q And you don't remember counsel talking with them about
9 the fact that he acknowledged this was a case where drugs
10 might've played a large part, that you had a severe drug
11 addiction? So obviously you had talked with him about
12 that.

13 A I don't remember him saying nothing to that nature.

14 Q Okay. And if the transcript reflects it says that,
15 would you agree that that probably occurred?

16 A If the transfer (sic) says it -- they might've just
17 wrote it in there. I can't say that it was said just
18 because it's in the transfer (sic).

19 MS. WHITE - Okay. All right, thank you, Mr.
20 Thompson. That's all I have, Your Honor.

21 MR. SHAFFER - Your Honor, just brief re-direct?

22 THE COURT - Sure.

23 RE-DIRECT EXAMINATION

24 BY MR. SHAFFER -

1 Q Now, Mr. Thompson, you -- how long after getting
2 arrested did you make that statement to the police?

3 A Well, she said it was the 31st, so I guess it was.

4 Q Okay. Do you remember why you made that statement to
5 the police?

6 A Really I was just talking. I guess I was just talking
7 to them. I didn't know -- well, at the time when I was
8 talking to Billy -- well, not -- the officer or whoever he
9 was -- I was telling him, you know, what was happening; I
10 didn't know I was giving him a statement saying that I done
11 something ---

12 Q You said Billy?

13 A Sir?

14 Q Who was the officer you were giving this to?

15 A His name was Officer Billy Hilton.

16 Q You know him.

17 A Yes, I knowed him, because we grew up together.

18 Q Okay. How did he approach you about the statement?

19 A He come to me not as an officer; he come to me as a
20 friend like he was talking to me like he was trying to find
21 out what happened and trying to help me, but in a way I
22 found out that he wasn't trying to help me; he was doing
23 what he was doing to find me guilty.

24 Q And did you tell this to Mr. Lifsey?

MIKE LIFSEY - DIRECT BY MR. SHAFFER

22

1 A Yes, sir, I told Mr. Lifsey that the officer that I
2 was talking to was a friend of mine, a friend of my family.

3 Q So you believed that the officer was trying to help
4 you out?

5 A I thought he was, but he wasn't.

6 MR. SHAFFER - No further questions, Your Honor.

7 THE COURT - All right.

8 MS. WHITE - Nothing further from the State, Your
9 Honor.

10 THE COURT - You can step down.

11 MR. SHAFFER - Your Honor, at this time we'd call
12 Mike Lifsey.

13 THE COURT - Okay.

14 MIKE LIFSEY, AFTER BEING FIRST DULY SWORN,
15 TESTIFIES AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. SHAFFER -

18 Q Good morning, Mr. Lifsey.

19 A Good morning.

20 Q You're the attorney who represented Rodney Thompson.
21 Correct?

22 A Yes, sir, I am.

23 Q How long have you been an attorney?

24 A Since 1991, so 21 years, 22 years now.

25 Q What's your current position?

1 A I'm the Circuit Public Defender for the Sixth Circuit.

2 Q Okay. And at that time you represented Rodney

3 Thompson, what was your position?

4 A The same. I was Circuit Public Defender at that time.

5 Q When was the first time you spoke with Mr. Thompson?

6 Do you recall?

7 A I do not recall the exact date. I remember it being

8 shortly after his arrest. I say every time I will take

9 better notes about when I meet people but I did not, but I

10 -- I did meet him shortly after his arrest as he testified.

11 Q Okay. And do you recall what you discussed with him?

12 A I -- my memory is at our initial meetings we did not

13 have discovery yet, so what my memory is is that he and I

14 talked in general terms about his background. I got the

15 usual kind of -- in fact, I have a -- I have some notes

16 indicate his background, where he's from, biographical

17 information, information about mental health history, if he

18 had any, all that kind of stuff I usually get, but I do not

19 think we got into the facts of the case in any great deal

20 at that point because I didn't have discovery yet, other

21 than telling him, of course, not to talk to anybody else; I

22 did tell him that.

23 Q And did you -- at what point did you get discovery?

24 A If you'd give me one minute. Let me see if I have a

25 note of -- the murder cases were handled -- discovery comes

MIKE LIFSEY - DIRECT BY MR. SHAFFER

24

1 sort of at a different pace on the murder cases than they
2 do with regular cases, mainly because the Solicitor --
3 elected Solicitor himself, Solicitor Barfield, usually
4 handles the murder cases. If you'd give me just one
5 second. (Pause) Well here -- I have a note dated April
6 27th, 2010 where our office sent him a copy of the
7 discovery, so I know we had it by then, because we gave him
8 a copy of it at that point.

9 Q Okay. So you sent him a copy in June.

10 A Yes, sir, because he asked me to.

11 Q And did you discuss it with him at the jail?

12 A Yes.

13 Q Do you remember your conversations with him?

14 A I do have notes from an April 27th conversation. This
15 is one note I actually managed to remember to date, and I
16 presume what would happen is I probably went over the
17 discovery with him on April 27th, and he probably at that
18 point wanted a copy, so I imagine I went back to my office
19 and told them to make him a copy which would be consistent
20 with what that letter is.

21 Q Okay.

22 A So we talked about the facts and circumstances I know
23 then.

24 Q Do you recall him telling you about the facts
25 surrounding the case?

1 A Yes, yes, sir.

2 Q What do you recall about his story?

3 A What he told me was basically what he told you
4 earlier. He had an altercation with the deceased that day.
5 He indicated to me that that day the deceased took a -- I
6 think he described it as a wrench or some kind of metal
7 tool and threatened to bust his head open. They had an
8 altercation at that time, and he told me about that.
9 Unfortunately, the -- unfortunately for Mr. Thompson, the
10 shots in this case didn't occur at that point. Mr.
11 Thompson indicated to me that he left the scene; he admit
12 he used crack and he smoked -- he smoked some crack; he
13 talked to some people and then he got a gun and he came
14 back and that's when the shooting happened.

15 Q Do you recall him telling you how he got the gun?

16 A No. He would not tell me where the gun came from. He
17 told me that it came from somebody, but he would not tell
18 me who.

19 Q Okay. Did he -- did he tell you where he placed the
20 gun afterwards?

21 A He told -- I don't recall him telling me an exact --
22 let me -- he told the police one story where -- that was
23 not true, and he admitted to me that he had lied to them,
24 because the police then later went and searched somewhere.
25 I can't remember where. I asked him -- and I remember

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26

1 asking him this shortly before the plea -- who he gave the
2 gun to, and he did not want to get that person in trouble
3 and he didn't tell me who he gave the gun to.

4 Q Okay. How many times total did you speak with him?

5 Do you recall?

6 A I do not recall total. My recollection in general is
7 about four times would be my guess. I have notes. While
8 my April 27th note is not -- is dated, I have notes from two
9 other times in two different pens I can tell, so I know I
10 talked with him at least twice on two other occasions. My
11 recollection is -- my recollection is three to four times
12 before the case went to trial -- or was scheduled for
13 trial.

14 Q If you would've gone to trial, what would've been your
15 trial strategy?

16 A I -- you know, I mean I guess we would've argued some
17 version of self-defense, but the problem is the facts just
18 didn't amount to self-defense. The facts really didn't
19 even amount to voluntary manslaughter. That's the ultimate
20 -- the ultimate problem in this case was that -- that he --
21 if he'd have shot him when he was threatened, you've got
22 either a self-defense or at worst a voluntary manslaughter
23 depending on how the facts came out, but the problem in
24 this case was that the facts indicated he left the scene
25 for, you know, I think he told me an hour or so before he

1 came back, and you know, that's a sufficient cooling down
2 period that not only -- I think it would eliminate the
3 voluntary manslaughter possibility. I'm sure I would've
4 tried to shape the facts to fit some theory of self-defense
5 or voluntary, but it would've been a very difficult selling
6 to a jury in my opinion.

7 Q At what point did you receive any sort of plea offer?

8 A Just a moment and I'll -- I have a plea offer dated
9 March 17th, 2011 from the Solicitor indicating a negotia --
10 a plea to voluntary manslaughter for a negotiated range of
11 20 to 30. That by the way is typical of the Solicitor
12 generally waiting -- I'm sure he set -- I mean I'm not --
13 I'm just -- I'm sure he set the trial date and then finally
14 got around to giving me an offer which is -- would be
15 typical the way homicides are handled around here.

16 Q And do you typically see 20 to 30 offers?

17 A It depends. I mean, you know, -- you know, if I --
18 it's hard to -- you know, he -- the Solicitor varies. I
19 mean in my experience, you know, a fight -- a fight, drug-
20 related kind of homicide, 20 seems to be about where he
21 starts. That seems to be about the ballpark of his average
22 offer, if you can say average, because every homicide is of
23 course different. In this case, you know, I think he
24 thought he had a -- between the facts and my client's
25 confession, I think he thought he had a pretty good case,

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1 so he was not willing to do any better than what he did, so
2 it was probably on the harsher side of offers, but on the
3 other hand, you know, like I say, I think he'd probably
4 been convicted of murder most likely if he'd gone to trial,
5 so it was a tough case, because Mr. Thompson seemed like a
6 pretty good fellow when he's not using drugs unfortunately.

7 Q Did the -- was there a lot of victim involvement in
8 the case?

9 A You know, I don't know. I mean I -- you know, the
10 victim -- what the Solicitor talks to the victims is, you
11 know, not something I'm really privy to. I mean I kind of
12 got the impression and my memory is from the plea that the
13 victim's family was there and very much involved, so it
14 wouldn't surprise me, but, you know, I have a letter -- if
15 you'll give me just a minute -- from the Solicitor. Give
16 me just a moment. I have a letter from the Solicitor dated
17 March 3rd, 2011 where he says, I will meet with the family
18 of the victim in the above-referenced case tomorrow morning
19 after the bond hearing, so I would -- that would probably
20 be -- he probably met with them at that point which led him
21 to formulate the offer that he communicated to me later on
22 that month.

23 Q Did you -- do you recall speaking with the Solicitor
24 trying to get it -- trying to get a lesser ---

25 A Yes, sir.

1 Q How many conversations do you recall?

2 A He and I talked multiple times about it. I mean um,
3 you have sort of good and bad from -- the facts were bad
4 for us, and the case file including the confession was bad
5 for us. On the other hand, my impression is that Mr.
6 Thompson was somebody that was generally fairly well-liked
7 in the community, you know, that he was -- he was from
8 Kershaw which is where the Solicitor's from and where --
9 Billy Hilton who took the statements were from and they all
10 knew him and seemed like a pretty nice decent fellow and
11 everybody generally kind of liked him, so I mean I tried to
12 leverage that as best I could into a better plea offer,
13 but, you know, Solicitor and I talked about it several
14 times and that was the best he would do.

15 Q And were you able to get any -- were you able to speak
16 to any of these mitigation type witnesses?

17 A I asked Mr. Thompson to get me people that could come
18 in and say good things about him and my recollection is
19 people were there and appeared in Court and said things for
20 him at the plea. I haven't really looked at that portion
21 of the transcript lately.

22 Q At this time how many cases do you have?

23 A Me personally? I don't know. I don't know that. I'm
24 not trying to avoid answering -- if you're general point is
25 is our -- my office in its entirety over the suggested

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1 standards by the ABA, I would say that we certainly are. I
2 probably am not, only because I do administrative duties
3 and stuff. I probably have a less case-load than the rest
4 of them, but ---

5 Q So but you're not a full-time criminal defense
6 attorney. There's parts of your job requiring
7 administrative work?

8 A Yes, I do more management than I would like to do and
9 more budget things than that I would to do.

10 Q Is it safe to say there is a significant portion of
11 your job that requires administrative work?

12 A Yes.

13 Q Okay. Would you venture to guess approximately how
14 many or what percentage, half, three-quarters, a third of
15 your time administrative?

16 A You know, I -- it's hard -- it's hard to say. I mean
17 I -- more than it ought to be it would seem to me for a
18 relatively small office. I mean I -- I would bet -- and it
19 depends on the time of the year frankly, because -- whether
20 it's budget time or not budget time. I bet you probably
21 half -- half of my time probably or close -- maybe a little
22 less than a half is devoted to budget, legislature,
23 personnel issues in the office, management kind of things.

24 Q And your office as a whole, how many attorneys do you
25 have?

1 A Counting ---

2 Q In the whole Sixth Circuit.

3 A Counting me we have four full-time and -- let me make
4 sure I'm telling you right. Four full-time and three in --
5 well, not -- counting me, five full-time lawyers and three
6 lawyers in some degree of part-time varying -- varying
7 degrees depending on their own personal circumstances.
8 We're the smallest in the State by population Circuit-wise
9 I will tell you.

10 Q The smallest Circuit in the State?

11 A Yes; yes, sir.

12 Q Okay. And approximately how many cases do most of
13 your full-time attorneys have?

14 A The full-time ones are probably significantly above
15 the ABA average. I would say they probably carry 300 or
16 so. Now, I will tell you that our back-log in this Circuit
17 skews those numbers because there are many cases that in
18 most places would probably be dismissed and are never going
19 to be tried, but our lawyers carry them, so I -- I could
20 get you at some point -- but I would agree that they were
21 probably in excess of 300 or close to 300.

22 Q Would you -- would you say ---

23 MS. WHITE - Your Honor, I would just object to
24 relevance for this. He hasn't drawn any connection to this
25 particular case.

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1 THE COURT - No, don't see any.

2 MR. SHAFFER - Your Honor, one of the -- if I may?

3 One of the allegations is that he -- he had insufficient
4 time to actually ---

5 THE COURT - Yes, but he just testified he didn't,
6 so why you going on about it?

7 MR. SHAFFER - Your Honor, I ---

8 THE COURT - This is -- I've been Chief Judge here
9 before. I'm Chief Judge all this year. They've got less
10 than most, you know. It may be that they're under-funded
11 and under-paid and all of that, but he said he had ample
12 time to do it, and I don't even understand why we're here.
13 The best that he can get is another trial, and from reading
14 the transcript he gets murder and life. Why he even wants
15 to pursue I do not know. Now, if you wanted to attack
16 this, you needed to have done your homework, subpoenaed all
17 those records about how many he has -- you know, you're
18 asking him in the abstract and he's given you, I think we
19 have so many per lawyer; he doesn't know that off the top
20 of his head. Maybe being Chief Public Defender he should,
21 but obviously he doesn't, so you don't have the facts, and
22 he can't supply you the facts to attack that. If that's
23 what you want to do, you're wasting our time on that issue
24 if that's his sole issue.

1 MR. SHAFFER - Your Honor, just -- and this for my
2 purposes. I certainly understand and I'm not arguing that
3 I -- I can go any further with the questioning. I'd just
4 ask that -- I ask that the case be left open and me to be
5 allowed to supplement it if necessary with -- with those
6 documentations. I ---

7 THE COURT - I don't see it in this case.
8 Normally -- I mean I might do that if it turned out that
9 this case was not properly prepared, but I have read the
10 transcript. He's got no chance in my opinion in a new
11 trial. Why he wants to go forward with it -- it's not in
12 his best interest. He's looking at 30 to life. Even --
13 and you haven't even got to the point about his confession
14 in it suppressed, but having read the transcript, Mr.
15 Lifsey brought that out to the Judge, that even were he
16 successful, the only defense that he could come up with was
17 a weak self-defense and he would have to testify to that,
18 and if he testified to that, the State would've come in
19 even if he had suppressed it. Now, of course, you could
20 still argue all that about the jury would have to find that
21 he was under the influence and all that, that, that.
22 Bottom line though, it's not a self-defense case under
23 anything that I have read or what he said, so he's looking
24 at 30 to life in a new trial which you might want to get
25 for him, and he might want to have, but he might want to

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1 serve life, but I'm not leaving it open to attack that he
2 was not prepared, because, one, he's 21 year public
3 defender. It's not like it's his first case, and he
4 handles murder cases. Solicitor handles the murder cases.
5 That's -- that's all; he knows how to handle a murder case.
6 Charge, murder charge.

7 MR. SHAFFER - Thank you, Your Honor.

8 THE COURT - And he might -- he may have been
9 over-extended as I've said. Testimony doesn't indicate
10 that. Doesn't show he didn't have enough time to do it
11 with him. You've got to have facts to win in a trial
12 before you can spend that much time on it.

13 MR. SHAFFER - Your Honor, if I may, I'm just
14 asking if I can ask if he believes he was over-extended.
15 Is that ---

16 THE COURT - No. You can ask him if he thinks he
17 did not have adequate time to investigate and prepare for
18 this case.

19 MR. SHAFFER - Yes, Your Honor.

20 THE COURT - Not the general question, because
21 he's over-worked and under-paid. That's what he's going to
22 say. Mr. Lifsey, right? Otherwise, you can't never get a
23 raise. But go ahead, ask him about this case, if he
24 thought he didn't have time to adequately prepare for it
25 because of his case-load.

1 MR. SHAFFER - Thank you, Your Honor.

2 Q Mr. Lifsey, do you believe that you had adequate time
3 to prepare for this case?

4 A Yes, I did.

5 MR. SHAFFER - Okay. Your Honor, at this time I
6 have no further questions.

7 THE COURT - Okay.

8 MR. SHAFFER - Thank you.

9 CROSS EXAMINATION

10 BY MS. WHITE -

11 Q Just briefly, Mr. Lipsey, you've talked about meeting
12 with the applicant. In regards to the sentence he faced,
13 he testified that you just told him he was facing life. Do
14 you recall if you talked with him about the possibilities
15 of a range of sentencing?

16 A Yes, ma'am. I mean I've got notes that indicate where
17 we talked about both the charges and what they carry,
18 murder, 30 to life a 100% of the time, that voluntary
19 manslaughter from two to 30 at 85% and then the plea --
20 I've got written plea, negotiated sentence where he's said
21 voluntary minimum 20 to 30 at 85% which I've calculated out
22 17 ½ years to 25 ½ years. We've even got some information
23 about his date, his birthday, how old he was; we discussed
24 how old he would potentially be when we got out. And then
25 we did that murder; basically if he were convicted at

MIKE LIFSEY - CROSS BY MS. WHITE

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1 trial, the best case is 30, of which he'd done about a
2 year, so we said he'd have 29 more years, and I think we
3 figured out he'd be 71 years old if he got out. I have
4 that information down, so, yes, we discussed it detail. I
5 didn't tell him he'd automatically get a life sentence at
6 all, but I told him he faced between a minimum of 30 of
7 which he'd have to serve day-for-day except what he'd
8 already served and up to life.

9 Q And in your discussions with the applicant in regards
10 to the facts of the case and the sentence potential, from
11 your understanding was he choosing to plead voluntarily
12 based upon that information?

13 A Yes, ma'am.

14 MS. WHITE - Okay. Thank you, Your Honor. That's
15 all the questions I have.

16 MR. SHAFFER - No further questions, Your Honor.

17 THE COURT - You can step down.

18 MR. SHAFFER - Your Honor, the applicant has no
19 further witnesses.

20 THE COURT - I can't hear you.

21 MR. SHAFFER - The applicant rests, Your Honor.

22 THE COURT - Okay.

23 MS. WHITE - And the State has no further
24 witnesses, Your Honor.

1 THE COURT - All right. Y'all can prepare Orders,
2 but it looks to me his best interest to me to deny it. I
3 don't see anything that's been presented, but maybe he can
4 come up with something that will sway me.

5 MR. SHAFFER - Thank you, Your Honor.

6 THE COURT - All right.

7 MS. WHITE - Thank you, Your Honor.

8 (END OF TRANSCRIPT)

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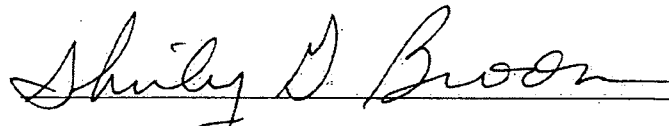
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C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 37 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Rodney Thompson vs. State of South Carolina as taken by me in the Court of Common Pleas for the Sixth Judicial Circuit on the 4th day February, 2013, and provided by me this the 19th day of July, 2014.

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



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LANCASTER)
)
)
 Rodney Thompson #345452,)
)
) Applicant,)
)
) v.)
)
 State of South Carolina,)
)
) Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTH JUDICIAL CIRCUIT

2012-CP-29-0004

ORDER OF DISMISSAL

FILED
 Clerk of Court
 LANCASTER
 2013 OCT 30 PM 2:21

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 3, 2012. The Respondent made its Return on or about June 6, 2012. An evidentiary hearing into the matter was convened on February 4, 2013, at the Lancaster County Courthouse. The Applicant was present at the hearing and was represented by Tristan M. Shaffer, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Michael Lifsey, Esquire, also testified. This Court also had before it a copy of the records of the Lancaster County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. The Applicant was indicted at the June 2010 term of the Lancaster County Grand Jury for murder (2010-GS-29-0838). He was represented by Mike Lifsey, Esquire. On March 28, 2011, the Applicant pled

guilty to the lesser included offense of voluntary manslaughter. He was sentenced by the Honorable Brooks P. Goldsmith to confinement for a period of twenty-four (24) years. The Applicant did not appeal his guilty plea or sentence.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel, in that;
 - a. "Attorney did not interview any witnesses,"
 - b. "Attorney had large case load [and] could not represent [Applicant],"
 - c. Applicant had tactical and strategic disagreements with Counsel, and
 - d. Counsel failed to request substitute counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v.

Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (*citing* Strickland).

Applicant alleged that Counsel was ineffective for failing to interview witnesses, lacking time to prepare for Applicant's case, and for disagreements with Applicant. Applicant testified that he received a sentence of twenty-four years for voluntary manslaughter. Applicant claimed that following the victim threatening to kill Applicant with a wrench, Applicant went to a third party's home, where the third party got Applicant high, gave him a gun, and took him back to the victim's home, where Applicant shot the victim. Applicant testified that he had given a statement to police regarding the case, but that he was still high when he gave the statement. However, Applicant acknowledged that the statement date was the 31st of the month, while the

incident had occurred on the night of the 27th. Applicant also stated that he told the police where the gun was located, but never told anyone about where or who he had gotten the gun from. Applicant testified that Officer Billy Hilton was the one who took his statement, but Hilton was a friend of his family, so Applicant did not realize that Hilton was not trying to help Applicant out.

Applicant also Applicant testified that he only met with Counsel twice, once a few days following his arrest and once at the jail. Applicant testified that he thought he had a good chance at trial, but Counsel told Applicant that he could receive a sentence of life. Applicant testified that he would have wanted to go to trial had Counsel talked with Applicant more and gone over possible defenses for trial.

Counsel testified that he met the Applicant shortly after the arrest, but because there was no discovery, the discussion focused on Applicant's background and Counsel telling Applicant to make any more statements. Counsel indicated that he had a copy of a letter in his file, dated April 27, 2010, which he sent along with a copy of discovery to Applicant. Counsel testified that he met with the Applicant approximately four times. Counsel testified that he also met with the Applicant on April 27th, at which time the Applicant explained the prior altercation with the victim and the fact that the Applicant left the scene of the altercation, smoked crack, got a gun, and shot the victim. However, Counsel testified that the Applicant would not say where he got the gun from or who he gave the gun to following the shooting.

Counsel testified that he would have certainly tried the case, but he did not think that the facts of the case amounted to self-defense or even voluntary manslaughter. Further, Counsel testified that between the facts and the Applicant's confession, the State felt that they had a solid case. Counsel testified that he did receive a plea offer on March 17, 2011, to allow the Applicant to plead to voluntary manslaughter with a range of twenty to thirty years. Counsel testified that

he did try to negotiate a lesser deal, but the Solicitor would not agree. Counsel also testified that he reviewed the options with the Applicant and has notes where he showed the Applicant the sentence range for murder, along with the fact that it is day for day, and the sentence possibilities if Applicant pled guilty. Counsel testified that even though he has a significant caseload, he did feel that he enough time to investigate and prepare for this particular case.

This Court finds the testimony of Counsel to be more credible than the testimony of the Applicant. The Applicant's allegations that Counsel did not conduct an adequate investigation, interview witnesses, or meet with him enough are without merit. Following testimony and review of the transcript, it is clear that Counsel had prepared for and discussed the Applicant's case with him. The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must also show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990).

The Applicant failed to point to any specific matters Counsel failed to discover, witnesses that could have helped the case, or any defenses that could have been pursued had Counsel prepared more or had more time to work on Applicant's case. Furthermore, the Applicant failed

to show any prejudice that may have resulted from Counsel's alleged inadequate preparation or lack of meetings. Accordingly, these allegations are dismissed.

Regarding Applicant's allegation that Counsel failed to request substitute counsel, this Court finds that Applicant failed to offer any evidence or testimony in support of this claim. Therefore, the Applicant has failed to meet his burden of proof and this claim is denied and dismissed.

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel, the Applicant's testimony is not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

CONCLUSION

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

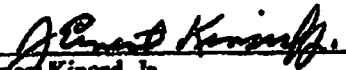
application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 22 day of Oct, 2013.



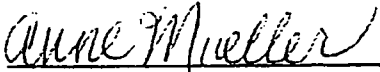
J. Ernest Kinard, Jr.
Presiding Judge

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER)	SIXTH JUDICIAL DISTRICT
Rodney Thompson,)	
)	2012-CP-29-0004
Applicant,)	
)	
vs.)	CERTIFICATE OF SERVICE BY MAIL
)	
State of South Carolina,)	
)	
Respondent.)	
)	

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

Tristan M. Shaffer, Esquire
 Shaffer Law Firm
 P.O. Box 176
 Chapin, South Carolina 29036

DATED this 6th day of February, 2014


 Anne A. Mueller
 Legal Assistant for the Respondent

DOCKET NO. 2010-GS-29-838

The State of South Carolina
County of Lancaster

FILED
OFFICE OF CLERK
OF COURT

86

2010 JUN 24 A 11: 51

CLERK OF COURT
LANCASTER, SC

COURT OF GENERAL SESSIONS

JUNE TERM 2010

THE STATE
vs.

Rodney Thompson

Indictment for
Murder

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

WITNESSES

Crump - LCSO # 10- 8592

Bailey

ARREST WARRANT NUMBER/DOA

K123890 (DOA-3-27-10)

ACTION OF GRAND JURY

A. S. P. Madala

Foreperson of Grand Jury JUN 24 2010

Date:

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

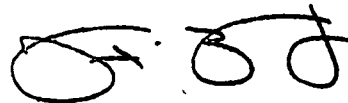
INDICTMENT

At a Court of General Sessions, convened on June 24, 2010, the Grand Jurors of Lancaster County present upon their oath:

MURDER

That Rodney Thompson did at [REDACTED], in Lancaster County on or about March 27, 2010, feloniously, willfully, and of his malice aforethought kill and murder Quintal Nehemiah James by shooting the victim three times with a handgun and the victim did die as the proximate cause thereof then and there, in violation of Section 16-3-10 of the *Code of Laws of South Carolina*.

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



Douglas A. Barfield, Jr., SOLICITOR