

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Bamberg County

James R. Barber, III, Circuit Court Judge

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S.C. Supreme Court

ORIGINAL

MARK A. BROWN, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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State of South Carolina)
 County of Bamberg) Court of General Sessions
 09-GS-05-0144

The State of South Carolina)
 Plaintiff)
 vs.) Transcript of Record
 Mark A. Brown)
 Defendant)

April 8, 2009
 Bamberg, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

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

Carol J. Summers, Assistant Solicitor
 Attorney for the Plaintiff

De Grant Gibbons, Esq.
 Attorney for the Defendant

Lisa H. Davenport
 Official Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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(none offered)

1 (Whereupon, on April 8, 2009 the following
2 proceedings were held:)

3 MARK A. BROWN, after being duly sworn, testified
4 as follows:

5 MRS. SUMMERS: This is 2009-GS-144, the State versus
6 Mark A. Brown, Jr. He is charged with murder. Your
7 Honor, he is pleading guilty to that offense. He is
8 waiving presentment to the grand jury and we are
9 recommending a 40-year cap.

10 THE COURT: Mr. Gibbons, you represent Mark A. Brown,
11 Jr., indictment 2009-GS-05-144, an indictment for murder.
12 It has not yet been presented to the grand jury. First of
13 all, have you advised him of his right to have the matter
14 sent to the grand jury before we proceed here today?

15 MR. GIBBONS: I have, Your Honor.

16 THE COURT: And does he wish to waive presentation of
17 the indictment?

18 MR. GIBBONS: Yes, sir, Your Honor. I went over the
19 procedure that that entails and explained it all to him
20 and he wishes to waive that and go forward here today and
21 I believe he signed the sentence sheet as such.

22 THE COURT: Mr. Brown, you stand before me. You have
23 been indicted for the crime of murder. The indictment
24 charges you with that crime. Typically, the indictment
25 goes to the grand jury to pass upon it before it comes

1 into this courtroom. The grand jury consists of 18
 2 members and the state presents evidence for the grand
 3 jurors to determine whether or not to what we call
 4 true-bill it to send it to this court for disposition.
 5 You have the right to waive that presentation of the grand
 6 jury and come straight on in here and have your case
 7 disposed of.

8 Your lawyer says you wish to waive or give up that
 9 right to have the indictment sent to the grand jury. You
 10 have signed the sentence sheet indicating that you wish to
 11 waive or give up the right to have the indictment
 12 presented to the grand jury. Is that correct?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Mr. Brown, do you have any questions that
 15 you'd like to ask me concerning the functions of the grand
 16 jury and or your right to have it presented -- have the
 17 indictment presented to the grand jury?

18 THE DEFENDANT: No, sir.

19 THE COURT: All right, sir. I find your decision to
 20 waive presentation of the indictment to the Bamberg County
 21 Grand Jury to be freely, voluntarily, and with the advice
 22 of counsel.

23 Mr. Gibbons, have you advised him of the charges
 24 contained in the indictment which is murder?

25 MR. GIBBONS: Yes, sir.

1 THE COURT: And have you advised him that under our
2 statutory laws that murder carries a minimum of 30 years
3 and a maximum of life imprisonment?

4 MR. GIBBONS: That's correct, Your Honor.

5 THE COURT: Have you advised him that under our
6 current statutory scheme that you do it day for day, that
7 there is no credit for good time, and whatever it is it
8 is.

9 MR. GIBBONS: That's correct, Your Honor. I told him
10 that that's what the law is right now.

11 THE COURT: So, if he gets 30 years, he does 30 years
12 day for day. If he gets 40 years, he does 40 day for day.
13 Whatever he gets, he does day for day.

14 MR. GIBBONS: Yes, sir, I explained that to him.

15 THE COURT: It is also classified as a most serious
16 offense. So, if he gets out and becomes involved in
17 breaking the law with crimes classified as serious and
18 most serious and he gets a combination of two strikes and
19 most serious or a combination of serious and most serious
20 three strikes he would be subjecting himself to life in
21 prison without the possibility of parole; is that right?

22 MR. GIBBONS: We've discussed that.

23 THE COURT: Have you discussed with him his right to
24 trial by jury -- explained to him his right to trial by
25 jury?

1 MR. GIBBONS: Yes, sir. We went thoroughly through
2 that. He does not wish to have a jury.

3 THE COURT: And it is my understanding that the
4 recommendation by the state is that there be a 40-year cap
5 on the sentence?

6 MR. GIBBONS: Yes, sir. And we have been over that
7 as well. He does understand that there is a 30-year
8 minimum and the cap is for 40 -- so, anywhere in between
9 those two.

10 THE COURT: That's simply a recommendation?

11 MR. GIBBONS: That's correct.

12 THE COURT: And has he advised you after you have
13 informed him of all of his rights as to how he wishes to
14 plead?

15 MR. GIBBONS: He has, Your Honor. He wishes to enter
16 a plea of guilty to this charge.

17 THE COURT: Mr. Gibbons, as his lawyer and after
18 having reviewed all the evidence and the facts in the case
19 are you in agreement with his decision?

20 MR. GIBBONS: I am, Your Honor. I've gotten a hold
21 of his school records, his mental health records, full
22 SLED report. I've been through it with him. There is
23 nothing in any of the information I have that indicates
24 there is any problem with him being before the court and
25 completely able to make this decision. He understands the

1 witnesses that will testify against him and we've been
2 through all that, and I'm comfortable that he knows what
3 he is doing and this is what he wants to do in this case.

4 THE COURT: Mr. Brown, good afternoon. You're 19
5 years old; is that correct?

6 THE DEFENDANT: Yes, sir.

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

8 THE DEFENDANT: To the ninth grade.

9 THE COURT: Eleventh grade?

10 MR. GIBBONS: Ninth.

11 THE COURT: Ninth grade. Before this happened were
12 you employed anywhere?

13 THE DEFENDANT: No, sir.

14 THE COURT: Where did you live?

15 THE DEFENDANT: In Denmark with my sister.

16 THE COURT: You understand what you're charged with?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You're charged with the offense of
19 murder. Under our laws murder carries a penalty of a
20 minimum of 30 years up to the balance of your natural life
21 in jail and that you do that time day for day. There is
22 no good-time credits. There is no parole. So, you do it
23 all. Do you understand the charges?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: I.E., murder. Do you understand the

1 possible punishment which is anywhere from 30 years to
2 life?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: There is a recommendation that I would
5 cap it at 40. I could listen to everything. I can go
6 along with the recommendation or may not, but it's not
7 binding on me. Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand that it's classified as
10 what we call most serious and that would be a strike
11 against you and in the event that you get out of
12 incarceration and become involved in criminal activity
13 that's classified as most serious and you get two of those
14 you would be subjecting yourself to life in prison without
15 the possibility of parole or if you got involved with
16 crimes classified as serious and you have two serious and
17 a most serious you would still be subjecting yourself to
18 life in prison without the possibility of parole?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Mr. Brown, understanding the charges,
21 i.e., murder, the possible punishment, the recommendation
22 the state has made, and the classification of most serious
23 and the fact that you have to do your time day for day,
24 how do you wish to plead, not guilty or guilty?

25 THE DEFENDANT: Guilty.

1 THE COURT: Mr. Brown, when you enter a plea of
2 guilty you give up certain of your constitutional rights.
3 One is your constitutional right to remain silent. You
4 will have to admit your guilt to me. Do you understand
5 that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: The other is your right to a trial by
8 jury. If you had asked or demanded a trial, of course,
9 the state would give you one at which time we would draw a
10 jury of 12 people. The state would call witnesses. You
11 would have the right to confront and cross examine those
12 witnesses through your lawyer. You have the right to
13 present your own case, your own defense. You can call
14 witnesses on your behalf. You could introduce relevant
15 exhibits on your behalf and you could testify in your own
16 defense. If you chose to exercise your constitutional
17 right to remain silent, then I would tell the jury that
18 they could not hold your failure to testify against you in
19 any manner whatsoever, and, in fact, I would instruct them
20 that they couldn't even consider the fact that you had not
21 testified when they deliberated your guilt or innocence.
22 You would be presumed to be innocent throughout the entire
23 trial and the State of South Carolina would have the
24 burden of proving your guilt beyond a reasonable doubt to
25 a jury of 12 people, and in order for that jury to convict.

1 you all 12 people would have to unanimously agree that you
2 were, in fact, guilty, and even if you were found guilty
3 you would still have the right to an appeal.

4 Mr. Brown, do you understand your rights to trial by
5 jury?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Understanding your rights to trial by
8 jury, do you still wish to plead guilty or do you want me
9 to schedule this case for a trial?

10 THE DEFENDANT: Plead guilty.

11 THE COURT: Other than the recommendation made by the
12 state, has anybody promised you anything, held out any
13 hope of reward, or threatened you in any manner in order
14 to make you plead guilty?

15 THE DEFENDANT: No, sir.

16 THE COURT: Anybody promised you anything to make you
17 plead guilty?

18 THE DEFENDANT: No, sir.

19 THE COURT: You're represented by Mr. Grant Gibbons
20 of the Public Defender's office. Are you totally and
21 completely satisfied with his legal representation?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: In your opinion, Mr. Brown, has
24 Mr. Gibbons had enough time to spend with you, your
25 family, enough time to research the law, enough time to

1 investigate the facts so that he can properly defend you
2 here today?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Mr. Brown, is there anything else you
5 wish for your lawyer to do for you today before we move
6 forward other than speak up on your behalf?

7 THE DEFENDANT: No, sir.

8 THE COURT: I ask you once again, sir, are you
9 totally and completely and fully satisfied with his legal
10 representation?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Are you today under the influence of any
13 alcoholic beverages, drugs, or prescription medication?

14 THE DEFENDANT: No, sir.

15 THE COURT: Mr. Brown, are you today aware of any
16 mental, nervous, or emotional conditions which would keep
17 or preclude you from understanding these proceedings?

18 THE DEFENDANT: No, sir.

19 THE COURT: Have you understood all of my questions?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Have you understood the conversations
22 with your lawyer?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Mr. Brown, are you entering this plea of
25 guilty of your own free will and accord?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Mr. Brown, did you here in Bamberg County
3 on or about August 20, 2008 shoot one Alfred Myers and he
4 died as a result of that shot? In other words, that you
5 did murder Alfred Myers?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Pleading guilty because you are guilty?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Pleading guilty because you broke the
10 law?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Pleading guilty because you killed Alfred
13 Myers?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. I find your decision to enter
16 this plea of guilty to be freely, voluntarily, and
17 intelligently made. You've had the representation of a
18 very competent lawyer Mr. Grant Gibbons whom you say
19 you're satisfied with and I'll accept your plea. If you
20 disagree with my sentence today or these proceedings you
21 have 10 days from today's date to file a notice of intent
22 to appeal. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Madam Solicitor.

25 MRS. SUMMERS: Thank you, Your Honor. May it please

1 the court. This happened on August 28 of 2008. Your
2 Honor, the victim was Alfred Edward Myers. He was an
3 88-year-old man who ran a candy store in Denmark. A child
4 went in the candy store to buy some candy from Mr. Myers
5 and noticed him lying on the floor in there and went and
6 contacted an adult who called 9-1-1. It was discovered at
7 the hospital that Mr. Myers had a gunshot wound to the
8 back and he actually expired very shortly thereafter. He
9 underwent cardiac arrest while he was en route to the
10 hospital and he passed away shortly thereafter.

11 South Carolina Law Enforcement Division investigated
12 the case and they began speaking with several witnesses
13 who had seen some individuals walking past this candy
14 store. One person that they spoke to was Tiffany Brown
15 who is the sister of the Defendant and she stated that he
16 had seen her brother and his friend JJ who ended up being
17 Jason Wilson that day and that she had seen them in that
18 area. They talked with Mr. Wilson. He said that he and
19 Mr. Brown had gone by the store, but had heard something
20 but didn't know anything and gave them no information in
21 that regard.

22 On August 28 -- pardon me, August 29 they spoke to
23 Mr. Brown who told them that they walked past the store
24 but they heard a gunshot. They ran, didn't have any more
25 information about that. That same day Mr. Brown agreed to

1 take a polygraph at SLED headquarters and he failed that
2 polygraph. After being advised of the results of the
3 polygraph he told agents that he had, in fact, been the
4 one who shot Mr. Myers -- that he and Mr. Wilson went into
5 the store with the intention to rob Mr. Myers; that they
6 had known that Mr. Myers kept a gun in their with him and
7 when they had their guns drawn and saw what they thought
8 was Mr. Myers going for his gun that -- excuse me, that
9 Mr. Brown stated that he had gotten scared and he pulled
10 out his gun and he shot Mr. Myers -- said that he had
11 tried to shoot him in the arm but that had shot him in the
12 back and he died as a result of that gunshot wound very
13 shortly thereafter. The medical examiner's report
14 indicates that the cause of his death was a renal artery
15 perforation due to that single penetrating gunshot wound
16 to his back.

17 Your Honor, as I stated the case was investigated by
18 the South Carolina Law Enforcement Division. Mr. Brown --
19 the weapon has never been recovered. There's been some
20 attempts to recover that weapon. They're concerned that
21 it'll get into the wrong hands, of course, and they have
22 attempted to question Mr. Brown about that and I believe
23 with Mr. Gibbons' permission asked him again today about
24 the gun and they're not able to locate that at this time.

25 Your Honor, it is -- He has no prior record. It's an

1 incredibly tragic situation for the Myers family. His
2 widow did not want to be present today but knows of this
3 plea, knows of the state's recommendation. Here is an
4 88-year-old man running a candy store.

5 THE COURT: Where was the candy store in Denmark?

6 MRS. SUMMERS: It was --

7 MR. GIBBONS: It's right there off Voorhees, little
8 clapboard house.

9 MRS. SUMMERS: So, he is working and Mr. Brown and
10 Mr. Wilson come in to rob him and he is killed. It is
11 incredibly tragic. Kelvin Myers, his son -- I believe he
12 wants to address the court at the appropriate time.

13 THE COURT: Okay. I'll hear from him. Not now.

14 MRS. SUMMERS: Your Honor, that's the state's case.
15 Certainly, may I just add I think based on the facts of
16 the case and that Mr. Brown did after much interrogation
17 and after several false statements but he did admit to the
18 crime, the state's position is that a 40-year sentence
19 would be appropriate.

20 THE COURT: And you've discussed that with the
21 victim's family?

22 MRS. SUMMERS: I have, Your Honor, and I have also
23 discussed that with law enforcement.

24 THE COURT: But that's just a cap? That's not --

25 MRS. SUMMERS: Yes, sir.

1 THE COURT: Mr. Gibbons?

2 MR. GIBBONS: Your Honor, as Mrs. Carol said this is
3 a tragic situation. Mark, as he told you, went through
4 the ninth grade in school, didn't finish. I got his
5 records and he did have some learning problems earlier on
6 and had some classes for that, but nothing to the extent
7 that would keep him from getting a job or knowing what to
8 do with his life. His father died when he was younger and
9 that seemed to really kind of push him over the edge. He
10 didn't have any criminal convictions.

11 He had moved out of Denmark with his mom and her
12 fiance, I think, to the Salley area and had been working
13 in a little store there. When he lost that job he wanted
14 to come back to Denmark and move in with his aunt. His
15 mom tells me that she didn't really know that her sister
16 wasn't keeping as tight a rein on him as she did when he
17 was at home. He got in the street and started running
18 with some old friends doing things that he hadn't ought to
19 do.

20 I met him in the jail a few months -- Well, I guess
21 about a month after all of this happened and he the first
22 time I met him told me the same story he told the officers
23 and he is telling me today -- that he got in there and
24 they had heard that Mr. Myers had a gun and there was a
25 gun in one of the drawers in the store and they thought he

1 was going for it and he got scared and he shot him. He
2 tells me that he put the gun back in his waistband and ran
3 through the woods to get back to the little housing
4 project back there and when he got to the other side of
5 the woods it was gone. It must have fallen down his pants
6 leg and out his pants, but he doesn't know where that is
7 now. The best he can figure out it's in the woods. It is
8 pretty thick woods. I have told the SLED agents that here
9 this afternoon. They felt a little better. They thought
10 that sounded more plausible and at least it's not in
11 somebody's yard where a kid can find it. They think it's
12 probably what did happen.

13 Mark has been forthright about this whole thing.
14 He's been straightforward with me and told me from day one
15 which is unusual exactly what he said happened. He is
16 willing to cooperate in any way he can. His
17 co-defendant's case has not gone to trial. He is
18 represented by Jerry Screen but he does admit that he was
19 the shooter. If he is required to help out on that case,
20 he is ready, willing, and able to do that.

21 I met with his mom and her fiance and this morning I
22 met his grandmother. They seemed to be really delightful
23 people. They're heartbroken about what's happened to Mark
24 in this situation. You just can't turn the clock back
25 once something like this has happened and he knows he is

1 going to spend a good chunk of his life behind bars, but I
2 have encouraged him to get involved and get some education
3 and maybe talk to the youth while he is in there about how
4 crazy it is to mess with guns and be in the street and he
5 can be some good for people in there during this time of
6 his life.

7 He was 18 years old when this happened, on the street
8 in Denmark, you know, no high school education. It is
9 just a tragic situation all the way around, Your Honor.
10 He is very sorry to the Myers family and he told me that
11 he wished it hadn't never happened. He wish he could take
12 it back. He has driven by that exit. That's not an
13 option. We would ask the court to depart down from the
14 40-year sentence. We do appreciate the state allowing him
15 a cap like that in a case like this. It's about as
16 serious as it gets. He is a young man and has had some
17 tough breaks in his life and we would ask the court to
18 show some mercy on him. I know his mother would like to
19 speak and his grandmother as well. Her name is Willie
20 Dale Brown.

21 MS. WILLIE DALE BROWN: My name is Willie Dale Brown.
22 I am Mark's mother. I am a single mother. His father
23 passed when he was like 10 years old. He got killed in a
24 tragic car accident. He got burned up. We never healed
25 from that because we never could see anything. The only

1 thing we had was a chain that was left around his neck.
2 Him and his father had some little argument that night and
3 they never had a chance to straighten it out. He died
4 before he did so mark carried that guilt. He thinks his
5 Daddy hated him when he passed away.

6 So from then on he used to tell me, Mom, I just want
7 to live to be 16. And me and his sister, my mother -- we
8 try to encourage him to try to go on, although, you know,
9 he had problems learning. We tried all we can do to try
10 to help him out, but he just got with the wrong crowd. I
11 never really had too much problems with him other than he
12 started cutting school and hanging with the wrong people
13 because people would pick at him because he could not read
14 and he could not write as good.

15 So, that's when all my little stuff really started
16 with him, but through it all he is a good person. He
17 tries all he could to help me out in any way that he
18 could, but the only thing I ask is that, you know, the
19 court be a little lenient on him and give him another
20 chance at society because I know that he do have a good
21 heart and he can make something of his life.

22 I have something I wanted to say to the Myers family.
23 I thought about y'all ever since the day this happened and
24 and I wrote this and I wanted to read it to you. It said
25 to the family of Mr. Albert Myers. If I could turn back

1 the hand of time or take back what my son did, I would.
2 I'm sorry that my family -- my son tore your family apart
3 that day. I regret my son Mark Brown went to Mr. Alfred
4 Myers' store that day. I know that you are hurting and I
5 understand that you would. I would like for you to know
6 that I'm hurting and my heart is filled with tears for
7 you. Please forgive my son for the wrong that he has done
8 for I know forgiveness is not an easy task when there is
9 so much harm that has been done. Mr. Alfred, I know that
10 if you're looking down on us today as we sit and stand
11 around I wanted to say to you I'm sorry my son took your
12 life away.

13 THE COURT: Thank you, ma'am.

14 MS. VERNELL BRANCH: Well, I'm Vernell Branch and I
15 helped raise Mark Brown and ever since he was a child I
16 helped brought those kids up because the father didn't did
17 the right things sometime about those kids and I took care
18 of those kids. I took groceries to them and I put clothes
19 on their back and I always teach them when you get in bad
20 company I said you know more than other people, but other
21 people will drive you to do the wrong thing, I said, but
22 you walk out that crowd. I always teach my children that
23 and I teach my grandchildren that.

24 I raised myself six head of children. My husband
25 walk off and leave me, but to this day I raised my six

1 kids and none of them had a criminal record or been in
2 jail or nothing since they've been up. All of them are
3 married, out the house, not a criminal record, and they
4 still don't have none and that's the way way I teach my
5 grandchildren. I always teach them that, but some reason
6 he got out there and he quit coming around my house
7 because it feels like I'm old-fashioned. You know, how
8 the children call you, but I was taught the old-fashioned
9 way, and I was telling them this fast life is no good.
10 Come in. Love your family. It ain't going to hurt you to
11 stay out a fast life. I said do the right thing.

12 I love my children and I love my grandchildren, but
13 regardless of how much you love them and teach them some
14 of them just won't listen. I'm so sorry that happened.
15 This is the first time this happened in my family and my
16 family and I -- it just tore me apart. It seemed like I
17 ain't myself no more. I have a problem being nervous when
18 I get things like this, but I hope I can overcome this and
19 I keep open praying to God and I plead that God is going
20 to bring me out of this because a whole lot I've been
21 through with, but God is bringing me out of it, and I'm
22 saying to the Myers family I'm so sorry, but I tried to
23 teach Junior but he just got with the wrong crowd and I
24 thank y'all for listening.

25 THE COURT: Thank you, ma'am.

1 THE COURT: Mark Brown, Jr., anything you want to
2 say?

3 THE DEFENDANT: No, sir.

4 THE COURT: Give us your name, please.

5 MR. KELVIN MYERS: Kelvin Myers, sir.

6 THE COURT: Mr. Myers, how are you this afternoon?

7 MR. KELVIN MYERS: I am okay, sir.

8 THE COURT: Sorry to meet you under these
9 circumstances.

10 MR. KELVIN MYERS: Yes, sir.

11 THE COURT: I'll be glad to hear from you.

12 MR. KELVIN MYERS: Well, I could, you know, stand
13 here and probably say a lot of things and, you know, with
14 hatred and all that, but I was reared from a different
15 mold. One of the things I would just like to ask
16 Mr. Brown, you know, why did he even feel that he had to
17 do that? You know, my father was an 88-year-old man,
18 didn't bother a soul. The store wasn't really about
19 making money, but that was his way of connecting with the
20 community and it was just a place that people could come
21 for many reasons if it was no more than kids getting out
22 of the rain when it was raining, and, you know, I just try
23 to ask myself, you know, why would they do what they did?

24 I mean, I hear what mom and grandma and the lawyer
25 has to say, but, you know, from the first day I saw him

1 'til now he doesn't seem to have any remorse from what he
2 did, you know, but like I said, I don't have any hatred in
3 my heart for him or his family and, basically, what I
4 would like to ask for people like hiself and others in
5 here let's try to prevent the the kind of things that
6 happen with a young man like this and certainly prevent
7 the things that happened to my father. Thank you.

8 THE COURT: Thank you.

9 Once again, Mr. Brown, anything you want to say?

10 THE DEFENDANT: No, sir.

11 THE COURT: Well, you know, Mr. Myers' son comes in
12 and asks why. At 10 o'clock this morning we had a
13 25-year-old young lady who pulled out a shotgun and
14 blasted somebody in the belly and killed him --
15 27-year-old man -- and all his family wanted to know was
16 why. She never told us why and you have never told us
17 why. It is amazing.

18 I know one thing. I know one why. We would not be
19 here if you had followed your grandmother's advice. She
20 may be old-fashioned, but her old-fashioned values are
21 pretty darn solid and this fast life that you live and a
22 lot of these young kids are living today they end up in
23 jail for most of the balance of their lives.

24 So, for the prevention, Mr. Myers, I wish more people
25 would listen to the old-fashioned advice they get from

1 their grandmama. Unfortunately, this young man chose not
2 the follow his grandmother's advice or his mother's advice
3 and chose to run with the fast crowd and as a result he is
4 going to jail for almost the rest of his life and your dad
5 is gone and nothing good at all coming out of it. He
6 won't even tell you he's sorry. That amazes me. His
7 mother said she was sorry and apologized for him, but not
8 him. That young lady this morning -- 25-years-old -- she
9 didn't apologize either. It is truly amazing.

10 Mr. Mark A. Brown, the sentence of the court in
11 indictment 2009-GS-05-144 an indictment for murder is that
12 you be committed to the State Department of Corrections
13 for a period of 40 years. Good luck to you.

14 (End of transcript of record.)
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CERTIFICATE OF REPORTER

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State of South Carolina)

5

County of Aiken)

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8

I, Lisa H. Davenport, Official Court Reporter for the

9

Second Judicial Circuit of the State of South Carolina, do

10

hereby certify that the foregoing is a true, accurate and

11

complete Transcript of Record of the proceedings had and

12

evidence introduced in the trial of the captioned case,

13

relative to appeal, in the Court of General Sessions for

14

Bamberg County, South Carolina, on the 8th day of April,

15

2009.

16

I do further certify that I am neither of kin,

17

counsel nor interest to any party hereto.

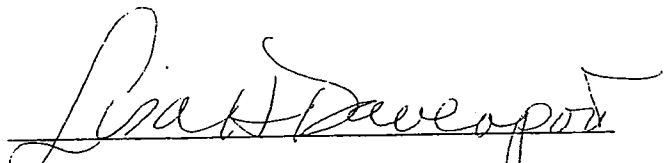
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May 24, 2010

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Lisa H. Davenport, Court Reporter

23

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FILED
BAMBERG COUNTY

STATE OF SOUTH CAROLINA
MAY 12 AM 9:53

County of Bamberg

CLERK OF COURT
BAMBERG, SC

Mark A Brown JR
Full name and prison number (if any) of Applicant.

vs.

State of South Carolina
Name of Respondent.

In the Court of Common Pleas

**APPLICATION FOR
POST-CONVICTION RELIEF**

INSTRUCTIONS — READ CAREFULLY

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

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention LEE Correctional Institution 990 Wisackly Highway Bishopville, South Carolina 29010
2. Name and location of Court which imposed sentence Bamberg County COURT OF GENERAL SESSIONS 2959 main Highway 29003
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2009-GS-05-144
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 8, 2009
 - (b) _____
 - (c) _____

5. Check whether a finding of guilty was made

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

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

NO

7. If you answered "yes" to (6), 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. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) Lawyer told me if I appeal They may be
- (b) more Charges against me.
- (c) ~~and because I did not~~

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

- (a) Counsel was ineffective for failing to investigate.
- (b) The Applicants plea was not made knowingly, Voluntarily.
- (c) New discovery Evidence.

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

- (a) N/A
- (b) N/A
- (c) N/A

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

12. If you answered "yes" to any part of (11), 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. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) 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) I never had A motion of discovery inter after
- (b) I got convicted.
- (c) _____

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

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

17. If you answered "yes" to one or more parts of (16), list:

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

- i. Grant Gibbons post office box 267
Barnwell South Carolina.
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

18. State clearly the relief you seek in filing this application.

Guilty plea vacated

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

No

STATE OF SOUTH CAROLINA

County of Bamberg

VERIFICATION

I, Mark Brown, 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.

* I am not aware of all the grounds that are available to me because I am incompetent to law and do not have all the discovery's

MARK BROWN

SWORN to and subscribed before me this 10

day of Mar., 192010

[Signature] (L.S.)
Notary Public

My Commission Expires: 5/16/11

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

I, Mark Brown, 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 therefor.

Mark Brown
Applicant

SWORN or affirmed to and subscribed before me this

10 day of Mar., 192010

[Signature]
Notary Public

My Commission Expires 5/16/11

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BAMBERG)	2010-CP-05-0061
Mark A. Brown, Jr., # 334066,)	
)	
Applicant.)	
)	
v.)	RETURN
)	(Appointment of Counsel Requested)
State of South Carolina,)	
)	
Respondent.)	
_____)	

Respondent, making its Return to the application for post conviction relief (PCR) filed March 12, 2010, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Bamberg County Clerk of Court. On April 8, 2009, Applicant waived presentment to the grand jury and pled guilty to Murder (2009-GS-05-0144) before the Honorable Doyet A. Early, III. De Grant Gibbons, Esquire, represented the Applicant. Judge Early sentenced Applicant to the recommended term of forty (40) years. The Applicant did not appeal his conviction or sentence.

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

II.

In his current application, Applicant alleges that he is being held in custody unlawfully for the

following reasons:

1. Ineffective assistance of counsel for failure to investigate.
2. Involuntary Guilty Plea.
3. Newly discovered evidence.

Applicant has failed to set forth with specificity the grounds upon which the application is based and facts in support thereof. S.C. Code §17-27-50. Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 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, 336 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient.

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

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

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct.

366, 369 (1985). A guilty plea is a solemn judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

Ground three alleges that newly discovered or after discovered evidence exists. This allegation is not cognizable in the Applicant's post-conviction relief action. The Applicant waived his right to a jury trial. If the Court determines that the Applicant knowingly and voluntarily pled guilty, the plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence. See Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981); Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975). Furthermore, this contention is vague and general in its terms. There are no specific allegations of the nature of the evidence. A defendant requesting a new trial based on after discovered evidence must show that the evidence:

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

The Applicant has not shown that the alleged evidence meets *any* of the requirements for after-discovered evidence. The Court should summarily dismiss this allegation.

VI.

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

VII.

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: Mary S. Williams
ATTORNEYS FOR RESPONDENT

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

Aug. 9, 2010.

STATE OF SOUTH CAROLINA)

COUNTY OF BAMBERG)

MARK A. BROWN, JR., #334066)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2010-CP-05-0061

AFFIDAVIT OF SERVICE BY MAIL

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

Daniel W. Luginbill, Esquire
Luginbill Law Firm
Post Office Box 527
Bamberg, SC 29003

DATED this 10th day of August, 2010

Lauren Meara

 Lauren Meara, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA

2 COUNTY OF AIKEN

CIRCUIT COURT
2010-CP-02-00061

3

4

MARK A. BROWN, JR.,
Applicant,

5

6 -vs-

TRANSCRIPT OF RECORD

7 STATE OF SOUTH CAROLINA,
Respondent.

8

9

Post Conviction Relief Hearing

10

Heard on Monday, July 11, 2011

11

Aiken, South Carolina

12

BEFORE:

13

THE HONORABLE JAMES R. BARBER, III

14

15

16 APPEARANCES:

17

Counsel on Behalf of the Applicant:
D. Kelsey Y. Kirkland, Esq.

18

19

Counsel on Behalf of the Respondent, State of SC:
Robert Corney, Esq.

20

21

22

23

Cheri L. Young, RPR
Circuit Court Reporter

24

P O Box 1154
Aiken, SC 29802-1154

25

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MARK ANTHONY BROWN, JR. - DIRECT

1 ON MONDAY, JULY 11, 2011 AT 10:35 A.M.:

2 MR. CORNEY: This is Mark Brown, Jr., case number
3 2010-CP-05-061. Mr. Brown waived presentment to murder
4 and pled guilty before Judge Early April 8th, 2009, as
5 indicted. He was sentenced to 40 years after the State
6 recommended a 40-year cap. And he's represented today by
7 Kelsey Kirkland on behalf of Mr. Daniel Luginbill.

8 THE COURT: All right. Ready to call your first
9 witness, Ms. Kirkland?

10 MS. KIRKLAND: Yes, sir, Your Honor. I'd like to
11 call Mark Brown, Jr.

12 MARK ANTHONY BROWN, JR., having been duly sworn, was
13 examined and testified as follows.

14 THE CLERK: Please have a seat in the box and state
15 your full name for the Court.

16 THE APPLICANT: Mark Anthony Brown, Jr.

17 THE COURT: Mr. Brown, I need you to speak up.
18 Okay?

19 DIRECT EXAMINATION

20 BY MS. KIRKLAND:

21 Q. Mr. Brown, we're here today because you're asking the
22 Court to vacate the plea that you entered in front of
23 Judge Early on April 8th, 2009. You're claiming in your
24 PCR application that Mr. Gibbons was ineffective in his
25 representation of you about your plea.

MARK ANTHONY BROWN, JR. - DIRECT

1 Do you have anything specific that you would like to
2 say about that?

3 A. Yes. I'm claiming ineffective assistance of counsel
4 for failure to advise trial counsel -- not -- trial judge
5 in advising me that I had a preliminary hearing still
6 pending at the time.

7 I feel by him not advising me that I had a preliminary
8 hearing that that waives a lot of my defense rights to
9 challenge my statement, also the witness statements at the
10 same time.

11 Q. Okay. Was there something specific -- when you were
12 pleading that day, you objected to -- well, you took issue
13 with the fact that the solicitor misquoted what your
14 sister had said in her statement?

15 A. Yes.

16 Q. Would you like to elaborate on that?

17 A. Yes. I also have a statement that was stated by the
18 solicitor stating that my sister had seen me on the crime
19 scene. And I also pulled a statement of my sister's and
20 it never say she seen me on the crime scene.

21 She only states that the last time she seen me was on
22 the front porch of the house. That was the last time she
23 seen me.

24 Q. How do you think that affected your sentencing?

25 A. I really think it affected a lot. Really, switching

MARK ANTHONY BROWN, JR. - DIRECT

1 burden and actually providing more evidence against me.

2 Q. Okay. You also claimed that you entered into the plea
3 not knowingly and not voluntarily?

4 A. Yes.

5 Q. Would you like to tell us about that?

6 A. The only reason why I entered the plea because at
7 first, when I first seen Grant Gibbons he tell me the case
8 was level. I had a chance. All right.

9 And then the second time I seen him, it was almost at
10 the end, two weeks before the plea. And he was like,
11 really he don't see no chance. He didn't also just tell
12 me. He told my parents, too. My grandmother, he told her
13 there ain't no chance.

14 In so many words, I feel when he telling me there
15 ain't no chance, well, he ain't going to work for me when
16 we go in for a trial. So I had no choice but to plead to
17 the 40 years.

18 He keeps telling me if I don't, he don't see no way I
19 *can win*. He asked me, did I see a way. And I never
20 respond but then again, he tell me, if I don't plead to
21 the 40 years I would get life without parole.

22 Q. Tell me about your education level, Mr. Brown.

23 A. I'm -- really, I have documents. And my education
24 level is real low. At the time I was on the second or
25 third grade reading level. All the way through, reading,

MARK ANTHONY BROWN, JR. - DIRECT

1 math, language, everything. I was on the third or second
2 grade reading level.

3 Q. Did you ask Mr. Grant to make a motion for you to have
4 an evaluation?

5 A. I never asked Grant, but I think my parents asked.
6 But also I had somebody come down to talk to me over --
7 they said they head of the public defenders office. And
8 they stated that I had a preliminary hearing pending and I
9 was on a list for a competency hearing at the same time,
10 two weeks before I took the plea.

11 Q. Did Mr. Gibbons explain to you that when you entered
12 into plea negotiations that that pretty much got rid of
13 your preliminary hearing option?

14 A. Never. He never told me that I had a preliminary
15 hearing pending. I never knew until after I plead. That
16 when I got a motion to where I was going, to the
17 institution.

18 Q. Okay. Did you request a preliminary hearing in
19 writing?

20 A. I request a preliminary hearing but at some point in
21 time they told me that I couldn't have it in the back.
22 For such reason I never know.

23 Q. Okay. You also asked that you have new evidence that
24 Mr. Gibbons didn't submit. There was more evidence?

25 A. No. I got a return back and the return tell me I

MARK ANTHONY BROWN, JR. - CROSS

1 could not offer new-discovered evidence.

2 Q. Okay. Do you have anything else you'd like to say
3 about your case?

4 A. That's about it. The only thing else I just wanted to
5 say -- well, I feel I didn't have enough time to gather up
6 a defense on my behalf. And I never had a opportunity to
7 challenge the statement that I had given, my voluntary
8 statement.

9 Q. When you met with Mr. Gibbons, did you go over --

10 A. Yes.

11 Q. -- that?

12 A. I also asked Mr. Gibbons can he please pull any tapes,
13 records, videos, anything, during the interrogation.
14 Because at the time SLED Agent Johnson tell me that it was
15 being taped and recorded.

16 And I asked him, could he please pull any, any
17 documents or any video recordings because before, before
18 the interrogation, before I even give a statement I asked
19 can he please take me to Bamberg County so I can get a
20 lawyer. He tell me, do your mother have enough money to
21 pay for a lawyer and he continue on interrogating me.

22 Q. This was the SLED agent?

23 A. SLED Agent Johnson.

24 Q. Okay. How many times did you meet with Mr. Gibbons?

25 A. It was, like, twice. Two or three times.

MARK ANTHONY BROWN, JR. - CROSS

1 Q. Okay.

2 MS. KIRKLAND: I have nothing further, Your Honor.

3 THE COURT: All right. Mr. Corney?

4 CROSS-EXAMINATION

5 BY MR. CORNEY:

6 Q. Mr. Brown, during your plea hearing the Court went
7 over, reviewed your constitutional rights with you;
8 right? The right to a jury trial, right to remain silent,
9 all of that; they advised you of that?

10 A. Yes, sir.

11 Q. And at the time of the plea you told Judge Early that
12 you were totally and completely satisfied with
13 Mr. Gibbons' representation of you?

14 A. Yes, sir.

15 Q. And Judge Early asked you whether you thought he had
16 enough time to specifically investigate the facts around
17 your case to properly defend and you said you thought he
18 had; right?

19 A. Yes, sir.

20 Q. You decided to take this plea because you wanted to
21 avoid facing a life-without-parole sentence; right?

22 A. At the same time, yes, in a way, but in a way, no. In
23 a way I feel I had no choice but to accept the plea at the
24 time.

25 Q. And you're alleging the solicitor made a statement

MARK ANTHONY BROWN, JR. - CROSS

1 about -- the solicitor stated your sister's statement
2 incorrectly?

3 A. Yes. Falsely.

4 Q. And after all the facts had been stated during the
5 plea hearing, Judge Early even asked you if there was
6 anything you wanted to say about what had been said and
7 you said no; right?

8 A. Yes. I feel I had no choice. My, my whole intention
9 was to agree with everything. Whatever I was told to
10 agree, to say yes to every question.

11 Q. You heard the solicitor make a misstatement of your
12 sister's statement?

13 A. At the time I really didn't -- I didn't really know
14 until I got the transcript.

15 Q. And you admitted to this crime to the police after you
16 failed the polygraph test; correct?

17 A. Well, it's a lot to it. Not only did I admit I had no
18 choice, I was interrogated to admit to it.

19 Q. And you did in fact shoot and kill Mr. Alfred Edward
20 Myers?

21 A. No, sir.

22 Q. You did not?

23 A. No, sir.

24 Q. You told Judge Early during the plea hearing that --

25 A. I told him I did.

1 Q. -- you did?

2 A. Yes.

3 Q. So you were lying that day?

4 A. Yes.

5 Q. And you're oath today in this court?

6 A. Sir?

7 Q. You're under oath today testifying in this court as
8 well?

9 A. Yes.

10 Q. And you were on that day, too, as well; right? Judge
11 Early explained to you that the minimum sentence you were
12 going to be getting was 30 years, right, if you pled
13 guilty to murder?

14 A. Yes.

15 Q. And you knew the State was recommending a 40-year cap?

16 A. Yes.

17 MR. CORNEY: Beg the Court's indulgence for one
18 minute, Your Honor. (Pause.)

19 I believe that's all I have, Your Honor.

20 THE COURT: Anything, Ms. Kirkland?

21 MS. KIRKLAND: No, sir, Your Honor.

22 THE COURT: All right. Thank you. You may step
23 down. Any other witnesses, Ms. Kirkland?

24 MS. KIRKLAND: No, sir, Your Honor.

25 THE COURT: Anything from the State?

DE GRANT GIBBONS - DIRECT

1 MR. CORNEY: Yes, Your Honor we'd like to call
2 Mr. Gibbons, please.

3 DE GRANT GIBBONS, having been duly sworn, was
4 examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. CORNEY:

7 Q. Mr. Gibbons, I hate to sound repetitive but do you
8 recall the facts and circumstances surrounding Mr. Brown's
9 case?

10 A. I do. I'd heard about Mr. Brown's case on the news.
11 I found out I was appointed or my office was appointed. I
12 made a trip down to Bamberg just to kind of touch base
13 with him before I got a shred of paperwork.

14 I went in to talk to him. And I asked him if he had
15 talked to the police. And he said, yeah, he had. And I
16 said, did you cooperate and tell them the truth. He said,
17 yes, he did. I said, well, tell me what happened. He
18 told me that they had robbed this same victim prior to
19 this date, and they went back to do it again.

20 And he thought the man -- during the course of the
21 robbery he thought the old man was reaching for a gun and
22 so he shot him, and ran off.

23 And at that point, I asked him, is that what you told
24 law enforcement. He said yes.

25 And so, I told him not to talk any more and that I

DE GRANT GIBBONS - DIRECT

1 would get an investigator down there and we would check
2 out what was going on.

3 I then got the discovery in. I assigned an
4 investigator in my office to go down and talk to every
5 witness, which he did. And every witness stayed
6 consistent with what they had told law enforcement. And
7 basically put him at the scene, put him running away from
8 the scene.

9 That coupled up with his statement he gave law
10 enforcement, which was consistent with everything they
11 found, he and I knew right up front that the evidence was
12 just overwhelming in this case. And we just started
13 making sure we covered all the bases.

14 I know I went and saw him probably seven or eight
15 times. There were three or four times I had to drive down
16 there at the request of the jail because he was showing
17 out and causing them problems, and I had to tell him to
18 calm down and that that wasn't helping us.

19 I know my investigator met with him at least two or
20 three times in addition to that.

21 It was a death penalty eligible case. There was a
22 co-defendant involved that I thought was going to tell on
23 my client because my client was the shooter. And so we
24 started negotiating about a plea.

25 We did talk about a preliminary hearing and what we

DE GRANT GIBBONS - DIRECT

1 could gain and what we couldn't gain. The fact that that
2 would put it back out in the community. It would be in
3 the paper again. It would be stirred up again in the
4 community.

5 And we both decided not to do that, to just wait and
6 see what we could work out with the State. And that's
7 kind of where we ended up.

8 Q. Okay. And you had the opportunity to speak with his
9 mother, her fiancée and his grandmother?

10 A. I did. I did. And I told them the same thing I told
11 him.

12 Q. Did you feel the State had, based on what you've said,
13 the evidence to prove his guilt beyond a reasonable doubt
14 if he had gone to trial?

15 A. Yes, I do.

16 Q. And you felt you spent enough time investigating the
17 facts and preparing the case for trial?

18 A. I do.

19 Q. During the plea, did you -- or prior to the plea, did
20 you tell him that during this plea he should respond to
21 the answers in any particular way that Judge Early was
22 asking him?

23 A. I told him to listen careful and just tell him the
24 truth. And when it came time where the Judge asked if he
25 had anything to say that, you know, if he wanted to say he

DE GRANT GIBBONS - DIRECT

1 was sorry, if he wanted to say this was a mistake, he
2 could say whatever he wanted to say at that point.

3 Q. Were you aware of his misstatement of his sister's
4 statement that the solicitor gave?

5 A. I didn't catch that at the plea, but that really was a
6 minor point given everything else that was in the case.
7 Given his confession to me and to law enforcement that was
8 completely consistent, I mean, it really didn't make a
9 whole lot of difference. There were plenty of other
10 witnesses to put him there.

11 I don't think my advice would have been any
12 different. I don't think I would have stopped the train
13 at that point anyway.

14 Q. When you were entering into plea negotiations, do you
15 remember any offers the State gave to you?

16 A. The first offer was life and then I think this was the
17 second offer.

18 Q. And you discussed these offers with Mr. Brown as they
19 came in?

20 A. I did.

21 Q. And what was his response to these when you discussed
22 it with him?

23 A. I mean he, he was pretty well resigned to -- that he
24 had told them what he had done and that it was more or
25 less get what we could get, get the best deal we could

DE GRANT GIBBONS - CROSS

1 get.

2 There was never a discussion about going to trial or
3 winning a trial after we discussed the strength of the
4 case.

5 MR. CORNEY: I believe that's all I have, Your
6 Honor.

7 THE COURT: Ms. Kirkland?

8 MS. KIRKLAND: Yes, sir, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. KIRKLAND:

11 Q. Mr. Gibbons, Mr. Brown earlier in his testimony stated
12 that he had a second- or a third-grade reading level. Did
13 you order any mental health records or school records to
14 ascertain whether you thought Mr. Brown was competent to
15 stand trial?

16 A. I did not. All my conversations with him, he seemed
17 to understand everything I was saying. He was making good
18 answers back to all my questions. We never seemed to have
19 any issues that would indicate that I needed to look into
20 his mental status. Everything seemed to be fine.

21 He seemed to be able to read the paperwork that was in
22 front of him. I went over his rights form with him.
23 Everything seemed to be straight, so I had no reason to
24 believe anything was wrong with him as far as competency
25 goes.

1 Q. Did he or anyone in his family, do you recall, request
2 an evaluation?

3 A. They, they told me that he had been to see somebody
4 locally. And I think I called down there and there was
5 some kind of ADHD kind of -- or depression treatment in
6 the past, but nothing indicating incompetence.

7 Q. At any time do you recall the solicitors offering a
8 manslaughter?

9 A. No.

10 Q. Did you ever discuss that with Mr. Brown, that that
11 could be a possibility?

12 A. I did tell him that -- all the options that could
13 happen early on in the case, you know, but there was never
14 an indication they were going to come down that far.

15 MS. KIRKLAND: That's all, Your Honor.

16 THE COURT: Anything, Mr. Corney?

17 REDIRECT EXAMINATION

18 BY MR. CORNEY:

19 Q. Mr. Gibbons, did you think there were any valid
20 challenges you could make to Mr. Brown's confession?

21 A. No, I didn't.

22 MR. CORNEY: That's all I have.

23 THE COURT: All right. Thank you. Anything
24 further? You may step down. Anything further from the
25 State?

1 MR. CORNEY: That's all, Your Honor.

2 THE COURT: All right. Take it under advisement.

3 END OF CASE: 10:45 A.M.

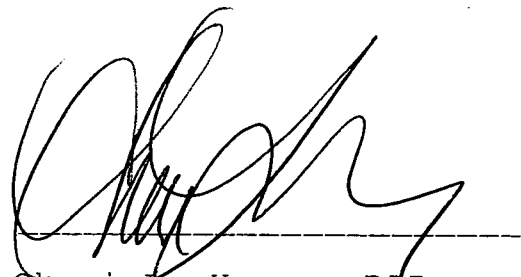
4 * * * *

5 CERTIFICATE OF REPORTER

6 I, Cheri L. Young, Registered Professional Reporter,
7 and Official Court Reporter for the State of South
8 Carolina, do hereby certify that the foregoing transcript
9 of proceedings heard on Monday, July 11, 2011, in Aiken,
10 South Carolina, was reported by me using machine shorthand
11 and realtime computer-aided translation and is a true,
12 accurate and complete transcript of the proceedings had
13 and evidence introduced in the hearing of the matter.

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

16 I have hereunto set my hand this Saturday, the 26th
17 day of November, 2011.

18
19
20 

21 Cheri L. Young, RRR
22 Official Court Reporter

23
24
25

The Circuit Court of South Carolina
Fifth Judicial Circuit

James R. Barber, III
Circuit Court Judge
Richland County Judicial Center
P.O. Box 2766
Columbia, South Carolina, 29201

(803) 576-1779
FAX (803) 576-1782



July 15, 2011

Robert Corney, Esquire
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211-1549

Kelsey Kirkland, Esquire
Wilson, Luginbill & Kirkland, LLC
Post Office Box 1122
Barnwell, SC 29812

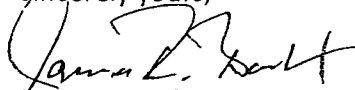
Re: Mark A. Brown, Jr., #334066 v. State

Dear Mr. Corney and Ms. Kirkland:

After listening to testimony and oral arguments at the Post-Conviction Relief hearing, I find that Applicant did not prove by the preponderance of the evidence that his trial counsel was ineffective. The fact that Applicant had a preliminary hearing pending when he entered his guilty plea does not render trial counsel's performance defective. I also find that Applicant entered his guilty plea knowingly and intelligently, and I am denying his application for Post-Conviction Relief.

I would ask Mr. Corney to please prepare a proposed order setting forth the above findings and send a copy to Ms. Kirkland.

Sincerely yours,


James R. Barber III
Circuit Court Judge

JRB: mcn

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

FILED
BAMBERG COUNTY

IN THE COURT OF COMMON PLEAS

Mark A. Brown, Jr., 334066
 Plaintiff

2011 AUG 31 AM 9:20

CASE NO.
2010-CP-05-0061

JAMES B. HIERD
CLERK OF COURT
BAMBERG, SC

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

State Of South Carolina
 Defendant.

Plaintiff's Attorney: Kelsey Kirkland, Bar No. Address: Post Office Box 1122 Barnwell SC 29812 phone: fax: e-mail: other:	Defendant's Attorney: Robert Corney, Bar No. Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:
--	--

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:
 Estimated Time Needed: Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / Defendant July 27, 2011
 Date submitted

SECTION III: Motion Fee

PAID - AMOUNT:
 EXEMPT: Rule to Show Cause in Child or Spousal Support
 (check reason) Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter:
 Other:

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
 Other:

JUDGE: _____
 CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

MOTION FEE COLLECTED: _____
 CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA
COUNTY OF BAMBERG

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2010-CP-05-0061

FILED
BAMBERG COUNTY
2011 MAR 22 AM 9:2
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

Mark A. Brown, Jr., # 334066,
Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,
Respondent.

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 12, 2010. The Respondent made its Return on August 9, 2010. An evidentiary hearing into the matter was convened on Monday, July 11, 2011, at the Aiken County Courthouse. The Applicant was present at the hearing and was represented by Kelsey Kirkland, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Applicant's trial counsel, Grant Gibbons, Esquire ("counsel"). This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Bamberg County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Bamberg County Clerk of Court. On April 8, 2009, Applicant waived presentment to the grand jury and pled guilty to Murder (2009-GS-05-0144) before the Honorable Doyet A. Early, III. De Grant

Gibbons, Esquire, represented the Applicant. Judge Early sentenced Applicant to the recommended term of forty (40) years. The Applicant did not appeal his conviction or sentence.

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

1. Ineffective assistance of counsel for failure to investigate.
2. Involuntary Guilty Plea.
3. Newly discovered evidence.

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, 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.

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. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be

allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Ineffective Assistance of Counsel

At the PCR hearing, Applicant alleged counsel was ineffective for failing to object to the entry of his plea because there was a preliminary hearing pending at the time he entered the plea. Our state's Supreme Court has held "[a] defendant's right to request a preliminary hearing is provided solely by state statute. It is not required by either the State or Federal Constitution..." State v. McClure, 277 S.C. 432, 434, 289 S.E.2d 158, 160 (S.C. 1982). Further, in Bonnette v. State, 277 S.C. 17, 282 S.E.2d 597 (S.C. 1981), the Court held that acts by an accused inconsistent with the continued assertion of his right to a preliminary hearing, such as entering a plea, may constitute waiver of his right to the preliminary hearing.

Counsel testified that during his meetings with Applicant, they did discuss the pending preliminary hearing and whether to pursue it, but in the end, Applicant and counsel agreed there was little to be gained through the preliminary hearing and it would be more detrimental to Applicant's case to have the incident replayed in the news. Additionally, by waiving presentment of the charges to the grand jury and entering this guilty plea, Applicant certainly acted inconsistently with the conduct expected from someone continuing to assert his desire for a preliminary hearing. Therefore, I find Applicant waived his right to pursue the pending preliminary hearing. Additionally, the fact that the preliminary hearing was pending at the time Applicant entered his plea does not render counsel's performance defective in any way. Therefore, Applicant has failed to prove by a preponderance of the evidence that counsel was ineffective in this regard.

At the PCR hearing, Applicant also alleged counsel was ineffective because counsel allegedly told Applicant he did not have a chance of being acquitted at trial and therefore Applicant believed counsel would not properly work his case for trial, which is why he entered this plea. Further, Applicant alleged counsel failed to have a mental evaluation done on Applicant even after Applicant's parents requested one.

Applicant testified that although he told the plea judge during the plea hearing that he was satisfied with counsel's representation and believed counsel had enough time to properly investigate his case, he only said so to take advantage of the plea deal to avoid a life without parole sentence. Applicant additionally alleged counsel coached him into agreeing with everything said at the plea hearing so he could enter this plea. Finally, Applicant went on to allege that he is not guilty of the crime he pled to but conceded that he did tell the plea judge he was guilty under oath at the plea hearing.

Counsel testified he met with Applicant almost immediately after being appointed to represent him. Counsel went on to say that during the initial meeting, he learned that Applicant had already spoken with Police and given a statement; additionally, Applicant admitted his guilt to counsel saying during the robbery of the store, he believed the victim was reaching for a gun so he shot him in the back. Counsel testified that after receiving and reviewing the discovery, he had an investigator speak with the witnesses involved, each of which confirmed Applicant's guilt and the facts as set forth in Applicant's statement. Counsel went on to testify that he met with Applicant a total of seven or eight times, plus two or three more times with the investigator present, and based on those meetings and a review of the evidence, he believed there was an overwhelming case against Applicant. Counsel stated Applicant was settled on entering a plea rather than going to trial, and asked counsel to negotiate the best deal possible for him. Counsel

entered into plea negotiations with the state, who initially only offered a life sentence, but ultimately agreed to a forty year sentence. Counsel stated he discussed all plea offers with Applicant. Finally, counsel testified he did not detect any mental health issues in his discussions with Applicant, but after speaking with Applicant's family did review an evaluation that had been done on Applicant which showed only Attention Deficit Hyperactivity Disorder ("ADHD").

Based on the testimony given at the hearing and a review of the records involved, I find no deficiency in Counsel's representation of Applicant. Counsel advised Applicant of all relevant issues regarding the charges he was facing, including his constitutional rights, the indictments, the elements of the offenses, the potential sentences he was facing, and the possibility of pursuing a preliminary hearing. Additionally, counsel reviewed all available discovery and evidence with Applicant after thorough investigation, and gave Applicant the information and advice to make an intelligent decision for himself on whether to enter this plea. Counsel sufficiently investigated Applicant's mental competency and mental health history to determine that Applicant did not suffer from any mental issues that would affect these charges or this plea. Based on the facts above, I find that Applicant did not prove by a preponderance of the evidence that counsel was ineffective. Further, Applicant has failed to prove prejudice from any alleged deficiency in counsel's representation.

Finally, I find that Applicant's guilty plea was entered knowingly and voluntarily after being fully and adequately advised by competent counsel acting within the range of competence demanded of attorneys in criminal cases.

As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed in its entirety.

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.

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

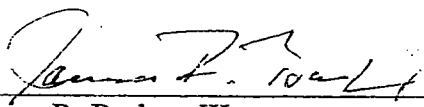
This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, 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 2 day of August, 2011.



 James R. Barber, III
 Presiding Judge
 Second Judicial Circuit

Columbia, South Carolina.

WITNESSES

BCSO.

ARREST WARRANT NUMBER

J401603

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: April 2, 2009

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-05-144

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

APRIL 6, TERM 2009

THE STATE

vs.

MARK A. BROWN, JR.

Indictment for

MURDER

SC Code: 16-3-0010

CDR Code: 0116

Class FEL

66

STATE OF SOUTH CAROLINA)
)
COUNTY OF BAMBERG)

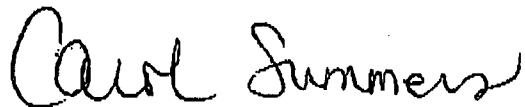
INDICTMENT

At a Court of General Sessions, convened on April 6, 2009 the Grand Jurors of Bamberg County present upon their oath:

MURDER

That MARK A. BROWN, JR. did in Bamberg County on or about August 29, 2008, willfully and, with malice aforethought, shoot the victim, Alfred Myers, and the said Alfred Myers did die as a result thereof, all in violation of §16-3-0010, *Code of Laws of South Carolina* (1976), as amended.

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



J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Bamberg
STATE

INDICTMENT/CASE#: 2009-GS-05-144

Mark A. Brown, Jr. vs.

AW#: J401603

AKA: _____
Race: B Sex: M Age: 19

Date of Offense: 8/29/08

DOB: 9/6/89 SS#: _____

S.C. Code §: 16-3-010

Address: _____
City, State, Zip: _____

CDR Code #: 0116

SENTENCE SHEET

30y - Life

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

in violation of § 16-3-010 of the S.C. Code of Laws, bearing CDR Code # 0116

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

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

ATTEST: Carol Summers Solicitor Mark Brown Defendant [Signature] Attorney for Defendant 64124 SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment

Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 set by SCDPPPS _____

Recipient: _____

*Fine:		\$	
§14-1-206 (Assessments 107.5%)		\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$	<u>100.00</u>
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$	
§56-5-2995 (DUI Assessment)	\$12	\$	
§35.13 (Public Def/Prob)	\$500	\$	
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$	<u>25.00</u>
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$	
§50-21-114(BUI Breath Test Fee)	\$50	\$	
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	
3% to County (if paid in installments)		\$	<u>3.90</u>
§90.11 TP (SCCJA Surcharge)	\$5	\$	<u>5.00</u>
TOTAL		\$	<u>133.90</u>

Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____ paid to Public Defender Fund
Other: _____
 Appointed PD or appointed other counsel, §35.13 TP
 Requires \$500 be paid to Clerk during probation.

Patricia K. Thomas
Clerk of Court Deputy Clerk

PRESIDING JUDGE [Signature]

Court Reporter: Lisa Hicklin

Judge Code: 0136
Sentence Date: April 2, 2009

ARREST WARRANT

J401603

STATE OF SOUTH CAROLINA

County/ Municipality of
BAMBERG

THE STATE
against

BROWN, MARK ANTHONY JR.

Address: DENMARK, SC 29042

Phone: SSN: _

Sex: M Race: B Height: Weight: _

DL State: DL #: _

DOB: 9/6/1989 Agency ORI#: _

Prosecuting Agency: SLED

Prosecuting Officer: S/A CHARLES GHENT

Offense: MURDER

Offense Code: G116

Code/Ordinance Sec. 16-3-10

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date

RETURN

A copy of this arrest warrant was delivered to
defendant BROWN, MARK ANTHONY JR.
on 8/29/08

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

ED FREEMAN
POB 187, 2873 MAIN HWY.
BAMBERG, S.C. 29003, 00000000

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

AFFIDAVIT

Personally appeared before me the affiant S/A CHARLES GHENT
being duly sworn deposes and says that defendant BROWN, MARK ANTHONY JR.
did within this county and state on DEC 08, 2008 violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of BAMBERG)
in the following particulars:

DESCRIPTION OF OFFENSE:

MURDER
16-3-10

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

That on or about August 28, 2008 at 2892 Church Street in the city of Denmark, County of Bamberg, State of South Carolina,
the defendant, Mark Anthony Brown Jr. did commit the crime of Murder of the victim, Alfred Edward Myers with malice
aforethought. That the defendant and co-defendant, Jason Jemal Wilson, did go to the above location with the intent to commit
the act of Armed Robbery. That in the process of this encounter, Myers was shot in the back and subsequently died. The
defendant and co-defendant then fled. All of the above is based on the investigation of Special Agent Ghent and Special Agent
Johnson of the South Carolina State Law Enforcement Division as well as witness statements and a voluntary written
statement from the defendant.

Signature of Affiant

S/A Charles Ghent

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

Affiant's Address 6435 FAIN STREET SUITE A
NORTH CHARLESTON, SC 29415

Affiant's Telephone

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that
on DEC 08, 2008 defendant BROWN, MARK ANTHONY JR.
did violate the criminal laws of the State of South Carolina (or ordinance of
 County/ Municipality of BAMBERG) as set forth below:

DESCRIPTION OF OFFENSE:

MURDER
16-3-10

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

Sworn to and subscribed before me)
on AUGUST 29, 2008)

Signature of Issuing Judge (L.S.)

Signature of Issuing Judge
Judge Code: 704
ED FREEMAN

Judge's Address POB 187, 2873 MAIN HWY.
BAMBERG, S.C. 29003, 00000000

Judge's Telephone (803) 245-3081

Issuing Court: Magistrate Municipal Circuit

FILED
CLERK OF COURT
BAMBERG, S.C.
JAN 2 2009
2 00 PM
S.E.P.

Judge: _____

on _____

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge: _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge: _____

on _____

by _____

(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

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Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

