

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Horry County
George C. James, Jr., Circuit Court Judge

RECEIVED

DEC 29 2014

S.C. Supreme Court

NICHOLAS MACKLEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014- 001389

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA

ORIGINAL

-vg-

2009-GS-26-1248,

1270, 1271, 1272, 1273

NICHOLAS MACKLEN,

DEFENDANT.

NON JURY GUILTY PLEA PROCEEDINGS HELD BEFORE

THE HONORABLE LARRY B. HYMAN, JR.;

COMMENCING AT THE HOUR OF 9:24 AM, ON THE 18TH DAY OF MAY, 2010; AND AGAIN COMMENCING AT THE HOUR OF 2:08 PM, ON THE 9TH DAY OF JUNE, 2010, BOTH SESSIONS HELD AT THE HORRY COUNTY COURTHOUSE, 15TH JUDICIAL DISTRICT, GENERAL SESSIONS CIRCUIT COURT, CONWAY, SOUTH CAROLINA.

REPORTED BY: H. EUGENE BUCKNER, CVR

ORIGINAL

H. Eugene Buckner
Official Court Reporter at Large
15th Judicial Circuit
PO Box 1462, Conway, SC 29528-1462

APPEARANCES

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REPORTER'S NOTE: This plea was qualified in a proceedings held on May 18, 2010; but the sentencing proceedings were held on June 9, 2010. Both were before Judge Hyman in Horry County General Sessions; and the transcript of both proceedings follows herein.

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NO EXHIBITS WERE MARKED BY THE COURT REPORTER

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(WHEREUPON: The court was called to order by the Bailiff at 9:24 AM, May 18, 2010; and all pertinent parties, along with their counsel, were back and present in the courtroom.)

BAILIFF:

Order in The Court.

THE COURT:

All right; thank you. Thank you all. It's good to see you. Please be seated.

All right, gentlemen, I think that we have a qualification on a negotiated plea this morning.

Is that right, Mr. Wilson?

MR. WILSON:

A what?

SOLICITOR:

Yes, Your Honor. It's -- uh --

State v Nicholas Macklen.

THE COURT:

Okay.

MR. WILSON:

I thought we were doing the plea. I thought we were doing the plea this morning.

THE COURT:

I have -- uh --

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SOLICITOR:

Your Honor, we have communicated with Mr. Chambers office on that. He called about that.

Uh --

THE COURT:

It was my understanding as of yesterday that it was going to be just a qualification and that there was a negotiation; is that -- is that your understanding?

MR. WILSON:

I knew that there was a negotiation; yes. We do have negotiations.

THE COURT:

There's not going to be a sentencing. It's just going to be a qualification.

MR. WILSON:

Okay. Well, we were try -- All right.

THE COURT:

Mr. Wilson, you got a problem that?

MR. WILSON:

Well, I'm just trying to -- We got this trial that we're getting ready to start --

THE COURT:

I understand.

MR. WILSON:

-- right now. And I'm just trying
to --

THE COURT:

We certainly do.

MR. WILSON:

-- trying to get my focus here. And
it's kind of -- But, we'll go ahead and do it.

I mean, it's -- it's --

THE COURT:

Okay. I'm just going to qualify.
And -- And I understand it is

negotiated?

MR. WILSON:

It is.

THE COURT:

Is that correct?

MR. WILSON:

That's -- That is correct, Your
Honor.

THE COURT:

Okay. All right.

Well, I -- I would think that we

STATE v NICHOLAS MACKLEN, MAY 18, 2010 & JUNE 9, 2010 8

could -- we could do that.

I don't believe the victim's here;
but we -- they just wanted to go ahead and get it -- get it
qualified; okay?

All right.

WHEREUPON: The Defendant was sworn
in open court by the Clerk at 9:37 AM, May 18, 2010.

SOLICITOR:

Your Honor, this is State versus
Nicholas Macklen.

He is here to plead guilty to
leaving the scene of an accident with death, Indictment
2009-GS-26-1270.

Uh -- Also, leaving the scene of an
accident with great bodily injury, Indictment 2009-GS-1271.

Uh -- Another count of leaving the
scene of an accident and great bodily injury. Uh -- That
indictment is 2009-GS-1272.

Also, leaving the scene of an
accident with great bodily injury, Indictment 2009-GS-1273.

Also burglary first degree,
Indictment 2009-GS-1248.

This is -- uh -- a negotiated
sentence for 27 years.

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THE COURT:

Okay.

Now, I understand that there is a burglary first? Is that correct?

SOLICITOR:

Yes, Your Honor.

MR. WILSON:

Yes sir.

THE COURT:

A leaving the scene with death.

SOLICITOR:

Yes sir.

THE COURT:

And did I count three leaving the scenes with great bodily injuries; or four?

SOLICITOR:

Three.

THE COURT:

Three. Okay. All right.

Mr. Wilson, Mr. Chambers, you represent Mr. Macklen?

MR. WILSON:

That is correct, Your Honor.

THE COURT:

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And I believe that you -- uh --
have both been representing Mr. Macklen for some time; is
that correct?

MR. WILSON:

That is correct. Yes, Your Honor.

THE COURT:

And have you had an opportunity to
explain to -- to Mr. Macklen the nature of the charges that
he's pleading to, as well as -- I think there were other
charges that he was initially charged with.

Is that correct?

SOLICITOR:

Yes, Your Honor.

THE COURT:

Okay.

SOLICITOR:

And those will be -- uh --
dismissed with the -- uh -- with this plea.

THE COURT:

Okay.

So you -- Have you explained -- uh
-- the charges that he is pleading to, as well as the
charges that he initially had, to him?

MR. WILSON:

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Yes sir. We have, Your Honor.

THE COURT:

And have you explained the potential penalties -- uh -- for the charges that he is pleading now?

MR. WILSON:

Yes sir.

THE COURT:

And if you had an opportunity to review the discovery materials in this case?

MR. WILSON:

We have, Your Honor.

THE COURT:

And have you shared that with Mr. Macklen?

MR. WILSON:

We have.

THE COURT:

And have you been able to form an opinion -- uh -- as to whether or not the State would have sufficient evidence to convince a jury most likely of his guilt to the charges to which he is -- he is pleading?

MR. WILSON:

We have Your Honor. And we do

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believe that the State could prove him guilty if they had to.

THE COURT:

All right.

Now the Solicitor tells me that this is a negotiated plea.

Have you discussed that with Mr. Macklen; and explained to him what a negotiated plea is?

MR. WILSON:

Yes sir. And in fact, Your Honor, we have -- I've gone over this with him over the last several months back and forth -- uh -- before agreeing to accept the negotiated plea.

THE COURT:

All right.

Now, Mr. Macklen, let me ask you if -- if you understand what a negotiated plea is?

DEFENDANT:

You can't change it.

COURT REPORTER:

I'm sorry?

THE COURT:

He said: You can't change it.

Do you understand that if I accept

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your plea, that I would impose that sentence?

DEFENDANT:

I understand.

THE COURT:

Okay. All right.

Now, Mr. Macklen, have you had ample opportunity to discuss the discovery materials or the evidence with client -- with your attorneys?

DEFENDANT:

Yes.

THE COURT:

All right.

Now Mr. Macklen, let me ask you --
uh -- some things.

How old are you, sir

DEFENDANT:

29, sir.

THE COURT:

And how far did you go in school?

DEFENDANT:

I left in the 10th grade, sir.

THE COURT:

10th grade?

DEFENDANT:

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Yes sir.

THE COURT:

You need -- You need to speak up a little bit because my court reporter here is having difficulty hearing you. And all this has to be recorded; all right, sir.

DEFENDANT:

All right.

THE COURT:

All right.

Are you married, Mr. Macklen?

DEFENDANT:

No sir.

THE COURT:

And you're how old now?

DEFENDANT:

29.

THE COURT:

29. And how far did you go in -- uh -- or -- Are you married?

DEFENDANT:

No sir.

THE COURT:

Do you have any children?

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DEFENDANT:

Three, sir.

THE COURT:

All right.

And are those children here in

Horry County?

DEFENDANT:

Yes sir. They are.

THE COURT:

How are they?

DEFENDANT:

Nine, six, and almost three.

THE COURT:

Do you support those children?

DEFENDANT:

Yes sir.

THE COURT:

Okay.

What sort of work have you been

doing, Mr. Macklen?

DEFENDANT:

Construction; for my grandfather.

THE COURT:

Okay. Uh -- You say construction

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work. Are you a carpenter? Or are you a brick mason?

What --

DEFENDANT:

Carpenter, framing houses --

THE COURT:

All right.

Now, Mr. Macklen -- uh -- have you had any special training in that field, other than just on-the-job training?

DEFENDANT:

I started whenever I was 15, sir.

THE COURT:

All right.

Uh -- Mr. Macklen, have you ever been treated for any mental health issues?

DEFENDANT:

No sir..

THE COURT:

Have you ever been treated for any addiction issues --

DEFENDANT:

No sir.

THE COURT:

-- such as alcohol addition or drug

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addiction?

DEFENDANT:

No sir.

THE COURT:

Have you taken any drugs or alcohol; or are you taking any medications -- in the last 24 hours?

DEFENDANT:

No sir.

THE COURT:

Okay.

Do you know, Mr. Macklen, of any reason whatsoever why you would not fully and completely understand what we're doing here today?

By that, I want to know if there's anything going on in your life?

If you have a physical or a mental condition -- uh -- perhaps that would impair your ability to understand what we're doing?

DEFENDANT:

(Inaudible).

THE COURT:

You do understand?

COURT REPORTER:

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What did he say, Your Honor, on
that last --

DEFENDANT:

No sir.

THE COURT:

Okay. You do understand what
we're here today for?

THE COURT:

Yes sir; I do.

THE COURT:

All right.

Now Mr. Macklen, I have several
indictments -- uh -- that were true-billed by the Horry
County Grand Jury -- uh -- in this matter.

Uh -- They range from -- uh --
murder, down to leaving the scene of an accident.

I understand that the murder
indictment will be dismissed; is that correct?

SOLICITOR:

Right, Your Honor.

THE COURT:

Okay.

Now -- But I do still have
remaining: a burglary in the first-degree that alleged that

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on or about the 30th day of August 2008, you did enter the dwelling of Randle Baylock at in Myrtle Beach -- uh -- without consent, within -- and with the intent to commit a crime therein; and that you were -- were there during the night time.

Are you familiar with that event?

DEFENDANT:

(Nods in the affirmative.)

THE COURT:

Do you know what we're talking about?

DEFENDANT:

(Nods in the affirmative.)

THE COURT:

All right.

Now, I also have a leaving the scene of an accident -- uh -- that alleges that on that same date, you were operating a vessel, and that it was involved in an accident resulting in great bodily injury to Elisabeth Morris, and you left the scene without first rendering aid.

Are you familiar with that event?

DEFENDANT:

Yes sir.

THE COURT:

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I have another one that alleges --
uh -- essentially the very same fact or -- or date. And it
says that the victim was Roxanna Gordon.

Are you familiar with that event?

DEFENDANT:

Yes sir.

THE COURT:

I have another one that alleges on
that same date that a victim of that accident was Robert
Gordon?

Do you -- Are you familiar with
that?

DEFENDANT:

Yes sir.

THE COURT:

And finally -- uh -- I have one
that alleges that on that date and during that accident --
uh -- one Shayne Odermatt (phonetic) -- uh -- was killed;
and again, you left the scene without rendering aid?

Are you familiar with that?

DEFENDANT:

(Nods in the affirmative.)

THE COURT:

So -- The reason I went through

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those, Mr. Macklen, is to make sure that you understood what indictments are before me; what indictments we're going forward on, today?

Are you clear on that?

Do you think you understand?

DEFENDANT:

Yes sir.

THE COURT:

All right, sir.

Now, if you would -- uh --

MR. WILSON:

I think he has a question.

THE COURT:

Yes ma'am? (sic)

MR. WILSON:

It appears -- He's reminding me that he was on probation. And wanted to take care of that.

But we can do that at sentencing.

THE COURT:

Right. That's correct. We'll take it up then.

All right.

Ms. Tilley, if you place -- uh -- on the record the -- uh -- facts giving rise to these

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charges.

SOLICITOR:

During the nighttime hours of August 30th of 2008, the Defendant and Codefendant, Bradley McGibbet (phonetic), entered the residence of Road here in Horry County.

They parked their boat at the dock of this residence, and then entered the house by breaking a door.

This occurred during the nighttime hours.

Once inside, they removed a flat screen TV.

A young girl who lived there with her parents came home and saw these man running from the house and jumping into the docked boat.

A witness across the water had observed the break-in and called 911 at approximately 8:00 o'clock that night.

Both witnesses state that the defendant and codefendant took off at a high rate of speed with no lights.

When fleeing from the residence, their boat collided with another boat located at the

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The boat, which belonged to this Defendant, hit and killed a 13-year-old boy. The great -- and the great-uncle and the great-aunt, and the grandmother of the child also received life-threatening injuries that required them to be airlifted to MUSC; and they still suffer from these -- some of these injuries today.

THE COURT:

All right.

Mr. -- uh -- uh -- Macklen, you've heard the Solicitor giving you the facts of this case. And she's required to do so in any plea; because I cannot accept your plea unless I find that there is a substantial, factual, basis for the plea.

Now are those facts that she has recited to me correct?

Is that what occurred?

DEFENDANT:

Uh -- That's what occurred.

THE COURT:

That's what happened?

DEFENDANT:

(Nods in the affirmative.)

THE COURT:

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And are you pleading guilty because
you are guilty of those facts?

DEFENDANT:

Yes sir.

THE COURT:

All right.

Now Mr. Macklen, I want you to
understand that you do not have to plead guilty.

You have an absolute right to a
jury trial.

Have you discussed that with your
attorney?

DEFENDANT:

Yes sir.

THE COURT:

Okay.

Do you understand that if you waive
your right to a jury trial -- and that's precisely what you
do you when you enter a guilty plea -- uh -- you also waive
many, many, other rights that are just too numerous for us
to -- to go over or discuss if we had a month to do it.

But some of the more important ones
that I just give you by way of example are:

Of course, your right to remain

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silent.

If we had a trial, you could not be compelled to testify against yourself.

Of course, you could testify if you wanted to.

But if you chose not to testify; that is, you exercised your Fifth Amendment right, I would tell the jury they could not use that against you.

You also would have the right to be represented by these two fine attorneys that you have here with you today and -- uh -- uh -- throughout the trial.

And they could challenge all the evidence that the State has against you, whether you testified or not.

And they could put up evidence that might be helpful to you; or might establish a defense that might be available to you.

Do you understand that if you plead guilty, you're waiving these rights and many other collateral rights that go along with a jury trial.

Do you understand that?

DEFENDANT:

Yes sir.

THE COURT:

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Is that what you wish to do?

DEFENDANT:

Yes sir.

THE COURT:

Now, Mr. Macklen, the Solicitor has told me that she has entered into an arrangement or agreement with your attorney considering your plea.

One is that this is a negotiated plea.

Now we've discussed that.

And we have talked about the fact that if I accept your plea, that will be what your sentence will be.

Do you understand that?

DEFENDANT:

(Nods in the affirmative.)

THE COURT:

Do you understand that, sir?

DEFENDANT:

Yes sir. (Barely audible.)

THE COURT:

All right.

Do you also understand that as a result -- as a part of this plea negotiation, the charge of

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murder and any charges involving this incident, other than the four that you pleading to, will be dismissed?

Is that right, Ms. Tilley?

SOLICITOR:

Yes, Your Honor.

This is going to --

THE COURT:

This is going to clear -- clear the -- the slate as far as these charges or this incident's concerned.

I know there's a probation matter.

But as far as these things, if I

understand --

SOLICITOR:

Yes, Your Honor.

THE COURT:

All right. All right.

Now Mr. Macklen, I want to ask you:

Has anybody promised you anything

other than that?

DEFENDANT:

(Begins to weep profusely.)

THE COURT:

Has anybody may any promises to you

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to get induce you to plead guilty, other than what I've been made aware?

I want to know what the full arrangement is.

DEFENDANT:

(Continues to weep profusely and begins speaking inaudibly.) It was an accident. That's a lot of time.

THE COURT:

You want to take a moment to compose your client, Mr. -- uh -- Mr. Wilson?

MR. WILSON:

Yes sir.

THE COURT:

Okay. All right. Let Mr. Wilson go back with him.

WHEREUPON: The Defendant, still weeping profusely and speaking incoherently exits the courtroom at 9:38 AM, May 18, 2010.

THE COURT:

Ms. Livesay and Mr. Monckton, while we have a moment?

(WHEREUPON: There is a bench conference concerning other matters unrelated to this case

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before The Court at 9:39 AM, May 18, 2010.)

THE COURT:

All right.

I -- I'm -- The Court's going to be at ease for just a few minutes, okay, while we -- uh -- find out where we are.

(WHEREUPON: The court was declared in recess at 9:40 AM, May 18, 2010.)

(WHEREUPON: The court was called to order by the Bailiff at 9:44 AM, May 18, 2010; and all pertinent parties, along with their counsel, were back and present in the courtroom.)

BAILIFF:

Order in court. All Rise.

THE COURT:

Okay. Please be seated. All right.

Mr. Macklen, I want to continue with your plea.

Uh -- And I was asking you:

Has anyone promised you anything other than what has been told to me in this courtroom?

DEFENDANT:

(Nods in the affirmative.)

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THE COURT:

They have not?

You must speak up, Mr. Macklen.

DEFENDANT:

No sir.

THE COURT:

All right. .

Now Mr. Wilson, Mr. Chambers, is

that correct?

MR. WILSON:

That is correct, Your Honor.

THE COURT:

All right.

MR. WILSON:

There's been no other offer; no
other negotiations beyond what has been stated by the State.

THE COURT:

Okay. So I know the full -- the
full agreement?

MR. WILSON:

Yes sir.

THE COURT:

All right.

Uh -- Mr. Macklen, are you

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satisfied with Mr. Wilson's and Mr. Chamber's representation in this matter?

DEFENDANT:

Can I make one statement?

THE COURT:

Certainly, you can.

DEFENDANT:

I was offered 20 years back in January.

And I was advised not to take it. And now I'm being advised to take 27.

THE COURT:

Well, let me ask you this:

Do you need any more time with your attorneys?

Do you need any more information from your attorneys?

Is there anything that I can -- uh -- can -- or any -- any information I can provide you about this process?

But, of course, I can't advise you as to what you should or shouldn't do; but as to this process, do you need more information?

Uh -- Do you -- Is there anything

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else you need from your attorneys?

Is anything else they can do for
your -- you that you think of?

DEFENDANT:

It's a lot more time, Your Honor.

THE COURT:

And sometimes it does that, Mr.
Macklen.

DEFENDANT:

And I just -- If I knew to take it
then, and I was advised to like I'm being advised to now, I
would've took it, Your Honor.

And -- uh -- you know 23 and a half
years is a long time for an accident.

And -- uh -- This was just an
accident.

THE COURT:

Well, Mr. Macklen, I want you to
tell me whether you have a problem with your attorney?

You know -- uh -- hindsight is
always 20/20. And what may have appeared unreasonable at
that time -- uh -- may be more than unreasonable now,
looking back.

But the offer that you have now is

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a negotiated 27, as I'm advised by your attorney and -- uh
-- the -- the prosecutor.

Now I want to know:

Is there anything else that you
want your attorneys to do for you?

It would appear that we are as far
as we're going to go with this thing; that this is the other
that the State's made -- making.

And I want to know if you are
satisfied with your attorneys?

Is there anything else that you
feel that they can do for you?

DEFENDANT:

No sir.

THE COURT:

All right.

Now, has anyone threatened you,
coerced you, intimidated you, or done anything to try to
force you to plead guilty?

DEFENDANT:

Nobody's forced me, Your Honor.

THE COURT:

All right.

Do you feel that this is in your

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best interest -- the best thing that you can do at this point?

DEFENDANT:

I don't know. Let me tell you that I probably really haven't had time to let this all sink in, you know.

THE COURT:

Are you telling me that you haven't had enough time to think about this plea; that you don't know whether you want to do this plea?

Is that what you're telling me, Mr. Macklen?

DEFENDANT:

(No response.)

THE COURT:

Mr. Macklen, let me -- let me explain something to you.

It is incumbent upon me as your plea Judge to make a determination in my mind as to whether or not you're pleading freely, voluntarily, knowingly, and intelligently.

Intelligently means that you have been provided with the information and -- uh -- about your case; that your questions have been answered; and you've

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reached the point that you're making an intelligent decision as to whether to go forward.

Freely and voluntarily means that you do it without threat, compulsion, or otherwise; or promise of reward.

That you haven't been promised anything that hadn't been laid right out on the table here in this plea.

I have to make a determination of that.

And that's why I am asking you these questions.

I'm not trying to -- to trick you.
I'm not trying to put you in a box.
It's just that I have to do that.
And you have to tell me these things.

Now again, let me ask you:
Have you had all the time that you need to think about this?

Do you feel like that this is the best you're going to be able to do; and it's in your best interest?

DEFENDANT:

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(No response.)

THE COURT:

Mr. Macklen, let me remind you that the State had a murder charge against you that the State could still pursue.

Uh -- You were looking at substantial time -- uh -- up to life on that -- that charge alone.

Uh -- There's -- uh -- a thing that you have to consider that I'm sure you talked with your attorney about.

And that's part of the deal here.

Now I want you to tell me that considering all those things, is this, do you feel, in your best interest -- what you need to do today?

DEFENDANT:

Anybody knows me, I'm not a violent person; okay. I'm not a murderer.

I just wanted to tell you that; okay.

THE COURT:

Yes sir.

DEFENDANT:

(Begins to weep profusely again.)

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I never her nobody intentionally.

And -- uh -- (trails off to inaudible).

THE COURT:

Tell me Mr. Macklen, do you still
feel this is what you need to do?

DEFENDANT:

I've been advised I could get life,
you know. And I want to go home one day.

So, this is what --

THE COURT:

Yes; okay.

All right.

Mr. Macklen, let me tell -- ask you
if you have understood my questions and you've answered them
truthfully?

DEFENDANT:

(No response.)

THE COURT:

Have you been truthful with me here
today?

DEFENDANT:

Yes sir.

THE COURT:

Have you understood what I've asked

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you?

DEFENDANT:

Yes sir.

THE COURT:

All right, sir.

Mr. Macklen, I want to advise you that even though this is a plea you still have a right to appeal your plea.

However -- uh -- in order to do so, you must file a notice of intent to appeal within 10 days of your sentencing.

Now, I'm not going to sentence you today.

That's my understanding. I'm not supposed to sentence you today.

I'm supposed to qualify your plea.

Part of the qualifications is I want to advise you or all of your rights.

And one of those is that you have a right to appeal. However, you have 10 days after sentencing to file a notice of intent to appeal.

You don't have to worry about where or how to do it.

You have two good attorneys who

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will do that for you?

Right, gentlemen?

MR. WILSON:

Yes sir.

THE COURT:

All right.

You just have to let them know in time to do it.

I find that there is a substantial, factual, basis for this plea.

I find that it is made freely, voluntarily, knowingly, and intelligently, after the advice of very competent attorneys with whom the Defendant tells me he is satisfied. And I will accept his plea.

I will defer sentencing until such time as -- I think we're having to arrange for the victims to come down.

Isn't that right, Ms. Tilley?

SOLICITOR:

Yes, Your Honor.

THE COURT:

Even though this is a negotiated plea, the victims have a right to be here.

Good luck to you, Mr. Macklen.

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Uh -- They'll be bringing you back
before me?

SOLICITOR:

It's like it'll be the first week
of June.

THE COURT:

All right.

Thank you very much.

(WHEREUPON: The court was declared in recess from this
matter at 10:02 AM, May 18, 2010.)

(See following page for sentencing
proceedings, which began on June 9, 2010.)

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(WHEREUPON: The court was called to order by the Bailiff at 2:08 PM, June 9, 2010; and all pertinent parties, along with their counsel, were back and present in the courtroom.)

BAILIFF:

Order in the court. All Rise.

THE COURT:

All right. Thank you very much.

Please be seated.

Okay.

SOLICITOR:

Your Honor, I'm going to check on the

--

THE COURT:

Yes, Ms. Tilley. How are you this morning?

SOLICITOR:

Good.

THE COURT:

This afternoon.

SOLICITOR:

May it please The Court?

THE COURT:

Yes ma'am.

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Mr. Wilson, Mr. Chambers, good to see you.

MR. WILSON:

Good to see you, Your Honor.

MR. CHAMBERS:

Afternoon, Your Honor.

SOLICITOR:

Your Honor, we're here in the posture of a sentencing hearing for Nicolas Macklen.

He pled guilty -- or the plea was accepted on May 18th of 2010 for leaving the scene with death, Indictment 2009-GS-26-1270; a leaving the scene with great bodily injury, Indictment 2009-GS-26-1271.

Uh -- Another indictment for leaving the scene with great bodily injury, Indictment 2009-GS-26-1272.

Another indictment for leaving the scene, 2009-GS-26-1273.

Also a burglary first-degree, 2009-GS-26-1248.

In regards to his prior record, it begins in '96 with a grand larceny, three counts of malicious injury to personal property.

'99:

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Three counts of grand larceny, and
a burglary third degree.

2003:

Breaking and entering an
automobile.

2005:

Driving under the influence.
Simple possession of marijuana.
Open container.
Criminal Domestic Violence.

2006:

Violation of a protective order.
Grand larceny and receiving stolen
goods.

2007:

CDV second and a reckless driving.

2008:

Uh -- Receiving stolen goods and
probation, for which he was -- uh -- on at the time of the
incident.

THE COURT:

All right.

It's my understanding that this
plea is to three leaving the scenes with great bodily

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injury; one death; and one -- uh -- burglary first degree.

Is that correct?

SOLICITOR:

Correct, Your Honor.

THE COURT:

All right.

And I've already qualified this
plea on the 18th May.

Uh -- I'll hear from the victims.

SOLICITOR:

Yes, Your Honor.

MS. MAKOOL:

Judge, my name is Susan Makool.

THE COURT:

Good afternoon.

MS. MAKOOL:

And I am -- uh -- Shayne's aunt;
the deceased.

THE COURT:

All right.

MS. MAKOOL:

And I just wanted to say:
They say that always happens to
somebody else; but now it's affected our family.

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I was there when Shayne was born.

I never thought at such a young age
I'd have to go to his funeral.

For a lousy TV, a beautiful young
life was taken.

Shayne was not your typical 13-
year-old. He cared about people young and old; always
helpful and loving. He had a heart made of gold.

You seem to have no remorse. I
don't know what is in your heart. You have no idea what it
was like that morning I received the call that my one
sister's heart had stopped; no pulse.

My other sister; cracked sternum;
deep gashes from the propeller, with fuel running in them
from the boat; two punctured lungs; and my brother-in-law
with bleeding on the brain; all in comas; in critical
condition. And little Shayne dead.

That was a horrible cost.

Among all the broken bone -- bones,
crushed chest, black and blue head to toe, every one of
them.

Thank God the people on the dock
were there; as I would have been going to four funerals
instead of one, with half my family wiped out.

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27 years is not good enough for you. It should be 27 years for each life you've affected.

Shayne's little brother asks:

When can I play with Shaynie again.

And asked my sister:

Grandma, why didn't you help Shane.

And she had to say:

I couldn't. I was unconscious.

He carries Shayne's urn around his bed:

Hi Shaynie.

A four year old should never have to do that.

I'm sorry.

But you were not a kid. You are a poor, pitiful, excuse for a man, at your age. You need to get right with God.

You're lucky he is a forgiving God.

But you have to repent and own up for what you did, as he knows your heart -- what's in your heart.

And the tears you cry were -- were either for repentance and for Shayne, or for your own self pity when you got 27 years.

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It could've been life, Judge.

Thank you.

THE COURT:

Thank you.

Yes ma'am?

MS. GORDON:

I'm Roxanne Gordon. I'm one of the victims; me and my husband.

THE COURT:

Yes ma'am?

MS. GORDON:

They say time heals all wounds; but I doubt this will ever heal.

How could you think there wouldn't be any consequences to this senseless and cowardly act.

It's so frustrating; because I was unconscious and I don't know all the details.

I only hope someday you ask God's forgiveness (begins weeping profusely and speaking unintelligibly.)

COURT REPORTER:

I'm sorry, Your Honor. I -- I need her to speak in the mike.

THE COURT:

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I'm sorry, ma'am; but you -- just slow down. Slow down and speak into the microphone because my court reporter has to record this.

MS. GORDON:

Okay.

THE COURT:

And he's having difficulty understanding you.

MS. GORDON:

Should I start over.

THE COURT:

No; you can go on from where you were.

COURT REPORTER:

Just aim that mike to her mouth, please ma'am.. Thank you.

MS. GORDON:

I only hope someday you ask God's forgiveness for what you did.

You took a young boy's life and almost took ours too.

You were such a coward, you left us for dead.

Thank God there was someone there;

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or my husband, my sister, and I, would've died. Then you would have had four counts instead of what you have now.

My heart had stopped.

Do you know how our entire family, and for that matter, yours as well, has been affected by this. How selfish and inconsiderate of you.

And that's -- And that's who you'll have to answer to, God.

Here -- I'm sorry.

Only God has the right to take a life. And that's who you'll have to answer to.

I just know that Shayne had just become his life. And now he's gone forever.

Do you know how long forever is?

Maybe 27 years will give you a little taste of what forever means; what it was worth.

Was it worth it for a stupid TV?

If you had only half the thoughtfulness and consideration Shayne had, this whole incident would of never occurred.

Now, I have to go through the rest of my life with pain and scars.

I'm not the person I used to be. I'm a lot more cautious. I have nerve damage on my face,

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and -- among others.

I had to cut down on my hours at work because I can't handle it anymore.

I never had to go to doctors before. Now, I got to go all the time.

Who knows how long this is going to affect my health ten years down the road, or how it's going to -- even after that, how it's was going to.

Living with the emotional aspect is worse -- worse than living with the physical pain and scars.

I'll never forget that big boat coming straight at us, full-throttle.

I always picture it with no lights on, in a no-wake zone, and plenty of room to go around us.

I just want you to actually realize what you did and what you put us through.

I feel if you acknowledge our pictures for when you ran over us, it just might be easier for you and your family to realize the full magnitude of this pain and suffering and recovery that we're still trying to deal with.

How would you feel having to attend the funeral of your child; and not even be able to say goodbye, because the body was not viewable.

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Maybe, just maybe, you might show a little remorse.

If not, at least you'll have some faces, to put on the people you almost killed, in your mind.

Hopefully, these pic -- pictures will give you something to think about -- to pic -- picture in your mind for the next 27 years.

This was my sister, Betsy, from the hospital.

This was my husband.

And this is a picture of me.

That's all I have to say.

THE COURT:

Thank you.

MS. GORDON:

Thank you.

MS. MORRIS:

Good morning, Judge.

THE COURT:

Yes ma'am.

MS. MORRIS:

My name is Morris. I'm one of the victims.

THE COURT:

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Morris? Okay.

MS. MORRIS:

I was Shayne's grandmother.

How do I put into words what it means for a grandmother to lose her oldest grandson.

Shayne is part of what made me who I am; a grandmother.

When I lost Shayne, I actually lost a part of who I am, and what I wake up for each morning.

How can I put on paper words to impact strongly enough how this crime has affected our lives as a family; the emptiness and the heartaches that it has caused.

The pain is not something that can be measured because it cuts deep to the core.

It's not anything that will ever be able -- that we'll ever be able to forget. It's impossible to deal with.

I lost my mother a year before this happened. But that was expected.

To lose a part of who you are -- who was just coming into manhood, is something that haunts my every dream.

When I think back to hearing his

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voice. It was deeper than my 38 year old son's.

And he was taller than both of his uncles.

In my eyes, Shayne was the joy of my life. And when Shayne died, a big part of me died too.

I am now on disability because of this crime.

And now Shayne is just a wisp of a memory.

How can I possibly express this on paper?

I'm -- The only remorse that I've heard or seen from these two young men so far has been for themselves and the fact that they now have to own up to the tragedy that they've caused.

Neither of them will even be man enough to admit who was driving the boat.

Is that remorse?

I know Nick has a little girl.

How can any man, who is a father, not find it in his heart to actually look into Shayne's mother's eyes and beg her forgiveness?

How can he know that he's hurt her so deeply, and have nothing to say to her. This is beyond

me. He's just destroyed her belief in God.

And Brandon, as far as I'm concerned, he was nothing but a follower. But it doesn't matter if he was wrong or right as long as he was accepted.

Now the better part of your life will be taken from you.

I don't know if your daughter will even have anything to do with you.

What were you thinking?

Don't you realize that there's a consequence for everything -- everything that you do.

I don't believe that it was an accident that fatal evening when you crashed your boat over ours, critically injuring us, and leaving my grandson for dead.

It was so odd the way that you drove your boat into the no-wake zone doing 5 miles an hour until you came right up behind us where we were docked, and then opened up full-throttle.

We saw it.

All I can fathom is that you thought you could push our boat out of the way so that you could dock in its space.

But that -- But it didn't happen

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that way; because you accelerated so much that you went right over us.

No one accelerates to that extent without first turning their head to see what's in front of them.

There's no way that you didn't know we were there; because we were docked right there, with our lights on.

Once you were both in the water, you swim to shore, and you fled the scene, evading capture; one surrendering one day, and the other, three days later.

I hope that someday you can realize the extent of the heartache that you've put on our families, including your own.

Do you realize that you've broken your own mother and grandmother's heart?

You've destroyed so many people; but mostly my daughter, and your own.

I pray that some day you will turn to the Creator and beg his forgiveness for all the misery that you've caused.

I hope that He can truly see the sincere repentance in your hearts, and that he will forgive you both.

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The days that you have left here on this earth are nothing compared to the eternity that He's planned for each one of us.

And I also pray that someday you will get to know Shayne on the other side,, and see what a beautiful person he was.

I also want you to know that if you come to your senses and realize the hurt that you've caused this family, and your own; that you truly ask for forgiveness for what you've done.

And I want you to know that I do have the capacity to forgive you; because I too want to spend eternity with Shayne.

I pray that the Holy Spirit will weigh heavily on your heart until this happens.

May God be with you.

And this is Shayne.

I want you to see him, putting a face to the crime. And I hope you're sorry.

MR. ODERMATT:

Your Honor, my name is Kurt Odermatt. I'm Shayne's uncle -- uh --

THE COURT:

Yes sir?

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MR. ODERMATT:

-- Ms. Morris's 38-year-old son.

I'm going to be brief.

Uh -- Today, families are
completely torn apart.

All of our lives in here have been
changed forever.

My family has to spend the rest of
their days on earth without a part of them that has made
them who they are.

I'm not sure what Nick Macklen's
concept of God is; but it is only Him who can offer true
forgiveness.

My son, Kurt, who is now 13 years
old, is here today.

Kurt and Shayne were not only
cousins, but they were also closest friends.

I hope that Mr. Macklen can take a
good look at Kurt, and remember for the rest of his life
what he took away from him.

It's been all of two years since
Nick -- since Nick's inexcusable act. Although a guilty
plea is just, everyone who Shayne's life has touched will be
-- will never be completely healed.

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Thank you.

THE COURT:

Thank you.

UNIDENTIFIED SPEAKER:

My name is Ileana. I'm the mom for

Shayne.

COURT REPORTER:

I'm sorry. What was your name

again?

UNIDENTIFIED SPEAKER:

Ileana.

THE COURT:

Last name, please.

UNIDENTIFIED SPEAKER:

(Inaudible -- weeping.)

THE COURT:

All right.

UNIDENTIFIED SPEAKER:

Uh -- I just wanted to describe

Shayne.

He had -- He had just started 8th
grade in -- like two weeks in the eighth grade.

Uh -- His -- His everything was
music; meaning violin.

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He often made it depend on his focus at the time between the first and second chair in his strings class; and decided that he wanted (trails off to inaudible).

COURT REPORTER:

I'm sorry, ma'am. What class?

UNIDENTIFIED SPEAKER:

His strings class; his violin strings.

Uh -- He had just decided that he wanted to go to Juilliard.

And about three months after he died -- uh -- he had already been signed up to study with some of the instructors at Juilliard.

They came to his school for a workshop; but he missed it.

Uh -- He -- He was just a great kid. He -- He was just my baby.

Uh -- He had just started getting armpit hair and his puberty voice.

Uh -- He had a long-distance girlfriend named Mary Beth. They texted all the time.

Uh -- And I read her text after he died. She wondered why he stopped texting back; and that

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someone else -- forever her view on love has been destroyed.

Uh -- And my family, I cannot take the negativity anymore.

It's time to just go away; leave us alone. Let my kids grow up with no fear.

They think robbers are going to come in our house and kill them.

And I can even visit my mom; because all she does is complain and whine about everything you've done.

I just -- I'm glad that they're going away.

Thank you.

And I just hope that we can all move on.

THE COURT:

Thank you, ma'am.

SOLICITOR:

Your Honor, I think that's all the victims that wished to address The Court.

THE COURT:

Anything else from the State, then?

SOLICITOR:

No, Your Honor.

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All right.

Mr. Chambers, Mr. Wilson?

MR. WILSON:

Your Honor, if it please?

I'd like for you to hear from some
family members of -- uh --

THE COURT:

Very well.

UNIDENTIFIED SPEAKER:

Your Honor, thank you for letting
me speak. I'm Nicholas's aunt.

And this is the first time we've
been able to speak on Nicholas's behalf.

Nicholas is not -- uh -- Something
happened and I apologize to the family on losing their
child.

But I helped raise Nicholas. And
Nicholas is not the monster that everybody says he is.

Nicholas has got a very good heart.
And he said he wished it would have been him instead of the
little boy.

But we can't change what God does.

And it was dark.

Nicholas did not see the boat.

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He called me at 1:15 in the morning. And he didn't know.

Somebody was on the phone telling him what had happened as it was happening.

And he was just totally devastated.

He -- He thought two people had got killed.

He -- He would get off the phone for 15 or 20 minutes with the people and then he stayed on the phone with me. And it was an accident.

I had a brother that got killed a year before. It's been three years.

We're friends with the boy that turned his truck in front of him. It was an accident.

We can't change an accident.

This boy did not go to jail for my brother's death.

And things happen sometimes that can't be changed.

I know I grew up on the waterway. We take our children out of the water by dark.

And it -- It was dark. He did not see them. No one saw anything.

I read this transcripts and the

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boys that saw the dock had to look down. They couldn't even see the people in the boat. It was dark.

Nicholas swam out of the water; his boat shattered to pieces. There was no boat left for him to stay in.

And when he got out, he -- he called. And he thought he had hit a dock.

And as he's talking with me, he's on the phone; and someone's telling him that it was an accident; it was a boat.

And he is not this monster that -- I mean, we've took two years of hearing no good about Nicholas.

Nicholas is not a monster.

He would give you the shirt off his back.

And something happened that -- that we hate happened; but things happen sometimes that we cannot change.

And I just pray that you don't send him away from us for this long.

Uh -- It was an accident.

And for the family, I know they're hurt. We were from losing our brother.

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It wasn't a child; but he was still my brother, I loved very much.

And the boy comes around our family. We accept him in. He -- He cries. He has nightmares. But we try to ease his pain.

We don't try to say:

You caused what happened to my brother.

And I hope that the family of Nicholas have called about God a lot. And he's been locked up in J. Rubin for two years; out one hour a day.

And it's been torture on him and on us.

And to be locked up in a small cage like a dog has been to -- in my opinion, has been enough.

And I pray that you see it not to send my nephew off for so long.

THE COURT:

All right. Thank you ma'am.

UNIDENTIFIED SPEAKER:

Thank you, sir.

MR. STEVE MACKLEN:

Your honor I'm -- uh -- Nick's --
uh -- I'm Steve Macklen.

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I'd like to the family how hard
it's (trails off to inaudible).

COURT REPORTER:

I'm sorry, sir. I'm sorry, sir.
But I need you speak in the mike.

MR. STEVE MACKLEN:

Uh -- Our hearts do go out for
family; but we do feel y'all'es pain.

Uh -- I know nothing we can do to
change anything that's happened here today. But our family
is also hurting too.

And -- uh -- And -- uh -- God be
with all of us.

Thank you.

MR. WILSON:

Your Honor, if I may?

Let me start out by saying that:

Nicholas is 29 years of age.

And, obviously, this is a very
difficult place for everybody to be in.

And -- And let me say to this
family, Your Honor:

I know from my conversations with
Nicholas that he regrets what happened. And that -- that

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obviously, there's nothing that he can do at this point to bring back this young man, who had his whole life in front of him.

And obviously that's a huge tragedy to this family, and a huge loss to them, that none of us can replace or change, or alter in any way.

And my sympathies go out to them as a family. And I -- I do understand their pain.

I wish I could say that I understand it fully. I've never lost a child. I have four my own.

But it's got to be the greatest tragedy that can occur in a human's life, is to use your child.

I understand that.

Having said that, I also understand the pain that Nicholas' family is feeling today, because he's going to go away from them, not permanently, but he's going away from them for a long, long, long, time.

For the vast majority of his life, he will be in prison.

Let me say, Your Honor, that:

While in some of these situations, we could argue all day that:

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Well, maybe somebody could have done something different.

And -- And -- And, yes.

Without question. Without any question whatsoever, Nicholas conduct on this evening caused the tragedy.

Nobody is disputing that.

He has pled guilty to that.

He's standing forth before His Honor for punishment for that.

Uh -- And it doesn't make him a monster; but it does mean that he did not use good judgment that night, in a lot of ways.

If the burglary hadn't happened, then maybe the accident wouldn't have occurred. And then maybe, we wouldn't be standing here.

But again Judge, we can't change any of that at this point.

What we can do -- What we can do -
- and what Nicholas, I think, is doing:

He has now come before This Court and -- and accepted responsibility for his acts.

And to come in, knowing that he's going away for as long as he's going away, is a very

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difficult thing.

To come stand here knowing that, no matter what he says, no matter who says anything in his behalf, he is going to be gone for the remainder of his adult life, pretty much.

He has a child of his own, you know. And he understands that he has taken a life -- or at least that his actions -- the actions that he was involved in -- has taken a life.

And not only taken a life; but has also injured several other people in a very significant way.

He understands that.

He's going to have to carry the with him the rest of his life.

And he has told me on more than one occasion, how many nights that he can't sleep because he keeps reliving this accident over and over and over and over in his head.

And that there is nothing that he can do except wake up and cry, and go back to sleep, and wake up and cry.

And being incarcerated, he's away from everybody who loves him and who cares about him; so he's pretty much on his own having to try to deal with it.

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But he's tried to do that.

But again, the responsibility for it has to rest with Nicholas. Because it was Nicholas who made the choices that night.

As bad as they were, he is one who made the choices.

His family didn't make it. They don't deserve to have to suffer through this. Because they -- If they had had their way, they would have had him at home where he should have been.

But he was not at home. He was out on his own that night, doing things that he had no business doing. And as a result, this tragedy occurred.

What -- What we're asking, Your Honor, is -- and we understand this is a negotiated plea; so, obviously, we are bound by the terms of that agreement.

We're just asking The Court to accept that agreement and to sentence Nicholas in accordance with the understanding that -- and hopefully this will bring some degree of -- of peace and closure to the family of -- of this young man who died, and to the people who were injured in this accident; and also some closure, hopefully, to Nicholas' family.

THE COURT:

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Yes sir. Mr. Chambers?

MR. CHAMBERS:

Your Honor, I can only follow up with -- uh -- what Mr. Wilson says -- uh -- and only hope that in -- there is some reason and purpose for this death that all of us involved would -- uh -- certainly learn from this in some way or another and this -- uh -- uh -- pointless -- uh -- death.

And -- uh -- I hope that all -- all parties can -- can reconcile that, and come to terms with it in the future.

Thank Your Honor.

THE COURT:

All right, Mr., Macklin, I'll hear from you, if you wish to make a statement.

DEFENDANT:

Yes sir, I do.

THE COURT:

All right, sir.

DEFENDANT:

Uh -- I understand -- you know -- that there's not a day that goes by that I don't think about this -- you know. (Begins to weep.)

What happened was a accident.

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I don't -- To say that you think I did it intentionally; it hurts me that y'all think of me that way -- uh -- you know.

Like the man said, I told him repeatedly:

If I could change places with him, I would.

What happened was truly an accident. We didn't see nothing.

We didn't know we were in a wreck.

We knew we hit -- We thought we'd hit the bridge. And that's -- honest to God, that's what we thought.

I apologize. Please try to forgive me.

It was never meant to happen.

You know, if we'd thought somebody get hurt, it's -- It's not my record.

Yes, I have been in trouble; but violence is not one of them -- you know.

And -- uh -- I'm sorry y'all got hurt.

I would have helped, had I known.

I'm not that -- I'm not coldblooded

STATE v NICHOLAS MACKLEN, MAY 18, 2010 & JUNE 9, 2010 72

at all -- you know.

I -- I -- Everybody will tell you
on that.

Every church meeting, I'm there,
Sunday.

I have a good roommate. We read
the bible together -- you know.

I feel like I have a real good
story to tell children how you can mess your life up, all on
one act -- you know.

You think it's not that bad, but
really something -- something terrible can come out of it.

And -- uh -- I will, whenever I
come out of this, be a positive person for young people my
age, or younger children.

And -- uh -- that's what I'm going
to do.

I'm going to make the best out of
this situation.

You know, I can't grasp -- forgive
myself because I've got three children that I love dearly..

Could I figure somebody?

I don't know.

But the Lord says:

STATE v NICHOLAS MACKLEN, MAY 18, 2010 & JUNE 9, 2010 73

You must forgive.

And I've tried as best as I could
for that to happen.

But -- uh -- I am truly, truly,
sorry.

And I understand how you feel about
me.

Maybe one day, it'll change.

And I know -- uh -- you say I
haven't reached out to y'all.

I don't know how to reach out to
you, you know.

In the future, I -- I'd love for
y'all to forgive me.

And who knows, may -- maybe it'll
be a positive whenever I get out of this; and we can be
friends and move on with our lives.

I'm surely sorry this had to
happen. I'm truly am sorry for this. I truly am.

THE COURT:

Anything further, Mr. Wilson?

MR. WILSON:

No sir, Your Honor.

THE COURT:

STATE v NICHOLAS MACKLEN, MAY 18, 2010 & JUNE 9, 2010 74

Anything further, Mr. Chambers?

MR. CHAMBERS:

No sir.

THE COURT:

Anything in reply, Ms. Tilley?

SOLICITOR:

No, Your Honor.

THE COURT:

All right.

Mr. -- uh -- Macklin, and -- uh --
the Odermatt family -- Morris family, let me say that:

There is -- is this thought of
these type proceedings bringing closure -- uh -- to -- uh --
- tragic situations.

Uh -- Let me tell you that:

You may feel some closure. But you
have suffered greatly. And you will suffer greatly as a
result of the events that occurred that night.

There will be no closure. You will
live with this, all of you; your family, Mr. Macklen; the
victim's family as well.

You, Mr. Macklin, will live with
this -- uh -- forever more.

Uh -- There will never be complete

STATE v NICHOLAS MACKLEN, MAY 18, 2010 & JUNE 9, 2010 75

and final closure as a result of it.

This is a negotiated plea.

I am fortunate, in that I have before me three attorneys who I have the utmost respect for; Mr. Wilson, Mr. Chambers, Ms. Tilley.

Uh -- I understand their motivations in entering into this negotiation. And this is a situation where I think the negotiations are appropriate to the crime; appropriate to the Defendant; appropriate to the victims.

Uh -- I am going to follow those recommendations, or negotiations, in sentencing you, Mr. Macklen.

I hope, Mr. Macklen, that you will find some purpose in your life.

You've told me that that -- uh -- is the track that you're on. And I -- I hope that that will continue.

Uh -- There are many who have had sentences -- uh -- significant sentences -- in which they have been able to find useful purpose in their -- their lives.

And I hope that's the case with you. I hope something good will come of this.

STATE v NICHOLAS MACKLEN, MAY 18, 2010 & JUNE 9, 2010 76

The sentence of The Court, as to each of the three charges of leaving the scene of an accident involving great bodily injury while operating a vessel; the sentence of The Court is 10 years.

As to the leaving the scene of an resulting in death while operating a vessel; the sentence of The Court is 25 years.

As to burglary in the first-degree; the sentence of The Court is 27 years.

These sentences are to run concurrently.

Good luck to you, Mr. Macklin.

MR. WILSON:

Thank you very much, Your Honor.

WHEREUPON: There being nothing further regarding the matter, this proceeding was closed at 2:42 PM, June 9th, 2010.

STATE v NICHOLAS MACKLEN, MAY 18, 2010 & JUNE 9, 2010 77

CERTIFICATE

I, the undersigned, H. Eugene Buckner, CVR, Official Court Reporter at Large in and for the State of South Carolina, do hereby certify that the foregoing proceedings were taken on the 18th day of May, 2010 and the 9th day of June, 2010.

That the within judicial proceedings are, to the best of my ability, an accurate and verbatim transcription of the hearing;

I further certify that I am neither Counsel nor Solicitor to any of the parties in said suit, nor interested in the event of the cause.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 15th day of September, 2010.

H. Eugene Buckner

H. EUGENE BUCKNER, CVR
OFFICIAL COURT REPORTER AT LARGE
15TH JUDICIAL DISTRICT
STATE OF SOUTH CAROLINA

WITNESSES

Alan Jones Horry County Police Department

DOCKET NO. 2008-GS-26-01248

The State of South Carolina

County of Horry

Elizabeth V. Tilley

08H03802

COURT OF GENERAL SESSIONS

MARCH, 2009 TERM

ARREST WARRANT NUMBER

J320946

CDR: 0079 16-11-0311

DOA: 9/2/2008

THE STATE

VS.

Nicholas G. Macklen

W/ M

8596 Hwy 544

Myrtle Beach, SC 29568

DOB: 1980-07-18

SSN: 241712543

ATTORNEY: Chambers, Trenton H.

Indictment for

BURGLARY, 1ST DEGREE

J. Gregory Hembree, Solicitor

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

MAR 2 6 2009

VERDICT

Foreperson of Petit Jury

Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

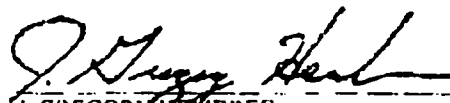
INDICTMENT

At a Court of General Sessions, convened on MARCH 26, 2009, the Grand Jurors of Horry County present upon their oath:

BURGLARY, 1ST DEGREE**CDR: 0079 16-11-0311**

That **Nicholas G. Macklen** did in Horry County on or about August 30, 2008 enter the dwelling of Randall Blalock located at 1082 Folly Road in Myrtle Beach, South Carolina without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, the defendant did enter or remain in the dwelling during in the nighttime, in violation of Section 16-11-0311(A), 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. GREGORY PEMBREE
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Robin Camlin S C Department Of Natural
Resources

DOCKET NO. 2009-GS-26- 01A7D

The State of South Carolina

County of Horry

Elizabeth V. Tilley

08-103886

COURT OF GENERAL SESSIONS

MARCH, 2009 TERM

ARREST WARRANT NUMBER

2009GS2601270

CDR: 2701 50-21-0130(A)(3)

DOA: 9/2/2008

THE STATE

VS.

ACTION OF GRAND JURY

TRUE BILL

Nicholas G. Macklen
W/ M

Myrtle Beach, SC 29588

Foreperson of Grand Jury
Date: MAR 2 8 2009

ATTORNEY: Chambers, Trenton H.

VERDICT

Indictment for

LEAVING SCENE OF ACCIDENT

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury
Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on MARCH 26, 2009, the Grand Jurors of Horry County present upon their oath:

LEAVING SCENE OF ACCIDENT

CDR: 2701 50-21-0130(A)(3)

That **Nicholas G. Macklen** did in Horry County on or about August 30, 2008, while operating a vessel become involved in an accident which resulted in the death of Shayne Odermatt, and did leave the scene of the accident without first rendering aid and/or information, in violation of Section 50-21-0130(A)(3), S. C. Code of Laws, 1976, as amended.

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


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Robbie Camlin S C Department Of Natural
Resources

DOCKET NO. 2008-GS-26-01871

The State of South Carolina

County of Horry

Elizabeth V. Tilley

08H03986

COURT OF GENERAL SESSIONS

MARCH, 2009 TERM

ARREST WARRANT NUMBER

2009GS2601271

CDR: 2699 50-21-0130(A)(2)

DOA: 9/2/2008

THE STATE

VS.

ACTING GRAND JURY

TRUE BILL

Nicholas G. Macklen
W/M

Myrtle Beach, SC 29588

Foreperson of Grand Jury
Date: March 9, 2009

ATTORNEY: Chambers, Trenton H.

VERDICT

Indictment for

LEAVING SCENE OF ACCIDENT

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury
Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

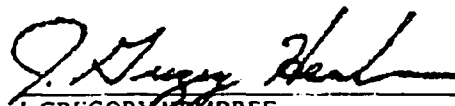
At a Court of General Sessions, convened on MARCH 26, 2009, the Grand Jurors of Horry County present upon their oath:

LEAVING SCENE OF ACCIDENT

CDR: 2699 50-21-0130(A)(2)

That **Nicholas G. Macklen** did in Horry County on or about August 30, 2008, while operating a vessel become involved in an accident which resulted in great bodily injury to Robert Gordon, and did leave the scene of the accident without first rendering aid and/or information, in violation of Section 50-21-0130(A)(2)), S. C. Code of Laws, 1976, as amended.

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


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Robin Jamlin S C Department Of Natural Resources

DOCKET NO. 2009-GS-26- 01272

☒ The State of South Carolina

County of Horry

Elizabeth V. Tilley

08-H03886

COURT OF GENERAL SESSIONS

MARCH, 2009 TERM

ARREST WARRANT NUMBER

2009GS2801272

CDR: 2699 50-21-0130(A)(2)

DOA: 9/2/2008

THE STATE

ACTION OF GRAND JURY

TRUE BILL

Nicholas G. Macklen
W/M

SC 29588

Foreperson of Grand Jury
Date: MAY 2 6 2009

ATTORNEY: Chambers, Trenton H.

VERDICT

Indictment for

LEAVING SCENE OF ACCIDENT

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury
Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on MARCH 26, 2009, the Grand Jurors of Horry County present upon their oath:

LEAVING SCENE OF ACCIDENT

CDR: 2699 50-21-0130(A)(2)

That **Nicholas G. Macklen** did in Horry County on or about August 30, 2008, while operating a vessel become involved in an accident which resulted in great bodily injury to Roxanna Gordon, and did leave the scene of the accident without first rendering aid and/or information, in violation of Section 50-21-0130(A(2)), S. C. Code of Laws, 1976, as amended.

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


J. GREGORY CHEMBREE
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Horry

VS.

Nicholas G. Macklen

AKA:

Race: W

Sex: M

Age: 29

DOB:

SSN:

Address:

City, State, Zip: Myrtle Beach, SC 29588

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (After June 20, 1985) - First degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS2601248

A/W#: J320946

Date of Offense: 8/30/2008

S.C. Code §: 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: E. V. Tilley 71146 9/1/09 271 2/1/10 6/17/10 13775
Tilley, Elizabeth V. SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 27 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 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: 6/9/10
☒ 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

§ 47.12 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$100 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/en \$

§ 90.7 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90Clerk of Court/ Deputy Clerk Nelanie Higgins - HardCourt Reporter Eugene Buckner

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
parts. of \$ 15.00 beginning 07/09/2009

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel.§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge
Judge Code: 2152

_____ 6/9/10

qualified 5/18/10 CP: Eugene Buckner

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry
 STATE VS.
Nicholas G Macklen

AKA: _____
 Race: W Sex: M Age: 29
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: Myrtle Beach, SC 29588
 DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Watercraft / Operator fails to render assistance - death results

INDICTMENT/CASE#: 2009GS2601270

A/W#: 2009GS2601270

Date of Offense: 8/30/2008

S.C. Code § 50-21-0130(A)(3)

CDR Code #: 2701

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 50-21-0130(A)(3) of the S.C. Code of Laws, bearing CDR Code # 2701

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

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: E. V. Tilley 71146 N. G. Macklen 2/16/10
 Tilley, Elizabeth V. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended 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: 6/9/10

☒ 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-63 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
§ 47.12 (Public Def/Prob)	\$500 \$
§ 14-1-212 (Law Enforce. Funding)	\$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$100 \$
§ 50-21-114(BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
§ 90.7 (SCCJA Surcharge)	\$5 \$ 5.00
3% to County (if paid in installments)	\$ 3.90
TOTAL	\$ 133.90

Clerk of Court/ Deputy Clerk Melanie Higgins Hard

Case Number

Eugene Buckner

Presiding Judge

Judge Code: 2152

6/9/10

qualified 5/18/10 CR: Eugene Buckner

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Horry

VS.

Nicholas G Macklen

AKA:

Race: W

Sex: M

Age: 29

DOB:

SS#:

Address:

City, State, Zip: Myrtle Beach, SC 29588

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Watercraft / Operator fails to render assistance - with great bodily injury

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS2601271

A/W#: 2009GS2601271

Date of Offense: 8/30/2008

S.C. Code §: 50-21-0130(A)(2)

CDR Code #: 2699

SENTENCE SHEET

in violation of § 50-21-0130(A)(2) of the S.C. Code of Laws, bearing CDR Code # 2699

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: E.V. Tilley
Tilley, Elizabeth V.71146
SC Bar#

Defendant

Attorney for Defendant

6176
SC Bar#
13775WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 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 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: 6/9/10☒ 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
§ 47.12 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$100	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/cn	\$
§ 90.7 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk: Melanie Huggins-Hard

Court Reporter

Gene Buckner

Presiding Judge

Judge Code: 2152

Qualified 5/18/10

CR: Eugene Buckner

Qualified 5/18/10 CR: Eugene Buckner

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry
STATE VS.
Nicholas G MacklenINDICTMENT/CASE#: 2009GS2601272AKA: _____
Race: W Sex: M Age: 29A/W#: 2009GS2601272Date of Offense: 8/30/2008

DOB: _____ SS#: _____

S.C. Code §: 50-21-0130(A)(2)CDR Code #: 2699

Address: _____

City, State, Zip: Myrtle Beach, SC 29588

DL#: _____ SID#: _____

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADSTO: Watercraft / Operator fails to render assistance - with great bodily injuryin violation of § 50-21-0130(A)(2) of the S.C. Code of Laws, bearing CDR Code # 2699☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: E.V. Tilley 71146 91 Macklen 2/17/10 6/7/10 13775
Tilley, Elizabeth V. SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 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 probation for _____with
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: 6/9/10
☒ 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

§ 47.12 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/en \$ _____

§ 90.7 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90Clerk of Court/ Deputy Clerk Nelanie Higgins HardEve Buckner

Presiding Judge

Judge Code: 2152

Qualified 5/18/10 Mr. Eugene Buckner

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

Nicholas Macklen 323454
 Full name and prison number (if any) of Applicant.

v.)

State of South Carolina)

12 5275
 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 see clearly 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 Lee Correctional Institution
2. Name and location of Court which imposed sentence Horry County Court House
3. Name(s) of co-defendant(s) (if any) Brandon M. Diviant
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: Docket 2009-GS-26 01246 Burglary 1st
 - (a) 2009-GS-26 01270 Leaving Scene of Accident
 - (b) 2009-GS-26-01271 Leaving Scene of Accident
 - (c) 2009-GS-26 01272 Leaving Scene of Accident
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Jun 9, 2010 27 yrs
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? *yes*
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. *Southern District Court of Appeals*
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. *denied*
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. *February 2012*
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: *The effective assistance of counsel*

- (a) Unknowns and Involuntary Guilty Plea/Trial Counsel Failure to object to guilty plea
 (b) Trial Judge Failure to Inform Applicant of his constitutional rights before accepting guilty plea
 (c) Exhibit A Trial Transcript Pg 24, 25, Trial Counsel Failure to object 6th Amendment violation

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

- (a) Counsel Failure to assist before the Court plea is involuntary
 (b) Boykin v. ALABAMA 395 U.S. 238
 (c) _____

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

- (a) any petition in a State Court under South Carolina Law? Yes
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____

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

- (a) the specific nature thereof:
 i. Writ Certiorari
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. South Carolina Supreme Court
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. Dismissed
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. Feb 22, 2012
- 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) Appellate counsel failure to raise on direct ~~appellate~~
- (b) Appropriate channel post-conviction relief
- (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? _____
- (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 "yes" to one or more parts of (17), list:

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

- i. Ralph S. ~~W~~ Wilson Esq
- ii. PO Box 1427 Conway, SC 29528
- iii. Trenton Chambers Esq

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

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

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

VACATE Conviction and Sentence and/or Retrial

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

NO

12

5275

STATE OF SOUTH CAROLINA)

County of Horry)

VERIFICATION

I, Nicholas Mecklen, 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.

Nicholas Mecklen

SWORN to and subscribed before me this 29
day of June, 2012.

[Signature] (L.S.)
Notary Public

My Commission Expires: 11-4-2015

FILED
Horry County
2012 JUL -9 PM 12:53
MELANIE HUGGINS-WARD
CLERK OF COURT

12

5275

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

I, Nicholas Mecklen, 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.

Nicholas Mecklen
Applicant

SWORN or affirmed to and subscribed before me this

29 day of June, 2012

[Signature]
Notary Public

My Commission Expires: 11-4-2015

FILED
CLERK OF COURT
2012 JUL -9 PM 12:53
MELANIE HUGGINS-WARD

TATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
	)	
	)	2012-CP-26-5275
Nicholas Macklen, 323454	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for post conviction relief (PCR) filed May 25, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the March 2009 term of the Horry County Grand Jury for three counts of leaving scene of accident (2009-GS-26-1270, 1271 and 1272), burglary 1st degree (2009-GS-26-1248), and (2008-GS-26-2659). Ralph Wilson, Esquire, represented Applicant.

On May 18, 2010, Applicant pled guilty as indicted before the Honorable Larry B. Hyman Jr., who sentenced Applicant to twenty-seven years imprisonment on the burglary charge, to twenty-five years imprisonment on the leaving scene of accident (1270), with all charges running concurrently. On information and belief, Applicant appealed arguing the circuit court erred in failing to inform him

that he was waiving his right to confront witnesses, and his appeal was dismissed, with the date of the remittitur March 12, 2012.

Attached herewith and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction, and Applicant's SCDC records, and the transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of Counsel

III.

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

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

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

Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

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

IV.

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

V.

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

VI.

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

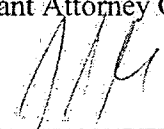
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

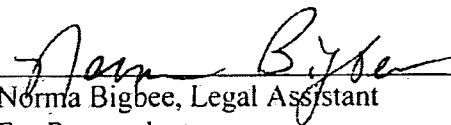
SEP 18, 2012.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
	)	
	)	2012-CP-26-5275
NICHOLAS MACKLEN, #323454	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

Phillip F. L. Hughes, Esquire
457 Main St.
Ocean Drive Section
N. Myrtle Beach, SC 29582

DATED this 18th day of September, 2012.


 Norma Bigbee, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**

COUNTY OF HORRY) CASE NO: 2012-CP-26-5275

PCR HEARING

B E F O R E: The Honorable George C. James
March 20, 2014

NICHOLAS MACKLEN,

Claimant/Applicant,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

APPEARANCES:

Charles Brooks, Esq.
For the Claimant/Applicant.

Joshua L. Thomas, Esq.
For the Respondent.
(Office of the Attorney General)

Court Reporter:

Natalie Dahl, RPR

 **ORIGINAL**

I N D E X

WITNESSES

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Redirect-Examination by Mr. Brooks.....	12

RALPH WILSON, ESQ.

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Cross-Examination by Mr. Brooks.....	20
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Cross-Examination by Mr. Brooks.....	24

EXHIBITS

(NO EXHIBITS WERE MARKED OR ADMITTED)

NICHOLAS MACKLEN - DIRECT EXAMINATION

P R O C E E D I N G S

1
2 THE COURT: This is Nicholas Macklen versus the
3 State, 2012-CP-26-5275. Mr. Brooks is here
4 representing Mr. Macklen. Mr. Thomas you want to --
5 well, it appears that this is a plea? It was a plea?

6 MR. THOMAS: It was a May 18th, 2010 plea --

7 THE COURT: You can have a seat.

8 MR. THOMAS: -- to burglary first.

9 MR. BROOKS: May I interrupt? He's got some
10 family outside; can I tell them to come in?

11 THE COURT: Sure.

12 MR. THOMAS: Sorry.

13 MR. BROOKS: That's all right. Thank you. I'm
14 sorry.

15 (A brief pause in the proceedings)

16 MR. THOMAS: He was originally indicted for
17 burglary first, two counts of leaving the scene in a
18 watercraft accident, death resulting, five counts
19 leaving the scene of a watercraft accident, great
20 bodily injury resulting, and murder.

21 He pled in May 2010 to one count of burglary
22 first, three counts of leaving the scene with great
23 bodily injury, and one count of leaving the scene,
24 death resulting. Judge Hyman sentenced him to a
25 negotiated 27 years on burglary, 25 years on the

NICHOLAS MACKLEN - DIRECT EXAMINATION

1 leaving the scene, death resulting, and ten years on
2 each count of great bodily injury resulting, all
3 running concurrent. He filed an appeal, and that was
4 perfected in the form of an Andrews brief by Wanda H.
5 Carter. That was dismissed by the Court of Appeals in
6 an unpublished opinion 2012-UP-106. He filed this
7 appeal July 9th, 2012 alleging an involuntary guilty
8 plea. He is represented by Charles Brooks.

9 THE COURT: Mr. Brooks, anything you would like
10 to say before you begin, or you want to call your
11 first witness?

12 MR. BROOKS: We're ready to go.

13 THE COURT: Call your first witness.

14 MR. BROOKS: Call Mr. Nicholas Macklen to the
15 stand.

16 (NICHOLAS MACKLEN, having been duly sworn,
17 testified as follows:)

18 DIRECT-EXAMINATION

19 BY MR. BROOKS:

20 Q Mr. Macklen, how are you?

21 A Good, Mr. Brooks.

22 Q How old are you?

23 A 33.

24 Q You brought this application for post-conviction
25 relief?

NICHOLAS MACKLEN - DIRECT EXAMINATION

1 A I did.

2 Q And you understand that the only relief that the
3 Court can give you is give you a new trial?

4 A Yes, sir.

5 Q Can't cut your time, make your parole eligible
6 any earlier. The only thing that can happen is, in
7 effect, you can press the reset button and start over
8 like we discussed?

9 A Yes, sir.

10 Q You understand that if that happens, that you
11 would go back and face all of the original charges
12 again that you were faced with, murder, all of those
13 things?

14 A Yes, sir.

15 Q You understand what could happen if you started
16 over?

17 A Yes, sir. Yes, sir.

18 Q And we talked about that, and you understand
19 that? You said that you still want to go forward in
20 your post-conviction relief; is that correct?

21 A Yes, sir.

22 Q Nicholas, I want to get that out there for
23 background. Now, you brought this application about
24 your guilty plea, that you didn't understand what you
25 were doing when you were represented by Ralph Wilson;

NICHOLAS MACKLEN - DIRECT EXAMINATION

1 is that correct?

2 A Correct.

3 Q Tell the Court what you didn't understand or --
4 why your plea was not freely and voluntarily given in
5 front of Judge Hyman?

6 A Well, you know, I was sitting there, and as you
7 go through the paperwork, it was three pages,
8 inaudibles, where I was -- I was crying and asked to
9 step back and come back, and I was still crying. I
10 said, Your Honor, I was originally offered a 20-year
11 plea --

12 THE COURT: A what?

13 THE WITNESS: 20-year plea, which I was advised
14 that he can give me 8 to 12 years.

15 Q (MR. BROOKS) That is what Mr. Wilson told you?

16 A Yes, sir.

17 Q Go ahead.

18 A So I didn't want to take this. So now I'm
19 offered 27 years, you know, later on. So I didn't
20 want to take the plea, and the judge says, well, you
21 know, the murder charge and the burglary charge, you
22 know, you end up with two life sentences off of this.
23 You know, I was sort of coerced into it.

24 Q Now, I hate to go back. You understand that if
25 that is what Judge Hyman told you -- you said that is

NICHOLAS MACKLEN - DIRECT EXAMINATION

1 what he told you during the plea?

2 A Yes, sir.

3 Q That if we convince Judge James to start you
4 over, that you would be right back at that same point
5 in time that Judge Hyman told you?

6 A Yes, sir.

7 Q And you fully understand that?

8 A Yes, sir, I do.

9 Q Now, you said you were crying during your guilty
10 plea?

11 A I was.

12 Q Very upset, very emotional for you?

13 A Uh-huh.

14 Q What else was going on during your guilty plea
15 that you want to tell the Court?

16 A Just, you know, I was advised, you know, like I
17 said, not to do that, so that was my first thing.

18 THE COURT: Advised not to do what?

19 THE WITNESS: To take a plea, you know, that I
20 was offered, that I was told I would get something
21 different.

22 THE COURT: He has to say who advised him.

23 THE WITNESS: Ralph Wilson.

24 Q (MR. BROOKS) Are you saying that Ralph Wilson
25 advised you not to take the plea?

NICHOLAS MACKLEN - DIRECT EXAMINATION

1 A The 20-year plea, yes. I originally had Trent
2 Chambers, and I was offered 20 years. My family went
3 to Ralph Wilson, he come and seen me and said don't
4 take the plea, I'll get you 8 to 12 years. So I'm
5 under this impression the whole time. Later on, I'm
6 offered 27 years, and he's saying you need to take
7 this, you know.

8 Q Did you talk to him about what changed when he
9 said don't take the plea and now he says take the
10 plea, did you talk about that?

11 A Yes, sir.

12 Q What was the result of that?

13 A That my codefendant had turned State's evidence
14 and, you know, now, I guess because he's saying we did
15 it, that more or less there wasn't no chance, really,
16 in a trial.

17 Q Nicholas, did you -- was your original intent to
18 take all of these charges to trial?

19 A Yes, sir.

20 Q Is that your intent now if the Court grants you a
21 new trial?

22 A Yes, sir, it is.

23 Q Now, one of the things you are raising in your
24 application, you said that you were not fully informed
25 that you could confront --

NICHOLAS MACKLEN - DIRECT EXAMINATION

1 A My accusers.

2 Q -- the witnesses, State's witnesses? .

3 A Yes, sir.

4 Q You did not know that you had the Constitutional
5 right to do that?

6 A You're right.

7 Q Didn't know that?

8 A Wasn't advised.

9 Q Now, you know in a trial you can force the State
10 to put up witnesses against you where you could sit at
11 the table and you look at them, and any lawyer like
12 myself would cross-examine them?

13 A Yes, sir.

14 Q And you said you didn't know about that?

15 A No, sir, I did not. Was not advised.

16 Q And that is one of the Constitutional rights that
17 you have subsequently waived when you took the plea?

18 A Yes, sir.

19 Q Is there anything else that we haven't covered
20 that we want to tell Judge James as to why you should
21 get your PCR granted?

22 A Just that, and the indictment thing.

23 Q One of the things you said in the indictment was
24 it wasn't stamped. Can you explain that to the Court?

25 A It wasn't time stamped.

NICHOLAS MACKLEN - CROSS-EXAMINATION

1 Q Time stamped by the Clerk of Court?

2 A Yes, sir.

3 Q It is your position that since it wasn't time
4 stamped, that should render it defective?

5 A Correct.

6 Q If the State had a defective indictment, they
7 could not proceed with your guilty plea; is that
8 correct?

9 A Yes, sir.

10 Q Okay. Is there anything else?

11 A I believe that is it.

12 Q Are you sure?

13 A Yes, sir.

14 Q Take a little time. This is your bite at the
15 apple. Your family is here, Judge James, and I want
16 to be sure we have everything out.

17 A Yes, sir, that's it.

18 Q Okay.

19 MR. BROOKS: Answer any questions of the Attorney
20 General.

21 MR. THOMAS: May it please the Court?

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. THOMAS:

25 Q How many meetings did you have with Mr. Wilson

NICHOLAS MACKLEN - CROSS-EXAMINATION

1 before you pled?

2 A Not exactly sure of the number. A few.

3 Q And during those meetings, you had a chance to
4 review the State's evidence against you?

5 A I did.

6 Q And you had a chance to tell him what your
7 version of events were that night?

8 A I did.

9 Q And did he -- he discussed with you any defenses
10 you might have, didn't you?

11 A Yes, he did.

12 Q Regarding that first plea, you said he advised
13 you to turn down that 20-year offer?

14 A He did.

15 Q But he also advised you that it was ultimately
16 your decision to take the plea, didn't he?

17 A Yes.

18 Q And, ultimately, it was your decision to turn
19 that 20-year offer?

20 A Yes, it was.

21 Q And it was your decision, ultimately, to plead to
22 the 28 or 27 years?

23 A Yes.

24 Q Do you recall in that trial agreeing with the
25 facts the Solicitor put on the record?

NICHOLAS MACKLEN - REDIRECT EXAMINATION

1 A Some of the facts, yeah.

2 Q And you recall telling Judge Hyman that you were
3 satisfied with Mr. Wilson, and there was nothing else
4 he could do to help you?

5 A I remember.

6 Q And you filed an appeal from this, didn't you?

7 A I did.

8 Q Didn't you in that appeal raise the issue of
9 Judge Hyman not going over your right to confront
10 witnesses?

11 A I did.

12 MR. THOMAS: That is all I have. Thank you.

13 THE COURT: Redirect?

14 REDIRECT-EXAMINATION

15 BY MR. BROOKS:

16 Q Did you feel you had enough time to talk with Mr.
17 Wilson in preparing your case?

18 A No. We had some meetings, but whenever it come
19 down to it, when my codefendant turned state's
20 evidence, you know, it wasn't a month,
21 month-and-a-half later we're here, you know, trial.
22 Really didn't have a lot of time to discuss.

23 Q Went kind of fast for you?

24 A Yes, sir.

25 MR. BROOKS: No other questions, Judge.

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 THE COURT: Anything else, Mr. Thomas?

2 MR. THOMAS: Nothing.

3 THE COURT: You can step down. Thank you, sir.

4 Mr. Brooks, any other witnesses?

5 MR. BROOKS: Beg the Court's indulgence.

6 (A brief pause in the proceedings.)

7 MR. BROOKS: No other witnesses.

8 THE COURT: Mr. Thomas.

9 MR. THOMAS: State calls Ralph Wilson to the
10 stand.

11 (RALPH WILSON, having been duly sworn,
12 testified as follows:)

13 THE CLERK: State your name.

14 MR. WILSON: Ralph J. Wilson.

15 MR. THOMAS: Beg the Court's indulgence.

16 (A brief pause in the proceedings.)

17 DIRECT-EXAMINATION

18 BY MR. THOMAS:

19 Q Good morning.

20 A Good morning.

21 Q How many years -- how much experience do you have
22 practicing law?

23 A I've been practicing law since 1977, and that's
24 primarily been criminal law for most of those years.

25 Q Ever held any elected positions related to

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 criminal law?

2 A I was the chief deputy public defender for
3 several years, and then I became chief deputy
4 solicitor for the 15th Judicial Circuit in 1988, and I
5 served in that capacity until, I think, '90, and then
6 I became the elected solicitor in 1990, served in that
7 capacity until 1999, and then I went back in private
8 practice at that time.

9 Q Were you retained or appointed to Mr. Macklen's
10 case?

11 A Retained.

12 Q What kind of motion did you file relating to
13 discovery?

14 A We filed basically a standard motion under -- to
15 get whatever discovery the State would have had, and
16 they actually did give us the discovery.

17 Q Did you believe that the response was everything
18 they had, complete response?

19 A Yes.

20 Q What were your conversations regarding State's
21 discovery?

22 A Let me back up a minute. One of the things in
23 this case is that -- and he is right in the sentence
24 that when we initially started this case, the State
25 really did not have proof sufficient to convict him,

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 in my mind, of anything significant. The problem is
2 that that changed, and that was one of the
3 conversations that we had early on, is that as long as
4 he and/or his codefendant both refused to cooperate
5 with the State, they were going to have a real problem
6 trying to convict him. The problem is that that
7 changed. When that changed, everything changed. I
8 always told him that if his codefendant decided to
9 testify against him, we have problems, because the
10 codefendant could put him at the scene of the
11 burglary, which was our primary concern.

12 The problem in this case was that they had no
13 witnesses who could actually identify him as being the
14 driver of the boat that hit the other boat. They
15 could not do that without the codefendant or without
16 Nick. Until the codefendant came forward and agreed
17 to cooperate and testify, which was, as he said,
18 probably like a month, maybe month-and-a-half before
19 the trial, they offered 20 years before that, the
20 State had.

21 I was of the opinion that based on that, no, I
22 didn't think he should have taken the 20 years,
23 because they couldn't prove it at that point. Now,
24 that changed. When that changed, I told him, look,
25 you know, now with your codefendant coming forward --

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 because he couldn't connect for the State all of the
2 dots that they needed to make a strong case against
3 him, not just for -- not just for the burglary first
4 degree, but for the murder, is what we were really
5 were concerned about, because we would have been
6 facing murder and burglary first degree, and so then
7 when they came back, they said now that we have the
8 codefendant to testify, we're not going to offer you
9 20 years anymore, we'll offer you 27, take it or leave
10 it, and/or we'll try for murder and burglary first
11 degree.

12 Q So backing up, did you review the State's
13 discovery responses?

14 A Absolutely. Not just with him, I also met with
15 his family on multiple occasions and talked about what
16 was going on with his case.

17 Q Who did you tell him ultimately made the decision
18 regarding whether to take that 20-year plea offer?

19 A Him. And not just with Nick, with every client I
20 have ever had. I'll tell them my opinion, but the
21 ultimate decision whether they do it or don't do it,
22 that's up to them.

23 Q I believe the 20 years came off the table when
24 the codefendant pled or --

25 A Once he agreed to cooperate, yes.

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 Q Did you have any other -- were those the only
2 plea deals you had from the State?

3 A Yes. The only offer we ever got was 20 years,
4 and then 27.

5 Q Do you remember how many meetings you had with
6 Mr. Macklen?

7 A We had a number, a number of meetings. I'm
8 looking at my file and it looks like December 18, '09
9 -- let me go back here. January 14, '09,
10 February 27th, '09, then I met with his parents on the
11 same day, February 27, '09, March 13, '09, May 7, '09,
12 June 29, '09. I see one here for December 18, '09.
13 Those are the dates that I have actually documented
14 visits. There were times that I would visit where I
15 didn't actually write it down in my ledger, but those
16 are documented visits.

17 We had a bond hearing on February 10, 2010, and I
18 had another meeting with him on August 7, '09. I
19 think I already said June -- no, that is the plea
20 date. Anyway, those are the dates that I have logged.
21 I'm pretty positive that there were other dates where
22 I met with his family when he was probably not even --
23 when he wasn't present, but those are the dates that I
24 have logged, yes.

25 Q And during those meetings, what did you all

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 discuss about his defenses to the crime?

2 A Whenever -- my routine is, and always has been,
3 with my first and initial meeting with any defendant
4 is that I sit down with them and I go over the
5 warrants, that is the first thing I do, whatever the
6 charges are. We talk about what the charges are and
7 the elements of the charges and what the penalties are
8 for the charges. I usually even do that before I hear
9 what their story is about what they say happened.
10 Then, after that, I want to listen to what they say
11 happened and let them tell me what happened so I can
12 try to determine if we have a defense; and if so, if
13 it's a viable defense, how we should approach the
14 case.

15 So that would have happened at our initial
16 meeting. Now, best I can recall, I met with his
17 family even before I met with Nick and talked with
18 them. I think I met with them a couple of times
19 before I actually went out to the jail and met with
20 Nick to discuss it with him.

21 Q So I guess during these meetings, did he -- what
22 kind of leads or investigation did he ask you to do or
23 did you think was necessary?

24 A I don't remember specifically him asking me to do
25 anything in particular, that I can recall. I do know

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 that, you know, one of the developments -- one of the
2 other major developments in the case was that in the
3 beginning the State had a real problem tying Nick to
4 the boat that was used, or the boat that was involved
5 in the accident. They had a real problem tying him to
6 it, but then I think it was his niece or cousin or
7 some relative of his came forward and told the police
8 that she had sold the boat to Nick a couple months
9 earlier, two months or three months earlier, or
10 something, and that was the first real break for the
11 State in the case, which started the downward spiral
12 from there.

13 Q Before the plea, the actual plea date, what
14 rights did you discuss with him that he would give up
15 when he pled guilty?

16 A Whenever -- with every defendant, and usually not
17 just before the plea, but when we start out the
18 process, we always talk about it, and we did. We
19 talked about going to trial. Originally, that was our
20 plan. The plan was to go to trial because I thought
21 -- I honestly believed that we had a good chance at
22 trial until the codefendant started agreeing to
23 cooperate.

24 So we discussed what would happen at trial and
25 who would testify and who our witnesses would be and

RALPH WILSON, ESQ. - CROSS-EXAMINATION

1 what the State had to prove and whether they could
2 prove it. As I said, my belief was that they couldn't
3 prove it at that point. As I said, that changed,
4 though. So we would have discussed his right to
5 testify. We would have discussed witnesses and the
6 right of the State to present those witnesses and have
7 their testimony heard, and the jury would then
8 ultimately make a decision based on the witnesses and
9 testimony presented at the trial as to whether or not
10 he was guilty or not guilty, if the State could not
11 prove the elements of the charges that they had
12 against him, which in my humble opinion, they could
13 not early on.

14 Q Specifically, did you discuss with him the right
15 to cross-examine witnesses?

16 A Yes, sir. Absolutely.

17 MR. THOMAS: Thank you. If you'll answer any
18 questions of Mr. Brooks.

19 THE COURT: Mr. Brooks.

20 CROSS-EXAMINATION

21 BY MR. BROOKS:

22 Q Mr. Wilson.

23 A Good morning.

24 Q How are you?

25 A Good for an old fellow.

RALPH WILSON, ESQ. - CROSS-EXAMINATION

1 Q Did you tell Mr. Macklen about 8 to 12 years?

2 A Um, I don't recall that. If I said that, it
3 would have been in this context, that maybe we can get
4 them down to 8 to 12 years.

5 Q I don't mean to interrupt, but that would have
6 been before the dynamics --

7 A Oh, absolutely. That would have been early on,
8 almost at the inception of the case. As I said,
9 because they couldn't prove the primary charges.
10 Their main charges was the murder and burglary. They
11 couldn't prove those early on. Even after they got
12 the information about the boat, which tied him to the
13 boat, they were still having trouble because they
14 couldn't identify Nick being the driver, so they still
15 couldn't get to where they needed to get to convict
16 him of anything.

17 My feeling was that by the time we got to trial,
18 if things stayed the way they were, what was going to
19 happen is they were going to have to come down to the
20 20-year offer to offer more reasonable. Instead of
21 that happening, what happened is they got additional
22 information because the codefendant, for whatever his
23 reasons were, decided that he was going to cooperate.
24 Now, they could put Nick as the driver of the boat,
25 and they could put him in the house burglarizing the

RALPH WILSON, ESQ. - CROSS-EXAMINATION

1 house, so now they had an airtight case against him.

2 It would have been his testimony against his
3 co-defendants if he had gone to trial, and that is not
4 a good position to be in when you are charged with
5 murder and burglary first.

6 Q Right. Did Nick have much of a record if he had
7 gone to trial and testified, would that have concerned
8 you?

9 A I'm thinking, if my memory serves me, and I stand
10 to be corrected, I think he had something, but it
11 certainly wasn't anything of the magnitude that he was
12 charged with. It wasn't no murder or burglary first
13 or anything like that, no.

14 Q So it would -- could have been conceivable for
15 him to go to trial and testify?

16 A Yes. Especially in this kind of a case, because
17 it -- if he had to testify -- and let me say this, I'm
18 always slow to put a defendant on the witness stand, I
19 just like don't doing that, because usually bad things
20 happen when they get up there. I felt like at the
21 outset that if we got to that point, and if we needed
22 to put him on the stand with these charges, that we
23 probably could have gotten away with it, maybe.
24 Again, that is hypothetical. I really don't know how
25 to answer that.

RALPH WILSON, ESQ. - EXAMINATION BY THE COURT

1 Q Did you explain what you just explained to him?

2 A Yes, sir. Look, one of the big things with any
3 defendant and a trial is -- with me -- my general
4 feeling is if I can avoid putting a defendant on the
5 witness stand, I do, but there are times when you have
6 to do it. It's such a fundamental right that you
7 always have to talk with the defendant about that so
8 he clearly understands that. I certainly would have
9 done that. I certainly did that in this case, if he
10 testified, what would happen. Tell him, too, look,
11 when you get up there, if you have any record, it's
12 coming out, and the prosecutor is going to jump all
13 over it and jump all over you about what you did. So
14 I certainly would have done that, there is no doubt in
15 my mind about that part.

16 MR. BROOKS: Beg the Court's indulgence.

17 (Mr. Brooks confers with Mr. Macklen.)

18 (A brief pause in the proceedings.)

19 MR. BROOKS: No other questions.

20 THE COURT: Any additional questions?

21 MR. THOMAS: No redirect.

22 THE COURT: Any objection to me asking questions?

23 MR. BROOKS: No, sir.

24 MR. THOMAS: No, Your Honor.

25

RALPH WILSON, ESQ. - EXAMINATION BY THE COURT

EXAMINATION

1

2 BY THE COURT:

3 Q What made it murder as opposed to felony DUI or
4 equivalent?

5 A That was the other issue, Judge. When we started
6 out -- what they were saying is that he was a fleeing
7 felon at the time the homicide occurred, that is the
8 death of the child. There was a boat accident, and
9 the allegations were that the boat that was being
10 driven by Nick ran into the boat of these other folk
11 out on the river that night.

12 Q So fleeing a felony that made the boating -- the
13 collision a murder?

14 A Yes, sir. Because he was fleeing from a burglary
15 first degree, according to the State. That was their
16 position.

17 THE COURT: Any follow-up to that since he's your
18 witness?

19 MR. THOMAS: No, Your Honor.

20 THE COURT: Mr. Brooks?

21 CROSS-EXAMINATION

22 BY MR. BROOKS:

23 Q Did you explain all of that?

24 A Yes, sir. Because that is our whole theory of
25 the case. Yes, sir.

RALPH WILSON, ESQ. - EXAMINATION BY THE COURT

1 Q And as you answered before, prior to the
2 codefendant making his deal, the State couldn't prove
3 that he had the boat?

4 A That's correct.

5 Q And was driving the boat?

6 A That's right. That's right. Absolutely.

7 Q They just knew that the boat came from this place
8 that was burglarized?

9 A No. They actually -- they obviously arrested him
10 so they thought he did it. The problem is they
11 couldn't identify Nick as being the actual person who
12 left the house in the boat and then got into the
13 wreck, because what happened after the wreck, they
14 swam away from the scene, but the boat was left there.
15 They tried to track the boat down, which they did
16 track it back to some relative of Nick's, and they
17 said, yeah, yeah, yeah, I sold it to Nick.

18 Q The cousin?

19 A Right. I sold the boat a couple months ago, or
20 something. Even with that, that didn't really place
21 Nick as the driver, so we were still kind of okay.

22 Q They couldn't place Nick as the driver of the
23 boat that night?

24 A That's correct, and they couldn't use that to
25 place him at the house where the burglary occurred, so

RALPH WILSON, ESQ. - EXAMINATION BY THE COURT

1 they still were struggling with that. Then what
2 happens, unfortunately, is when the codefendant then
3 decides to kick in, he can fill in all of the missing
4 pieces and say, yeah, he and I left, we went to the
5 house, we actually burglarized the house, jumped in
6 the boat and there was somebody chasing them in the
7 boat, but the person chasing them could not identify
8 them, all he could say is it is a boat with a steeple
9 on it. He couldn't identify the people on the boat.
10 It was not a good case for the State until the
11 codefendant testified. Once he agreed to, everything
12 unraveled.

13 Q Okay.

14 MR. BROOKS: Beg the Court's indulgence.

15 THE COURT: Yes, sir.

16 (Mr. Brooks confers with Mr. Macklen.)

17 MR. BROOKS: No other questions, Your Honor.

18 THE COURT: All right. Anything else?

19 MR. THOMAS: That is all from the State.

20 THE COURT: You may step down will. Thank you.

21 MR. THOMAS: That is the State's case.

22 THE COURT: Any reply?

23 MR. BROOKS: No, sir.

24 THE COURT: Any closing, Mr. Brooks, remarks?

25 MR. BROOKS: Judge, it is our position, based on

THE COURT

1 my client's testimony, that he be granted his
2 post-conviction relief as outlined in his testimony
3 today, and grant him a new trial. That is our
4 position.

5 THE COURT: Mr. Thomas, any response?

6 MR. THOMAS: Just that it's our position that the
7 applicant has not met his burden. Mr. Wilson's
8 testimony was pretty thorough, that he went over
9 everything that was possible with Mr. Macklen
10 beforehand, and we ask that it be denied.

11 THE COURT: All right. Mr. Macklen, what I'm
12 going to do -- and I'm sure Mr. Brooks had or will
13 explain it -- I have to review all of the evidence. I
14 took detailed notes, and you do have the burden of
15 proof in this case. I'll go over the transcript, all
16 of the documents you filed and I'll review all my
17 notes. I'll issue an order that will say one of two
18 things, either that you prevailed, which means your
19 application is granted, at which time you would go
20 back in front of the court, judge or jury on all of
21 these charges. If that happens, if I grant your
22 request in my order, the State can appeal it.

23 The other option I have is to deny your request
24 for relief. If I do that, I'll also issue an order,
25 I'll sign it, you'll get a copy of it, your lawyer

THE COURT

1 will get a copy of it. After receipt of that order,
2 two things can happen. Either your lawyer can move
3 within ten days to reconsider the decision, or you can
4 appeal, and you'll have 30 days from the day you
5 received the order that you can do that. Did I
6 explain that correctly, Mr. Brooks?

7 MR. BROOKS: Yes, sir.

8 THE COURT: You have a chance to appeal if you
9 are not satisfied with my decision. State can appeal
10 my decision if the State is not satisfied, do you
11 understand?

12 MR. MACKLEN: Yes, sir.

13 THE COURT: Thank you, gentlemen.

14 (Whereupon, the proceedings concluded.)
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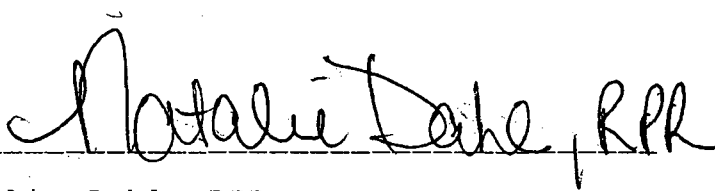
CERTIFICATE OF REPORTER

State of South Carolina)
County of Horry)

I, Natalie Dahl, Official Court Reporter for the
State of South Carolina, do hereby certify that the
foregoing is a true, accurate and complete Transcript
of Record of the proceedings had and evidence
introduced in the matter of the captioned case,
relative to appeal, in the Court of General Sessions
for Horry County, South Carolina, on the 20th day of
March, 2014.

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

July 20, 2014


Natalie Dahl, RPR

Court Reporter

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FOR THE FIFTEENTH JUDICIAL CIRCUIT

Nicholas Macklen, #323454,) Case No. 2012-CP-26-5275
)

Applicant,)

v.)

State of South Carolina,)

Respondent.)
_____)

ORDER OF DISMISSAL

HORRY COUNTY
14 JUN 11 PM 1:38
MELANIE HUGGINS-WARD
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed July 9, 2012. Respondent made a timely Return on or about September 18, 2012.

The Court convened an evidentiary hearing into the matter on March 20, 2014, at the Horry County Courthouse. Applicant was present at the hearing and represented by Charles T. Brooks, III, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, Ralph J. Wilson, Sr., Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Horry County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the appellate records, the application for post-conviction relief, and the return. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In March 2009, the Horry County Grand Jury indicted Applicant for murder (2009-GS-26-1245), first degree burglary (2009-GS-26-1248), leaving the scene of a watercraft accident resulting in death (2009-GS-26-1270), and

three (3) counts of leaving the scene of a watercraft accident resulting in great bodily injury (2009-GS-26-1271, -1272, and -1273). Ralph J. Wilson, Sr., Esquire ("plea counsel"), represented Applicant. On May 18, 2010, Applicant entered a negotiated plea of guilty to first degree burglary, leaving the scene of a watercraft accident resulting in death, and three (3) counts of leaving the scene of a watercraft accident resulting in great bodily injury. As part of the negotiations, the State dismissed the murder indictment in exchange for the plea. The Honorable Larry B. Hyman, Jr., sentenced Applicant to concurrent terms of twenty-seven (27) years for first degree burglary, twenty-five (25) years for leaving the scene of a watercraft accident resulting in death, and ten (10) years for each count of leaving the scene of a watercraft accident resulting in great bodily injury.

Applicant filed a timely notice of appeal, and Wanda H. Carter, Esquire, of the Office of Appellate Defense perfected the appeal with the filing of an Anders¹ brief. The South Carolina Court of Appeals dismissed Applicant's appeal on February 22, 2012. State v. Macklen, Op. No. 2012-UP-106 (S.C. Ct. App. filed February 22, 2012). The remittitur was returned to the circuit court on March 12, 2012.

II. ALLEGATIONS

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

1. "Ineffective Assistance of Counsel"
2. "Unknowing and Involuntary guilty plea/Trial counsel failure to object to guilty plea"
3. "Trial Judge failure to inform Applicant of his constitutional rights before accepting guilty plea"
4. "Exhibit A Trial Transcript pg 24, 25, Trial counsel failure to object 6th Amendment violation"

¹ Anders v. California, 386 U.S. 738 (1967).

At the PCR hearing, the Applicant proceeded on only two (2) allegations. First, he alleged plea counsel was ineffective in advising Applicant to reject a twenty (20) year plea offer. Second, he alleged his plea was involuntary because Judge Hyman failed to adequately advise him of his rights.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. 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).

A. Summary of Testimony

Applicant testified the State initially offered him a plea of twenty (20) years. He testified plea counsel told him to reject this offer because he could get a better offer of eight (8) to twelve (12) years. Applicant further testified plea counsel advised him to reject the twenty (20) year offer because he had a good chance of success at trial. Applicant recalled intending to take the case to trial until his co-defendant decided to give a confession. On cross-examination, Applicant admitted it was his decision to decline the initial plea offer.

Applicant also testified he was crying during the guilty plea and upset about the amount of time he would be getting. He recalled Judge Hyman did not inform him he was waiving his right to confront the witnesses against him. On cross-examination, Applicant recalled raising on direct appeal the issue of Judge Hyman's lack of advice regarding the right to confront witnesses.

Plea counsel testified he has been practicing criminal law since 1977. He recalled

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meeting with Applicant or his family at least seven (7) times. Plea counsel also recalled filing discovery motions and receiving a complete response from the State. Plea counsel testified the State initially did not have proof Applicant participated in the burglary or was in the boat fleeing the burglary scene. However, plea counsel recalled advising Applicant the situation could change if the co-defendant decided to testify. Plea counsel admitted he advised Applicant to reject the twenty (20) year plea offer because the State could not prove Applicant's guilt. However, plea counsel also testified the ultimate decision to reject the offer was Applicant's. On cross-examination, plea counsel testified he did not recall promising Applicant an eight (8) to twelve (12) year sentence. Plea counsel testified any discussion of a lesser sentence would have been in the context of what he hoped he could get if he continued to negotiate with the State.

Plea counsel testified his advice was based on the inability of the State to tie Applicant to the boat involved in the accident. He recalled his advice changed when the co-defendant agreed to cooperate with the State and when Applicant's niece gave a statement that tied Applicant to the boat. The co-defendant identified Applicant as participating in the burglary and driving the boat involved in the accident. At that time, the State rescinded its twenty (20) year offer. Plea counsel admitted he was most concerned with the murder and burglary charges at that time. Plea counsel negotiated the twenty-seven (27) year offer and discussed it with Applicant. He testified he also discussed the risks and benefits of a trial. Plea counsel recalled discussing with Applicant his right to testify in his own defense and his right to cross-examine the State's witnesses.

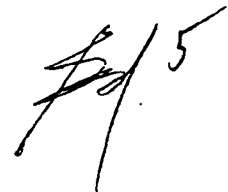
B. Ineffective Assistance of Plea Counsel

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, 442, 334 S.E.2d 813, 814 (1985)

(citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

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

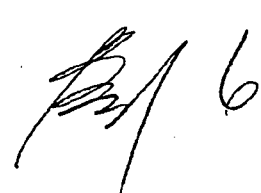
The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness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



The Court finds Applicant failed to meet his burden of proving plea counsel was ineffective in advising Applicant to reject the twenty (20) year plea offer. Regarding this allegation, the Court finds plea counsel's testimony credible and Applicant's not credible. The Court further finds counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

As to plea counsel allegedly promising Applicant an eight (8) to twelve (12) year sentence, the Court finds credible plea counsel's testimony that any reference to such a potential range of sentences would have been as a "best case scenario" for Applicant. The Court is also persuaded by the fact this conversation occurred before the co-defendant turned on Applicant and placed him at the scene of the burglary, as well as before anyone came forward with information connecting Applicant to the boat. After the State got this information, the 20 year offer was withdrawn and plea counsel's attempts to negotiate a lower sentence were ~~rebutted~~ ^{rebutted.} (87) The record reflects Applicant was clearly aware of the risk of rejecting the initial offer if the co-defendant decided to cooperate. Applicant made the decision to reject the initial offer with full understanding of the potential consequences, and he cannot now allege counsel was some way ineffective under these circumstances.

Everything in plea counsel's plans to go to trial seems to have unraveled when the co-defendant turned on Applicant. This change of events because of new information being supplied to the State does not render plea counsel's assistance ineffective in any way. The Court finds plea counsel's performance was reasonable under the circumstances, and certainly "reasonable under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688).



C. Involuntary Guilty Plea

The voluntariness of a guilty plea is determined in light of the entire record before the court. Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012) (citing Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000)). "To knowingly and voluntarily enter a plea of guilty, all that is required is that a defendant have a full understanding of the consequences of his plea and of the charges against him." Simpson v. State, 317 S.C. 506, 508, 455 S.E.2d 175, 176 (1995) (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991)). Furthermore, a defendant must only be informed of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Roddy, 339 S.C. at 33, 528 S.E.2d at 421 (citing Boykin v. Alabama, 395 U.S. 238 (1969)). "When attempting to determine the voluntary and intelligent nature of a plea, the plea colloquy ordinarily serves as confirmation that a criminal defendant is waiving the right to raise certain constitutional claims by pleading guilty." Hyman, 397 S.C. at 44, 723 S.E.2d at 379 (citing Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97, 98 (1975)). However, the plea judge need not provide an "enumeration of specific rights waived ... where the record otherwise reveals affirmative awareness of the consequences of a guilty plea." State v. Lambert, 266 S.C. 574, 579, 225 S.E.2d 340, 342 (1976) (citing Stinson v. Turner, 473 F.2d 913 (10th Cir. 1973)). Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

The Court finds Applicant failed to demonstrate his plea was not knowingly and voluntarily entered. As an initial matter, the Court notes Applicant raised in his direct appeal the issue of Judge Hyman's failure to advise him of the right to confront his accusers. To the extent this issue has already been decided by the Court of Appeals, it is not properly raised in post-conviction relief. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for post-conviction relief is not a substitute for an appeal.").

Regardless, the Court finds the record before it supports a conclusion Applicant's plea was knowingly and voluntarily entered. The Court finds plea counsel's testimony on this issue to be credible, and finds Applicant's testimony to be not credible. From the transcript, it appears Judge Hyman fully advised Applicant of his rights and that Applicant understood the rights he was giving up by pleading guilty. Judge Hyman advised Applicant of his right to remain silent, his right to testify, and his right to have plea counsel represent him throughout a trial and challenge the State's case, as well as put up a case or raise defenses that could be helpful to him. (Trial Tr. p. 24-25). At the time of the plea, Applicant indicated he understood the rights he was giving up and had no mental issues that would keep him from understanding what he was doing. (Trial Tr. p. 16-18). Furthermore, prior to the plea, plea counsel discussed with Applicant the way a jury trial worked including his right to present witnesses and cross-examine the State's witnesses. Accordingly, the Court finds Applicant pled guilty with a full understanding of the rights he was waiving by entering the plea.

Nothing in the record indicates Applicant did not intend to plead guilty at the time of the plea. Plea counsel and Applicant went over the facts, the charges and their elements, and the potential sentences well before the plea. Plea counsel and Applicant met at least seven (7) times prior to the plea, giving Applicant many opportunities to discuss plea agreements and the

possibility of a trial with plea counsel. Plea counsel and Applicant discussed the prospect of a trial at first, but this strategy changed once the co-defendant agreed to cooperate. After evidence linked Applicant to the scene of the burglary as well as the boat, Plea counsel and Applicant discussed the change in circumstances and Applicant made the ultimate decision to accept the negotiated plea. Nothing from the PCR hearing or the plea transcript shows credible evidence Applicant did not have a full understanding of the consequences of his plea. Accordingly, the Court finds Applicant's plea was knowingly and voluntarily entered.

D. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Plea counsel rendered effective assistance and Applicant's plea was knowingly and voluntarily entered. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

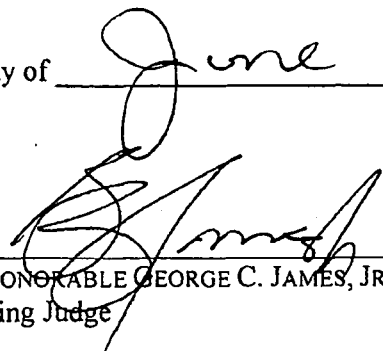
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a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

appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 4 day of June, 2014.


THE HONORABLE GEORGE C. JAMES, JR.
Presiding Judge

Sunder, South Carolina

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June 23, 2014

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: Nicholas Macklen, 323454 vs. State of South Carolina
2012-CP-26-5275

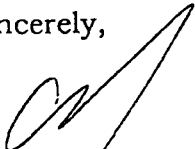
Dear Sir or Madam:

Enclosed herewith you will find the **Notice of Appeal, Order of Dismissal**, along with a **Proof of Service** in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,



Charles T. Brooks, III
CTB/srw

Enclosed as stated

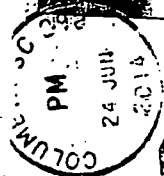
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JUN 26 2014

S.C. SUPREME COURT

cc: Joshua L. Thomas, Office of Attorney's General
South Carolina Office of Appellate Defense
Nicholas Macklen, 323454

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