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S.C. Supreme Court

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Appeal from Orangeburg County  
Maite Murphy, Circuit Court Judge

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LAYMON DAVIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002023

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APPENDIX

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ATTORNEY FOR PETITIONER

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1 STATE OF SOUTH CAROLINA )  
2 COUNTY OF ORANGEBURG ) COURT OF GENERAL SESSIONS  
3 ) 2012 GS 38 0001; 0002

4 STATE OF SOUTH CAROLINA )  
5 )  
6 versus ) TRANSCRIPT OF RECORD  
7 )  
8 LAYMON DAVIS )  
9 Defendant )

Orangeburg, South Carolina  
January 16, 2013

12 B E F O R E:

13 HONORABLE EDGAR DICKSON, Presiding Judge

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

16 For the State: DAVIS PASCOE, Esq.  
Solicitor

17 For the Defendant: JILLIAN ULLMAN, Esq.  
18 Public Defender

19 Reporter Present: HARRY DOT WALKER

22 HARRIET P. BENNETT  
23 Reporter, S. C. Court Administration  
24 46 Regency Oaks Drive  
25 Summerville, S.C. 29485

1 (The within matter came before the Court on January  
2 16, 2013)

3 SOLICITOR: Your Honor, standing before you is Laymon  
4 Davis who is represented by Ms. Jill Ullman.

5 Mr. Davis, Your Honor, is pleading guilty to Indictment  
6 2012 GS 38 0001, felony DUI; 2012 GS 38 0002, driving un-  
7 der suspension.

8 (Defendant sworn by the Clerk for purposes of this  
9 hearing)

10 THE COURT: Okay, driving under suspension, is that a  
11 thirty days and fine, and felony DUI, is that one year to  
12 twenty-five years?

13 SOLICITOR: Yes, sir.

14 THE COURT: All right, Mr. Davis. The sentence sheet  
15 indicates that you are seventy-one years old. Is that correct?

16 DEFENDANT: Yes, sir.

17 THE COURT: And, Mr. Davis, are you retired?

18 DEFENDANT: Yes, sir.

19 THE COURT: What kind of work did you do?

20 DEFENDANT: I drove trucks and I was a parking atten-  
21 dant in New York for twenty-something years.

22 THE COURT: Okay. You did that in New York?

23 DEFENDANT: Parking attendant.

24 THE COURT: Did you grow up in South Carolina and  
25 move back?

1           DEFENDANT: Oh, yeah.

2           THE COURT: All right, Mr. Davis. Are you taking  
3 any kind of medication?

4           DEFENDANT: Not right now.

5           THE COURT: Okay. Have you ever been treated for any  
6 mental health issues?

7           DEFENDANT: Yes, I have in the past but I don't take  
8 no medication for it.

9           THE COURT: All right, sir. Are you under the influ-  
10 ence of any drugs or alcohol here today?

11          DEFENDANT: No.

12          THE COURT: Okay, are you thinking clearly today?

13          DEFENDANT: Oh, yes.

14          THE COURT: You know what you're doing?

15          DEFENDANT: Yes, sir.

16          THE COURT: Mr. Davis, you are here to plead -- I'm  
17 told you're here to plead guilty to felony DUI where death  
18 resulted and pleading guilty to a driving under suspension.  
19 Is that correct? A driving under suspension, first of-  
20 fense?

21          DEFENDANT: Yes, sir.

22          THE COURT: The sentencing sheet indicates it is with-  
23 out negotiation or recommendation.

24          Has anybody promised you anything or threatened you  
25 or forced you in any way to get you to plead guilty here?

1 DEFENDANT: No, sir.

2 THE COURT: You are doing this freely and voluntar-  
3 ily then?

4 DEFENDANT: Yes, sir.

5 THE COURT: Okay. Mr. Davis, you have met with your  
6 attorney and gone over both of these cases with her?

7 DEFENDANT: Yes, sir.

8 THE COURT: Okay, and she has advised you of the law,  
9 the possible sentences, and your constitutional rights?

10 DEFENDANT: Yes, sir.

11 THE COURT: Have you understood everything she's told you?

12 DEFENDANT: Yes, sir.

13 THE COURT: Are you satisfied with her services as  
14 your attorney?

15 DEFENDANT: Yes, sir.

16 THE COURT: Do you need any more time to talk with  
17 her?

18 DEFENDANT: I think we've had enough time.

19 THE COURT: Okay. Do you want a jury trial on either  
20 one of these charges?

21 DEFENDANT: No, sir.

22 THE COURT: Mr. Davis, the first indictment is the  
23 driving under suspension, 2012 GS 38 2, and the allega-  
24 tions are that you did in Orangeburg County on or about  
25 November 5, 2011, drive a motor vehicle on the highways of

1 this State when your license to drive was cancelled, sus-  
2 pended or revoked, in violation of the law.

3 Do you understand these allegations?

4 DEFENDANT: Yes, sir.

5 THE COURT: Do you agree with these allegations?

6 DEFENDANT: Yes, sir.

7 THE COURT: How do you plead to the charge of driv-  
8 ing under suspension, first offense?

9 DEFENDANT: Guilty.

10 THE COURT: The next Indictment that I have is Indict-  
11 ment Number 2012 GS 38 1, and that Indictment and the  
12 earlier Indictment were both true billed by the Grand Jury  
13 on July 18, 2012.

14 This Indictment alleges that you did in Orangeburg  
15 County on or about November 10, 2011, while driving a ve-  
16 hicle under the influence of alcohol or drugs or a combi-  
17 nation thereof, did perform an act forbidden by law or did  
18 neglect a duty imposed by law to -- you made an improper  
19 turn, driving left of center, driving with no headlights,  
20 which act of negligence proximately caused the death of  
21 Joseph Michael Mijeski.

22 Do you understand the allegations contained in this  
23 Indictment?

24 DEFENDANT: I understand what you said but that is not  
25 true of what happened, no.

1 I was -- she been . .

2 REPORTER: I'm sorry. I didn't understand what he  
3 said.

4 MS. ULLMAN: He disagrees with the last sentence but  
5 there are things we can't disagree with.

6 THE COURT: You don't disagree with the fact that you  
7 were drinking?

8 DEFENDANT: No, I had a couple of beers like I told  
9 them.

10 THE COURT: That's fine.

11 DEFENDANT: But I didn't even see him when I pulled  
12 out and as to driving on the wrong side of the road I wasn't.

13 THE COURT: Okay. That's fine.

14 DEFENDANT: I didn't even see him when I pull out and  
15 that's been about five hundred feet maybe before the acci-  
16 dent. It happened so quick I didn't see.

17 THE COURT: But you had been drinking?

18 DEFENDANT: I had a couple of beers.

19 THE COURT: Okay, and you didn't see him?

20 DEFENDANT: Not at all.

21 THE COURT: And in this accident this gentleman died,  
22 is that correct?

23 DEFENDANT: Yes, sir.

24 THE COURT: And you are pleading guilty to felony  
25 driving under the influence where death resulted. Is that

1 correct?

2 DEFENDANT: Yes, sir.

3 THE COURT: How do you plead to that charge, guilty or  
4 not guilty?

5 DEFENDANT: I have to plead guilty. It happened.

6 THE COURT: Thank you, sir. All right.

7 SOLICITOR: Your Honor, the victim in the case was  
8 Michael Joseph Lijewski. Mr. Lijewski, Your Honor, was  
9 fifty-two years of age.. He lived in Berkeley County, just  
10 off Highway 6.

11 On the incident date which was November 10, 2011, about  
12 seven o'clock in the evening, Mr. Lijewski was actually  
13 returning home from church. It was a Saturday night and he  
14 had gone to church. He was by himself. He had ridden his  
15 motorcycle. I think church would have gotten out about six  
16 thirty or so.

17 So he would have been on his way home, traveling down  
18 Highway 6, back toward his home in Berkeley County, near  
19 Cross, South Carolina.

20 He was on his motorcycle behind another vehicle. The  
21 vehicle in front of him was a pickup truck, Your Honor,  
22 occupied by the Gathers Family. They had three of their  
23 four children in the pickup truck with them.

24 As Mr. Gathers and Mr. Lijewski approached County Line  
25 Road there is kind of a T-intersection. The Defendant was

1 in his vehicle by himself, and he turned left off of  
2 County Line Road. Two witnesses, Mr. and Mrs. Gathers,  
3 said that he turned left off of County Line Road onto  
4 Highway 6, onto oncoming traffic.

5 He collided head-on with Mr. and Mrs. Gathers. I have  
6 met with Mr. and Mrs. Gathers in their home in Cross and  
7 gotten their statements which are consistent with what was  
8 told to the South Carolina Highway Patrol.

9 They state, Your Honor, that Mr. Davis turned left  
10 into their lane with no lights on at about seven o'clock  
11 at night. I think under the statute it's questionable whe-  
12 ther or not he was required by law to have his lights on.

13 Mr. and Mrs. Gathers would testify that the other ve-  
14 hicles on the street or highway had their lights on.

15 They stated that when they saw Mr. Davis turn off of  
16 County Line Road they didn't know what to do so they came  
17 to a complete stop. Then I believe Mr. Lijewski who was  
18 behind Mr. Gathers did not know why they were stopping. He  
19 thought they were going to turn right off County Line Road  
20 so Mr. Lijewski went around the Gathers' vehicle.

21 As he did so, Your Honor, according to the Gathers,  
22 the Defendant got back in the proper lane of travel -- they  
23 said he was not in the proper lane of travel before it happened.  
24 He got into a lane of travel and hit head-on into Mr.  
25 Lijewski.

1           They hit head on, and Mr. Lijewski died at the scene.  
2           Mr. Davis stopped his car and the Gathers stopped their ve-  
3           hicle. Emergency personnel were called and the police  
4           responded to the scene. It took them a while to get to  
5           the scene.

6           When they got to the scene, they contacted Mr. Davis.  
7           According to Trooper Green, Mr. Davis appeared to be intox-  
8           icated. There was an odor of alcohol on his breath. Mr.  
9           Davis admitted to Trooper Green that he had had some al-  
10          cohol that night.

11          A field sobriety test was given to Mr. Davis which,  
12          according to Trooper Green, he did not pass. Mr. Davis was  
13          taken to the Harleyville Police Department and offered a  
14          datamaster. Initially according to the machine, Mr.  
15          Davis did not give a sufficient breath sample to register,  
16          so they started another data master procedure. At that  
17          point, the machine did not pass the internal standard.

18          At that point, Your Honor, the Defendant was taken to  
19          the Regional Medical Center where a blood sample was drawn.  
20          The blood sample was taken/from Mr. Davis and sent to SLED  
21          for analysis, and when it was analyzed it showed blood  
22          alcohol level of point two four three.

23                 THE COURT: Point two what?

24                 SOLICITOR: Point two four three.

25                 THE COURT: All right.

1           SOLICITOR: His prior record -- he has no prior record  
2 for the past sixteen years, but he did have a DUI in 1991  
3 and in 1994 and 1997.

4           Mrs. Lijewski is present and would like to address  
5 Your Honor.

6           THE COURT: All right. What would you like to tell  
7 me?

8           MRS. LIJEWSKI: My husband was not what you think of  
9 when you think of motorcycle riding. You think of bad guys,  
10 Hells Angels. My husband was a God-fearing man, and we  
11 were married for thirty years.

12           I know that Mr. Davis did not get up that morning and  
13 decide to do this and I know he's very sorry that it hap-  
14 pened. I loved the man with all my heart, and I'd just  
15 like you to take into consideration that he was a good man  
16 and he now has a grandchild he won't see grow up.

17           THE COURT: I'm very sorry for your loss, ma'am.

18           Mr. Davis, you heard what the Solicitor has told me  
19 about the circumstances of the accident?

20           DEFENDANT: Yes. As far as this being in the wrong  
21 lane, . . .

22           THE COURT: You'll have a chance to explain.

23           Mr. Davis, do you understand that if I accept your  
24 guilty plea, it will go against you on your record? Do  
25 you understand that?

1 DEFENDANT: Yes, sir.

2 THE COURT: And do you understand that you are facing time  
3 in jail?

4 DEFENDANT: She has told me, yes, sir.

5 THE COURT: All right, and do you want me to accept your  
6 guilty plea?

7 DEFENDANT: Yes.

8 THE COURT: All right, Mr. Davis. I find your decision  
9 to plead guilty is freely, voluntarily and intelligently  
10 made, and that you have had the advice and counsel of a compe-  
11 tent attorney. I find that you are satisfied with the services  
12 of your attorney.

13 I find there is a factual basis for you to plead guilty to  
14 this charge, and I will accept the guilty plea.

15 All right, Ms. Ullman.

16 MS. ULLMAN: Thank you, Your Honor. As you have already  
17 discussed, he is seventy-one years old and retired. He was  
18 born and raised in South Carolina.

19 He met his future wife here in South Carolina, went to New  
20 York to start a life there -- North Carolina and New York -- she was  
21 brought up there and they lived there most of their adult lives  
22 and raised their family.

23 He and his wife have four children together and they have  
24 lost three children. All of his children are good adults and  
25 contributing to society. One lives in Goose Creek. Three up north

1 His mother is actually still living, Your Honor, and  
2 she is ninety-three years old. She lives in Eutawville, and  
3 pretty much right next door to him.

4 His father passed away back in the seventies, and he has  
5 been helping her since then. She would be here today but  
6 she is in a wheelchair, Your Honor, and does not walk. She  
7 has a medical appointment today that somebody else in the  
8 family is taking her to because he had to be here.

9 He does have family support, his wife. They still have a  
10 mortgage on their home so his wife is currently working. She is  
11 in her sixties.

12 But he is retired and receiving social security retire-  
13 ment. He was part of a union in North Carolina and he worked  
14 there as a parking attendant for twenty-some years he told me.

15 His wife is at work today. She has just started a new job  
16 unfortunately and could not miss a day at work.

17 Your Honor, he does have a friend with him though, sitting  
18 back in the blue shirt with the glasses. He just wanted to be  
19 here today to show his support and make sure the Court understands  
20 that Mr. Davis is a man who has community support and has people  
21 in the community who love him and need him.

22 I asked him -- obviously he has not been in any trouble  
23 since 1977, and the only trouble he has had was drinking and  
24 driving incidents. Three of them in the nineties. He is certainly  
25 not someone who took any intentional actions.

1           It is a very hard thing, Your Honor, because nobody in-  
2           tended any of these results. I appreciate Mrs. Lijewski real-  
3           izing that Mr. Davis did not get up and go out intending to  
4           harm anybody.

5           He was at a friend's house. He had some alcohol at his  
6           friend's house, and he was literally about two miles from his  
7           house when he made a very bad decision on trying to get him-  
8           self home that day.

9           He is taking responsibility, Your Honor. I would tell  
10          you that he knows there is mandatory prison time, and in his  
11          situation we discussed what risk there was in him going to  
12          trial, but he did not want that.

13          He didn't want to put anybody through that so he is tak-  
14          ing responsibility, truly taking responsibility. He stayed  
15          on the scene, Your Honor. The officer -- you know the distance  
16          to get from Neece to almost Santee. He had plenty of time  
17          if he wanted to to try to get away and avoid any prosecution  
18          but he didn't. He stayed and obviously he willingly gave his  
19          breath sample.

20          He willingly gave his blood, so this is not something he  
21          ever tried to fight to say he didn't do. The one thing he does  
22          say he disagrees on is turning into the wrong lane.

23          I will tell you I have been to the scene, and everything  
24          happened so fast. It is real close there, this intersection,  
25          close to where this intersection was.

1           He has taken responsibility because he knows he contri-  
2           buted to this.

3           I will tell you that I even saw the video, an officer  
4           talking with another officer, talking about what happened, and  
5           he said that in his opinion Mr. Davis and Mr. Lijewski both  
6           contributed to the accident.

7           He was following and there was no passing zone, and whe-  
8           ther the witness' truck was slowing down to make a turn or  
9           slowing down for Mr. Davis, Mr. Lijewski also should have not  
10          have been passing at that intersection and should have slowed  
11          down.

12          That does not make Mr. Davis' drinking and driving okay,  
13          Your Honor, and he's not trying to say that it does. Mr. Davis  
14          is here to take responsibility and has mandatory time to do.  
15          I'd ask you to consider the fact that he never tried to fight  
16          any of this, the fact that he is seventy-one years of age and  
17          supporting his wife, still trying to pay a mortgage on the  
18          house, taking care of his mother.

19          He has lived a good life, Your Honor, and not been a  
20          criminal in any sense of the word. He actually told me he  
21          has been very healthy, and I was expecting to hear many health  
22          issues but he has only had some eye issues.

23          He honestly doesn't have any, and that's a great thing  
24          for him. He believes this incident has gotten him closer to  
25          his God and his church. He is a God-fearing man, and this

1 has made him get back into his church more. He has done that.

2 The stress from this has caused his health to deterior-  
3 ate a bit. He has lost weight, but this is not something he  
4 thinks is no big deal. He knows it is a big deal, and he is  
5 sorry for the loss Mr. Lijewski's family has been through.

6 We just ask you to have mercy on him and do what you feel  
7 is appropriate.

8 THE COURT: Did you spend any time in jail?

9 MS. ULLMAN: Your Honor, he spent one night in jail. He  
10 was bonded out the next morning.

11 Your Honor, the other thing I would ask for, and I have  
12 discussed this with the Solicitor -- Mr. Davis obviously has man-  
13 datory time he will be doing, and he some things regarding the  
14 mortgage and such things he needs to take care of.

15 The Solicitor said he would not be opposed to Mr. Davis  
16 being given a little bit of time to report so he would be able  
17 to get the legal things done that are necessary to get every-  
18 thing out of his name and into his wife's name; get things handled.

19 The reality of it is that he may not come out so he wants  
20 to get things taken care of.

21 SOLICITOR: For the record, this case was on the trial  
22 docket for next week. I believe he asked protection . . .

23 THE COURT: What amount of time did you all discuss?

24 MS. ULLMAN: We discussed him coming today to do the plea  
25 but we did not discuss a time frame. He just said I could

1 ask you to consider that, him not being sentenced today.

2 SOLICITOR: I wouldn't want to put it past next Tuesday.

3 THE COURT: The bondsman would have to agree.

4 MS. ULLMAN: Yes, sir, I understand that.

5 I can have an answer from her in a few minutes. I'll have  
6 him sit wherever you would like while I get in touch with her  
7 right now.

8 THE COURT: Okay.

9 (Brief pause in proceeding)

10 THE COURT: Mr. Davis, I find your decision to plead  
11 guilty is freely, voluntarily and intelligently made. I find  
12 you have had the advice and counsel of a competent lawyer.

13 I find that there is a factual basis for your plea, and I  
14 am going to accept your guilty plea.

15 There are things about this case I need to consider, Mr.  
16 Davis. You are facing serious jail time. I do understand you  
17 are seventy-one years old, and I am going to take this matter  
18 under advisement and sentence you on Tuesday morning at nine  
19 o'clock. You need to be back here then.

20 Ms. Lijewski, I'm sorry, but it's going to take me a while  
21 to think about it, but I will be sentencing him then.

22 Thank you all.

23 (SENTENCING DEFERRED)

24 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

25

CERTIFICATE

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I, HARRIET P. BENNETT, Official Court Reporter for South Carolina Court Administration, hereby certify that the foregoing Transcript was prepared from the records of Harry Dot Walker to the best of my ability, having been heard in the Court of General Sessions for Orangeburg County on January 16, 2013.

FURTHER, I certify that I am neither of kin nor counsel to any party to this action, nor do I have any interest in the matter.

September 23, 2013

*Harriet P Bennett*

FORM 5

STATE OF SOUTH CAROLINA )

County of Orangeburg )

Mr. Lammont Davis )  
Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

IN THE COURT OF COMMON PLEAS

2013CP38-00496

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention South Carolina Department of Corrections  
Waterloo Correctional Institution
2. Name and location of Court which imposed sentence General Session Court  
Orangeburg County Court House
3. Name(s) of co-defendant(s) (if any) NONE  
Felony Driving Under the Influence Death Resulted <sup>INDICTMENT #</sup> 2012 G 538-001
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
(a) Driving Under Suspension 1st offense 2012 G 538-0002  
(b)

(c) \_\_\_\_\_

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

(a) JANUARY 16, 2013 (EIGHT) 8 YEARS AND (FIVE) 5 YEARS PROBATION

(b) (VIOLENT)

(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ENTERED A PLEA OF GUILTY (NEGOTIATED)

(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?

\_\_\_\_\_

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

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

i. NONE PCR

ii. }

iii. }

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

i. \_\_\_\_\_

ii. NONE

iii. }

(c) the date of each such result:

i. NONE

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. NONE

ii. }

iii. }

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

(a) RATHER PCR

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

- (a) The state has failed to Demonstrate the Elements of the
- (b) offense charged in which constitutes violations of Applicants
- (c) 4th 6th and 14th Constitutional Rights Note: there is New Evidence

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

- (a) state failed to Establish DUS (Note there is Newly Discovered Evidence
- (b) Appointed Counsel was Ineffective that Caused Improper Conviction
- (c) The Court was without proper Jurisdiction Applicant will submit  
A Memorandum in Support of Allegations Made herein

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

- (a) any petition in a State Court under South Carolina Law? NONE
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NONE
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NONE
- (d) any other petitions, motions or applications in this or any other Court? NONE

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. NONE
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(b) the name and location of the Court in which each was filed:

- i. NONE
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(c) the disposition thereof:

- i. NONE
- ii.
- iii.
- iv.

(d) the date of each such disposition:

- i. NONE
- ii.
- iii.
- iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. NONE
- ii.
- iii.
- iv.

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

NONE

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

(a) which grounds have been presented:

- i. NONE
- 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) Appointed Counsel failed to present EVIDENCE of INNOCENTS
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? NONE
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NONE
- (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. Jillian D. Ullman Esq  
Orangeburg County public Defender office
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Guilty plea Only
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

I, MR LAYMON DAVIS, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

\_\_\_\_\_  
*Applicant*

SWORN or affirmed to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
*Notary Public*

My Commission Expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
COUNTY OF ORANGEBURG )

IN THE COURT OF COMMON PLEAS )  
FOR THE FIRST JUDICIAL CIRCUIT )

Laymon Davis, #244742, )

2013-CP-38-0496 )

Applicant, )

v. )

**RETURN** )

State of South Carolina, )

Respondent. )

The Respondent, making its Return to the application for post-conviction relief filed April 15, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. The Applicant was true bill indicted at the July 2012 term of the Orangeburg County Grand Jury for Felony Driving under the Influence, Death Results (2012-GS-38-001) and Driving under Suspension (2012-GS-38-002). Applicant was represented by Jillian D. Ullman, Esquire. On January 16, 2013, the Applicant pled guilty to Felony Driving under the Influence, Death Resulting before the Honorable Edgar W. Dickson. Judge Dickson sentenced Applicant on January 22, 2013, to confinement for a period of twenty (20) years provided upon the service of eight (8) years and five (5) years of probation.

A Notice of Appeal was filed with the South Carolina Court of Appeals. An Order of Dismissal was issued on March 19, 2013 for failure of Appellant to timely serve the notice of appeal. The Remittitur was issued on April 5, 2013.

Attached herewith and incorporated herein are the records of the Orangeburg County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections, and the sentencing hearing transcript.<sup>1</sup> The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

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

1. Ineffective assistance of counsel;
2. Newly Discovered Evidence
  - a. "State failed to establish DUIs (Note there is newly discovered evidence)".
3. Subject matter jurisdiction.
  - a. "The Court was without proper jurisdiction".

Any claims not specifically enumerated in the post-conviction relief application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

## III.

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

---

<sup>1</sup> Respondent has requested the guilty plea transcript and will forward upon receipt.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

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

#### IV.

Applicant's assertion that he is entitled to a new trial based upon newly or after-discovered evidence is without merit. A defendant requesting a new trial based on after

discovered evidence must show that the evidence:

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983). The Applicant has not shown that the alleged evidence meets *any* of the requirements for after-discovered evidence, as he has failed to present any evidence to the Court which could allow for such a claim to proceed forward. The Court should summarily dismiss this allegation.

V.

Respondent submits that the Applicant's claim that the circuit court lacked subject matter jurisdiction is meritless. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003), *citing* Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001). In this case, the Applicant waived indicted by the Orangeburg County Grand Jury. The said indictments contain all the necessary elements of each offense, and further cite the applicable statute. A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. *See, e.g.*, Tate v. State, 345 S.C. 577, 549 S.E.2d 601 (2001); Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986). The Applicant here cannot show any irregularity, because the indictments in question are sufficient on their face.

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. *See* Brown v. State, 343 S.C. 342, 540 S.E.2d

846 (2001), overruled in part by Gentry, 610 S.E.2d 494. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 610 S.E.2d 494; See also S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction. Therefore, the Respondent would move for summary judgment on this allegation pursuant to S.C. Code Ann. § 17-27-70 (2003), because there is no issue of material fact relating to this allegation and it should be dismissed as a matter of law.

## VI.

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.

## VII.

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

## VIII.

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

*[Signature page to follow.]*

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN  
Assistant Attorney General

By: *Megan E. Harrigan*  
ATTORNEYS FOR RESPONDENT

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

September 12 2013.



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No exhibits were introduced

Laymon Davis v State of S. C.  
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May 29, 2014

1

## PROCEEDINGS

2

MS. HARRIGAN: May it please the court?

3

THE COURT: Yes, ma'am.

4

MS. HARRIGAN: Your Honor, the next matter is

5

Laymon Davis v the State of South Carolina, docket number

6

2013-CP-38-00184 [sic]. Mr. Davis was true bill indicted

7

during the July 2012 term of the Orangeburg County Grand

8

Jury for Felony Driving under the Influence resulting in

9

death, as well as Driving Under Suspension.

10

Mr. Davis was represented by Jillian Ullman. On

11

January 16, 2013 Mr. Davis pled guilty as indicted before

12

the Honorable Edgar W. Dixon and sentencing was deferred

13

at that time. On January 22, 2013, court reconvened and

14

Judge Dixon sentenced Mr. Davis to confinement for a

15

period of 20 years suspended upon the service of eight

16

years followed by five years' probation and a time served

17

sentence for the Driving Under Suspension.

18

A notice of appeal was filed on Mr. Davis' behalf

19

with the South Carolina Court of Appeals. An order of

20

dismissal was issued by the Court of Appeals on March 19,

21

2013 for failure of Mr. Davis to timely serve the notice

22

of appeal. The remittitur was issued on April 5, 2013.

23

Thereafter on April 15, 2013, Mr. Davis filed a timely

24

application for post conviction relief alleging he was

25

being held in custody unlawfully based on the following

Laymon Davis v State of S. C.  
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1 allegations: Ineffective assistance of counsel for  
2 failure to show him the discovery or investigate his  
3 case, and failure to explain the penalties of the plea,  
4 newly discovered evidence with the specific allegation  
5 that the state failed to establish D-U-I's and subject  
6 matter jurisdiction, that the court was without proper  
7 jurisdiction to take his plea.

8 The state made its return on September 12, 2013  
9 requesting an evidentiary hearing be held and he's  
10 represented in this action by Jonathan Waller and I'll  
11 turn it over to Mr. Waller at this time.

12 THE COURT: Mr. Waller?

13 MR. WALLER: Thank you, Your Honor. At this time  
14 I will call Laymon Davis to the stand.

15 THE COURT: Mr. Davis.

16 [Whereupon, Mr. Davis comes forward]

17 CLERK OF COURT: Please raise your right hand and  
18 state your full name for the record.

19 THE WITNESS: Laymon Davis.

20 [Whereupon, the witness is duly sworn by the Clerk  
21 of Court]

22 THE COURT: Your witness, Mr. Waller

23 MR. WALLER: Thank you, Your Honor, may it please  
24 the court?

25 THE COURT: Yes, sir.

Laymon Davis v State of S. C.  
Laymon Davis-Direct Examination by Mr. Waller  
May 29, 2014

1 LAYMON DAVIS,  
2 Having been first duly sworn,  
3 Was examined and testified as follows:  
4 DIRECT EXAMINATION  
5 BY MR. WALLER  
6 Q. Mr. Davis, how are you this afternoon?  
7 A. Okay.  
8 Q. Mr. Davis, I want to talk with you about your  
9 representation by Ms. Ullman and how we got here today  
10 for a little bit. You were arrested and charged with  
11 Felony D-U-I where death results, is that correct?  
12 A. Yes.  
13 Q. Okay. Have you ever been arrested and convicted  
14 for a D-U-I before?  
15 A. Yes.  
16 Q. Okay. More than once?  
17 A. Yes.  
18 Q. Okay. Now when you were arrested this time, how  
19 did Ms. Ullman come to be your attorney?  
20 A. By signing up to her, I guess.  
21 Q. Okay. Did you -- was she with the Public  
22 Defender's Office?  
23 A. Public Defender.  
24 Q. Okay. When she began representing you, did y'all  
25 meet?

Laymon Davis v State of S. C.  
Laymon Davis-Direct Examination by Mr. Waller  
May 29, 2014

- 1 A. Yes.
- 2 Q. Okay. How many times did y'all meet?
- 3 A. I'd say for about a year and a month.
- 4 Q. Okay. And you were out on bond, right?
- 5 A. Yes.
- 6 Q. Okay. Did y'all discuss the evidence the State had  
7 that they were planning on using against you?
- 8 A. Say that again.
- 9 Q. Did y'all discuss the evidence that the State had?
- 10 A. Such as?
- 11 Q. Were there any statements given that the State  
12 planned to use against you?
- 13 A. I really don't understand what you saying right now.
- 14 Q. Okay. I apologize, I'll withdraw that question.  
15 When you were first arrested did the officer conduct  
16 field sobriety tests?
- 17 A. Yes.
- 18 Q. Okay. Was there a recording or a report made from  
19 those?
- 20 A. I don't think so.
- 21 Q. Okay. Did you ever discuss that with Ms. Ullman?
- 22 A. No.
- 23 Q. Okay. Did the officer or someone at a hospital  
24 take some blood from you?
- 25 A. Yes.

Laymon Davis v State of S. C.  
Laymon Davis-Direct Examination by Mr. Waller  
May 29, 2014

1 Q. Okay. Did you ever discuss that with Ms. Ullman?

2 A. No.

3 Q. Did you and Ms. Ullman discuss the penalties that  
4 your charge carried?

5 A. No.

6 Q. Okay. Did you and Ms. Ullman discuss the elements  
7 of the crime of Felony D-U-I where death results?

8 A. No.

9 Q. Mr. Davis, over the year and a half what did you and  
10 Ms. Ullman discuss?

11 A. Through the whole time that day that we visit in the  
12 little office after she find out about the letter that  
13 was received to her.

14 She said this is something that will help you in  
15 this case and she said I don't see where you should get  
16 any time. No more than probation of 1 year.

17 Q. Okay. And when you say letter, what do you mean?  
18 What are you talking about?

19 A. The letter that was found at the scene which was a  
20 suicide letter.

21 Q. Okay. Now did you find this letter?

22 A. No, my brother did.

23 Q. How did you first hear about the letter?

24 A. Through her.

25 Q. Through Ms. Ullman?

Laymon Davis v State of S. C.  
Laymon Davis-Direct Examination by Mr. Waller  
May 29, 2014

1 A. Right.

2 Q. Okay. When y'all discussed the letter how did  
3 y'all discuss it as a potential defense?

4 A. No, she told me she said Mr. Davis I have something  
5 that will help you and she read the letter to me in the  
6 presence of my mother and one of my granddaughters and  
7 she showed me the letter. And through the whole year  
8 that went through, I never heard any more about the  
9 letter.

10 Q. Okay. How -- when y'all discussed the letter, how  
11 did she say it was going to help you?

12 A. Well she said this will help you in your case  
13 because the guy will really -- well if you read the  
14 letter it will tell you how he died and how he wanted to  
15 die.

16 Q. Based on your understanding of the letter, who was  
17 supposedly the author of the letter?

18 A. Joseph Lijewski.

19 Q. And was that the victim in this case -- in your  
20 case?

21 A. That's the dead man.

22 Q. Yes, sir. At some point, Mr. Davis, you made the  
23 decision to plead guilty, is that right?

24 A. Yes.

25 Q. What did you base that decision on?

Laymon Davis v State of S. C.  
Laymon Davis-Direct Examination by Mr. Waller  
May 29, 2014

1 A. Well, she advised me to plead guilty. I do as she  
2 -- as I was told.

3 Q. Okay. What questions did you ask of her about  
4 pleading guilty?

5 A. I didn't ask no questions. This was all --  
6 everything that I said was from...

7 Q. Okay. With you knowing about -- did you ask her  
8 how the letter played into your decision to plead guilty?

9 A. Did I did what?

10 Q. Did you ask her how this letter that is now in  
11 possession of your attorney, how that related to your  
12 decision to plead guilty?

13 A. You mean how is it related to me now?

14 Q. No, sir. How -- what did the letter do to make you  
15 plead guilty?

16 A. Well I didn't plead guilty concerning the letter, I  
17 plead guilty because she told me to plead guilty. But I  
18 take into consideration that -- what is it all about.

19 Q. Okay. Up until the letter was shown to you by Ms.  
20 Ullman, had you planned to go to trial on this?

21 A. Well, she told me not to go to trial.

22 Q. Okay. And you took her advice ---

23 A. --- yes ---

24 Q. --- in that regard?

25 A. Yes.

Laymon Davis v State of S. C.  
Laymon Davis-Direct Examination by Mr. Waller  
May 29, 2014

1 Q. And your testimony is that you pled guilty based on  
2 her advice to you?

3 A. Yes, sir.

4 MR. WALLER: I have no further questions, Your  
5 Honor.

6 THE COURT: Ms. Harrigan?

7 MS. HARRIGAN: Thank you, Your Honor. May it please  
8 the court?

9 THE COURT: Yes, ma'am.

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Laymon Davis v State of S. C.  
Laymon Davis-Cross-Examination by Ms. Harrigan  
May 29, 2014

1 CROSS-EXAMINATION

2 BY MS. HARRIGAN:

3 Q. Good afternoon, Mr. Davis.

4 A. Good afternoon.

5 Q. I didn't quite get your testimony before. You said  
6 Ms. Ullman represented you for a year and a half. How  
7 many times did you guys meet?

8 A. Not a year and a half, I said from the time that I  
9 signed up with her which was I think was right after  
10 whatever Monday was, to the end of the time.

11 Q. Okay. How many times did you meet with her?

12 A. I think it was like maybe once a month or twice a  
13 month.

14 Q. Okay.

15 A. And I think I only missed one.

16 Q. Okay. Do you recall going over any of the discovery  
17 with her?

18 A. Such as?

19 Q. Statements or I think you testified to this before  
20 that you had a field sobriety test and a blood alcohol  
21 draw, but you never discussed those with her correct?

22 A. Okay.

23 Q. Did you discuss those with her?

24 A. No. Can I say it?

25 Q. Certainly if you need to explain yourself, sir,

Laymon Davis v State of S. C.  
Laymon Davis-Cross-Examination by Ms. Harrigan  
May 29, 2014

1 yeah.

2 A. Well, at the scene the police officer that had  
3 arrest me, I had a breathalyzer test and he said the  
4 machine wasn't working. So we leave there and we go  
5 seven miles to the station house.

6 I went inside there and he said that one was out of  
7 order. So we leave from there and went to the hospital  
8 and took some blood.

9 Q. Do you recall what your blood alcohol level was?

10 A. Everything came back negative and it was signed  
11 through by the SLED.

12 Q. Do you remember your guilty plea proceeding in front  
13 of Judge Dixon when you pled guilty?

14 A. Guilty?

15 Q. Do you recall that hearing?

16 A. Beg your pardon?

17 Q. Do you recall that hearing in front of Judge Dixon?

18 A. Guilty?

19 Q. When you pled guilty? Do you remember the hearing?  
20 Do you remember being in court for the hearing?

21 A. Oh, yes.

22 Q. Do you recall the State, the Assistant Solicitor,  
23 telling the court the facts that led to you being charged  
24 with Felony D-U-I?

25 A. I don't remember that, but in my transcript and

Laymon Davis v State of S. C.  
Laymon Davis-Cross-Examination by Ms. Harrigan  
May 29, 2014

1 stuff like that which is a letter that I have the D-U-I  
2 was dropped.

3 Q. Do you recall the State telling Judge Dixon that  
4 your blood alcohol level was .243?

5 A. I don't remember that, but I have the papers.

6 Q. And you were given a field sobriety test at the  
7 scene of the accident, correct?

8 A. Yes.

9 Q. And you failed that, right?

10 A. Sobriety test?

11 Q. The field sobriety test at the scene ---

12 A. --- well that's what he had on paper, but due to the  
13 fact that I was so nervous I guess that's where it came  
14 from.

15 Q. And you never denied drinking, you told Judge Dixon  
16 you'd only had a few beers though, correct?

17 A. I didn't say that to Judge Dixon, I say that to the  
18 police. I told him where I was.

19 Q. Do you deny that you had been drinking that night?

20 A. I didn't deny that I drink. I told him I had two  
21 beers, Bud Light. I admit that and they have that on  
22 paper.

23 Q. So you do admit here today that you were drinking  
24 that night when you got in the accident?

25 A. Well I told him I had two beers. I told the police

Laymon Davis v State of S. C.  
Laymon Davis-Cross-Examination by Ms. Harrigan  
May 29, 2014

1 that.

2 Q. Do you recall whether or not your attorney ever  
3 visited the accident scene?

4 A. She said she did.

5 Q. Did you ask her to do any other investigation?

6 A. Well, I didn't ask her, but I think she did visit  
7 the accident scene and I think she went to the lady  
8 house.

9 Q. When you say lady -- lady's house, what do you mean?

10 A. Mrs. Lijewski.

11 Q. The victim's wife?

12 A. Yes, ma'am. I think she went to her house.

13 Q. And you testified before this wasn't your first  
14 D-U-I, correct?

15 A. Yes.

16 Q. How many prior D-U-Is had you had?

17 A. I think about the last maybe 10 years about three of  
18 them.

19 Q. Not just in the past 10, in your lifetime, how many  
20 D-U-Is have you had?

21 A. Maybe five.

22 Q. To the best of your recollection, you've only had 5  
23 D-U-Is in your life?

24 A. I think it was.

25 Q. Do you recall during your guilty plea proceeding

Laymon Davis v State of S. C.  
Laymon Davis-Cross-Examination by Ms. Harrigan  
May 29, 2014

1 telling Judge Dixon you understood there was no  
2 negotiation or recommendation from the State as to your  
3 sentence length?  
4 A. Say that again?  
5 Q. Do you recall telling Judge Dixon during your guilty  
6 plea proceeding, when you were in front of the court,  
7 that you understood there was no already decided sentence  
8 that he would impose? There's no negotiation or  
9 recommendation?  
10 A. I don't remember the question that guy was asking  
11 me.  
12 Q. Do you remember telling Judge Dixon that it was your  
13 decision to plead guilty and you were guilty?  
14 A. Say that again.  
15 Q. Do you remember telling Judge Dixon that you wanted  
16 to plead guilty?  
17 A. I don't remember telling him that I wanted to plead  
18 guilty. But he asked me was I guilty and I said I was  
19 guilty because my lawyers tell me to say that I was.  
20 Q. But you admitted you were drinking ---  
21 A. --- but I know I wasn't ---  
22 Q. --- that night?  
23 A. Yes, I had two beers, yes I admit that.  
24 Q. And then you got in an accident after having those  
25 two beers, correct?

Laymon Davis v State of S. C.  
Laymon Davis-Cross-Examination by Ms. Harrigan  
May 29, 2014

1 A. Actually I wasn't driving.

2 Q. But you were driving after having some beverages?

3 A. Yes.

4 Q. Did you want to go to trial on this case?

5 A. Well I really came back to -- because I feel like I  
6 was in the right because of this guy -- because of the  
7 letter stated and really how the accident happened and I  
8 just pull out from the intersection and I feel like he  
9 had wanted to do what he did.

10 Q. Did you want a trial?

11 A. I'll accept a trial.

12 Q. You would've accepted one. Did you want to plead  
13 guilty?

14 A. Beg your pardon?

15 Q. Did you want to plead guilty?

16 A. Well, I don't feel like I was guilty to the fact.  
17 Plead guilty on what though?

18 Q. As you were charged a Felony D-U-I resulting in  
19 death.

20 A. But I got the result back that I wasn't -- that it  
21 wasn't D-U-I. They dropped the D-U-I because I wasn't --  
22 they couldn't -- all my point came back negative.

23 MS. HARRIGAN: Your Honor, may I approach the  
24 witness?

25 THE COURT: You may.

Laymon Davis v State of S. C.  
Laymon Davis-Cross-Examination by Ms. Harrigan  
May 29, 2014

1 Q. [By Ms. Harrigan] Mr. Davis, I'm going to hand you  
2 your sentencing sheet do you remember this?

3 [Whereupon, the witness is shown document]

4 Q. Will you look and see if that's your signature  
5 there?

6 A. Oh, yes.

7 Q. Do you see what the charge that you're pleading  
8 guilty is to? What does that say?

9 A. Felony Driving under the influence --

10 THE COURT REPORTER: Could you repeat that? I  
11 can't hear you.

12 Q. [Ms. Harrigan] Could you say that a little louder  
13 for the Court Reporter?

14 A. Felony Driving Under the Influence Death Result.

15 Q. And you recall signing that sheet before your guilty  
16 plea?

17 A. Yes.

18 Q. So you understood when you were pleading guilty  
19 that's what it was for?

20 A. Well I plead guilty. I wasn't guilty but I plead  
21 guilty because I was advised to.

22 Q. But you knew that day that it was for Felony D-U-I  
23 Resulting in Death, correct?

24 A. Well I really didn't understand all that but, yes.

25 MS. HARRIGAN: No further questions, Your Honor.

Laymon Davis v State of S. C.  
Laymon Davis-Cross-Examination by Ms. Harrigan  
May 29, 2014

1 THE COURT: Anything further Mr. Waller?  
2 MR. WALLER: Just briefly Your Honor.  
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Laymon Davis v State of S. C.  
Laymon Davis-Redirect Examination by Mr. Waller  
May 29, 2014

1 REDIRECT EXAMINATION

2 BY MR. WALLER:

3 Q. Mr. Davis, you told the officers on the scene and  
4 then again in court that you had had some alcohol that  
5 night is that correct?

6 A. I admit that I had two beers.

7 Q. And you were obviously driving the vehicle is that  
8 right?

9 A. Yes.

10 Q. Okay. What -- whose lane did the accident actually  
11 take place in?

12 A. My lane.

13 Q. Okay. Was that ever any question in anybody's  
14 mind?

15 A. Well, that was never mentioned in the courtroom. It  
16 happened directly in my lane, I didn't went to the right  
17 and I didn't go to the left.

18 Q. Okay.

19 MR. WALLER: No further questions, Your Honor.

20 THE COURT: You may step down sir, thank you.

21 [Whereupon, the witness is excused and exits the  
22 witness stand]

23 THE COURT: You may call your next witness.

24 MR. WALLER: No further witnesses.

25 MS. HARRIGAN: The State would call Jillian Ullman.

Laymon Davis v State of S. C.  
Laymon Davis-Redirect Examination by Mr. Waller  
May 29, 2014

1 THE COURT: Ms. Ullman.

2 [Whereupon Ms. Ullman comes forward]

3 CLERK OF COURT: Please raise your right hand and  
4 state your full name for the record.

5 THE WITNESS: Jillian D Ullman.

6 [Whereupon, the witness is duly sworn by the Clerk  
7 of Court]

8 THE WITNESS: And for the record it's U-L-L-M-A-N.

9 THE COURT: Your witness.

10 MS. HARRIGAN: Thank you, Your Honor.

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Laymon Davis v State of S. C.  
Jillian Ullman-Direct Examination by Ms. Harrigan  
May 29, 2014

1 JILLIAN ULLMAN,  
2 Having been first duly sworn,  
3 Was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. HARRIGAN:

6 Q. Ms. Ullman, how long have you been practicing law?

7 A. 2004.

8 Q. Where have you previously practiced?

9 A. I currently am the Colleton, Hampton, and Allendale  
10 County Department of Social Services attorney  
11 representing all three counties.

12 Before that I was a public defender for seven years.  
13 I started that in 2006 and from 2004 to 2006 I mostly did  
14 real estate practice.

15 Q. And you represented Mr. Davis during your tenure at  
16 the Public Defender's office, correct?

17 A. I did. I was appointed January 15, 2012 and the  
18 plea happened almost exactly a year later, January 22,  
19 2013.

20 Q. How many times did you meet with Mr. Davis prior to  
21 his guilty plea?

22 A. I would say he's correct we met basically once a  
23 month. I think there was one meeting he could not  
24 attend, we called him and he couldn't get transportation  
25 and he came in very quickly thereafter.

Laymon Davis v State of S. C.  
Jillian Ullman-Direct Examination by Ms. Harrigan  
May 29, 2014

1 Q. Did you file any Brady or Rule 5 motions on his  
2 behalf?

3 A. That is routine when a public defender is appointed.  
4 The first thing my secretary did was file a Rule 5 in all  
5 cases and did so with Mr. Davis also.

6 Q. Did you review the discovery with him?

7 A. I did. We went over the discovery, we went over  
8 the field sobriety test, and I also sent the discovery to  
9 a Mr. Poplin [phonetic].

10 I can't remember his first name, but he's a local  
11 expert in accident reconstruction and had him review  
12 everything.

13 Q. What were his findings?

14 A. Mr. Poplin [phonetic], if I can refer to my notes,  
15 he actually did have a little bit of useful information.  
16 One of the complaints that the witnesses said was that  
17 Mr. Davis didn't have his headlights on.

18 And Mr. Poplin [phonetic] told me that by statute  
19 you have to have your headlights on 30 minutes after  
20 sunset and the accident happened at 6:50 and sunset at  
21 6:26, so for four more minutes he didn't have to have his  
22 lights on by law.

23 Otherwise, most of what he told me was not helpful.  
24 Mr. Poplin [phonetic] had actually spoken with the  
25 witnesses. There were two cars in between Mr. Davis and

Laymon Davis v State of S. C.  
Jillian Ullman-Direct Examination by Ms. Harrigan  
May 29, 2014

1 Mr. -- the decedent, I apologize his name is hard to  
2 pronounce. Both of those witnesses actually could see  
3 Mr. Davis' car, the problem was they say that he pulled  
4 out, he was at a T-stop and he pulled in a left hand  
5 turn.

6 When he made that left hand turn, he did so into the  
7 oncoming traffic lane and drove in that lane long enough  
8 that the car closest to him actually came to a complete  
9 stop in the roadway because he was -- that driver was  
10 sure he was going to get hit by Mr. Davis.

11 At some point Mr. Davis realized that he was in  
12 oncoming traffic and pulled into his own lane.  
13 Unfortunately, the decedent was on a motorcycle behind  
14 both cars, didn't know why those cars were slowing down  
15 and went to pass them and that's where they hit.

16 One useful thing Mr. Poplin [phonetic] said was that  
17 the decedent on the motorcycle did cross a double yellow  
18 line, he should not have been passing at that point, but  
19 by statute there's not a comparative negligence standard  
20 here.

21 It is a matter of if you caused an accident or part  
22 of the cause of an accident and you were under the  
23 influence at that time you are guilty for any actions or  
24 consequences of that accident.

25 Q. Did you explain that to your client?

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Jillian Ullman-Direct Examination by Ms. Harrigan  
May 29, 2014

1 A. I did. And the expert said that if I were to call  
2 him as an expert that he would not be able to assist at  
3 trial because basically what his report would show is  
4 that when the motorcycle pulled around the two cars to  
5 pass them, is pretty much when Mr. Davis pulled back into  
6 the correct lane and they hit almost immediately.

7 So, realistically neither of them could have avoided  
8 the accident is what the expert felt, at that point  
9 neither one of them could have taken evasive actions.

10 And I believe the witness in the first car, I  
11 believe it was a married couple, would say that the  
12 accident happened almost right beside their car, I mean  
13 it was loud. They heard it, they saw it, and the  
14 motorcycle and the decedent went flying behind them.

15 Q. Do you recall, you said there was a field sobriety  
16 test in the discovery; do you recall the results of that?

17 A. The officer felt that Mr. Davis did very badly on  
18 the field sobriety tests. He could not stand on one leg,  
19 he could not do the walk and turn, and then the nystagmus  
20 which you can never really see on the video, but of  
21 course the officer said that he had nystagmus.

22 Q. Do you recall whether or not there was any witness  
23 statements or any investigative reports saying whether or  
24 not the responders or other witnesses smelled the odor of  
25 alcohol on Mr. Davis?

Laymon Davis v State of S. C.  
Jillian Ullman-Direct Examination by Ms. Harrigan  
May 29, 2014

1 A. I believe there were statements in that regard. I  
2 think the officer said -- we had a preliminary hearing in  
3 June and if I remember the officer said that Mr. Davis  
4 could barely get out of the car and that he smelled  
5 extremely of alcohol.

6 Q. Do you recall the results of his blood alcohol draw,  
7 what his blood alcohol content was?

8 A. It was .24 something; I can't remember. It was  
9 three or four digits, but it was .23 or .24. It was I  
10 think three times the legal limit or illegal limit of  
11 .08.

12 Q. You were in here for Mr. Davis' testimony, correct?

13 A. I was.

14 Q. Do you recall how many prior D-U-Is he'd had based  
15 on your review of his file and records?

16 A. In state and out of state convictions are a little  
17 harder to read on these NCIC reports. In state starting  
18 in 1986, the record shows a D-U-I second degree.

19 I will tell you in my experience reading rap sheets  
20 over the last seven years, magistrate and municipal  
21 offenses often do not end up on criminal records so had  
22 he been charged with D-U-I first offense numerous times,  
23 which can happen, those wouldn't show up on his record  
24 more than likely. So the fact that a D-U-I second shows  
25 up first does not surprise me. There are at least five

Laymon Davis v State of S. C.  
Jillian Ullman-Direct Examination by Ms. Harrigan  
May 29, 2014

1 instate South Carolina convictions. Related to that is a  
2 leaving the scene of an accident and public drunkenness  
3 conviction which certainly could be looked at as a D-U-I.

4 And out of Vermont he had what they called a D-U-I  
5 number six, which makes me think at some point they were  
6 able to add up that that would have been his sixth charge  
7 in Vermont and that was in the mid-eighties.

8 Q. Did Mr. Davis ever deny having alcoholic beverages  
9 that evening?

10 A. No.

11 Q. Did Mr. Davis ever tell you he wanted to proceed to  
12 trial?

13 A. He wasn't very firm on how he wanted to proceed. He  
14 never felt like he did anything wrong in all the times  
15 that we had talked. He basically said these witnesses  
16 were not telling the truth, that he was not in the wrong  
17 lane.

18 Certainly at trial he could present that evidence.  
19 I advised him, obviously, that his testimony regarding  
20 that versus all the witnesses and the accident  
21 Reconstructionist expert's testimony that would say that  
22 that was incorrect would I'd say that more than likely it  
23 would pretty much guarantee that he would have been  
24 convicted. I advised him from the beginning once I was  
25 able to get the blood results and have my own expert look

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Jillian Ullman-Direct Examination by Ms. Harrigan  
May 29, 2014

1 at this, that a plea was in his best interest.

2 Q. Did you approach the State to seek a favorable plea  
3 negotiation on his behalf?

4 A. I did and I think the eight year sentence that he  
5 was given was a very unwelcomed gift and it's weird to  
6 say, but in my experience these cases a sentence range is  
7 more like 15-20 for a person being killed while someone  
8 was drunk driving.

9 So the fact that he only got an eight year sentence  
10 based on his charge, plus his extensive D-U-I record  
11 really was out of the norm and much lower than I would  
12 expect.

13 Q. You've heard some testimony about a letter today,  
14 correct?

15 A. Yes, ma'am.

16 Q. Can you elaborate -- do you know anything about this  
17 letter?

18 A. I do.

19 Q. Can you elaborate based on your experience for the  
20 court?

21 A. I can. My memory of the letter was it -- I believe  
22 I received the letter in the mail and Mr. Davis came in  
23 and I asked him about the letter and he said that he was  
24 also aware of the letter; someone at the church had  
25 talked to him about this letter. I asked him if he would

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Jillian Ullman-Direct Examination by Ms. Harrigan  
May 29, 2014

1 possibly know anything more about it and he said that he  
2 thought Mr. Lijewski, the decedent, had gone to this  
3 church. There's absolutely no way to authenticate this  
4 letter or verify it.

5 I did actually go to the church, I had been trying  
6 forever to speak with somebody about it, couldn't get  
7 anyone so I went on a day the pastor was there and spoke  
8 with the pastor personally.

9 He -- I took the letter and showed it to him, he  
10 showed me an exact copy of the letter along with the  
11 envelope that it came in. It had been mailed to him  
12 based on the United States Postal Service time stamp at  
13 the same time it had been mailed to me, which would have  
14 been after the decedent had passed away.

15 So it certainly did not get sent to the church or to  
16 me by the decedent. We have absolutely no way to know  
17 where it came from. There are at least two different  
18 handwritings on it in two different colored pens and,  
19 again, it basically is a plea to the church.

20 It starts on one of the requests that the church  
21 sends out to make a pledge or a promise for your  
22 donations for the year and it's the decedent saying he  
23 has no money he can't give anything. Letter goes on to  
24 say that basically he's very sad in life, his wife is  
25 leaving him, he doesn't want to live, he previously had

Laymon Davis v State of S. C.  
Jillian Ullman-Direct Examination by Ms. Harrigan  
May 29, 2014

1 tried to commit suicide and God wouldn't let him do it at  
2 that time and he just really, really needs some help or  
3 he's about to be homeless. If the burden doesn't get any  
4 easier he'll have to do what he has to do to end it.

5 But, again, there's absolutely no way I can  
6 authenticate this and from every indication I have  
7 received there's no way for us to have known it was  
8 written by this man or had anything to do with him.

9 Q. Did you explain that to your client?

10 A. I did.

11 Q. Did you ever tell your client that it would be  
12 beneficial or help him receive probation or get out of  
13 these charges?

14 A. Absolutely not. First let me say Felony D-U-I is  
15 not a charge that you can get probation for, you have at  
16 least a mandatory one year sentence I believe. So I  
17 certainly would have never advised him that he could  
18 receive a probationary sentence.

19 Secondly, as I'm saying right now, I have no idea  
20 how this letter would get in. I mean, realistically,  
21 even today you can't authenticate this letter; you can't  
22 say where it came from.

23 All I can say is I have a piece of paper with  
24 somebody's handwriting on it and that's the end of it.  
25 So, I couldn't figure out any legal way to enter that

Laymon Davis v State of S. C.  
Jillian Ullman-Direct Examination by Ms. Harrigan  
May 29, 2014

1 into evidence. As mitigation, I didn't see the value --  
2 and I told him if I stood up there and told the Judge  
3 that you shouldn't get sentenced very harshly because the  
4 person who ended up dead wanted to die anyway, the Judge  
5 would have been very offended by that statement and it  
6 certainly wouldn't have helped and absolutely could have  
7 hurt.

8 The decedent's wife, who is actually mentioned in  
9 the letter as leaving him, showed up to court talked  
10 about how she and their children missed him. I  
11 certainly, I promised it was not going to help.

12 Q. Do you think it's relevant to whether or not he was  
13 appropriately charged with Felony D-U-I Death Resulting?

14 A. No.

15 Q. Why not?

16 A. Because what the decedent was doing does not matter.  
17 The issue in Felony D-U-I is was the person driving a  
18 vehicle while intoxicated and that caused the injury or  
19 death to another person.

20 Q. Did he seem to understand that when you told him  
21 that?

22 A. I believe so because he ended up pleading guilty. I  
23 don't think he ever was happy about any of this. He's in  
24 his 70's and was going to prison and nobody, honestly,  
25 felt very good about this. But in the same sense

Laymon Davis v State of S. C.  
Jillian Ullman-Direct Examination by Ms. Harrigan  
May 29, 2014

1 there's a person who lost his life and his children have  
2 no father and there had to be punishment and the court  
3 did what they felt was just in the situation.

4 Q. Regarding his allegation that the court didn't have  
5 subject matter jurisdiction, did you see any reason to  
6 challenge the indictments or the Grand Jury procedure?

7 A. No.

8 Q. Is it your standard practice if you do notice an  
9 error to bring it to the court's attention or make a  
10 motion?

11 A. Absolutely.

12 Q. Who's decision was it for Mr. Davis to plead guilty?

13 A. It was his. I will say in this case it was probably  
14 more his than even other cases often family members,  
15 moms, girlfriends, people come in and listen to what's  
16 going on and try to help make decisions.

17 In this situation Mr. Davis was pretty much on his  
18 own. I met a lady who we called Ms. Mattie [phonetic], I  
19 actually called her his wife one day and she corrected me  
20 and said she was not his wife, I'm not sure if she had  
21 been his ex wife or who she was.

22 But I met her, maybe twice, she never had anything  
23 to say, never had an opinion and at the plea I believe  
24 his -- who was introduced to me as Uncle Jack Davis  
25 showed up. So in this matter literally it was just him

Laymon Davis v State of S. C.  
Jillian Ullman-Direct Examination by Ms. Harrigan  
May 29, 2014

1 and me and I gave him my advice and he made his decision.

2 Q. Did you attempt to contact other family members to  
3 come offer mitigation at his guilty plea proceeding?

4 A. I did and there was no one that would come. His  
5 children are out of state, Ms. Mattie didn't even come.  
6 Jack Davis was the only person that showed up at the  
7 plea.

8 MS. HARRIGAN: Moment's indulgence, Your Honor.

9 [Whereupon, Ms. Harrigan reviews documents]

10 MS. HARRIGAN: No further questions.

11 THE COURT: Anything further?

12 MR. WALLER: Fairly briefly, Your Honor.

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Laymon Davis v State of S. C.  
Jillian Ullman-Cross-Examination by Mr. Waller  
May 29, 2014

1 CROSS-EXAMINATION

2 BY MR. WALLER:

3 Q. Ms. Ullman, you had questions as to the authenticity  
4 of this letter, is that your testimony?

5 A. Yes, sir.

6 Q. Okay. What steps did you take to attempt to  
7 authenticate it one way or the other?

8 A. I actually attempted to get something that would  
9 have Mr. Lijewski, the decedent's signature on it to try  
10 and compare signatures. I was going to send it off to a  
11 handwriting expert; I could not ever obtain something  
12 with his signature on it.

13 Certainly it was not appropriate to go to his wife  
14 and ask her if this was his letter. I was not trying to  
15 harm Mr. Davis and again even if she could say, she's not  
16 a handwriting expert, even if the wife said that might be  
17 my husband's letter it's still not going to be  
18 authenticated for the standard that the court would  
19 require.

20 And beyond that, pretending that the decedent  
21 somehow called me from the beyond to tell me he did write  
22 this letter, it was not useful and could have done  
23 nothing but hurt Mr. Davis by us claiming that basically  
24 he shouldn't be punished because the decedent wanted to  
25 die.

Laymon Davis v State of S. C.  
Jillian Ullman-Cross-Examination by Mr. Waller  
May 29, 2014

1 Q. You mentioned there were multiple forms of  
2 handwriting. What did your investigation into the  
3 letter raise as to those?

4 A. I'm not sure I understand what you're asking.

5 Q. Was there ever -- did you ever reach any sort of  
6 explanation why there was multiple forms of handwriting?

7 A. No, because nobody could ever explain to me who  
8 wrote it.

9 Q. You are aware that he had multiple past D-U-I's is  
10 that correct?

11 A. Yes, sir.

12 Q. Is there any chance that affected the way you  
13 represented him and going over the elements because he'd  
14 had experience with it in the past?

15 A. No. I never assume anybody knows anything because  
16 that assumes that somebody previously had representation  
17 which in D-U-Is you don't always and that that attorney  
18 explained it correctly and that the law at that time  
19 would be the same.

20 And I know with D-U-I in South Carolina, the law  
21 changes often and had changed very recently. So, I  
22 always go over the elements with everyone.

23 MR. WALLER: No further questions, Your Honor.

24 THE COURT: You may step down, ma'am, thank you.

25 THE WITNESS: Thank you.

Laymon Davis v State of S. C.  
Jillian Ullman-Cross-Examination by Mr. Waller  
May 29, 2014

1           [Whereupon, the witness is excused and exits the  
2 witness stand]

3           MS. HARRIGAN:    The State has no additional  
4 witnesses to call.

5           THE COURT:       Anything further from either party?

6           MR. WALLER:       Just a brief argument, Your Honor.

7           THE COURT:       All right, I'll be happy to hear from  
8 y'all.

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Laymon Davis v State of S. C.  
Closing Argument-By Ms. Harrigan  
May 29, 2014

1 CLOSING ARGUMENT

2 BY MS. HARRIGAN:

3 The State would submit that this application needs  
4 to be denied in full. The applicant has not met his  
5 requisite burden of proof as required under Strickland v  
6 Washington. There was -- turning first to his allegation  
7 that counsel failed to show him discovery or failed to  
8 investigate, we've got testimony from Ms. Ullman that she  
9 immediately, upon appointment, filed Brady and Rule 5  
10 motions. She got the material and she reviewed it with  
11 her client.

12 Additionally, in regards to investigation, we have  
13 testimony from Mr. Davis as well as in the guilty plea  
14 transcript that Ms. Ullman actually visited the accident  
15 scene. Additionally she retained an accident  
16 reconstruction expert who ultimately was not able to be  
17 of any assistance to her. So, the State would submit  
18 that she was in no way deficient in regards to either of  
19 those allegations and that that allegation should be  
20 denied in full.

21 Additionally, we have testimony from Ms. Ullman that  
22 she explained all the penalties of Felony D-U-I and  
23 explained to him that probation was not something that  
24 you could even receive for this sentence. The State  
25 would submit that there has been no showing of deficiency

Laymon Davis v State of S. C.  
Closing Argument-By Ms. Harrigan  
May 29, 2014

1 and also no showing of any sort of prejudice. The  
2 applicant stated on the record before Judge Dixon that he  
3 understood this was without any negotiation or  
4 recommendation and after hearing that and hearing of the  
5 potential penalties, told Judge Dixon while under oath  
6 that he wanted to proceed forward with his guilty plea  
7 and that he was indeed guilty.

8 Furthermore, we also have testimony from Mr. Davis  
9 today that he was drinking alcoholic beverages, made the  
10 decision to get in the car, and got in an accident. So  
11 the State would also submit there's overwhelming evidence  
12 of guilt and prejudice cannot be shown. And the State  
13 would submit that the application should be dismissed in  
14 full.

15 THE COURT: Thank you. Mr. Waller?  
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Laymon Davis v State of S. C.  
Closing Argument-By Mr. Waller  
May 29, 2014

1 CLOSING ARGUMENT

2 BY MR. WALLER:

3 Your Honor, I think the testimony today shows that  
4 Ms. Ullman's performance was deficient. Mr. Davis  
5 testified that the elements of Felony D-U-I and the way  
6 they differed from previous D-U-I's he'd had were not  
7 discussed with him. He was not given an opportunity to  
8 go over the discovery with her, nor did she discuss the  
9 potential penalties. He testified that he was under the  
10 impression probation was an option. Obviously, she's  
11 entirely correct that it's not. If he would have been  
12 apprised of the potential penalties he would have  
13 understood that it was not.

14 Your Honor, additionally I think there is -- have  
15 been a failure to investigate with regards to attorney  
16 inducing him to plead guilty. Not only do we have  
17 potential issues with the blood draw, there were  
18 potential issues with this letter and potential issues  
19 with the accident itself.

20 Mr. Davis testified that based upon his attorney's  
21 recommendation that he plead guilty is what he did. I  
22 think that he testified that he would not have pled  
23 guilty, but would have continued on to trial but for her  
24 recommendation. I believe under Hill v Lockhart  
25 [phonetic] that her performance was deficient as a guilty

Laymon Davis v State of S. C.  
Closing Argument-By Mr. Waller  
May 29, 2014

1 plea counselor.

2 THE COURT: Thank you, Mr. Waller. Again, I'll  
3 review the record and notify you both of my ruling.

4 MS. HARRIGAN: Thank you, Your Honor.

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Laymon Davis v State of S. C.  
Certificate of the Court Reporter  
May 29, 2014

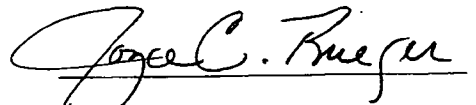
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official  
Circuit Court Reporter for the Ninth Judicial Circuit of  
the State of South Carolina, do hereby certify that the  
foregoing is a true, accurate, and complete Transcript of  
Record of the proceedings had and evidence introduced in  
the trial of the captioned case, relative to appeal, in  
the Court of Common Pleas for Orangeburg County, South  
Carolina on the 29th day of May, 2014.

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

November 12, 2014

  
Joyce C. Rueger, CVR-M  
Court Reporter

STATE OF SOUTH CAROLINA )  
 COUNTY OF ORANGEBURG )  
 )  
 Laymon Davis, #244742, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2013-CP-38-00496

**ORDER OF DISMISSAL**

FILED  
 W. CLERK  
 2014 AUG 22 PM 3:05  
 ORANGEBURG COUNTY SC

This matter comes before the Court by way of an application for post-conviction relief filed April 15, 2013. The State made its Return on September 12, 2013, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on May 29, 2014, at the Dorchester County Courthouse. Applicant was present at the hearing and was represented by counsel, Jonathan D. Waller, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. After reviewing all testimony and other evidence presented at the hearing, along with a review of all records provided to the Court, this Court finds that there are no constitutional deprivations or other grounds on which to grant relief and is denying and dismissing this application with prejudice.

**PROCEDURAL HISTORY**

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was true bill indicted during the July 2012 term of the

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 8/4/14

ATTEST: TRUE COPY  
*Wingji B. Clark*  
 CLERK OF COURT  
 ORANGEBURG COUNTY, SC

Orangeburg County Grand Jury for Felony Driving under the Influence – Death Results (2012-GS-38-001) and Driving under Suspension (2012-GS-38-002). Applicant was represented by Jillian D. Ullman, Esquire. On January 16, 2013, Applicant appeared before the Honorable Edgar W. Dickson, where he pled guilty as indicted to both offenses; sentencing was deferred. On January 22, 2013, Judge Dickson sentenced Applicant to twenty years imprisonment suspended upon the service of eight years imprisonment and five years of probation for Felony DUI – Death Results and to time served for Driving under Suspension.

A Notice of Appeal was filed with the South Carolina Court of Appeals. The South Carolina Court of Appeals dismissed Applicant's appeal for failure to timely serve his notice of appeal as required by Rule 203, SCACR. The Remittitur was issued on April 5, 2013.

In his application for post-conviction relief, Applicant alleged that he was being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of counsel<sup>1</sup>
  - a. Failure to show Applicant evidence or investigate; and
  - b. Failure to explain penalties of plea.
2. Newly Discovered evidence
  - a. State failed to establish DUIs
3. Lack of Subject Matter Jurisdiction
  - a. Court was without proper jurisdiction

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<sup>1</sup> Following the evidentiary hearing, Applicant filed a "Motion to Amend Application for Post-Conviction Relief" on June 5, 2014, requesting to add in the specific allegation of "ineffective assistance of counsel for failure to advise him correctly as to the law on Felony DUI (Death), specifically as to the proximate cause element of that crime and how it related to his case." This Court denies Applicant's motion to amend, finding that it was made following the conclusion of all testimony and evidence presented to this Court and after the record was closed. Furthermore, this Court finds that this allegation is without merit.

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**SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING**

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from plea counsel, Jillian D. Ullman (hereinafter "Counsel"). This Court also had before it Applicant's guilty plea and sentencing transcripts, the records from the Orangeburg County Clerk of Court regarding the subject convictions, Applicant's appellate records, and Applicant's records from the South Carolina Department of Corrections.

Applicant testified first on his own behalf. Applicant testified that Counsel was appointed to represent him and she met with him once or twice a month during the year and a half she represented him. He testified that he has had numerous DUIs previously, although this is the first DUI where someone was injured or killed. He testified that he reviewed discovery with Counsel, including the Breathalyzer test results, the failed field sobriety test, and the results of his blood alcohol test indicating a 0.243 Blood Alcohol Content (BAC). He testified that Counsel visited the crime scene, interviewed witnesses, and attempted to talk to the victim's wife. He testified that a letter from the victim was found at the scene of the accident, which he interpreted to be a suicide note. He testified that it was found by his brother, who gave the letter to Counsel. He testified that Counsel told him the letter would be helpful to his case because it showed that the victim wanted to die, so Applicant should not be held responsible for his death.

He testified that Counsel told him to plead guilty, but she never discussed the elements of the charges or the possible penalties with him. He acknowledged that he never asked Counsel any questions and never requested that she complete any particular investigation. He testified that he "would have taken it to trial" because he "[doesn't] feel guilty," but acknowledged that

he was drinking before the accident and could not articulate any defenses he could have employed at trial. He acknowledged that he told Judge Dickson that he understood that the plea was without any negotiations or recommendations and that a sentence of imprisonment was required.

Following Applicant's testimony, Counsel was called to testify by Respondent. She testified that she has been practicing law since 2004 and has extensive criminal defense experience. She testified that she was appointed to represent Applicant on January 15, 2012, while employed at the Orangeburg County Public Defender's office. She testified that she met with Applicant numerous times, averaging approximately once a month, with increased frequency as Applicant proceeding approached. She testified that she filed appropriate Rule 5, SCRCrimP and Brady motions on Applicant's behalf and reviewed discovery materials with Applicant, including the Breathalyzer test results, the blood test results, and the field sobriety test results. She testified that she consulted with a local accident reconstruction expert, who reviewed all materials and was ultimately not able to provide any beneficial testimony or other information to assist in Applicant's defense. She testified that she also visited the crime scene, spoke with the witnesses, and attempted to speak with the victim's wife. She testified that numerous witnesses all reported that Applicant smelled like alcohol and was clearly intoxicated immediately following the accident. She testified that she reviewed all elements of the offenses and potential sentences with Applicant, including that there was a required term of imprisonment that must be imposed by the court. She testified that Applicant had at least five prior DUIs in South Carolina since 1986, as well as convictions for public drunkenness and leaving the scene

of an accident. She testified that he also had at least six DUIs in Vermont. She elaborated that this was at least his eleventh DUI related arrest, but believes the number is actually higher based on numerous out-of-State convictions.

She testified that she also reviewed Applicant's version of the facts and possible defenses with him. She elaborated that there were no viable defenses available based on all of her investigation, research, and consultation with an expert. She testified that she reviewed the indictments with Applicant and saw no possible basis on which to challenge the indictments. She testified that she received a letter in the mail that was purported to be a suicide letter from the victim, but that she was unable to confirm the letter's author or origin despite speaking to numerous persons. She testified that she explained to Applicant that this letter did not amount to any feasible defense and would likely only outrage the victim's family and the court if she attempted to introduce it. She testified that she also would not have been able to authenticate the letter and explained to Applicant that it would also not be admissible based on those grounds. She also testified that the letter had at least two different handwritings on it and was written in a variety of different pens.

She testified that she advised Applicant that it was in his best interest to plead guilty. She testified that Applicant understood the guilty plea was without any negotiation or recommendation as to sentence. She testified that while the sentence of eight years active imprisonment was not desirable, it was an "unwelcome gift" as most defendants would have received a sentence between fifteen to twenty years imprisonment and the actual sentence

Applicant received was much lower than she expected. She testified that it was Applicant's decision to plead guilty.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. This Court finds that Counsel's testimony is credible and should be afforded great weight; additionally this Court finds that Applicant's testimony lacks credibility. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

#### *Ineffective Assistance of Counsel*

In a post-conviction relief action, the applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

After careful review based on the standard discussed above, including a review of the testimony of the witnesses presented at the evidentiary hearing, this Court denies this application on the basis that Counsel's performance did not fall below the standard required and there was no resulting prejudice to Applicant from these alleged deficiencies. Below are the findings in regards to each of Applicant's claims of ineffective assistance of counsel:

*Allegation that Counsel failed to investigate or review discovery with Applicant*

Applicant alleges that Counsel was ineffective for failing to investigate or review discovery with him prior to his guilty plea. This Court finds that this allegation is without merit and must be denied and dismissed with prejudice. First, this Court finds that Counsel's

performance was not deficient. Counsel reviewed all discovery materials with Applicant, including but not limited to the field sobriety test, blood alcohol test results and witness statements. Counsel also sought assistance from an expert, as well as interviewed witnesses, visited the accident scene, and attempted to speak with the victim's family. This Court finds that Counsel's performance was reasonable according to professional standards and, therefore, did not perform deficiently in regards to this allegation. Furthermore, this Court finds that Applicant has failed to establish that he was prejudiced by Counsel's alleged deficiency, as he failed to establish what benefit, if any, could have been yielded by any additional investigation. See Cherry, supra (holding that to establish prejudice, the result of the proceeding would have been different but for counsel's unprofessional error); Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result"). Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

*Allegation that Counsel failed to explain the penalties of his plea*

Applicant alleges that Counsel was ineffective for failing to explain the penalties and consequences of his guilty plea. This Court finds that this allegation is without merit and must be denied and dismissed with prejudice. This Court finds that Counsel's performance was not deficient, as Counsel met with Applicant numerous times, reviewed all elements of the offenses with Applicant, and advised Applicant of possible sentences, including the requirement that he serve at least a period of time incarcerated. This Court finds that Counsel's performance was in accordance with professional standards and that she was not deficient in regards to this

allegation. Furthermore, this Court finds that Applicant has failed to meet his requisite burden of proof in establishing prejudice, as he failed to present any testimony or evidence to indicate that he would not have pled guilty absent Counsel's alleged deficiency. See Hill, supra. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

#### *Subject Matter Jurisdiction*

Applicant alleges that the trial court did not have proper jurisdiction to accept his guilty pleas. This Court finds that this allegation is without merit and must be denied and dismissed with prejudice. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003), citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001). In the present case, Applicant was true bill indicted by the Orangeburg County Grand Jury for both offenses to which he entered guilty pleas. The indictments sufficiently state the necessary elements of each offense and cite the applicable statutes. A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. See, e.g., Tate v. State, 345 S.C. 577, 549 S.E.2d 601 (2001); Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986). This Court finds that Applicant has failed to establish any irregularity warranting relief. Furthermore, this Court finds that the indictments in question are sufficient on their face and properly conferred jurisdiction to the trial court. See State v. Gentry, 363 S.C. 93, 610 S.E.2d

494 (2005) (“[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.”).

Therefore, this allegation must be denied and dismissed with prejudice as a matter of law.

#### *Newly Discovered Evidence*

Applicant alleges that he is entitled to a new trial based on newly discovered evidence.

This Court finds that this allegation is without merit and must be dismissed. A defendant requesting a new trial based on newly or after discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983). Here, Applicant has failed to establish what his newly discovered evidence is or show that the alleged evidence meets *any* of the requirements for newly discovered evidence. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice as a matter of law.

#### CONCLUSION

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

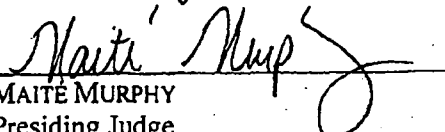
This Court notes that Applicant must file and serve a Notice of Appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an

applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on an applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 18 day of Aug, 2014.

  
MAITE MURPHY  
Presiding Judge  
First Judicial Circuit

St. George, South Carolina.

WITNESSES

R. GLEICH

S C Highway Patrol

ARREST WARRANT NUMBER

F212599

Arrested: November 5, 2011

ACTION OF GRAND JURY  
TRUE BILL

*[Signature]*

July 18 2012  
Foreperson of Grand Jury  
Date: July 18, 2012

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO. 2012GSS38-0001

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

July 16, 2012 TERM

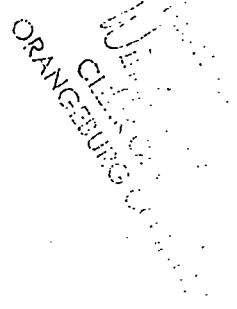
THE STATE  
vs.

Laymon Davis

Indictment for

FELONY DRIVING UNDER THE  
INFLUENCE, DEATH RESULTS

SC Code: 56-5-2945(A)



After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ORANGEBURG )

INDICTMENT  
2012GS38-0001

At a Court of General Sessions, convened on July 16, 2012 the Grand Jurors of Orangeburg County present upon their oath:

**FELONY DRIVING UNDER THE INFLUENCE, DEATH RESULTS**

That in Orangeburg County, South Carolina, on or about November 5, 2011, the Defendant, Laymon Davis, while driving a vehicle under the influence of alcohol, drugs, or a combination thereof, did perform an act forbidden by law or did neglect a duty imposed by law while driving, to wit: improper turn and/or driving left of center and/or driving with no head lamps, which act or neglect proximately caused the death of Joseph Michael Lijewski, this offense being a violation of Section 56-5-2945, of the South Carolina Code of Laws, as amended.

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

Thomas B. Scott, III

Thomas B Scott, III, Solicitor

WITNESSES

R. GLEICH

DOCKET NO. 2012GSS38-0002

The State of South Carolina

County of ORANGEBURG

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

S C Highway Patrol

COURT OF GENERAL SESSIONS

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER  
F212600

July 16, 2012 TERM

Arrested: November 5, 2011

THE STATE  
vs.

Defendant

ACTION OF GRAND JURY

Laymon Davis

Witness:

C.C.C. PLS. AND G.S.

Foreperson of Grand Jury  
Date: July 18, 2012

TRUE BILL

Indictment for

DRIVING UNDER SUSPENSION

VERDICT

SC Code: 56-1-460(A)

Foreperson of Petit Jury  
Date:

