

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Greenville County

D. Garrison Hill, Circuit Court Judge

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MAR 19 2015

S.C. Supreme Court

BILLY JOE HANNAH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001517

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APPENDIX

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1 THE CLERK: Your Honor, this is case number  
2 2011-GS-23-5729 Billy Joe Hannah indict -- excuse me,  
3 indictment for felony DUN -- DUI resulting in death, pleading  
4 to the same, it is a true bill and 2011-GS-23-5730 indictment  
5 for leaving the scene of an accident with death, pleading to  
6 the same, it is also a true bill. Would you raise your right  
7 hand.

8 BILLY JOE HANNAH, having been  
9 first duly sworn, testified as follows:

10 THE CLERK: Thank you.

11 THE COURT: Okay, how many jail days ---

12 MS. DRAWDY: Hundred and fifty-nine, Your Honor.

13 THE COURT: Alright, in the last twenty-four hours you  
14 had any drugs, alcohol or medication?

15 THE DEFENDANT: No, sir.

16 THE COURT: Ever been treated for substance abuse or  
17 mental illness?

18 THE DEFENDANT: Mental illness, yes.

19 THE COURT: What?

20 THE DEFENDANT: PSD, post-traumatic stress.

21 THE COURT: Alright, are ya supposed to be on medication?

22 THE DEFENDANT: No, sir, I've quit takin' it, been a  
23 while since I've had it, they've relieved me from it.

24 THE COURT: Who? the doctors?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Alright, well you understand what's goin' on  
2 today?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Alright, you're up here on Indictment  
5 2011-5729 alleges you did Greenville County January 23, 2011  
6 drive a motor vehicle under the influence of alcohol, drugs or  
7 combination thereof and did an act forbidden by law or  
8 neglected to do the imposed by law, you exerc -- failed to  
9 exercise due care or exceeded the speed limit or you drove too  
10 fast for conditions or you failed to maintain control of the  
11 vehicle or you drove off the roadway which acts ne -- in  
12 negligent proximately cause the death of James Scott Sullivan;  
13 felony DUI resulting in death carries a mandatory minimum 1 to  
14 25 years, you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You're also here on 2011-5730, it alleges  
17 that you did Greenville County January 23, 2011 drive a motor  
18 vehicle that was involved in an accident which resulted in  
19 great bodily injury to and ultimately the death of James Scott  
20 Sullivan and you left the scene without providing assistance  
21 to the victim and obtaining medical care or without reporting  
22 the accident to proper authorities, it's also 1 to 25 years,  
23 you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Your felony DUI with death resulting is a

1 serious offense and that means if you get convictions for  
2 three or more serious offenses you're eligible for life in  
3 prison without parole, you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And I believe these would be non-parolable,  
6 isn't that right?

7 MR. PRICE: That's correct, they're 85 percent, Your  
8 Honor.

9 THE COURT: Ya understand that? Ya have to speak.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Alright, understanding the nature of the  
12 charge against and the maximum possible punishment, how do you  
13 wanna plead?

14 THE DEFENDANT: Guilty.

15 THE COURT: Has anybody forced you in any way or coerced  
16 you, threatened you or promised you anything to get you to  
17 enter that plea?

18 THE DEFENDANT: No, sir.

19 THE COURT: You understand you have an absolute right to  
20 a trial by jury where you'd be presumed innocent unless and  
21 until the State could prove you guilty beyond any reasonable  
22 doubt of each and every element of each offense that you're  
23 charged with, you would have a right to confront and  
24 cross-examine the witnesses and the evidence put up against  
25 you by the State, you'd have a right to compel in court all

1 relevant and competent evidence in your own defense or you can  
2 remain silent, your silence cannot be held against you and you  
3 can never be compelled to incriminate yourself, do you  
4 understand all those rights?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You wanna give all those rights up to enter  
7 this plea?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Are ya guilty?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Are you totally and completely satisfied with  
12 the representation of your attorney?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You have any complaints that you'd like to  
15 make about the way you've been treated in this matter?

16 THE DEFENDANT: No, sir.

17 THE COURT: And have you had enough time to review the  
18 evidence that the State has against you?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay, listen while they tell us about it.

21 MR. PRICE: Your Honor, ---

22 MS. DRAWDY: May it please the Court. There is no  
23 recommendation in this case. The State is arguing for a  
24 sentence of 15 to 20 years.

25 THE COURT: Okay.

1 MS. DRAWDY: This case involves a fatal crash that  
2 occurred in Slater-Marietta area of Greenville County on the  
3 afternoon of January 23rd 2011. It was a Sunday afternoon  
4 when the defendant who was driving his wife's Lexus SUV on  
5 North River Road drove off the right side of the roadway and  
6 down a steep embankment striking a number of trees on the way  
7 down. The vehicle sustained extremely heavy damage to the  
8 front and top. James Monroe Anderson a motorist who was  
9 traveling on North River Road noticed that a vehicle had run  
10 off the road and stopped to investigate. He climbed down the  
11 embankment and found the car with the deceased passenger still  
12 strapped in the passenger seat, there was no one else around.  
13 Mr. Anderson recognized the passenger because he lived in the  
14 neighborhood as someone that he knew: James Scott Sullivan.  
15 Mr. Anderson called 911 at approximately 4 p.m. and reported  
16 the accident. EMS arrived and confirmed that the passenger  
17 was deceased. EMS and fire department personnel who were also  
18 on the scene began looking for the driver whom they feared may  
19 have been ejected possibly into the river which was not far  
20 from where the SUV had come to rest. Troopers began their  
21 investigation and found that the vehicle was registered to  
22 Nicole Hannah the defendant's wife, they also found an open  
23 container of Bud Light beer and a damaged milk jug that  
24 smelled strongly of some type of liquor. At a little after  
25 5 p.m., James Roy Anderson who is the father of the young man

1 who discovered the crash came to the scene and told officers  
2 that the defendant, Billy Joe Hanny -- Hannah who most of the  
3 people who know him call Joey, had walked up to his home about  
4 one hour to an hour and a half earlier and asked for a ride  
5 home. Hannah smelled of alcohol and had some scrapes on his  
6 face. The defendant told Mr. Anderson that he had been  
7 drinking moonshine and riding his horse and that he had been  
8 thrown by the horse. Mr. Anderson and his wife offered to  
9 call EMS or take Hannah to the hospital but Hannah insisted  
10 that he would rather be taken to his home and that he would  
11 have his ex -- have his wife take him to the hospital, she is  
12 a registered RN, she's an RN, Mr. Anderson then gave the  
13 defendant a ride to the defendant's residence on [REDACTED].  
14 At a little after 5:30, the defendant was taken back to the  
15 scene of the crash by his wife. She says that he arrived home  
16 between about 4:30 and 5 p.m., she noticed a small pickup  
17 truck leaving her driveway and he was standing at the back  
18 steps screaming and holding his arm. She finally got it out  
19 of him that he'd been in a crash and he refers to the  
20 defendant who it -- who -- I mean, to the victim, James Scott  
21 Sullivan is known by the nickname of Jimmy Jack to his friends  
22 and sh -- he said that Jimmy Jack is dead. She finally got it  
23 out of him that he had left Jimmy Jack behind still breathing  
24 and he said kind of gurgling and he was screaming that he  
25 wanted to call the wreck in as a actually a stolen vehicle and

1 he wanted to take a shower. While he was in the shower, she  
2 called her mother who advised her that they needed to call 911  
3 and take him back to the scene. When he got outta the shower,  
4 she gave him the phone and he did call 911, they live actually  
5 over the line in Pickens County so this went to Pickens 911  
6 instead of Greenville County 911, and he was on the phone for  
7 a short time, she could not hear the other end of the  
8 conversation. The 911 operator says that he told them his  
9 name as Joey Hannah, that he had walked 12 miles to get to a  
10 phone and that he ha -- they needed to send an ambulance out  
11 to River Road to help his friend who he left gasping for  
12 breath, this call was made about 4:43 p.m. Later the next day  
13 after all of this happened and it was on the news another  
14 witness came forward, Ryan Atkinson, who does not know the  
15 defendant but he saw it on the news and recognized him and  
16 called the highway patrol and gave a statement that Mr. Hannah  
17 had come through the woods, he was fishing in the river and  
18 asked for a ride, said that he'd been in a car crash but he  
19 never mentioned that anyone was hurt in the crash, he offered  
20 to give Mr. Hannah his cell phone to call someone and he said,  
21 No, if you'll just take me up to my friend's house, he'll help  
22 me get it out and he let him out is what we later discovered  
23 was the end of James Anderson's driveway, that he eventually  
24 walked down the driveway and told James Anderson that he had  
25 been in an accident on his horse. When James Anderson left

1 him, when he got out of James Anderson's car, he left his  
2 jacket and his sweatshirt in the car and then went on into his  
3 house so Mr. Anderson had the jacket and sweatshirt. It just  
4 so happened that after Mr. Anderson got back home his son who  
5 coincidentally had found the collision called him to tell him  
6 what he found because he knew Mr. Hannah and he knew  
7 Mr. Sullivan and Mr. -- his father said, Well you won't  
8 believe this but Joey just came up to my house and told me he  
9 fell off a horse so Mr. Anderson went to the scene on River  
10 Road and told the investigating troopers what had happened, at  
11 that point they had already run the tag and had the name of  
12 Nicole Hannah and an address and maybe five minutes later  
13 about 5:30 p.m. Mrs. Hannah drives up with Joey in the car.  
14 They're running a video, he walks up to the troopers, he's  
15 mirandized and he starts to tell them that he was the driver  
16 of the car, that he had run all the way home to get help and  
17 that Mr. Sullivan was still breathing when he left. An  
18 accident reconstruction team estimated that he was going about  
19 53 miles per hour in a 45 mile per hour zone at the time. He  
20 was placed under arrest and taken to the hospital and this is  
21 a blood sample that was taken more than three hours after the  
22 collision of 0.11 percent which using retrograde extrapolation  
23 techniques makes it at least point .15 percent at the time of  
24 the collision, he was also positive for marijuana. It may be  
25 of interest to you to know that Mr. Sullivan's blood alcohol

1 based on ocular fluid was .06 and he had no marijuana in his  
2 system. A mechanical evaluation of the defendant's vehicle  
3 found no defects that could have caused the accident.  
4 Mr. Hannah was checked out by EMS at the scene, he was also  
5 checked out in the ER, he was transported to the ER room,  
6 there was no evidence of head trauma. He did have blood on  
7 his ear, his wife had also looked at it and says that he was  
8 alert and oriented times three, he did not appear to have a  
9 concussion of any kind and the hospital records he was treated  
10 and released almost immediately. Those would be the facts at  
11 trial, Your Honor. There are friends and family of the victim  
12 who would like the Court to know their feelings about this at  
13 the appropriate time.

14 THE COURT: Okay, what's his prior criminal history?

15 MS. DRAWDY: Your Honor, he has none.

16 THE COURT: Alright. Is all that true and correct?

17 THE DEFENDANT: Not exactly, Your Honor.

18 THE COURT: Well tell me what's true and correct.

19 THE DEFENDANT: What's true and correct, Your Honor, is  
20 me and Mr. Sullivan left TR, was comin' down highway 288, went  
21 up that way, whenever we wrecked I got outta the car  
22 disoriented, cut my head, my shoulder, went across the road to  
23 the house, nobody was home, car come by and kept goin', I  
24 walked to the end of the road, the two guys fishin' she was  
25 inquiren' about picked me up, took me to Mr. Anderson's

1 driveway and dropped me off at the end of their driveway. I  
2 hollered for Mr. Anderson, he come runnin' with his truck,  
3 sent his son Jamie to where the wreck was then Jamie called  
4 911 and James was takin' me to my house.

5 THE COURT: So you didn't say anything about jumpin' off,  
6 fallin' off a horse.

7 THE DEFENDANT: No, sir.

8 MS. DRAWDY: We have written statements from the  
9 Andersons.

10 THE COURT: Well, I mean, he's not admittin' to it now so  
11 I don't know why we're takin' the plea.

12 MR. PRICE: Well he is admitting that he left the scene,  
13 Your Honor. I think he's just disputing what he supposedly  
14 told Mr. Anderson.

15 THE COURT: Well it sounds to me like he's claimin' that  
16 he left the scene to go get help. Is that what you're  
17 claimin'?

18 THE DEFENDANT: Yes, sir. I was so disoriented at the  
19 time I -- there's a scar on my head right here (indicating),  
20 Your Honor, to show, if you wanna shave my head, I'll be glad  
21 to show it.

22 THE COURT: No. I don't think I can take that plea.

23 MR. PRICE: I I still think that at the end of the day he  
24 is admitting that he left the scene. He did not ask  
25 Mr. Atkinson, the fisher -- fisherman who gave him a ride to

1 Mr. Anderson's house, to call any help and I think that in and  
2 of itself will trigger the statute.

3 THE COURT: Let let me talk to the lawyers up here real  
4 quick.

5 (Whereupon, a bench conference was held off the record.)

6 (Attorney/client discussion held off the record.)

7 THE COURT: Alright, Mr. Hannah, you tell me what you did  
8 when you left the scene. You're talkin' to me now.

9 THE DEFENDANT: Whenever I left the scene, Your Honor,  
10 across the road there's this cabin, I I went to that cabin  
11 holdin' my head with my coat in my hand bleedin', went to that  
12 door, knocked on it, nobody was there. Whenever I come offa  
13 that porch there was a car comin' down the road, went to  
14 waivin' this (indicating) left hand, nobody -- that car just  
15 kept goin' so I went left up that road and walked to the end  
16 of that road whenever I seen a black Toyota sittin' on the  
17 right there's two guys was comin' up outta the river fishin'.  
18 I went to hollerin' and try to flag 'em down. As soon as I  
19 got up to their truck, I fell down I guess from so much blood  
20 loss 'cuz I, my coat's covered in blood. Whenever I got to  
21 their truck I told 'em, I said me and my friend's had a bad  
22 wreck, I said, I need help. They said, You want us to call,  
23 ya know, I said, Take me up the road here to my friend, I  
24 said, they'll help me get help. Whenever they took me up  
25 there to Jame [sic] Anderson's house at the end of his

1 driveway, they dropped me off right there, I started hollerin'  
2 for James, he said, What so I -- he -- I said come quick, I  
3 said, Me and Jimmy Jack's had a bad wreck, need help. He sent  
4 his son, Jamie, in his truck down there to the wreck, James  
5 took -- put me in his truck, took me to my house. On the way  
6 James's son was already at the wreck, called James on his cell  
7 phone, told him, said Jimmy Jack's gone, he's already gone.

8 THE COURT: You just told me that the father sent the son  
9 to the wreck, now ---

10 THE DEFENDANT: Yes, sir.

11 THE COURT: --- you're tellin' me that he was already at  
12 the wreck.

13 THE DEFENDANT: No, the father sent him to the wreck. We  
14 was -- whenever the guys ---

15 THE COURT: And you didn't tell this gentleman that you  
16 fell off your horse.

17 THE DEFENDANT: No, sir.

18 THE COURT: I can't take it.

19 MR. PRICE: Thank you, sir.

20 (Whereupon, the plea continued later that day.)

21 THE COURT: Alright, Mr. Hannah, we're back on the  
22 record. You are still under oath, you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now as you -- do you maintain your prior  
25 story?

1 THE DEFENDANT: I agree with what the solicitor's sayin'  
2 that I am guilty for leavin' the scene.

3 THE COURT: Well why would you tell me that before?

4 THE DEFENDANT: Because I was -- I'm scared and confused  
5 and a little bit idled right now.

6 THE COURT: A little bit idled?

7 MR. PRICE: I think that's a cousin to, cousin to addled.

8 THE COURT: Yeah, okay. Alright. Well then I'm gonna --  
9 so so you did tell that gentleman that you -- you  
10 misrepresented what happened to that gentleman?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Alright. Okay, I gotcha.

13 MS. DRAWDY: Okay, and he had multiple opportunities to  
14 have access to a phone and did not avail himself of it.

15 THE COURT: Would that be a correct statement?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Alright, I'll accept the plea as being  
18 freely, voluntarily and intelligently made with the advice of  
19 a very competent attorney whom he states he's well satisfied,  
20 there is a substantial fact -- substantial factual basis for  
21 each of the pleas. Alright. Anything?

22 MS. DRAWDY: Yes, Your Honor, we do have John Rooks  
23 (phonetic) who has traveled from upstate New York, he is the  
24 personal representative for the estate of Scott Sullivan and  
25 was his very be -- best friend in life. I also have some

1 letters that I want to pass up to the Court that you read if  
2 you wish from or scan from family members, from friends from  
3 upstate New York primarily who could not be here. I will  
4 summarize what Carolyn Clock has to say, she is Scott  
5 Sullivan's ant who practically raised him, Scott, she could  
6 not be here today because her husband has shingles and they're  
7 dealing with quite a situation there and they live in  
8 Missouri, ---

9 THE COURT: Okay.

10 MS. DRAWDY: --- Scott's mother he was the youngest of  
11 three children, she was not married to his father and was  
12 ashamed of that and it c -- what Mrs. Clock wanted you to know  
13 is that Scott had kind of a rough time growing up and it it  
14 caused him to become very shy and the Rooks really became his  
15 family when he went out on his own and took him under their  
16 wing and became part of their family. He has been part of  
17 their family for over sixteen years now. He's, Scott was a a  
18 lineman and John Rooks will tell you a little bit about their  
19 relationship and what he meant to a lot of people with, if you  
20 would stand up please, John is accompanied by Robert Proderick  
21 who came all the way from Rochester, New York who was a  
22 friend, he doesn't expect to speak, John is going to speak on  
23 behalf of everyone, and also are Eddie and Vickie Anderson who  
24 were Scott's next-door neighbors here in South Carolina but he  
25 was a a fella who had a rough time growin' up and his ant

1 really loves him and looked out for him after his mom kind of  
2 left the scene ---

3 THE COURT: Okay.

4 MS. DRAWDY: --- so Mr. Rooks.

5 MR. ROOKS: Your Honor, my name is John Rooks, please be  
6 patient because I'm very uncomfortable speaking in public;  
7 I'm doing this because I feel it is my duty. Your Honor, I  
8 want you to know that if you would have asked me almost any  
9 time during the first two weeks after I received the phone  
10 call about the accident if I would be coming to court to ask  
11 you to sentence Joey Hannah to a long term in pri -- prison I  
12 would have said no. I thought that this was just an accident  
13 and that Scott and because Scott and Joey were friends I  
14 naturally assumed Joey did everything that he could do to help  
15 Scott and that Joey's worst punishment would be living with  
16 the fact that he had killed a very good friend. I have now  
17 come to realize that Joey Hannah had no regard for anyone but  
18 himself that Sunday afternoon when he left Scott to die alone  
19 all in an attempt to avoid a DUI charge.

20 On February 12th almost three weeks after Scott was  
21 killed, Joey Hannah himself confirmed all of the that all of  
22 the rumors that we've been hearing about what happened after  
23 the accident were true. My wife and I had come to South  
24 Carolina with our youngest son to pick up Scott's ashes. We  
25 were at Scott's house on [REDACTED] the home that we owned

1 and that Scott had been renting to own from us, Joey Hannah  
2 came to the house to see us. He told my wife and me that  
3 Scott was alive, breathing and making some noises when he left  
4 him behind in the car. Joey said that he told Scott, Don't  
5 worry, I'm goin' to get help but he didn't get help. Joey  
6 also also told us that he searched the car until he found his  
7 red Freemason Bible which he took with him when leaving but he  
8 did not take the time to search for his cell phone to make the  
9 call to get help for Scott. Then Joey asked me about some  
10 contraband that he had left in Scott's house; he had kept  
11 those things at Scott's house so his wife did not know about  
12 it. It just so happened that I discovered these things in the  
13 house and I had taken them to the dump and I told Joey this.  
14 Joey began to tell us how hard things had been for him the  
15 past two weeks, he said that he had gone to see the car that  
16 morning and it was awful. He talked about how sore his  
17 shoulder was and how much money this situation was going to  
18 cost him. He knew how close Scott and I were, I kept waiting  
19 to hear him say how sorry he was about Scott's death but he  
20 never expressed any remorse or sorrow about Scott being gone.  
21 It was all about Joey and the trouble that he was in and since  
22 the day, since that day he has never made any attempt to  
23 apologize or to show any compassion toward us for our loss.

24 With me today are some of Scott's friends. He left, he  
25 left behind so many friends from California to Florida to New

1 York and that he worked with and that he worked for, men who  
2 knew what a good human being he was. I have given the  
3 solicitor copies of many of the emails and letters from people  
4 who wrote us following Scott's death and from people who would  
5 have liked to have been here today but could not make the trip  
6 to South Carolina. I am the one speaking for all of us  
7 because James Scott Sullivan who we all called Scott or Jimmy  
8 Jack, a nickname that I had given him years ago, was my best  
9 friend and he was my brother. No, we were not born brothers  
10 but we came -- we became like brothers almost sixteen years  
11 ago when we were both single and working together for UTelex  
12 building power lines in the Carolinas. Both of us had  
13 situations in the homes that we came from that caused us to  
14 leave them behind while we were still in our teens. Scott was  
15 apprenticed under me to learn to become a lineman and we  
16 became best friends and I found myself looking out for Scott  
17 like a younger brother. Scott was an extremely kindhearted  
18 man whose biggest fault was not knowing his own value. At  
19 first glance he looked like a Hell's Angel. He was about 6  
20 foot 4, 478 pounds tattooed giant with a Winston hanging out  
21 of his mouth at all times. You expected him to be a confident  
22 confident, loud, boisterous guy but he was just the opposite,  
23 he was really painfully shy. We sort of became each other's  
24 family then I met and married my wife, Brenda, Scott remained  
25 a part of our family. Brenda and I, our three young sons,

1 Brenda's ant, cousin, mother and even our daycare provider all  
2 love Scott. He visit us -- visited us often at our home in  
3 Fairport, New York and he spent almost every Thanksgiving and  
4 Christmas with us. My wife, Brenda, wanted to be here today  
5 but we decided that she needed to remain behind with our boys  
6 in New York. We all miss Scott. My oldest boy likes to wear  
7 one of his old cowboy hats, our kindergartner talks about him  
8 at night when he says his bedtime prayers, our first grader  
9 talks about him and the tree they planted together at daycare  
10 all of the time. I still spend hours alone on the patio  
11 thinking of Scott, I still shed many tears during those times.  
12 It all seems so un -- unnecessary and so wrong.

13 I've been told that Scott's injuries were so serious that  
14 he likely would not have lived even if an ambulance had got to  
15 him sooner but we will never know that for sure. We have all  
16 heard of people that the medical experts say should've died  
17 but who make it, one of them is standing here next to me  
18 today. Miracles do happen but Joey Hannah's decision not to  
19 get help for Scott who he said was alive when he left him, I'm  
20 sure that Scott did not get a chance for one of those  
21 miracles.

22 Your Honor, as much as my strong emotions about this tend  
23 me to ask you for the maximum possible sentence which I  
24 understand to be 50 years, I realize that this is probly not  
25 appropriate but a penalty that does not include some

1 significant incarceration would be just as inappropriate. We  
2 realize that Joey does not have a prior record but surely that  
3 does not give him a free pass, that is not the message that  
4 we -- that should be sent to others who may find themselves in  
5 a similar situation with Joe -- which Joey Hannah found  
6 himself. The law simply requires that people in Joey's  
7 situation to to exercise common decency and get help for the  
8 injured when they're involved in an accident like this. Joey  
9 knew exactly what he was doing that Sunday afternoon and he  
10 went to great extremes to get away from the scene and to avoid  
11 being caught while he still had alcohol in his system. Joey  
12 was willing to sacrifice Scott's life so that he could get  
13 away and although we are not asking you to sentence him to the  
14 maximum sentence, we would ask that you sentence him to more  
15 time than what the solicitor has asked that he be sentenced.  
16 Thank you for hearing what I had to say.

17 THE COURT: Alright, thank you very much.

18 MS. DRAWDY: Nothing else, Your Honor.

19 THE COURT: Alright, Mr. Price.

20 MR. PRICE: Thank Your Honor. Can I start off by passing  
21 up a few things please, sir?

22 THE COURT: Okay.

23 (Whereupon, counsel handed documents to the Court.)

24 MR. PRICE: The top thing is a letter, actually, the  
25 picture that you have there is a picture of Joey and his

1 family, my client and his family. The second poster that you  
2 have there is a map of River Road and where this happened with  
3 an arrow on it. As you can see is a very curvy road; in fact,  
4 we found out that two people had been killed on this road  
5 within two years prior to this accident back in January of  
6 last year. Very important thing that I'd ask you to read  
7 there that letter, Your Honor, and the enclosure, that was  
8 sent from the decedent's Mr. Sullivan's mother to my client  
9 Mr. Hannah last year basically forgiving him for what happened  
10 and sending him some literature that she felt would help him  
11 as far as the loss of a loved one. I think it's significant  
12 that Jimmy Jack's mother has forgiven my client for what  
13 happened and that the Court should take that into account. I  
14 have friends and pastor and mother for Mr. Hannah. Pastor and  
15 mom, would ya'll come up here to the podium, please.

16 MR. PRICE: Your Honor, I'd kinda like to break this up  
17 in stages. As the State has stipulated, Mr. Hannah has no  
18 prior criminal record, 35-years-old, as you can see he was  
19 marr -- he is married, two beautiful children. He was working  
20 as a construction person for Oconee County Nuclear Plant for  
21 three years prior to this happenin'. He rode horses, he liked  
22 NASCAR, he was a member of a masonic temple up in Marietta and  
23 he was also a Shriner. He has, you've heard a lot about Jimmy  
24 Jack from Mr. Rooks, just like Mr. Rooks loved Jimmy Jack, my  
25 client loved him. The Hannah family was also a second family

1 to Jimmy Jack, they had known each other for a number of  
2 years, all of the witnesses in this case knew that they were  
3 close friends and it was not uncommon when you saw one you saw  
4 another. They did a lotta stuff together: they road horses,  
5 bull riding, NASCAR races, they were together on holidays. If  
6 Jimmy Jack was not with the Rooks family, he was with the  
7 Hannah family. My client was instrumental in getting Jimmy  
8 Jack started off in the Masonic Temple and also in the  
9 Shriners but unfortunately a lot of what they did involved the  
10 use of alcohol and that is what happened. This particular  
11 incident they went out, had been to see some friends, they  
12 were ridin' around, cuttin' up, it was probly around 3:30 p.m.  
13 or so and they were on River Road and just did not make a  
14 turn, it is a bad curve, there is no guardrail there. My  
15 client was drivin', he went off the road, he hit a tree and  
16 hit another tree and went down an embankment about 20 feet.  
17 This was a horrible crash, I'm not gonna give the Court but  
18 one picture of this thing but Mr. Sullivan was in the driver's  
19 seat, he was restrained but he was pinned in the car, he was  
20 trapped ---

21 MS. DRAWDY: May I correct? Mr. Sullivan was in the  
22 passenger seat, ---

23 MR. PRICE: Passenger ---

24 MS. DRAWDY: --- you misspoke.

25 MR. PRICE: --- seat, excuse me.

1 MS. DRAWDY: I'm sure that wasn't intentional.

2 MR. PRICE: He was in the passenger seat, my bad. He was  
3 pinned in the car, he probably was somewhat alive when my  
4 client got his wits and got outta there but from the coroner's  
5 report and our conversations with medical personnel he was not  
6 going to live very long at all; in fact, he did not. He  
7 was -- he died as a result of what was described or designated  
8 as atlanto-occipital subluxation which is nothing but a fancy  
9 word for internal decapitation. The force of this crash  
10 snapped his neck and he was dead. When EMS got there sometime  
11 after four, there was no life signs. When Mr. Anderson, Jr.  
12 got there, there were no life signs. The coroner's report has  
13 the time of death at 4 p.m. When the EMS got there, not only  
14 were there no life signs but there was rigor mortis present so  
15 if he lived for any lengtha time, it was a matter of minutes  
16 after the collision. My client is taking a beating for what  
17 he did and did not do afterwards but I submit that it really  
18 would not have mattered. He should not have done what he did  
19 but even if he had gone out and called help, I don't believe  
20 that it would matter and I think that the statute goes to a  
21 situation in which if a person is alive and can be saved and  
22 can be helped then the person owes a duty, in this case it  
23 would not have made any difference. And the question might be  
24 asked why did Mr. Hannah do what he did, I think it was a  
25 combination of things, I think he panicked, I think he was in

1 shock, I know that he had some injuries: he injured his  
2 shoulder, he injured his head, there were lacerations, his ear  
3 was torn up and plus we had the alcohol factor.

4 If I could present a couple other things to the Court,  
5 Your Honor, one is a picture that is cropped showing the  
6 driver's side of the vehicle, that's (indicating) where my  
7 client was. If you'll notice that there is blood on the visor  
8 that started off above his head and there is blood on the air  
9 bag, um, also have a copy of one of the hospital reports. He  
10 did have a CT scan of his head, of his neck and of his chest,  
11 they came back negative but there was an obvious injury there  
12 and the injuries were confirmed by Mr. James Anderson who was  
13 the guy that gave my client the ride from his house over to  
14 the wife's house. Mr. Anderson was interviewed on audiotape  
15 by the M.A.I.T. team at 6:40 p.m. that same day and  
16 Mr. Anderson on his statement said that Joey had lacerations  
17 to his head, I quote, "ear torn up, shoulder hurt,  
18 disoriented, bloody clothes," and as he drove my client from  
19 Anderson's house to his house, to my client's house, every  
20 time he hit a bump in his little pickup truck my client would  
21 groan or yell because it hurt, he was hurt. Now did he do  
22 wrong by not reporting this? absolutely. Is he guilty of that?  
23 absolutely, but is there a mitigation factor for this or  
24 factors, I think so because of his injuries, the combination  
25 of things and that it really would not have mattered.

1           Let's talk about post-incident. My client wanted to work  
2 but he lost his job. He started having depression and was  
3 treated for post-traumatic stress syndrome at mental health.  
4 He started volunteering for the, for the Gleaning which is a a  
5 group that picks food, collects food for underprivileged  
6 people, he did that twice a week, he got active in his church,  
7 he got active in Alcoholics Anonymous, he is sorry that this  
8 happened, he's remorseful. I gave you the letter from Jimmy  
9 Jack's mother; I talked to her two weeks ago and just asked  
10 her what her feelings were about my client and she said, I  
11 feel the same way, this is terrible on me but must -- it's  
12 terrible on on Mr. Hannah also so she still forgives him. My  
13 client got back in in the church, I'm gonna ask the pastor to  
14 speak a little bit. Pastor, would you tell the Court briefly  
15 who you are and what you've observed from Mr. Hannah after  
16 this collision.

17           PASTOR BRUCE: Yes, sir. My name is James McCoy Bruce,  
18 I'm the pastor at Dacusville United Methodist Church and Joey  
19 and I have known each other for number of years, we've been  
20 having conversations and also in fronta the church he has  
21 taken responsibility for what he has done, he has apologized  
22 to his family, to the church community, I know that he's  
23 apologized to Jimmy Jack's mother and he has, he has asked for  
24 forgiveness as he's taken that responsibility, I also know  
25 that that he realizes that there are real consequences and

1 he's been struggling with that. Every time that he talks  
2 about Jimmy Jack, I know that I've heard no remorse, he can't  
3 fight back the tears when it's just the two of us sitting down  
4 at a table. He he is hurting over the loss of his friend  
5 probably more than that he's hurting over the loss of the  
6 consequences with the boys as Colton and Cash miss their daddy  
7 and he has, he just wants to be there with them and yet at the  
8 same time he understands that he has been wrong here and he  
9 said that he knows why he's here but also wrong is to be able  
10 to make things right however he can.

11 THE COURT: Alright, thank you.

12 MR. PRICE: Your Honor, I'm gonna wrap this up, uh, I  
13 would like to say that my client in certain ways has been  
14 punished already. I showed you that picture of his wife and  
15 children, she has filed for divorce; in fact, there's a  
16 temporary hearing scheduled this Friday. His marriage is is  
17 over with, she is moving on. You are going to send him to  
18 prison, I would love it if you gave him house arrest but I  
19 don't expect that, this is a very serious thing and I know  
20 you've got to do what you've got to do, I just ask that you be  
21 fair so that's gonna take him away from his his children.  
22 He's had depression, he's had mental problems but he's not  
23 blaming this on anybody but himself. He has stood up in front  
24 of his church and admitted his fault and he is truly  
25 remorseful. I'd ask the Court to follow the spirit of Jimmy

1 Jack's mother's letter right there, I think that it is very  
2 impressive that she saw fit to forgive him of what happened  
3 and this was a very, very close friend of my client, very  
4 close. It is eating him up, he'll tell you in just a minute  
5 how he feels and I know what the solicitor is wanting in the  
6 way of a sentence, I think that is totally inappropriate or  
7 excessive in light of the lack of a criminal record. This is  
8 a very serious thing but I would think something like a  
9 15-year suspended on 5 might be appropriate or some. He can  
10 still contribute, he's a good man, he's been punished, he will  
11 be punished. What do you want to say?

12 THE DEFENDANT: I want everybody to know I accept my  
13 responsibility for the mistake and the accident that did  
14 happen. I might not have shown remorse before but people  
15 didn't stay around me long enough to see I'm very sorry and  
16 very, very deeply remorseful for what happened. Every single  
17 day I live this in my mind. I wake up cryin' and go to bed  
18 cryin' because I lost my best friend. Words can't explain how  
19 sorry for and how remorseful I am about this. I've asked  
20 Jimmy Jack's family for forgiveness, I've asked God for  
21 forgiveness. With some way words can't explain, I can make a  
22 better benefit to others by my testimony, my bein' out there  
23 to tell people about this to help them not do the same. I'm  
24 askin' mercy for the Court with all the remorse in the world  
25 for me deep down sorry I have to show mercy on this court

1 please have mercy on me because I am a son of a poor widow. I  
2 ask mercy to let me go out in the world and show that I can  
3 make a benefit to others and have the opportunity to make a  
4 difference in the world. Thank you, Your Honor.

5 THE COURT: Alright.

6 MR. PRICE: That's all that we have, Your Honor.

7 THE COURT: Any from the State?

8 MS. DRAWDY: No, Your Honor, I just ask you to take into  
9 account the relationship that the the victim did not have with  
10 his mother.

11 THE COURT: Yeah, while I think it's very admirable that  
12 she she's found it in her heart to forgive and I think  
13 everybody's gotta do that, we're not here to -- not talkin'  
14 about cleansing of the soul, we're talkin' about the laws of  
15 man. I'm gonna give him 25 years provided upon 12 years, the  
16 balance is suspended with 3 years probation, substance abuse  
17 counseling, random drug and alcohol testing, attend M.A.D.D,  
18 25 suspended durin' probation on the other one.

19 MR. PRICE: Thank Your Honor.

20 THE COURT: Okay, good luck.

21 THE DEFENDANT: Thank you, sir.

22 MS. DRAWDY: Thank Your Honor.

23

24

25

## 1 CERTIFICATE OF REPORTER

2  
3 I, Margaret A. Woods, Court Reporter in and for the State  
4 of South Carolina at Large, hereby certify that I reported the  
5 preceding case on June 26, 2012 at the time and place  
6 heretofore set forth; and that the foregoing pages numbered  
7 from 2 through 28, inclusive, constitute a true and accurate  
8 transcription of my stenographic notes of the said proceeding.

9 I further certify that I am neither attorney nor counsel  
10 for, nor related to or employed by any of the parties  
11 connected to the action, nor am I financially interested in  
12 the action.

13 August 8, 2012

14  
15 Margaret A. Woods 4/14/13

16 Margaret A. Woods, Court Reporter  
17 in and for the State of South Carolina at Large.

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF Greenville )  
 )  
**Billy Joe Hannah #348206** )  
 Full name and prison number (if any) of Applicant. )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )  
**Respondent,** )

IN THE COURT OF COMMON PLEAS

2013-CP-23- 01351

APPLICATION FOR

POST-CONVICTION RELIEF

FILED  
CLERK OF COURT  
JUN 27 2013  
7:03 AM

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 Tyger River Corrections Institution, 200 Prison Road Enoree, S.C. 29335
2. Name and location of Court which imposed sentence Greenville AMHERSTON County Court of Common Pleas
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) Felony DUI (Resulting in Death), 2011-GS-23-5729
  - (b) Leaving the scene of an Accident with Death, 2011-GS-23-5730
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) 6-26-2011, 25 yrs. upon service of 12 yrs, and 3 yrs, probation
  - (b) 6-26-2011, 25 yrs. Suspended

- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I was not informed that I could Appeal the Sentence & Conviction.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Breach of Plea Agreement.
- (b) Involuntary Plea.
- (c) Ineffective Assistance of Counsel.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHED SUPPORTING MEMORANDUM FOR (PCR).
- (b) SEE ATTACHED SUPPORTING MEMORANDUM FOR (PCR).
- (c) SEE ATTACHED SUPPORTING MEMORANDUM FOR (FOR).
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. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (c) the disposition thereof:
- i. N/A
- ii. N/A
- iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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) I was not informed that I could raise any (appeal)

" " " " " " " " " " " " " " " " " "

(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? \_\_\_\_\_
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
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. ATT. Michael MacKinnon, 300 Pettigru St. Greenville, S.C 29601
  - ii. James H. Price, III Esquire, Address N/A
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
- i. Felony DUI & Leaving Scene—Plea withdrawal Sentence vacated.
  - ii. Re-plea on Felony DUI & Leaving Scene of Accident.
  - iii. \_\_\_\_\_
19. State clearly the relief you seek in filing this application:  
Atleast the Non-violent status on the sentence that was in the agreement.
20. Are you now under sentence from any other court that you have not challenged?  
No

STATE OF SOUTH CAROLINA )  
 )  
County of SPARTANBURG )

VERIFICATION

I, BILLY BSH  
HANNAH being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 16th  
day of JANUARY, 2013.

Herbert [Signature] (L.S.)  
Notary Public | SC

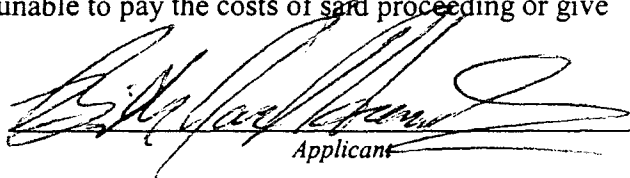
My Commission Expires: 1-14-2019

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

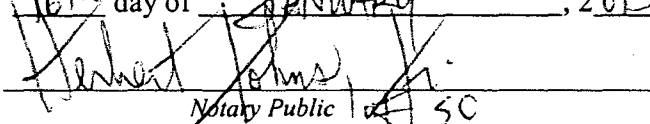
*Billy BSH*  
I, ~~Herbert~~

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  
16th day of JANUARY, 2013.

  
Notary Public SC

My Commission Expires: 1-14-2019

STATE OF SOUTH CAROLINA )  
 COUNTY OF Greenville )  
 )  
 Billy Joe Hannah #348296 )  
 Applicant: )  
 )  
 Vs. )  
 State of South Carolina )  
Respondent, )

IN THE COURT OF COMMON PLEA

CA. 2013-CP-23-01351

SUPPORTING MEMORANDUM FOR  
 APPLICATION OF POST-CONVICTION  
 RELIEF

FILED  
 2013 MAR -7 PM 2:03  
 CLERK OF COURT  
 JAMES H. HARRIS  
 1000 W. MAIN ST.  
 GREENVILLE, SC 29601

The Applicant) Billy Joe Hannah, respectfully present this matter before this Court on application for post-conviction relief (PCR); The Applicant is presently confined in (SCDC) Tyger River Corrections Institution pursuant to Order of Commitment from Greenville County Clerk of Court. The Greenville County Grand Jury indicted Applicant at the September 13, 2011 term of General Sessions for Felony DUI (resulting in Death) violation §56-05-2945 Code of Laws, indictment 2011-GS-23-5729; Leaving the Scene of an Accident with Death, Violation §56-05-1210 indictment 2011-GS-23-5730, Sentence of two (2) 12 Years concurrent sentences.

CASE FACTS

That Billy Joe Hannah (Applicant) did in Greenville County, on or about the 23rd of January 2011, drive a Motor Vehicle while under the influence of alcohol, drugs or a combination of both, and did an act forbidden by Law and/or neglected a duty imposed by law to wit; The Applicant failed to exercise due care, and/or exceeded the posted speed limit, and/or drove too fast for conditions, and/or failed to maintain control of the Vehicle, and/or drove off the roadway, which acts and/or neglect proximately caused the death of victim (James Scott Sullivan). This was a violation of §56-5-2945; Also Billy Joe Hannah (Applicant) when driving a Motor Vehicle that was involved in an accident which resulted in great bodily injury and ultimately the death of victim, did leave the scene without providing any assistance to the victim in obtaining medical care and without reporting the accident to proper authorities violation of §56-5-1210 both of the South Carolina Codes of law.

ISSUE I

APPLICANT PLEAS WAS UNINTELLIGENT AND INVOLUNTARY DUE TO PROSECUTION BREACH OF PRE-ARRAIGNED PLEA AGREEMENT:

ARGUMENT I

The Due Process Clause requires that a guilty plea be enter voluntarily, knowingly, and intelligently, Boykin v. Alabama, 395 U.S. 242 (1969). In addition to the requirements of Boykin, the Supreme Court of South Carolina requires that a defendant entering a guilty plea must be aware of the nature and crucial elements of the offence, the Maximum and mandatory Minimum penalty, and nature of the Constitutional Right being waived, State v. Hazel, 275 S.C. 292, 271 S.E. 2d 602 (1980).

A plea of guilty is more than an admission of conduct: It is a conviction, Ignorance, incomprehension, coercion, terror inducement, subtle or blatant threats might be perfect cover-up of unconstitutionality and the question of an effective waiver of a Federal Constitutional Right is governed by Federal Standards. Bouglas v. Alabama, 388 U.S. 415, 85 S. CT. 1074, 13 L. Ed. 2d 934. Who enters such a plea simultaneously waives several Constitutional Rights, including his privileges against compulsory self-incrimination, his right to trial by jury, and his right to confront his accusers. For this waiver to be valid under the Due Process Clause, it must be an intentional relinquishment or abandonment of a known right or privilege. Consequently, if a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of Due Process and is therefore, void. Moreover, because a guilty plea is an admission of all elements of a formal criminal charge it cannot be truly voluntary unless the defendant possesses an understanding of the law in the relation to the facts, Boykin v. Alabama, 395 U.S. 238, 89 S. CT. 1709, 23 L. Ed. 2d 274; In Pittman v. State, 524 S.E. 2d 823 (1999)( the trial Judge did not affirmatively advise Pittman of the crucial "Element" of the charged offence, this error rendered the his plea involuntary. The Trial Court is required to advise a defendant of all the ranges of punishment attached to offense charged.

The Trial Court erred, during the guilty plea proceeding, Tr. Pg. 3, Ln. 25; Pg. 4, Ln. 1-14, during the colloquy, the Trial Court informed the Applicant that the felony (DUI) resulting in death, was "serious offense" and

that meant if he get three more serious offense conviction he's eligible for life in prison without parole, the Applicant acknowledged that he understood. The Court went to say that it believed the charges would be non-parolable ask is that right? the Applicant acknowledged yes sir. At that time, the defense attorney Mr. Price stated yes they will be 85% your Honor.

In this case the Trial Court fail to properly inform Applicant of the Elements and Sentencing Consequences if he pled guilty. (1) Where the Trial Court informed Applicant that his crimes were "Non-Parolable Offenses, fail to clarify whether or not the crimes were violent or non-violent when the Applicant [DID NOT] and as of yet [DO NOT] have a degree in Criminal Law and Legislative Law, (2) Applicant's defense attorney Mr. Price informing the Trial Court that the sentences would be 85%, likewise, [Fail] to properly advise Applicant and clarify (informally) whether or not the offenses were "Violent or Non-Violent", why! because the 85 percent Statute is a Two-Pronged Statute on Sentences. The 85 Percent Statute has a Non-Parolable Violent Sentencing Status Prong and a Non-Parolable Non-Violent Sentencing Status Prong, therefore, the Trial Court use's of the term of "These are Non-Parolable Offenses" was an error which fail to properly inform the Applicant all of his guilty plea, sentences, and convictions consequences. the Trial Court's rendered Applicant's plea an involuntary and unintelligent.

In this case, initially, the Applicant's defense attorney Mr. Mackinnon confronted him and informed him that he and the Ms. Drawdy has agreed upon a plea agreement of a "Non-Violent Status on his sentences, also at that time Mr. Mackinnon had the Applicant to sign a the pre-prepared plea agreement sentencing sheets with the "Non-violent" box with a Check in it, and agreed that there would no recommendation of sentence from the Prosecutor. The Applicant were sentenced 10-13-11.

(2) During the original plea and sentencing proceeding, The Prosecution Breached the prior plea agreements concerning recommendation (1) which were agreed that there would be no recommendation from the Prosecution. (2) Plea would be too a non-violent sentence.

The Applicant defense attorney Mr. Mackinnon chose to without being requested, file a Motion to withdraw Applicant's guilty plea on the grounds as follows:

The grounds for such request are based on Plea-Negotiation between Counsel for the defendant and the Assistant Solicitor that no recommendation for sentencing would be made by the Prosecutor, the Solicitor invited inquiry by the Court as to a sentence recommendation which was then articulated by the Assistant Prosecutor in Derogation and breach of the plea negotiation and agreement which inevitably affected the Court's sentencing consideration to the detriment of the defendant.

Thereafter, the Trial Court accepted the Motion to withdraw guilty plea and vacated the sentencing Order of the Ten (10) year concurrent Non-Violent Sentence, (SEE ATTACHED copies of sentencing sheet orders marked vacated per order 6-4-12). The Applicant's attorney Mr. Mackinnon choice to withdraw Applicant plea subjected Applicant to a harsher punishment.

(2) Further, the Applicant were provided with another attorney (James H. Price III) in which the Court held a second plea proceeding on 6-25-12; the Applicant pled guilty, the Trial Court up graded the sentence from the Original agreed Two Ten (10) years Non-Violent Concurrent Sentences to Twenty Five years Non-Violent Suspended and One Twenty Five Years Non-Violent Sentence Provided service of Twelve (12) Years and Three (3) Probation.

During the second plea proceeding, the Prosecutor also continue to "Breach" plea agreement, the Solicitor invited inquiry by the Trial Court as to a sentence recommendation which was then articulated by the solicitor in derogation and "Breach of the prior plea negotiation and agreement which inevitably affected the Court's sentencing consideration to the detriment of the Applicant. SEE TRANSCRIPT or attached Transcript Page Tr. Pg. 5, Ln. 22-25) Prosecutor Ms. Drawdy, states' there is no "Recommendation" in the Applicant's case, BUT, She tell the Court, that the State is arguing for a sentence of (15) to (20) years sentence. the Prosecutor's argued sentence request is nothing other than an indirect recommendation of a sentence which is still a clear "Recommendation" to the Trial Court for sentencing that she had Negotiated an agreement not to do, the Assistant Solicitor breached the Applicant's plea agreement.

(3) Even to make matter of the Applicant's plea agreement and sentence even harsher and worst Three days from (6-25-12 to 6-28-12) after Applicant second guilty plea proceeding, the Prosecution and Attorney Price call Applicant back before sentencing Judge and had the Judge change and amend the Applicant's sentencing Status from "Non-Violent to Violent (SEE ATTACHED SENTENCE SHEET). This act of the Prosecutor and Defense Attorney resulted in a third act of a "Breach of Plea Agreement" in which the sentencing Court played adversarial role for the Assistant Solicitor and erred during Trial Proceeding and sentencing of Applicant where (Judge) failed to properly advise the Applicant of all the elements and sentencing consequences if he pled guilty to the Charges. (SEE ATTACHED TRANSCRIPT) of the sentencing sheet amendment; Tr. Pg. 4, LN. 5-21, Assistant Solicitor Ms. Drawdy, (Listed Ms. Salisbury) passed up the sentencing sheets and indictments to Judge and ask him to reaffirm Applicant plea with a motion amend the sentencing sheets; Ms. Drawdy, stated that she and attorney Mr. Price in error checked the block of non-violent. The Court, Okay. Ms. Drawdy, Stated both of these are violent crimes. The Court, Okay, and I specifically remember saying that these were non-parolable offenses and clearly remember inquired and Mr. Price ask Mr. Hannah (Applicant) whether or not he (Mr. Price) had discussed that these were non-parolable offenses. Mr. Hannah (Applicant) acknowledged yes sir..

The Trial Court Erred during the plea proceeding Tr. Pg. 3, Ln. 25; Pg. 4, Ln. 1-14. During the Colloquy, the Trial Court informed the Applicant that the felony DUI resulting in Death was a serious offense and that mean if he get convictions for three or more serious offenses he's eligible for life in prison without Parole, the Applicant acknowledge yes sir; Mr. Price stated, that will be 85 percent your Honor.

In this case it is clear that Trial Court fail to properly inform Applicant of the Elements and sentencing consequences, (1). Trial Judge's informing Applicant that his crimes were "Non-Parolable offenses, fail to clarify whether the crimes were "Violent or Non-Violent" when the Applicant did not an as yet still do not have a degree in criminal law or legislative Statute Law, (2). the Applicant's defense attorney Mr. Price's informing the Court that the sentences would be "85 Percent", likewise, this statement from

Counsel fail to properly advise Applicant and clarify (informally) whether or not the offense were "Violent or Non-Violent, because as already been stated, the 85 percent Statute is Two Pronged, the Statute has a "Non-Paroleable Violent Sentence Status" and a "Non-Paroleable Non-Violent Sentence Status" Clauses in it, therefore, the Trial Court and defense Counsel fail to properly inform the Applicant of all the sentencing consequences elements of the crimes charged if he pled guilty. this error resulted the Applicant's plea an involuntary and unintelligent plea

When a plea rests in any significant degree on a promise or agreement of the Prosecution, so that it can be said to be part of the inducement or consideration, such promise [MUST] be fulfilled Santobello v. New York, 404 U.S. 257, 262, 92 S.Ct. 485 (1971); The State is bound by any material promises it makes to a defendant as part of a plea agreement that induces the defendant to plead guilty State v. Rhinehart, 430 S.E. 2d 536 (1993).

The Applicant's claims that the Solicitor "breached" the original plea agreement of a "Non-Violent Ten (10) years sentence and more to true where the agreed sentence had been imposed and Applicant had commenced to serve the imposed sentence. The Trial Court erred, The Assistant Solicitor Breached Plea agreement, and the Court and prosecution subjected Applicant to Double jeopardy.

ISSUE II

APPLICANT WAS DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEES BY THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION:

ARGUMENT II

under the Sixth Amendment to the United States Constitution, a criminal defendant has a right to receive reasonable effective assistance from his attorney. Strickland v. Washington, 466 U.S. 688, 687, 104 S.Ct. 2092, 80 L.Ed. 2d 674 (1984). A Two-Prong test for determining whether a defendant received Constitutionally adequate representation was established by the Supreme Court in Strickland, in which it held that a individual, who asserts an effective assistance of Counsel claim, must demonstrate that, (1) his attorney's performance fell below an objective standard of reasonableness, given by all of the circumstances and prevailing professional norms; and (2) a reasonable probability exists that, but for the attorney's unprofessional errors, the result of the proceeding would have been different.

Applicant received ineffective assistance of Counsel during his guilty plea proceeding in violation of his right to effective assistance of Counsel. Applicant contends that due to his Counsel's lack of interest and incompetent representation he failed to articulate a Fourth Amendment claim by making an objection to the Prosecutor's breaching of the original plea agreement. This constitutes ineffective assistance in that the claim was meritorious in this case and that the outcome of the proceeding would have been different.

Counsel failed to conscientiously discharge his professional responsibilities while he was handling Applicant's case. He did not have Applicant's best interest in mind; He failed to properly acquaint himself with the Law and facts surrounding the case and as a direct result to his intentional negligence, there was a very serious "error" committed in this case. Counsel failed to oppose the Prosecution's case to any adversarial testing, he failed to function as the Counsel that the Constitution Sixth Amendment guarantees. Counsel's representation was not within...the range and scope of competence.

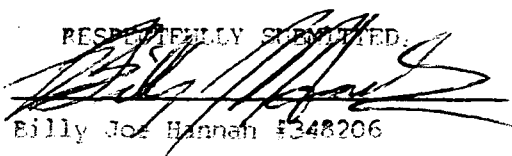
When a defendant alleges that he received ineffective assistance of Counsel, he must prove that Counsel's performance was deficient and that his deficient performance prejudiced the defendant's case. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). In order to meet his burden of proof, the Applicant must demonstrate errors and omissions on the part of trial Counsel such that Counsel deficiency prejudiced the defense as to deprive the Applicant of a fair trial, Wilson v. State, 325 S.C. 158, 432 S.E. 2d 477 (1992); Cherry v. State, 300 S.C. 115, 386 S.E. 2d 624 (1989), the facts of this case clearly indicate that Applicant has met his burden of proof.

Applicant's attorney was ineffective and there is a probability that but for Counsel errors the Applicant would not have pled guilty. Counsel failed to move to have the Prosecutor honor the pre-arranged plea agreement of the agreed Ten (10) years Non-Violent sentence. the Applicant advise by Counsel were done so without Applicant being properly informed during colloquy from either the Court or Counsel, this prejudiced the Applicant. Applicant at the time was ignorant of the law and only mimicked what Counsel told him to say. this violated Applicant's Due Process Constitutional Rights, rendering his guilty plea not voluntarily, knowingly or intelligently given, see North Carolina v. Alford, 91 S.Ct. 160 (1970); Boykin v. Alabama, 89 S.Ct. 1769 (1969); Pittman v. State, 524 S.E. 2d 623 (S.C. 1999).

#### CONCLUSION

For the foregoing reason, Applicant prays that this Honorable Court inquire into the matter alleged, issue an order for an evidentiary hearing, vacate Applicant's sentence, and grant further and other relief as the Court deems Just and Proper.

RESPECTFULLY SUBMITTED,

  
Billy Joe Hannah #348206

Date 1/16/, 2013.

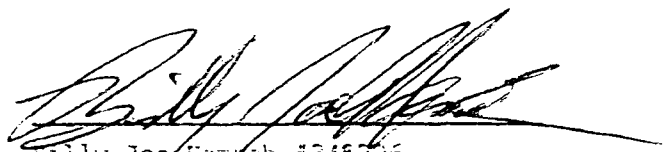
STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

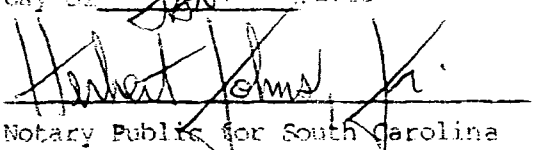
CERTIFICATE OF SERVICES

I, Billy Joe Hannah, with the proper affixed postage, have deposited an application and supporting memorandum for post-conviction relief (PCR) in the Tyger River Corrections Institution mail system to be delivered to the addresses as follows:

Paul E. Wickensimer  
Clerk of Court  
305 E. North Street  
Greenville, S.C. 29601

Alan Wilson  
Office of Attorney General  
P.O. Box 11549  
Columbia S.C. 29211

  
Billy Joe Hannah #348206  
T.R. (C.I.) U-6  
200 Prison Road  
Greene, S.C. 29335

Sworn to before me This 16 th  
day of Jan, 2013.  
  
Notary Public for South Carolina  
My Commission Expires: 1-14-2019

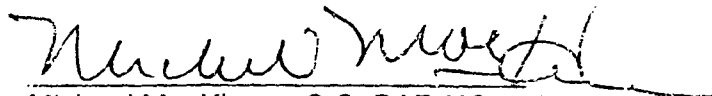
STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 PLAINTIFF, )  
 )  
 VS. )  
 )  
 Billy Joe Hannah, )  
 )  
 DEFENDANT. )  
 \_\_\_\_\_ )

IN THE GENERAL SESSIONS COURT  
 THIRTEENTH JUDICIAL CIRCUIT  
 Warrant: F 037966; 037967

**MOTION TO WITHDRAW GUILTY PLEA**  
 (Warrant/Ticket Nos: FD 037966; FD) 037967

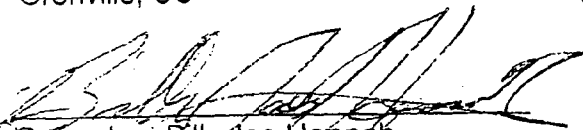
Please take Notice that the Defendant, Billy Joe Hannah, by and through his attorney of record, Michael MacKinnon, will move before the Court at a date and time convenient for the Court, that the Court permit the Defendant to Withdraw the Guilty Pleas in the above matter. On October 13, 2011 the Defendant pled Guilty to Felony DUI with Death and Leaving the Scene of an Accident with Death. The grounds for such request are based upon the Plea Negotiation between counsel for the Defendant and the Assistant Solicitor that no recommendation for sentence would be made by the Prosecutor. The Assistant Solicitor invited inquiry by the Court as to a sentence recommendation which was then articulated by the Assistant Solicitor in derogation and breach of the Plea Negotiation and Agreement which inevitably affected the Court's sentencing consideration to the detriment of the Defendant.

Respectfully submitted,



Michael MacKinnon S.C. BAR NO.: 003512  
 Attorney for the Defendant  
 300 Pettigru Street  
 Greenville, SC 29601  
 (864) 235-4767 Fax: (864) 232-9526

October 14, 2011  
 Greenville, SC



Defendant Billy Joe Hannah

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA, )  
 )  
 PLAINTIFF, )  
 )  
 -VS- )  
 )  
 BILLY JOE HANNAH, )  
 )  
 DEFENDANT. )  
 \_\_\_\_\_ )

2011-GS-23-05729 & 05730

TRANSCRIPT OF RECORD

JUNE 28, 2012  
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE EDWARD W. MILLER

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

SARA LEE DRAWDY, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

JAMES H. PRICE, III, ESQUIRE

SUSAN W. HUDGINS  
CIRCUIT COURT REPORTER

WHO IS THIS?  
★

1 MS. DRAWDY: Your Honor, this is Billy Joe Hannah,  
2 indictment number 2011-GS-23-05729 and 2011-GS-23-05730. He  
3 pled guilty and was sentenced two days ago before you on a  
4 felony DUI, driving under the influence ---

5 THE COURT: I remember it.

6 MS. SALISBURY: And I'm going to pass up the sentencing  
7 sheets and the indictments. We are here to ask him to  
8 reaffirm his plea and on a motion to amend the sentencing  
9 sheets if he does.

10 We, Mr. Price and I, in error checked the blocks of  
11 non-violent. And ---

12 THE COURT: Okay.

13 MS. DRAWDY: --- both of these are violent crimes.

14 THE COURT: Okay. And I specifically remember saying  
15 that these were non-parolable offenses. And I don't know if  
16 I said -- if I used the term violent, okay? But I remember  
17 and clearly remember Mr. Price -- I inquired and Mr. Price  
18 said that he had asked you, Mr. Hannah, whether or not you  
19 -- that you had discussed that these were non-parolable. Do  
20 you remember that?

21 MR. HANNAH: Yes, sir.

22 THE COURT: All right. So you acknowledge that that  
23 was discussed?

24 MR. HANNAH: Yes.

25 THE COURT: Did you know it before you -- you knew it

1 before you entered the plea?

2 MR. PRICE: Your Honor, we discussed the fact that they  
3 were non-parolable. We did not -- I did not catch the fact  
4 that the violent had not been checked. We did not discuss  
5 that.

6 And as I -- once we caught this thing, as I've  
7 explained to Mr. Hannah, even though it's eighty-five  
8 percent, the violent will also affect as far as not being  
9 eligible for work release and not being eligible for a  
10 minimum custody institution. So it would affect him above  
11 and beyond the eighty-five. Now that was not explained to  
12 him before because of my error and has been explained to him  
13 since.

14 THE COURT: Okay. Do you -- well, I'll tell you, Mr.  
15 Hannah, does that impact your decision on what you want to  
16 do?

17 MR. HANNAH: No, sir. I guess I'll just have to take  
18 it and go with it.

19 THE COURT: No, sir. No. I'll tell you, I'll give you  
20 an opportunity because of this, I'll allow you to withdraw  
21 your guilty plea and start all over from ground zero if you  
22 want to.

23 MR. HANNAH: No, sir, I don't want to make it any worse  
24 than it is.

25 THE COURT: Okay. Well, do you -- I'm going -- do you

*Plea  
voluntary*

1 consent then to me checking the violent ---

2 MR. HANNAH: Yes, sir.

3 THE COURT: Okay. And I'm doing it on each sentencing  
4 sheet. And you have any question, any -- 'cause I will let  
5 you go back to ground zero. I don't know what will be  
6 available out there, but ---

7 MR. HANNAH: No, sir. I'm just heartbroken, that's  
8 all.

9 THE COURT: I know. This is a very difficult -- very  
10 difficult matter and these cases always are. So I just -- I  
11 hope that you're going to do well. And I wish you the best  
12 of luck. I've changed the designation on the sentencing  
13 sheet of each case. All right.

14 MR. PRICE: Thank you, Your Honor.

15 MS. DRAWDY: Thank you, Your Honor.

16 THE COURT: Okay. Best of luck.

17 (Hearing ended at 10:56 am)

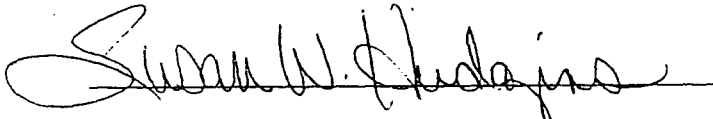
18 (End of requested transcript of record)

## 1 Certificate of Reporter

2 I, the undersigned, Susan W. Hudgins, Official Court  
3 Reporter for the Thirteenth Judicial Circuit of the State of  
4 South Carolina, do hereby certify that the foregoing is a  
5 true, accurate, and complete transcript of record of all the  
6 proceedings had and evidence introduced in the trial/hearing  
7 of the captioned case, relative to appeal, in the Circuit  
8 Court for Greenville County, South Carolina, on the 28th day  
9 of June 2012.

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

12 September 7, 2012

13  
14 A handwritten signature in cursive script that reads "Susan W. Hudgins". The signature is written in black ink and is positioned above the typed name.

15  
16 Circuit Court Reporter

52  
STATE OF SOUTH CAROLINA

COUNTY OF Greenville  
STATE VS.  
Billy Joe Hannah

AKA:  
Race: WHITE Sex: M Age: 34  
DOB: [REDACTED] SS#: [REDACTED]  
Address:  
City, State, Zip:  
DL#: [REDACTED] SID#: [REDACTED]

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
In disposition of the said indictment comes now the Defendant who was  
TO: DUI / Felony driving under the influence, death results

IN THE COURT OF GENERAL SESSIONS 1351723

INDICTMENT/CASE#: 2011GS2305729  
A/W#: F037966  
Date of Offense: 1/23/2011  
S.C. Code §: 56-05-2945(A)(2)  
CDR Code #: 0395

SENTENCE SHEET

CONVICTED OF or  PLEADS

in violation of § 56-05-2945(A)(2) of the S.C. Code of Laws, bearing CDR Code # 0395  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC)  §17-25-45  
w/minor 1st or Lewd Act)

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

ATTEST:  
Drawdy, Sara Lee SC Bar# 1787  
Defendant: Billy Joe Hannah  
Attorney for Defendant: Michael Mackinnon SC Bar# 3512

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
for a determinate term of 90 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_ years  
and/or to pay a fine of \$ 10,400; provided that upon the service of \_\_\_ days/months/years and/or payment  
of \$ \_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
probation, which are incorporated by reference.  
 CONCURRENT or  CONSECUTIVE to sentence on:  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections.  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

Recipient: \_\_\_\_\_

\*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$ 10100.00
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)		\$
TOTAL		\$

Obtain GED   
Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling   
Random Drug/Alcohol testing   
Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_ paid to Public Defender Fund  
Other: \_\_\_\_\_

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

Clerk of Court/ Deputy Clerk: \_\_\_\_\_  
Court Reporter: \_\_\_\_\_  
SCCA/217 (03/2011)

Presiding Judge: \_\_\_\_\_  
Judge Code: 2162  
Sentence Date: 12/13/11

STATE OF SOUTH CAROLINA )  
 COUNTY OF Greenville )  
 STATE VS. )  
 Billy Joe Hannah )  
 AKA: )  
 Race: Sex: M Age: 34 )  
 DOB: SS#: )  
 Address: )  
 City, State, Zip: )  
 DL#: SID#: )

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2305729  
 A/W#: F037966  
 Date of Offense: 1/23/2011  
 S.C. Code § : 56-05-2945(A)(2)  
 CDR Code #: 0395

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
 In disposition of the said indictment comes now the Defendant who was  
 TO: DUI / Felony driving under the influence, death results

CONVICTED OF or  PLEADS

in violation of § 56-05-2945(A)(2) of the S.C. Code of Laws, bearing CDR Code # 0395  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC  §17-25-45  
 w/minor 1st or Lewd Act)

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

ATTEST: Drawdy, Sara Lee 1747 SC Bar# Billy Joe Hannah Defendant [Signature] Attorney for Defendant 4562 SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
 for a determinate term of 25 ~~months~~ months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of 12 ~~months~~ months/years and/or payment  
 of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for 3

~~months~~ months/years and subject to. South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
 probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on:  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
 by the State Department of Corrections. 159 DAYS  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered  
 Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
 Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

PTUP \_\_\_\_\_  
 \_\_\_\_\_ days/hours Public Service Employment  
 Obtain GED   
 Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
 May serve W/E beginning \_\_\_\_\_  
 Substance Abuse Counseling   
 Random Drug/Alcohol testing   
 Fine may be pd. in equal, consecutive weekly/monthly  
 prmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
 \$ \_\_\_\_\_ paid to Public Defender Fund  
 Other: [Signature]

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

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

Clerk of Court/ Deputy Clerk Paul B. Wickens  
 Court Reporter: Woods

Presiding Judge [Signature]  
 Judge Code: 2130  
 Sentence Date: 6-26-2012

SCCA/217 (03/2011) Probation begins after completion of any early release program.

54  
 STATE OF SOUTH CAROLINA )  
 COUNTY OF Greenville )  
 STATE VS. )  
 Billy Joe Hannah )  
 AKA: )  
 Race: WHITE Sex: M Age: 34 )  
 DOB: [REDACTED] SS#: [REDACTED] )  
 Address: [REDACTED] )  
 City, State, Zip: [REDACTED] )  
 DL#: [REDACTED] SID#: [REDACTED] )

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2305730  
 A/W#: F037967  
 Date of Offense: 1/23/2011  
 S.C. Code § : 56-05-1210(A)(3)  
 CDR Code #: 2463

25  
 10K fine

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
 In disposition of the said indictment comes now the Defendant who was  
 TO: Traffic / Hit and run, duties of driver involved in accident with death

CONVICTED OF or  PLEADS

in violation of § 56-05-1210(A)(3) of the S.C. Code of Laws bearing CDR Code # 2463  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC)  §17-25-45 w/minor 1st or Lewd Act

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

ATTEST: Sara Lee McDraw 1747 SC Bar# Billy Joe Hannah Defendant Michael McKeown 3512 Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
 for a determinate term of 10 days/months/years or  under the Youthful Offender Act not to exceed     years  
 and/or to pay a fine of \$ 10,000; provided that upon the service of     days/months/years and/or payment  
 of \$    ; plus costs and assessments as applicable\*; the balance is suspended with probation for    

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTMP  
 Total: \$     plus 20% fee: \$     days/hours Public Service Employment  
 Payment Terms:  Obtain GED   
 Set by SCDPPPS  Attend Voc. Rehab. or Job Corp.      
 May serve W/E beginning    

Recipient:     Substance Abuse Counseling   
 \*Fine:     Random Drug/Alcohol testing   
 § 14-1-206 (Assessments 107.5 %) \$ 10,000.00 Fine may be pd. in equal, consecutive weekly/monthly  
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 10,750.00 pmts. of \$     beginning      
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$      
 § 56-5-2995 (DUI Assessment) \$12 \$      
 § 56-1-286 (DUI Breath Test) \$25 \$      
 Proviso 47.9 (Public Def/Prob) \$500 \$      
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25  
 § 14-1-213 (Drug Court Surcharge) \$150 \$      
 § 50-21-114(BUI Breath Test Fee) \$50 \$      
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$      
 Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5  
 3% to County (if paid in installments) \$      
 Other:     \$     paid to Public Defender Fund

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

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

Presiding Judge [Signature]  
 Judge Code: 2-162  
 Sentence Date: 10/13/14

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS. Billy Joe Hannah

INDICTMENT/CASE#: 2011GS2305730
A/W#: F037967
Date of Offense: 1/23/2011
S.C. Code § : 56-05-1210(A)(3)
CDR Code #: 2463

AKA:
Race: Sex: M Age: 34
DOB: SS#:
Address:
City, State, Zip:
DL#: SID#:

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Traffic / Hit and run, duties of driver involved in accident with death

CONVICTED OF or PLEADS

in violation of § 56-05-1210(A)(3) of the S.C. Code of Laws, bearing CDR Code # 2463
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45

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

ATTEST: Sara Lee M. Drawdy, Sara Lee SC Bar# 1747
Defendant Billy Joe Hannah
Attorney for Defendant [Signature] SC Bar# 4562

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ ; provided that upon the service of days/months/years and/or payment
of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.
CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 159 DAYS
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

PTUP days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

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

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

Clerk of Court/ Deputy Clerk Paul B. Wickensin
Court Reporter: Woods
SCCA/217 (03/2011)

Presiding Judge ED (W. Wickensin)
Judge Code: 2130
Sentence Date: 6-26-2012

1 THE COURT: Alright, well you understand what's goin' on  
 2 today?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Alright, you're up here on Indictment  
 5 2011-5729 alleges you did Greenville County January 23, 2011  
 6 drive a motor vehicle under the influence of alcohol, drugs or  
 7 combination thereof and did an act forbidden by law or  
 8 neglected to do the imposed by law, you exerc -- failed to  
 9 exercise due care or exceeded the speed limit or you drove too  
 10 fast for conditions or you failed to maintain control of the  
 11 vehicle or you drove off the roadway which acts ne -- in  
 12 negligent proximately cause the death of James Scott Sullivan;  
 13 felony DUI resulting in death carries a mandatory minimum 1 to  
 14 25 years, you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You're also here on 2011-5730, it alleges  
 17 that you did Greenville County January 23, 2011 drive a motor  
 18 vehicle that was involved in an accident which resulted in  
 19 great bodily injury to and ultimately the death of James Scott  
 20 Sullivan and you left the scene without providing assistance  
 21 to the victim and obtaining medical care or without reporting  
 22 the accident to proper authorities, it's also 1 to 25 years,  
 23 you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Your felony DUI with death resulting is a

(A)  
1 serious offense and that means if you get convictions for  
2 three or more serious offenses you're eligible for life in  
3 prison without parole, you understand that?

4 THE DEFENDANT: Yes, sir.

5 [ THE COURT: And I believe these would be non-parolable,  
6 isn't that right?

7 [ MR. PRICE: That's correct, they're 85 percent, Your  
8 Honor.

9 THE COURT: Ya understand that? Ya have to speak.

10 THE DEFENDANT: Yes, sir.

11 — THE COURT: Alright, understanding the nature of the  
12 charge against and the maximum possible punishment, how do you  
13 wanna plead?

14 — THE DEFENDANT: Guilty.

15 THE COURT: Has anybody forced you in any way or coerced  
16 you, threatened you or promised you anything to get you to  
17 enter that plea?

18 THE DEFENDANT: No, sir.

19 THE COURT: You understand you have an absolute right to  
20 a trial by jury where you'd be presumed innocent unless and  
21 until the State could prove you guilty beyond any reasonable  
22 doubt of each and every element of each offense that you're  
23 charged with, you would have a right to confront and  
24 cross-examine the witnesses and the evidence put up against  
25 you by the State, you'd have a right to compel in court all

1 relevant and competent evidence in your own defense or you can  
 2 remain silent, your silence cannot be held against you and you  
 3 can never be compelled to incriminate yourself, do you  
 4 understand all those rights?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You wanna give all those rights up to enter  
 7 this plea?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Are ya guilty?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Are you totally and completely satisfied with  
 12 the representation of your attorney?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You have any complaints that you'd like to  
 15 make about the way you've been treated in this matter?

16 THE DEFENDANT: No, sir.

17 THE COURT: And have you had enough time to review the  
 18 evidence that the State has against you?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay, listen while they tell us about it.

21 MR. PRICE: Your Honor, ---

22 [MS. DRAWDY: May it please the Court. There is no  
 23 recommendation in this case. The State is arguing for a  
 24 sentence of 15 to 20 years. *Still is a Recommendation*

25 THE COURT: Okay.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )

IN THE GENERAL SESSIONS COURT  
 THIRTEENTH JUDICIAL CIRCUIT  
 Warrant: F 037966; 037967

STATE OF SOUTH CAROLINA, )  
 )  
 PLAINTIFF, )

VS. )

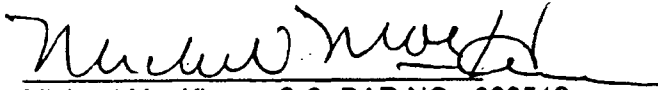
Billy Joe Hannah, )  
 )  
 DEFENDANT. )

**MOTION TO WITHDRAW GUILTY PLEA**  
 (Warrant/Ticket Nos: FD 037966; FD) 037967

OCT 14 AM 9:14  
 PUBLIC CLERK  
 THIRTEENTH JUDICIAL CIRCUIT  
 GREENVILLE, SC

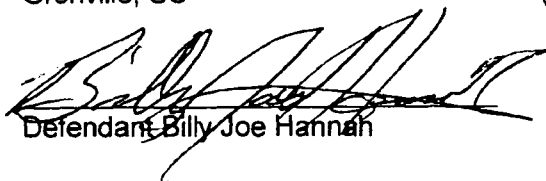
Please take Notice that the Defendant, Billy Joe Hannah, by and through his attorney of record, Michael MacKinnon, will move before the Court at a date and time convenient for the Court, that the Court permit the Defendant to Withdraw the Guilty Pleas in the above matter. On October 13, 2011 the Defendant pled Guilty to Felony DUI with Death and Leaving the Scene of an Accident with Death. The grounds for such request are based upon the Plea Negotiation between counsel for the Defendant and the Assistant Solicitor that no recommendation for sentence would be made by the Prosecutor. The Assistant Solicitor invited inquiry by the Court as to a sentence recommendation which was then articulated by the Assistant Solicitor in derogation and breach of the Plea Negotiation and Agreement which inevitably affected the Court's sentencing consideration to the detriment of the Defendant.

Respectfully submitted,



Michael MacKinnon S.C. BAR NO.: 003512  
 Attorney for the Defendant  
 300 Pettigru Street  
 Greenville, SC 29601  
 (864) 235-4767 Fax: (864) 232-9526

October 14, 2011  
 Greenville, SC



Defendant Billy Joe Hannah

F037966, F037967, F037968

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 State of South Carolina )  
 )  
 v. )  
 )  
 Billy Joe Hannah, )  
 )  
 Defendant. )  
 )  
 )

IN THE GENERAL SESSIONS COURT  
 THIRTEENTH JUDICIAL CIRCUIT

Indictment Nos.: 2011-GS-23-05729,  
 2011-GS-23-05730, and  
 2011-GS-23-05718

**CONSENT ORDER**

2012 JUN -4 PM 2:02

This matter comes before the Court pursuant to Motion filed by Defendant's attorney, Michael A. Mackinnon. The relief sought is for an Order vacating the guilty plea on the grounds more fully set forth in the Motion. Subsequent to the filing of the Motion a Consent Order was issued by this Court relieving Michael A. Mackinnon of his representation of the Defendant and substituting James H. Price, III, as attorney of record.

The Court believes that under the totality of the circumstances the relief sought is proper, and the Defendant's previous guilty plea is vacated and the Defendant is granted a new trial. By agreement of the parties the following schedule shall be placed into effect:

1. Defendant shall be transported to Greenville, South Carolina, as soon as possible, by the Greenville County Sheriff's Office and housed in the Greenville County Detention Center;
2. The parties anticipate that a guilty plea can be scheduled within ninety (90) days of the date of this Order or, if Defendant wishes a jury trial, a trial can be scheduled within 120 days of the date of this Order. Accordingly, the parties agree that Defendant will not have a bond for a period of 120 days from the date of this Order. If no plea or trial has been set during the 120 day period then the Defendant may petition for a bond.



**FAXED**  
 Date: 6-4-12  
 To: Jail/Transport  
 By: MT

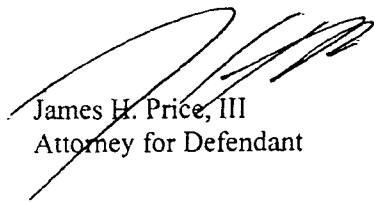
IT IS SO ORDERED.



THE HONORABLE LETITIA H. VERDIN  
Presiding Judge, Thirteenth Judicial Circuit


Dated: 6/4/18  
Greenville, South Carolina

I SO MOVE:



James H. Price, III  
Attorney for Defendant

I CONSENT:



Brennan Curry Townsend  
Assistant Solicitor



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2013-CP-23-1351
COUNTY OF GREENVILLE	)	
	)	
Billy Joe Hannah,	)	
S.C.D.C. No. 348206,	)	
	)	
Applicant,	)	
	)	<b>RETURN</b>
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed March 7, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the September 2011 term of General Sessions for felony driving under the influence (DUI) resulting in death (2011-GS-23-5729) and leaving the scene of an accident resulting in death (2011-GS-23-5730). James H. Price, III, Esquire represented the Applicant.

On June 26, 2012, the Applicant pled guilty.<sup>1</sup> The Honorable Edward W. Miller sentenced the Applicant to concurrent terms of twenty-five years suspended on twelve years and three years probation for felony DUI resulting in death and twenty-five years suspended during probation for leaving the scene of an accident resulting in death. The Applicant did not appeal.

---

<sup>1</sup> It appears the Applicant originally pled guilty to these charges before the Honorable Letitia H. Verdin on October 3, 2011 but that the pleas and sentences were vacated by order dated June 4, 2012.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

## II.

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

1. Breach of plea agreement.
2. Involuntary guilty plea.
3. Ineffective assistance of counsel.

## III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386

S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983).

#### IV.

The Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by

showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

When determining issues relating to guilty pleas, the court will consider the entire record,

including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248.

V.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN  
Assistant Deputy Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211

By:

  
Attorneys for Respondent

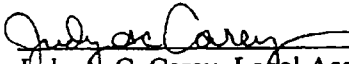
July 12, 2013

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2013-CP-23-1351
	)	
BILLY JOE HANNAH, 348206	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

**Billy Joe Hannah, 348206**  
**Tyger River Correctional Institution**  
**100-200 Prison Road**  
**Enoree SC 29335**

DATED this 12th day of July, 2013.

  
 Judy A. C. Carey, Legal Assistant  
 For Respondent



I N D E X

(AW) - Denotes Applicant's Witness  
(RW) - Denotes Respondent's Witness

Page No.

(AW) BILLY JOE HANNAH:

Direct Examination by Mr. Johnson.....	4
Cross-Examination by Ms. Ratigan.....	13
Redirect Examination by Mr. Johnson.....	16
Recross-Examination by Ms. Ratigan.....	17

(RW) JAMES H. PRICE, III:

Direct Examination by Ms. Ratigan.....	18
Cross-Examination by Mr. Johnson.....	24

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

1  
2 THE COURT: Yes, ma'am.

3 MS. RATIGAN: Thank you, Your Honor.

4 May it please the Court.

5 This is the case of Billy Joe Hannah v. the State.

6 The docket number is 2013-CP-23-1351. Mr. Hannah was  
7 indicted for felony DUI resulting in death, and leaving  
8 the scene of an accident resulting in death. He was  
9 represented on these charges by Mr. Price.

10 On June 26th, 2012, Mr. Hannah pled guilty before  
11 Judge Miller. He received concurrent sentences of  
12 25 years, suspended on 12 years, and three years of  
13 probation for felony DUI resulting in death. And 25 years  
14 suspended during probation for leaving the scene of an  
15 accident resulting in death.

16 He did not file an appeal. And the State is ready to  
17 proceed.

18 THE COURT: Mr. Johnson.

19 MR. JOHNSON: Thank you, Your Honor.

20 In my client's application, one of his primary  
21 allegations is that his plea was unintelligent and  
22 involuntary. Furthermore, Your Honor, I think the  
23 essential argument is that his plea was not freely,  
24 voluntarily, and intelligently given. I believe he will  
25 claim that -- or the testimony will show that he was

1 trying to recite his version of the facts. And he was not  
2 allowed to do so. I believe he will testify that his  
3 attorney advised him to answer questions contrary to his  
4 best interest -- I mean, contrary to his -- to the truth,  
5 Your Honor.

6 So, at this point in time, I'd like to call  
7 Mr. Hannah to the stand.

8 THE COURT: Okay, sir.

9 THE CLERK: Mr. Hannah, please, place your left hand  
10 on the Bible and raise your right hand.

11 WHEREUPON,

12 BILLY JOE HANNAH,  
13 after first having been duly sworn, testified as follows:

14 THE CLERK: Thank you.

15 You may be seated.

16 Please state your full name for the record.

17 THE WITNESS: Billy Joe Hannah.

18 DIRECT EXAMINATION

19 BY MR. JOHNSON:

20 Q All right. Billy -- you go by Joey; is that correct?

21 A Yes, sir.

22 Q Okay. Can I call you that today?

23 A Yes, sir.

24 Q All right. Now, Joey, do you know why you're here  
25 today?

1 A Yes, sir.

2 Q Can you portray to the Court why?

3 A A PCR hearing.

4 Q All right. And that's for post-conviction relief?

5 A Yes, sir.

6 Q And is it true that you are alleging that your guilty  
7 plea was not intelligently, voluntarily, and freely given?

8 A Yes, sir.

9 Q All right. Who was your attorney at the time of your  
10 guilty plea?

11 A The first time or second time?

12 Q Well, the first -- let's say the first time.

13 A The first time was Mike MacKinnon. The second time  
14 was Chip Price.

15 Q Okay. So let's portray the background to the Court  
16 of the first time. Now, you pled guilty with Mike  
17 MacKinnon the first time; is that correct?

18 A Yes, sir.

19 Q To the same charges?

20 A Yes, sir.

21 Q And what happened?

22 A The next day at the jail, he come in with a piece of  
23 paper that I wasn't sure what it was. He said, Sign this.  
24 We got screwed. He said, You should have got house arrest  
25 and probation.

1           And what it was -- come to find out later on, it was  
2 a motion to withdraw my plea, which took 10 months to get  
3 vacated for me to hire another attorney to get back in  
4 court.

5           Q     And who was the other attorney that you hired?

6           A     Chip Price.

7           Q     Okay. Now, Chip Price represented you at your second  
8 guilty plea; is that correct?

9           A     Yes, sir.

10          Q     And was there a sequent proceeding with regards to  
11 that guilty plea as well?

12          A     Clarify yourself on that.

13          Q     Was there another -- was there a motion by either you  
14 or the State that had -- before the same judge and the  
15 Court again with regards to that plea?

16          A     Yeah. What -- you're speaking correctly.

17          Q     Okay. Now, in your application, you allege, among  
18 other things, that you weren't able to portray to the  
19 Court your version of the facts; is that true?

20          A     Yes, sir.

21          Q     Can you, please, express to the Court, first of all,  
22 what the situation was? And then I'll ask some follow-up  
23 questions based upon your response.

24          A     Whenever I was asked questions, the -- I started  
25 telling my side of the story to the Court. And I kept

1 getting cut off. And whenever I'd get cut off, they made  
2 Mr. Price approach the bench and take -- reconvene, take  
3 me back in the back for him to tell me, look, if you don't  
4 go along with this, it's not going to be done any more  
5 today. So we're going to have to go back in there and  
6 you're going to have to tell him yes and no, and tell --  
7 telling me -- coercing me what to say. Because I paid him  
8 for my defense to take care of me is what I thought.

9 Q Now, this -- the conversations that you're referring  
10 to, is that in the transcript? Is that in the record?

11 A The backstage part?

12 Q Yes, sir.

13 A No, sir. They cut court off and took us backstage.

14 Q Okay. Now, when you were speaking to the Judge, at  
15 that time, you tried to relay your version of the facts;  
16 is that correct?

17 A Yes, sir.

18 Q Okay. Now, that's --

19 MR. JOHNSON: And I would just have the Court take  
20 notice, that's on Page 10 of the transcript -- 10 and 11,  
21 actually, Your Honor.

22 BY MR. JOHNSON:

23 Q And then the Court, at that time, questioned you  
24 about that version of events; is that true?

25 A Yes, sir.

1 Q And was it true that the Judge was not prepared to  
2 take your plea at that time or --

3 A Yes, sir.

4 Q Okay. Now, what you said here in the transcript on  
5 Page 10 and 11, was that -- is that the truth?

6 A What are you referring to?

7 Q Well, would you like me to read it?

8 A Yes, sir.

9 Q It was stated, What's true and correct, Your Honor,  
10 is that me and Mr. Sullivan left TR, was coming down  
11 Highway 288, went up that road. Whenever we wrecked, I  
12 got out of the car disoriented, cut my head and my  
13 shoulder. I went across the road to the house. Nobody  
14 was home. A car come by and kept going.

15 I walked to the end of the road. And two guys  
16 fishing was inquiring about -- picked me up, took me to  
17 Mr. Anderson's driveway and dropped me off at the end of  
18 the driveway. I hollered for Mr. Anderson. He came  
19 running with his truck and sent his son, James, to where  
20 the wreck was.

21 And then Jamie called 9111. And Jamey was taking me  
22 to my house.

23 A James was taking me to the house, and Jamie went to  
24 the wreck. That's correct.

25 Q Okay. Yes, sir. And is it your testimony today that

1       you were, essentially, dissuaded from sticking to your  
2       story?

3       A     Yes, sir.  Because whenever he brought me back in the  
4       courtroom, he said, You have to go back and tell that what  
5       the Solicitor was saying is true.  And what the Solicitor  
6       was saying was not exactly true at all.  The way I was  
7       trying to tell the story was true.  And I didn't get a  
8       chance to even finish telling it.

9       Q     Okay.  Now, obviously, on the record, the Judge  
10      questioned you with regards to this wreck and -- when you  
11      came back to court; is that correct?

12     A     Yes, sir.

13     Q     And, at that time, you answered his questions  
14      appropriately and you admitted that the Solicitor's  
15      version of the facts was what really happened; is that  
16      true?

17     A     That -- yes.  That's what I admitted, yeah.

18     Q     All right.  Now, can you, please, portray to the  
19      Court why you would do that?

20     A     Because Mr. Price told me to do that.

21     Q     Okay.  When did he tell you to do that?

22     A     When we was behind closed doors after they  
23      closed court and convened [sic] me to go back and talk to  
24      him.

25     Q     Okay.  Now, you, also, came -- after the plea was

1       accepted, you were sentenced; is that correct?

2       A     Yes, sir.

3       Q     And was there any issue with regards to the  
4       sentencing sheets that you can recall that --

5       A     Yes, sir. Mr. Price had his PI bring the sentencing  
6       sheet to me at the jail. And I signed it. It was a  
7       non-violent open plea with no recommendations. All right.  
8       Whenever they sentenced me to 25 suspended to 12 upon --  
9       with three years probation, they brought me back two days  
10      later and said, We have to make this violent. Sorry,  
11      Mr. Hannah. We have to make this violent because of the  
12      crime.

13             Well, Mr. Price tells me, Just go with it. I'll ride  
14      with you. It's -- it'll be okay. That's what he tells me  
15      before going to court. Well, that's what I did.

16             I didn't know, at the time, that -- really what that  
17      was meaning. Because if you look at my record, I've never  
18      been in trouble before in my life. And I'm putting all my  
19      faith and my trust in him to take care of this for me.  
20      And it didn't work that way.

21             MR. JOHNSON: Now, before we continue.

22             Your Honor, do you have access to the sentencing  
23      sheets?

24             THE COURT: Yes.

25             MR. JOHNSON: Okay.

1 BY MR. JOHNSON:

2 Q So, Mr. Hannah, you came back -- so you ended up  
3 having to come back to court --

4 A Yes, sir.

5 Q Okay. And what happened then?

6 A I got -- Mr. Miller marked through --

7 Q Hold on. Who's Mr. Miller?

8 A Mr. Miller, Judge Miller.

9 Q Okay.

10 A He said, Mr. Hannah, we have to change this. He had  
11 neglected to tell me that it was a violent crime in court.  
12 Nobody ever said anything about the non-violent issues in  
13 court. All right.

14 So he says, We have to mark through this. And he  
15 initials it and changes it to violent. But he never says  
16 anything about it being serious or most serious.

17 Q Now, during that proceeding, Judge Miller, also,  
18 questioned you as well, didn't he?

19 A Yes, sir.

20 Q And he questioned you, basically, as to whether you  
21 wanted to contest their request to amend the sentencing  
22 sheets, didn't he?

23 A Yes, sir.

24 Q And you stated, eventually, that that was okay; isn't  
25 that true?

1 A Yes, sir. I was dishearted [sic].

2 Q Okay. Now, why did you do that?

3 A Well, I was dishearted [sic], crushed at the time.  
4 Because Mr. Chip told me that it's going to be okay.  
5 It ain't going to make no difference. Just go with  
6 it.

7 Q Okay. So are you portraying that he suggested how  
8 you should answer the question, or did you make that  
9 decision yourself?

10 A Yes, sir. He coerced me to say that.

11 Q Okay. And what were the consequences if you didn't  
12 say it?

13 A I felt it would have been a lot better for my benefit  
14 in not having to get as much time, or as strenuous of a  
15 time for losing my best friend.

16 Q Okay. And when you're talking about your best  
17 friend, who's that?

18 A I -- we refer to him as Jimmy Jack. But his name was  
19 James Scott Sullivan.

20 Q And that is the victim; correct?

21 A Yes, sir.

22 MR. JOHNSON: Your Honor, I have no further questions  
23 at this time.

24 THE COURT: Ms. Ratigan.

25 MS. RATIGAN: Thank you, Your Honor.

CROSS-EXAMINATION

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BY MS. RATIGAN:

Q Did you discuss all of the evidence with Mr. Price before you pled guilty?

A What evidence are you referring to?

Q The State's evidence against you.

A I never seen the video. He just told me they had the blood and urine analysis. I never seen the video or -- that was pretty much all we discussed.

Q So you talked about the lab reports, about the blood and urine analysis?

A That's all.

Q You didn't talk about any kind of witness statements, or police reports, or anything?

A All he did was show me the witnesses statements that alleged people that I had never heard of had wrote.

Q So you did see the witness' statements?

A Some statements I knew of.

Q Okay. And did you discuss the results of that blood alcohol test with Mr. Price?

A Vaguely.

Q What do you mean?

A Just that I was a few tenths over the legal limit. That's all.

Q And did you tell Mr. Price your version of what had

1 happened that day?

2 A I wrote a 27-page documentary and give it to  
3 Mr. Price explaining exactly what happened that day.

4 Q Are you saying now that you did not want to plead  
5 guilty?

6 A No, ma'am. That's not what I'm saying.

7 Q So you did want to plead guilty?

8 A I feel that I was coerced to plead guilty.

9 Q So you wanted to plead guilty, but you think this  
10 guilty plea was coerced?

11 A Yes, ma'am.

12 Q Okay. So you did not want to go to trial?

13 A Yes, ma'am.

14 Q And why did you tell the Judge that you had not been  
15 coerced if your testimony today is that Mr. Price had been  
16 coercing you the whole time?

17 A Where does it say that I -- that in the testimony --  
18 transcript?

19 Q You don't recall the Judge asking you that question?

20 A No, ma'am, I don't.

21 Q Okay. So if you don't recall, you don't recall.

22 Why did you tell the Judge you were satisfied with  
23 Mr. Price's representation if you felt like he had been  
24 coercing you?

25 A Because I had paid him a lot of money to represent me

1 and be on my behalf. And when he came to see me -- the  
2 first time he ever came to see me, what he had told me he  
3 thought he could get me, I felt that that was going to be  
4 a benefit.

5 Q So were you satisfied with him that day?

6 A No, ma'am.

7 Q So why did you lie to the Judge and say --

8 A Because he told me to go back in there and tell the  
9 Judge exactly what he told me. Otherwise, this was not  
10 going to happen this day.

11 Q Did he tell you to lie to the Court?

12 A In a sense, yes.

13 Q Now, you stated your concern that the sentencing  
14 sheets were changed after you pled guilty from non-violent  
15 to violent?

16 A Yes, ma'am.

17 Q Why do you believe that's a -- that prejudiced you?  
18 Why is that harmful to you?

19 A I signed those sheets, originally, as non-violent.  
20 That's what my original sentence was before I ever come  
21 back. And that's what I was going to plead to the next  
22 time was a non-violent. I felt that was fair, because  
23 I've never been in trouble. I'm not a violent person.  
24 I -- what's not fair about it?

25 Q But didn't the Judge tell you that day that you would

1 expect to serve 85 percent of your sentence?

2 A Yeah. But that didn't mean -- that's a two-pronged  
3 question. That don't mean that it's a violent or  
4 non-violent 85.

5 Q So you know enough to know that there's a difference  
6 between 85 and not 85, but you didn't know that felony DUI  
7 resulting in death would be a violent sentence?

8 A Yes, ma'am. I did not know that.

9 Q And Mr. Price never told you this would be violent --

10 A No, ma'am.

11 Q Are you saying you would not have pled guilty if you  
12 knew this was a violent offense?

13 A I wouldn't have signed a sentencing sheet for  
14 violent. I signed a non-violent. That's the way I...

15 Q But are you saying that you would not have pled  
16 guilty if you knew this would be a violent charge?

17 A Not necessarily.

18 MS. RATIGAN: That's all I have, Your Honor.

19 THE COURT: Redirect?

20 MR. JOHNSON: Briefly.

21 REDIRECT EXAMINATION

22 BY MR. JOHNSON:

23 Q Mr. Hannah, if you were brought a sentencing sheet,  
24 originally, that said violent on it, are you sure -- does  
25 that settle the question of whether you would have gone to

1 trial or not?

2 A Yes. I would have questioned it indepthly '[sic]  
3 because of the first sentencing sheet I had signed being  
4 non-violent. I had been told that that was parolable.  
5 And it showed -- I was showed a parole date after I was  
6 sentenced on the first non-violent 10. And if I was  
7 knowing that it would be violent, then there would be no  
8 such --

9 Q So, basically, you would have discussed this  
10 further --

11 A Yes, sir.

12 Q -- upon that?

13 A Yes, sir.

14 MR. JOHNSON: I have no further questions, Judge.

15 MS. RATIGAN: Just one briefly, Your Honor.

16 RE CROSS-EXAMINATION

17 BY MS. RATIGAN:

18 Q So you believed after you pled guilty that you  
19 were -- you would be parole eligible, and then this changed  
20 that?

21 A No, ma'am, not necessarily. The first non-violent  
22 sentence showed a parole date.

23 Q Are you talking about the first time you pled guilty  
24 and that it got withdrawn?

25 A Yes, ma'am.

1 MS. RATIGAN: Okay. That's all I have, Your Honor.

2 THE COURT: Thank you.

3 THE WITNESS: Thank you, sir.

4 THE COURT: You may step down.

5 THE WITNESS: May God bless you.

6 MR. JOHNSON: Your Honor, the Applicant doesn't have  
7 any further witnesses.

8 THE COURT: Okay, Mr. Johnson.

9 Ms. Ratigan.

10 MS. RATIGAN: Thank you, Your Honor.

11 We call Mr. Price.

12 THE CLERK: Mr. Price.

13 WHEREUPON,

14 JAMES H. PRICE, III,

15 after first having been duly sworn, testified as follows:

16 THE CLERK: Thank you.

17 You may be seated.

18 Please state your full name for the record.

19 THE WITNESS: James H. Price, III.

20 DIRECT EXAMINATION

21 BY MS. RATIGAN:

22 Q Mr. Price, do you recall representing Mr. Hannah on  
23 these charges?

24 A I do.

25 Q And were you the first attorney to represent him?

1 A I was not.

2 Q Do you recall when you would have been retained in  
3 this case?

4 A I first met Mr. Hannah in March of 2012, I think.  
5 And I think we, actually, signed a contract several weeks  
6 after that. Because I wanted to look into the situation  
7 first. So sometime around the end of March, early April.

8 Q When you were retained on the case, had the paperwork  
9 gone through to withdraw and vacate that prior plea?

10 A No. That was still Mr. Hannah's decision to make as  
11 to whether he wanted that to go through or not.

12 Q And, ultimately, he, clearly, decided he wanted to  
13 vacate that prior plea?

14 A That is what he chose to do.

15 Q And did you discuss with him the kind of advantages,  
16 and the disadvantages, the benefits, and all of that of  
17 vacating that plea?

18 A Well, the first time I met him, I told him that if he  
19 vacated the plea he would start over again. It would be a  
20 clean slate. There were no deals. There was no plea  
21 agreement that he might get more time, he might get less  
22 time. But whatever happened before then didn't matter.  
23 In fact, I got him to sign a statement to that effect that  
24 he wrote in his handwriting.

25 Q And when Mr. Hannah -- well, let me back up a little

1 bit. Did you or someone from your office go to see  
2 Mr. Hannah and bring him sentencing sheets prior to this  
3 plea hearing?

4 A If Mr. Hannah said that my investigator did that --  
5 you know, I don't have any independent recollection of me  
6 doing it versus my investigator doing it. I have no  
7 reason to disbelieve him on that point.

8 Q Would it be your usual practice to have someone sign  
9 up prior to showing up to court that day?

10 A I don't understand your question.

11 Q Would it be your usual practice to have those  
12 sentencing sheets signed prior to the client showing up to  
13 court that day?

14 A Yes. I like to get that out of the way first. These  
15 sentencing sheets were prepared by the Solicitor. She  
16 sent them to me. We had gone over the questions that  
17 would be asked with Mr. Hannah several times prior to that  
18 point.

19 So, in my mind, it was just a formality of signing  
20 the sheets and getting them up to the courthouse. And  
21 this was a good while before the plea, because there were  
22 some out-of-state people coming down. And the Solicitor  
23 wanted to get the signing part out of the way first.

24 Q And when you met with Mr. Hannah, did you explain to  
25 him the elements of these charges?

1 A Yes, ma'am.

2 Q And the possible penalties?

3 A Yes, ma'am.

4 Q Did you discuss with him whether these would be  
5 violent or non-violent charges?

6 A I did not. I made a mistake. The violent and  
7 non-violent boxes were not checked. I just assumed that  
8 they were non-violent. And we did not discuss that before  
9 the plea.

10 Q Did Mr. Hannah ever tell you one of the reasons he  
11 was pleading guilty is because he assumed it would be a  
12 non-violent sentence?

13 A That subject did not come up. It was just a question  
14 of the amount of time that he had gotten, and him wanting  
15 to get a lighter sentence.

16 Q And did the State ever make a recommendation to you  
17 once you had taken the case?

18 A As far as sentencing is concerned?

19 Q Yes, sir.

20 A No. The Solicitor was angry at Mr. Hannah for making  
21 the decision to reopen the case. There were no plea  
22 deals, and no plea recommendations, or whatever.

23 The Solicitor did tell me that she was going to be  
24 asking for a sentence. And Mr. Hannah knew that ahead of  
25 time. We did not know exactly what the amount of time she

1 was asking for. But it was not any -- couched in any  
2 terms like a recommended sentence, or anything of that  
3 nature.

4 Q Okay. And I believe you testified that you had sat  
5 down with him and gone through kind of what the Judge  
6 would ask at the plea?

7 A Several times.

8 Q Did you instruct Mr. Hannah how to answer those  
9 questions?

10 A I told Mr. Hannah what the Court would expect of him  
11 as far as admitting guilt. I never told him what he had  
12 to say and what -- I never told him what to say, period.

13 Q And reading through the plea transcript, it appears  
14 that Mr. Hannah may have wavered a little bit during the  
15 plea. Would that be fair to say?

16 A That's the way Judge Miller interpreted it. I  
17 disagreed with him at the time. But the decision not to  
18 take the plea was Judge Miller's. And so he stood us  
19 down.

20 Q And after the Judge stood you down, did you, in fact,  
21 go speak to Mr. Hannah?

22 A I did.

23 Q And what did you convey to him at that time?

24 A Mr. Hannah really didn't understand what had  
25 happened. And I told him that the Judge felt he was not

1 accepting responsibility for the plea on leaving the scene  
2 with death. That the Judge felt that Mr. Hannah was  
3 trying to state that he had sought help. And that the  
4 Judge was not going to accept the plea with the way that  
5 it stood.

6 Q At that point, did you coach him or kind of feed him  
7 the answers to the Judge's questions should you go back in  
8 the courtroom?

9 A No. Mr. Hannah wanted to know what he should state.  
10 And I just told him, the truth. And I told him what the  
11 elements were again, that he could not go in there and try  
12 to plead guilty but at the same time say that he was  
13 attempting to get help for his friend who was still in the  
14 car. And the decision to go forward was his. It was --  
15 he wanted to plead guilty in front of Judge Miller. That  
16 was the main thing that I got hired for.

17 Mr. Hannah is a very strong-feeling Mason, Shriner.  
18 And he felt -- for some reason, he felt that Judge Miller  
19 was a Mason. And that's who he said he wanted to plead in  
20 front of?

21 Q Now, Mr. Hannah testified that a couple days after  
22 the plea hearing he was brought back to do the amendment  
23 to the sentencing sheet. Do you recall that?

24 A That is correct.

25 Q And after the sentencing sheets were amended, did

1 Mr. Hannah ever tell you that he wanted to withdraw the  
2 plea, vacate the plea, back out of it at that point?

3 A Well, I met with Mr. Hannah that morning and told him  
4 what the problem was. And the problem was that the  
5 Solicitor had not checked the correct boxes as far as the  
6 charges being violent, which they were. I -- she called  
7 me, told me what was going on, that she was going to bring  
8 Mr. Hannah back.

9 I went down and talked to Mr. Hannah and explained  
10 that to him. When Mr. Hannah was brought back, I accepted  
11 responsibility for that mistake to the Court. And the  
12 Court gave Mr. Hannah the opportunity, at that time, to  
13 vacate his plea and start over again, which Mr. Hannah  
14 chose not to do.

15 MS. RATIGAN: That's all I have, Your Honor.

16 MR. JOHNSON: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. JOHNSON:

19 Q Mr. Price, you stated that the decision had not yet  
20 been made by Mr. Hannah as to whether the original plea  
21 with Mr. MacKinnon would be vacated until after you had  
22 spoken with him; is that true?

23 A When I first met Mr. Hannah in March of 2012, the  
24 motion to vacate his previous sentence was still pending.  
25 Judge Verdin wanted to hear from Mr. Hannah from

1 Mr. MacKinnon -- or through Mr. MacKinnon whether he wanted  
2 to do that or not. And Mr. MacKinnon and Mr. Hannah were  
3 already talking about replacing him with me for whatever  
4 reason. And so I did not get substituted as counsel until  
5 late March, early April. And that is when the decision was  
6 communicated to Judge Verdin that Mr. Hannah did, in fact,  
7 want to start over.

8 Q Do you know who communicated that decision? Do you  
9 recall?

10 A I believe it would have been me. And I think it was  
11 during a meeting that was with SaraLee Drawdy, the  
12 Prosecutor, me, and Judge Verdin.

13 Q Do you recall whether you gave Mr. Hannah advice as  
14 to whether he should proceed with vacating his plea?

15 A I told him that was his call, not mine. I didn't  
16 tell him he was going to get less time, or more time, or  
17 anything. I told him we'd just start it all over again  
18 and whatever happened happened.

19 Q Now, did you ever give Mr. Hannah any idea as to what  
20 you might be able to accomplish if the plea was vacated?

21 A No. I told -- well, other than the fact that I told  
22 him that we would go through all of the evidence. We  
23 would rework it. We would look at everything that he  
24 wanted us to look at. We would look at what his prior  
25 attorney had done, and report back to him. But there was

1 never any promise, or anything, saying, yes, I will get  
2 you less time.

3 Q Now, Mr. Hannah's testimony was that your  
4 investigator had him sign up to plead guilty; is that  
5 correct?

6 A If he says so, I don't have any reason to disagree  
7 with that. I'm not sure. Because, you know, at that  
8 point, I'm looking at signing the sentencing sheets just  
9 as a formality. Because we had gone over the stuff so  
10 much.

11 Q Do you recall going over the sentencing sheet itself  
12 with Mr. Hannah?

13 A No, sir, I don't.

14 Q Now, I believe initially -- well, at least, before  
15 the second plea hearing, you stated that y'all didn't  
16 really discuss the violent or non-violent nature of the  
17 charge?

18 A Before the initial plea on June the 26th, we did not.  
19 The box on violent had not been checked. I noticed that.  
20 So I just assumed that SaraLee had it right. And I wasn't  
21 going to argue with her, you know, if it wasn't checked  
22 and it would be considered non-violent. So I did not go  
23 over that with Mr. Hannah. I missed that.

24 Q Okay. So you yourself assumed that the charge was  
25 non-violent?

1 A On June 26th, I did, yes, sir.

2 Q Now, when you gave back -- when the sentencing sheets  
3 were amended, did you discuss with Mr. Hannah his rights  
4 as far as whether he had to consent, or whether he could  
5 contest it?

6 A Absolutely. I told him that morning what the problem  
7 was before we came in here, what his options were. And I  
8 told him that I was going to take responsibility for, you  
9 know, what I advised him and what I didn't, which was on  
10 the record there. And then Judge Miller gave him the  
11 option of vacating his pleas and starting over, if he  
12 chose to do so.

13 Q Now, with regards to his version of events. I  
14 believe your testimony was that you didn't believe it was  
15 inconsistent with what he was pleading guilty to, but  
16 Judge Miller did?

17 A I don't know quite how to answer that. I thought  
18 that Billy Joe was trying to accept responsibility in a  
19 way that he could live with. All right. Judge Miller  
20 didn't. You know, he's the Judge. So he refused to take  
21 the plea.

22 Q Yes, sir. And I guess in between the time that you  
23 had spoken with him and the time that you went back in  
24 front of Judge Miller, did you discuss with him the option  
25 of going in front of another judge, at that time,

1 considering that Judge Miller thought that he wasn't  
2 accepting responsibility?

3 A Yes. I told him that he could plead in front of  
4 another judge, that he could have a trial in August. You  
5 know, the call was his.

6 MR. JOHNSON: Yes, sir.

7 Your Honor, I have no further questions for this  
8 witness at this time.

9 MS. RATIGAN: I have no redirect, Your Honor.

10 THE COURT: Thank you, Mr. Price.

11 MS. RATIGAN: And the State would rest at this time.

12 THE COURT: All right. Any further evidence?

13 MR. JOHNSON: No further evidence, Judge.

14 THE COURT: Okay. I'm going to look at it in light  
15 of what I've heard here today. And I'll let you know my  
16 decision as soon as I can.

17 Thank you.

18 \*\*\*\*\*END OF TRANSCRIPT OF RECORD\*\*\*\*\*

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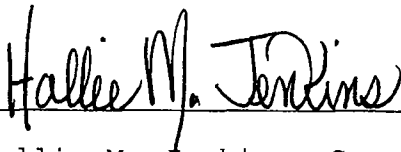
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA            )  
COUNTY OF GREENVILLE            )

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth 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 the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 23rd day of April, 2014.

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

October 14, 2014

  
\_\_\_\_\_  
Hollie M. Jenkins, Court Reporter  
My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Billy Joe Hannah, )  
 S.C.D.C. No. 348206, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2013-CP-23-1351

**ORDER OF DISMISSAL**

FILED-CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL B. WICKENSIMMER  
 2014 JUN 5 AM 10 12

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 7, 2013. The Respondent made its return on July 12, 2013. An evidentiary hearing into the matter was convened on April 23, 2014 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Brian P. Johnson, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, James H. Price, III, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

**PROCEDURAL HISTORY**

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the September 2011 term of the Greenville County Grand Jury for felony driving under the influence (DUI) resulting in death (2011-GS-23-5729) and leaving the scene of an accident

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resulting in death (2011-GS-23-5730). He was represented by James H. Price, III, Esquire.

On June 26, 2012, the Applicant pled guilty. The Honorable Edward W. Miller sentenced the Applicant to concurrent terms of twenty-five years suspended on twelve years and three years probation for felony DUI resulting in death and twenty-five years suspended during probation for leaving the scene of an accident resulting in death. The Applicant did not file an appeal.

### ALLEGATIONS

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

1. Breach of plea agreement.
2. Involuntary guilty plea.
3. Ineffective assistance of counsel.

At the start of the PCR hearing, counsel for the Applicant stated they were proceeding solely upon the issue of an involuntary guilty plea.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

#### Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

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To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citation omitted). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Applicant stated he entered a guilty plea with his first attorney but that plea was vacated. The Applicant stated he retained plea counsel and that they discussed some of the State's evidence. The Applicant stated he told plea counsel his version of events. The Applicant stated he was not allowed to tell the plea judge his version of events and that plea counsel coerced him as to what to say in court. The Applicant stated plea counsel told him that he had to agree with what the State said at the plea hearing. The Applicant stated plea counsel told him to

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lie "in a sense." The Applicant stated he signed the sentencing sheets at the jail before he pled guilty and the sheets noted the charges were non-violent. The Applicant stated he would not have necessarily pled guilty if he had known the charges were violent. The Applicant stated he was eventually brought back to court for the charges to be changed to violent.

Plea counsel confirmed he was the Applicant's second attorney and stated the paperwork to vacate the Applicant's first guilty plea was in process when he was retained. Plea counsel testified he reviewed the plea colloquy several times with the Applicant and explained what the plea judge would expect to hear. Plea counsel testified he did not tell the Applicant what to say in court. Plea counsel testified the plea judge initially would not take the plea because he interpreted the Applicant's actions as wavering. Plea counsel testified he spoke with the Applicant and explained the plea judge did not feel he was accepting responsibility. Plea counsel testified he told the Applicant that he should tell the truth but that if he did not want to go forward, there would be a trial in August. Plea counsel testified he and the Applicant discussed the elements and the penalties for the charges but not whether they were violent or non-violent. Plea counsel testified the Applicant never mentioned that he wanted to plead guilty to non-violent charges. Plea counsel testified the Applicant signed the sentencing sheets "a good while" before the plea hearing. Plea counsel testified the Applicant was brought back to court at some point after the plea hearing in order to change the sentencing sheets from non-violent to violent and that he explained this problem to the Applicant. Plea counsel testified the judge said the Applicant could withdraw his plea and start over again but that the Applicant chose not to vacate this plea.

This Court finds the Applicant has failed to meet his burden of proving plea counsel coerced his guilty plea or somehow coached him as to how to answer the judge's questions. This

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Court notes there was a thorough guilty plea colloquy in this case. The Applicant was advised of the sentencing ranges for the offenses. (Plea transcript, p.3). The Applicant admitted to the plea judge that he was guilty. (Plea transcript, p.5). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.4-5). The Applicant admitted he left the scene of the accident and expressed remorse. (Plea transcript, p.14; pp.27-28). Plea counsel testified he did not instruct the Applicant about how to answer the plea judge's questions. This Court finds plea counsel's testimony is credible. This Court finds there is no evidence in the guilty plea transcript to support the Applicant's assertion that he was coerced into entering a guilty plea; therefore the transcript has refuted this allegation. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007); see also Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him). This Court finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712.

This Court finds the Applicant failed to meet his burden of proving his guilty plea was involuntary because he was not allowed to present his version of the facts at the plea hearing. After the State recited its version of the facts, the Applicant disputed some of it and told the plea judge his version of what happened that day. (Plea transcript, pp.6-13). The plea judge determined he could not accept the Applicant's guilty plea. (Plea transcript, p.13). Later that day, the Applicant appeared back in court and stated "I agree with what the solicitor's sayin' that I am guilty for leavin' the scene" and said he had disputed this earlier because he was "scared and confused and a little bit idled right now." (Plea transcript, pp.13-14). The Applicant agreed

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with the State's contention that "he had multiple opportunities to have access to a phone and did not avail himself of it." (Plea transcript, p.14). This Court finds the plea judge was aware of both the Applicant's version of the facts and that he had admitted his guilt. This Court finds the Applicant has failed to meet his burden of proof. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (holding that in a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application).

This Court finds the Applicant failed to meet his burden of proving his guilty plea was involuntary because non-violent was improperly marked on the sentencing sheets when he signed them. Plea counsel testified the Applicant never said he wanted to plead guilty only to non-violent charges. Plea counsel further testified the judge gave the Applicant the option to withdraw his guilty plea because of this error, but the Applicant chose not to do so. This Court finds plea counsel's testimony is credible. This Court finds that, while there may have been an error on the sentencing sheets at the time of the plea hearing, the Applicant cannot prove he suffered any resulting prejudice because: (1) this error was subsequently corrected and (2) the Applicant opted not to withdraw his guilty plea when given the option to do so. See id.

Accordingly, this Court finds the Applicant has failed to meet his burden of proving his guilty plea was not knowing, intelligent, and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

#### All Other Allegations

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

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CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Furthermore, the Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED:**

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 23<sup>rd</sup> day of May, 2014.



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D. Garrison Hill  
Presiding Judge  
Thirteenth Judicial Circuit

Greenville, South Carolina.

DOCKET NO. 2011-GS-23-  
SLD 005729

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

September

TERM 2011

THE STATE

vs.

BILLY JOE HANNAH

**DL SUSPENDS**

Did Clerk receive driver's license?

YES  NO

If no, explain

*[Signature]*  
Defendant

**WITNESSES**

M.C. Johnson

S. C. Highway Patrol

1/23/2011

ARREST WARRANT NUMBER

F037966

ACTION OF GRAND JURY

TRUE BILL

*[Signature]*  
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0395

FELONY DUI (RESULTING IN DEATH)

VIOLATION § 56-05-2945

Foreperson of Petit Jury

Date:

ENTERED  
ACCT

RECEIVED

JUL 28 2011

Clerk of Court  
Greenville County

STATE OF SOUTH CAROLINA    )  
   )  
 COUNTY OF GREENVILLE    )

INDICTMENT FOR  
 FELONY DUI (RESULTING IN DEATH)

At a Court of General Sessions, convened on

SEP 13 2011

the Grand Jurors of Greenville

County present upon their oath:

That BILLY JOE HANNAH did in Greenville County, on or about the 23rd day of January 2011, drive a motor vehicle while under the influence of alcohol, drugs, or a combination of both, and did an act forbidden by law and/or neglected a duty imposed by law, to wit: the defendant failed to exercise due care, and/or exceeded the posted speed limit, and/or drove too fast for conditions, and/or failed to maintain control of the vehicle, and/or drove off of the roadway, which acts and/or neglect proximately caused the death of JAMES SCOTT SULLIVAN. This is in violation of §56-5-2945 of the South Carolina Code of Laws (1976) as amended.

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

  
 SOLICITOR

DOCKET NO. 2011-GS-23-<sup>SLD</sup> 005730

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

September TERM 2011

THE STATE

vs.

BILLY JOE HANNAH

WITNESSES

M C Johnson

S. C. Highway Patrol

1/23/2011

ARREST WARRANT NUMBER

F037967

ACTION OF GRAND JURY

*DRUG BILL* *RAM*

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

*JAMES H PRICE III*

Indictment for

2463

LEAVING THE SCENE OF AN ACCIDENT WITH DEATH

VIOLATION § 56-05-1210

Foreperson of Petit Jury

Date:

RECEIVED

JUL 28 2011

Clerk of Court  
Greenville County

ENTERED  
ACCT

