

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Dorchester County

Maite Murphy, Circuit Court Judge

RECEIVED

APR 3 2015

S.C. Supreme Court

ROGER RUTLEDGE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001891

APPENDIX

JOHN H. STROM
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

MEGAN HARRIGAN
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)	IN THE CIRCUIT COURT
)	
COUNTY OF DORCHESTER)	CASE NO. 2008-GS-18-1690
)	
THE STATE OF SOUTH CAROLINA,)	
)	
Plaintiff,)	
)	
-vs-)	TRANSCRIPT OF RECORD
)	
ROGER RUTLEDGE,)	
)	
Defendant.)	
)	

JUNE 20, 2011
Dorchester, South Carolina

B E F O R E:

THE HONORABLE, Judge Goodstine

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

RUSLE HILTON, ASSITANT SOLICITOR
Attorney for the Plaintiff

MR. FARLY AND MARY LeMATTY, Esquire
Attorneys for the Defendant

CRYSTAL HOLMES
Official Court Reporter

I N D E X

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4	Court Reporter Certification	45
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
D-1	REPORT FROM DR. SCHWARTZ-WATTS		6

1 (The following proceedings were held on October 12,
2 2011.)

3 THE CLERK: Please raise your right hand. State
4 your full name for the record.

5 THE DEFENDANT: Roger Rutledge.

6 THEREUPON,

7 ROGER RUTLEDGE,

8 after having been duly sworn, testified as follows:

9 THE DEFENDANT: (Shaking of the head, yes)

10 COURT REPORTER: You got to say, yes, sir.

11 THE DEFENDANT: Yes.

12 THE COURT: Good morning.

13 THE DEFENDANT: Good morning.

14 THE COURT: And you're Roger B. Rutledge?

15 THE DEFENDANT: Yes.

16 THE COURT: Good morning, Mr. Rutledge.

17 THE DEFENDANT: Good morning.

18 THE COURT: Now, you're represented by Ms. LeMatty
19 and Mr. Farley?

20 THE DEFENDANT: Yes.

21 THE COURT: That's a yes?

22 THE DEFENDANT: Yes.

23 MR. FORLY: You have to say yes or no because she's
24 typing everything you're saying, okay. You've got to speak
25 loudly so that she can hear you.

1 THE COURT: Thanks for that Mr. Farly. Mr.
2 Rutledge, my court reporter, Mrs. Crystal, is got to take
3 down everything that you're saying. And I know if you
4 nod or go huh-uh or huh-uh, I'll know what you mean but I
5 want our record to reflect what you mean, okay. I don't
6 want her to have to interpret what you intend to say. Be
7 clear, okay?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Thank you so much. Thank you so much.
10 Now, Mr. Rutledge, there -- I will ask some questions of your
11 lawyers and I'm going to direct them to Mr. Farly and if you
12 need - if you have any questions about what I ask him I want
13 you to feel free to ask me, okay?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: All right, great. Now, Mr. Farly have
16 you advised your client of the nature of this offense, the
17 maximum, the possible penalty, and his constitutional right to
18 include the right to a jury trial?

19 MR. FARLY: Yes, Your Honor.

20 THE COURT: And, you've done that in conjunction
21 with, of course, Mrs. LeMatty?

22 MS.FARLY: That's correct, Your Honor.

23 THE COURT: And do you believe that he understand
24 the nature of this offense, the maximum possible penalty and
25 his right?

1 MR. FARLY: He does, Your Honor.

2 THE COURT: Tell me how he wishes to plead.

3 MR. FARLY: Guilty.

4 THE COURT: Do you concur with his decision?

5 MR. FARLY: Yes, Your Honor.

6 THE COURT: And from your investigation, the facts
7 and circumstances of your client's case, do you believe the
8 state could produce sufficient evidence to convict and
9 establish your client's guilt beyond a reasonable doubt?

10 MR. FARLY: Yes, I do.

11 THE COURT: And if he was to stand trial, do you
12 believe that his conviction would be probable?

13 MR. FARLY: Yes, Your Honor.

14 THE COURT: All right. And do you have any
15 questions or concerns regarding his competency?

16 MR. FARLY: No, Your Honor. I believe the court was
17 presented a report by Dr. Schwartz-Watts. I think ---

18 THE COURT: I was.

19 And, Crystal, did you get a copy - right here?

20 Will you mark this one because I've been carrying this around.

21 (REPORT FROM DONNA SCHWARTZ-WATTS HAS BEEN MARKED
22 AND ENTERED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT NO. 1)

23 THE COURT: Thank you. Has Mr. Rutledge seen a copy
24 of Dr Schwartz-Watts report?

25 MS. LeMATTY: I'm not sure if he's seen the new one,

1 Your Honor.

2 THE COURT: All right.

3 MS. LeMATTY: There was a preliminary one.

4 THE COURT: All right. Now, very well. Now, Mr.
5 Rutledge, I have many questions to ask of you, okay?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: The reason I'm asking you these
8 questions is so that I know you're entering into your plea
9 freely and voluntarily, okay?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: You understand - okay. If at any point
12 in time you do not understand my question don't answer it,
13 okay.

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: But let me know you would understand my
16 question, right?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And the reason for that, Mr. Rutledge,
19 is so, is so, if I know you don't understand the question
20 there are many way to explain any one thing, okay.

21 THE DEFENDANT: (SHAKING OF THE HEAD, YES)

22 THE COURT: And, I will be happy to explain it in a
23 different way, okay.

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: All right. Very well. Now I going to

1 try to take this very slow, okay.

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: If I go to fast for you, will you let me
4 know?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: If I go to slow just bear with me, all
7 right?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Okay. Now, Mr. Rutledge, how old are
10 you?

11 THE DEFENDANT: Thirty-one.

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

13 THE DEFENDANT: Tenth grade.

14 THE COURT: Okay. Did you - Do you have your GED?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: Okay. Were you, um, when you were in
17 school were you in regular classes or did you have some
18 special classes?

19 THE DEFENDANT: Both.

20 THE COURT: Both, okay. And have you ever been
21 treated for alcohol or drugs?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: Okay. Have you ever been treated for
24 any mental health challenges?

25 THE DEFENDANT: Nah.

1 THE COURT: Okay. Okay. And I know you talk to Dr.
2 Schwartz-Watts, remember talking to her?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Okay. Very well. Now, are you married?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Do you have children?

7 THE DEFENDANT: No, ma'am.

8 THE COURT: Okay. And do you know how long you been
9 over at the jail?

10 THE DEFENDANT: Three years, ma'am.

11 THE COURT: Okay. I knew it was a long time,
12 Mr. Rutledge. Okay. Do you remember the date of your arrest?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: Okay. We've got that.

15 THE DEFENSE: Your Honor, I believe September 15th
16 of 2008.

17 THE COURT: Okay. All right. Now, Mr. Rutledge, in
18 the last 72 hours since, we'll say since Friday, have you had
19 any medicine?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Okay. And do you know the names of the
22 medicine?

23 THE DEFENDANT: Celexa and Trazadone.

24 THE COURT: Celexa and Trazadone. And, I think you
25 take - I was just looking at Dr. Schwartz-Watts report, tell

1 me why you think you take this Celexa and Trazadone. What
2 does it help you with?

3 THE DEFENDANT: Sleeping and being calm.

4 THE COURT: Sleeping and being calm. Okay. Does it
5 help?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Okay. Do you know what your underline
8 condition is? Do you have a diagnosis, do you know that?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: Okay. But what, what you understand is
11 that the Trazadone helps you sleep?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: And does it, in fact, help you sleep?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Okay. And does the Celexa just help you
16 stay calm?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Okay. And, and, Mr. Rutledge, um, is
19 there anything about your medicine or your condition that
20 could keep you from knowing what you're doing here today?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: Okay. Do you understand what you're
23 doing here today?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: I'm going to ask you a question, Mr.

1 Rutledge, it's going to be so simple and you can try to make
2 it complicated because it's real simple. You're making
3 wonderful eye contact and we're having a conversation but I
4 want our record to reflect what I'm seeing. And so, would you
5 - I'm going to ask you a question and it's going to be so
6 simple. You're not going to think it's as simple as it is but
7 what are we doing here today?

8 THE DEFENDANT: Huh?

9 THE COURT: What are we doing here today?

10 THE DEFENDANT: I'm pleading.

11 THE COURT: Uh-huh, exactly and how you are
12 pleading?

13 THE DEFENDANT: Guilty.

14 THE COURT: Do you know what the offense is?

15 THE DEFENDANT: Um, voluntary manslaughter.

16 THE COURT: Okay. And that's the lesser offense,
17 isn't it?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Okay. Okay. I just wanted the record
20 to reflect that you are well aware of what we've doing here
21 today, okay?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: All right. Now -- and tell me how
24 you're feeling today?

25 THE DEFENDANT: All right.

1 THE COURT: You're feeling okay?

2 THE DEFENDANT: Yeah.

3 THE COURT: Great. You look like you feel fine. I
4 just wanted again the record to reflect that. Now,
5 Mr. Rutledge, I want to ask one other question, before you
6 were locked up, did you ever work outside your home? Did you
7 have a job?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Tell me where you worked.

10 THE DEFENDANT: B & B Ceramic.

11 THE COURT: B & B Ceramic?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: What did do you?

14 THE DEFENDANT: Floors.

15 THE COURT: Ceramic floor?

16 THE DEFENDANT: Yeah.

17 THE COURT: You laid tile?

18 THE DEFENDANT: Uh-huh.

19 THE COURT: Oh, wow. How long did you do that?

20 THE DEFENDANT: Couple of years.

21 THE COURT: Okay. Very well. And before you worked
22 for them, did you, did you, work anywhere else?

23 THE DEFENDANT: A little construction.

24 THE COURT: Okay. Was it different kinds of
25 construction jobs?

1 THE DEFENDANT: Yeah.

2 THE COURT: For - give me for example. Did you do
3 like framing?

4 THE DEFENDANT: Yeah.

5 THE COURT: Okay. Didn't do roofing?

6 THE DEFENDANT: A little bit of both.

7 THE COURT: Little roofing?

8 THE DEFENDANT: Yeah.

9 THE COURT: Okay. All right. So in other words,
10 you worked in the construction industry?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And could do several things, I gather?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Okay. All right. And then got to the
15 point you were laying tile?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: I understand. Now, have you ever been
18 treated for alcohol or drug abuse?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: Okay. And the treatment that you've had
21 for any anxiety or whatever has been in the jail?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Okay. All right. Now, and this is
24 going to be another one of the general questions. Are you
25 aware of any problems that you can think of that you have that

1 might keep you from knowing what you are doing here today?

2 THE DEFENDANT: No, ma'am.

3 THE COURT: Okay. Let's talk about your charges,
4 okay. And, um, I want to be sure that you feel free to stop
5 me and we will talk about them more if we need to, all right?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Okay. Voluntary manslaughter is the
8 charge I understand that you intend to plea to. I understand
9 that the - you were indicted for murder but that the charge
10 that you intend to plea to is not murder but voluntary
11 manslaughter, am I right?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Okay. Now, do you understand that the
14 maximum possible penalty for voluntary manslaughter is thirty
15 years in prison? Do you understand that that's the maximum?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: I know this is a negotiated sentence,
18 okay. I'm aware of that.

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: I want the record to reflect that you
21 know that it goes up to thirty. Do you understand that?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And, it has a minimum of two years, do
24 you understand that?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Of course, you've already been in jail
2 longer than two years, right?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Okay. Now, there are some consequences
5 to your plea and I want to talk about those and I'm going to
6 take them slow, okay.

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: This is so important that you
9 understand, okay.

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: All right. Now, first of all, the
12 voluntary manslaughter has a designation. There's certain
13 crimes in South Carolina that have certain classifications,
14 voluntary manslaughter is one of those and it has a
15 classification as a violent offense. It's called a violent
16 offense. It has that classification, do you understand that?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: All right. Now, the classification, the
19 violent classification really has many different consequences.
20 It has to do with where you would be housed in the department
21 of corrections. Your inability to earn work credits or
22 educational credits and there are many other consequences to
23 pleading to a crime that is a violent offense, do you
24 understand that?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Okay. All right. And also voluntary
2 manslaughter has another classification, it is, um, has a
3 classification as being a most serious offense, do you
4 understand that?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Okay. Under South Carolina law there
7 are two of kinds of these classifications, one is serious and
8 one is most serious. And the way that, that works is if a
9 person has a most serious offense already, conviction of most
10 serious ---

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: --- and they then stand accused of a
13 second most serious offense and if - understand that scenario
14 the state sends notice to that person that the state intends
15 to seek what is life without the possibility of parole and the
16 person is then convicted, then that person would spend the
17 rest of their life in prison without the possibility of
18 parole. Now, I don't believe that you already have a most
19 serious offense. I think you don't. We going to establish
20 that but it is important that you understand that this is a
21 most serious offense and we'll give you a conviction for a
22 most serious offense. Do you understand that?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Here's what I want to do, I'm going to
25 start with Mr. Hilton, I'm then going to go to Mr. Farly and

1 then to you.

2 Mr. Hilton, have you reviewed Mr. Rutledge's record?

3 SOLICITOR: I have, Your Honor.

4 THE COURT: And do you believe that his is first
5 most serious offense?

6 SOLICITOR: I do.

7 THE COURT: All right. You agree with that, Mr.
8 Farley.

9 MR. FRALY: Yes, Your Honor.

10 THE COURT: All right. Most importantly, Mr.
11 Rutledge, do you understand that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Okay. After today as you understand it,
14 that today would be your first most serious offense?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Okay. Now, I want to talk about another
17 consequence with this particular statute happen to be 17-25-45
18 because it could have importance also. So, I want to talk
19 about it a little bit.

20 Now, under our law there are also offenses that are
21 serious offenses and the reason that it becomes important is
22 that if you over the course of your lifetime are convicted of
23 one most serious offense and two serious offenses then as you
24 stand accused of that second serious offense and the state
25 sends you that same notice and you're then convicted then you

1 would spend the rest of your life in prison without the
2 possibility of parole. I bring this up because it's my
3 understanding that you had no serious offenses but I wanted to
4 establish that. Is that your understanding, Mr. Hilton?

5 SOLICITOR: It is.

6 THE COURT: All right. And yours, Mr. Farly?

7 MR. FRALY: Yes, Your Honor.

8 THE COURT: And, of course, Mr. Rutledge?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: You don't have any serious offense
11 convictions at all, right?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Okay. The only reason I mentioned it to
14 you is to just go forward, it's important that you understand
15 that if you given after today, you'll have a most serious
16 offense but in over the course of your life time should you
17 pick up two serious offenses and the state sends you notice
18 then you would spend the rest of your life in prison without
19 the possibility of parole. You understand that?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Okay. Very well. Now, I want to talk
22 about this too, Mr. Rutledge, um, whatever sentence is - and,
23 of course, this is a negotiated twenty years and I understand
24 that?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: So, I will either agree to accept the
2 negation or not.

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: But, but, the -- but the plea would be
5 twenty years.

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: The time would be twenty years. It's a
8 negotiated twenty years. You understand that?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Now, Mr. Rutledge, here's what I want to
11 be clear with you about. If I accept the plea and impose
12 twenty years, you have to count on spending that twenty years
13 in prison. You get creditor for the time that you've served,
14 do you understand that?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Okay. But what's important is that you
17 understand that this a real life twenty year sentence, do you
18 understand that?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Do you understand that this no parole
21 offense?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: All right. And that you need to count
24 on spending day for day of that twenty years, understanding
25 you get credit for time that you've served but whatever

1 remains on that twenty years, you need to count on serving day
2 for day. Do you understand that?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Do you have questions of your lawyers
5 about that?

6 THE DEFENDANT: No, ma'am.

7 THE COURT: Do you have any questions of me about
8 that?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: I would be straight up with you about
11 that because sometimes people they have a different opinion
12 about that and I want to be sure that I'm clear with you that
13 it's day for day. So, this is a day for day sentence.

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Okay. And you understand that?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: You don't have questions about that?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: Okay. All right. Now, here's what you
20 have told me, Mr. Rutledge, you have told me up to this point,
21 that you understand this offense it's violent, it's most
22 serious, no parole offense.

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: You've told me that you understand the
25 maximum possible penalty of thirty years ---

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: --- minimum of two years, that you understand the
3 consequences of your plea. You understand we went over the
4 two-strike, three-strike rule. You understand that, most
5 serious and serious those consequences, you told me all of
6 that.

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: In the consequences of this being a
9 violent offense, Mr. Rutledge, keeping this in your mind,
10 everything that you've told me, everything that we've talked
11 about up to this point, tell me how you plea to the offense of
12 voluntary manslaughter.

13 THE DEFENDANT: Guilty, ma'am.

14 THE COURT: And, do you understand that when you
15 plead guilty you're giving up certain important constitutional
16 rights?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: We're going to talk about some of them.
19 We won't talk about them all. We'll talk about some of them.
20 You give the right to remain silent which is one of your
21 constitutional rights and you give up that right, you're
22 telling me you're guilty, right? Do you understand that?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Okay. You give up the right against
25 self incrimination which means you say something that hurts

1 you. That you implicate yourself. That you say something
2 that makes you look more guilty or guilty. It's just what
3 self incrimination is and means. Do you understand that when
4 you plead guilty you give up your right against self
5 incrimination?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: You do that because you tell me you're
8 guilty, right?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: All right. You give up your right to
11 require the state to prove you guilty beyond a reasonable
12 doubt, if they can, you give up that right as well, do you
13 understand?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Okay. You're giving up your right to
16 have your lawyers cross examine witnesses who would testify
17 against you. That's called confronting witnesses who would
18 testify against you and you give up that right also, do you
19 understand?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: You give up your right to have your
22 lawyers subpoena witnesses to come testify in your defense,
23 you understand?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: And you give up your right to present

1 defenses, do you understand that?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And you give up your right to challenge
4 any incriminating statements that you may have made, meaning,
5 you give up your right to challenge any statements that law
6 enforcement may say you made that incriminate yourself. You
7 give up your right to challenge those statements. Do you
8 understand that?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: You give up your right to challenge any
11 stops or searches or seizures that happened to you that you
12 believe were not appropriate. Do you understand you give that
13 up too?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: You give up your right to a jury trial.
16 Do you understand?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And if you wanted a jury trial,
19 Mr. Rutledge, you would have a jury trial. Do you understand
20 that?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And at the jury trial it would be your
23 decision to decide if you wanted to testify or not. Do you
24 understand?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: And do you understand that if you
2 decided that you wanted to go to trial and you did not want to
3 testify that the judge trying your case would tell the jury
4 that they could not consider your decision not to testify on
5 whether you were guilty or not guilty. Do you understand
6 that?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: In fact, the judge would tell the jury
9 that they could not even discuss your decision not to testify
10 in the jury room, you understand?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And the reason is that your exercise of
13 your Fifth Amendment right not to testify it is your
14 constitutional right because you don't have to prove a thing,
15 it's up to the state to prove you guilty -- guilty beyond a
16 reasonable doubt. You don't have to prove yourself innocent
17 and the judge would tell the jury that. Do you understand?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Okay. Now, do you understand,
20 Mr. Rutledge, that your constitutional rights are preserved
21 for you at that trial, you understand?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And do you understand that they are
24 waived when you plead guilty?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: All right. And is that what you want to
2 do?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: All right. Do you clearly understand
5 that when you plead guilty you're giving up your right to have
6 a jury determine you're guilty or not guilty?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Do you understand that if I accept your
9 plea I will sentence you?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: All right. We will pause here. We're
12 just kinda recap where we are to this point.

13 You've told me that you understand the nature of
14 this offense, voluntary manslaughter.

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Violent most serious. You understand
17 the maximum possible penalty, we've talked about that. The
18 consequences you are pleading. We've talked about that. Now,
19 we've talked about your constitutional rights and you tell me
20 you understand those as well?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Keeping all of these matters -- all of
23 this information in the forefront of your mind, do you still
24 wish to continue with your plea of guilty?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: All right. I want you to listen, this
2 is Mr. Hilton. Have you met Mr. Hilton? This is Mr. Hilton,
3 one of the assistant solicitor's.

4 THE DEFENDANT: (SHAKING OF THE HEAD, YES)

5 THE COURT: He's been working on your case on behalf
6 of the state, on the behalf of the solicitor's office, the
7 prosecutor. And he's going to go over - he's going to give me
8 a brief rundown of the facts because, you see, Mr. Rutledge,
9 every plea has to be supported by facts. So, we're going to
10 go over those facts. When he's finished I'm going to ask you
11 if that's what happened. What you will need to do is correct
12 anything that needs to be corrected so that I have an accurate
13 picture of what occurred, okay.

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Okay. So, you have to listen very
16 carefully, all right?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: All right. Yes, sir, Mr. Hilton, take
19 it kinda of slow.

20 SOLICITOR: Thank you, Your Honor, may it please the
21 court?

22 THE COURT: Yes.

23 SOLICITOR: This offense occurred on August 29, 2008
24 near the -- on [REDACTED] near the [REDACTED] residence which is
25 in Dorchester County. On the incident morning, approximately

1 4:30 in the morning, deputies responded to a call in reference
2 to a man laying in the roadway behind a vehicle. That victim
3 was Herman Ward, a twenty four year old individual who lived
4 in the area. When deputies responded, Mr. Ward had a single
5 gunshot wound to the forehead.

6 At the time he was transported by EMS and taken to
7 the hospital. At the scene the detectives and crime scene
8 came out and collected evidence and they took the vehicle to
9 be processed. At this scene they recovered eight spent shell
10 casings that were fired presumably from the murder weapon.
11 And then inside the vehicle they also recovered a copper
12 jacket from one of the projectiles had stripped off
13 projectiles as it entered into the vehicle.

14 The shell casings that were collected that evening
15 were sent to -- where they were determined to have matched up
16 to a scene that occurred approximately three weeks prior over
17 in Dorchester Manor area. Roger Rutledge was identified by
18 witnesses as being the shooter in that incident where he was
19 at a birthday party and got into an argument and upon his
20 leaving he shot several times in the air.

21 As the investigation progressed the sheriff's office
22 was able to recover a projectile from another individual who
23 indentified Roger Rutledge as the shooter at that scene was
24 well. There he had shot into a television set after arguing
25 with an individual at that residence. Time marched on and as

1 Ms. Sausen, the individual who recovered the projectile, as
2 she was moving she found this bullet and ended up giving to
3 police when police questioned her during the course of their
4 investigation. That projectile matched the copper jacket that
5 was found in the victim's vehicle and it also matched the
6 projectile that was recovered from the residents of [REDACTED]
7 [REDACTED]. The residents at [REDACTED] called the sheriff's
8 office the next day, the day after the shooting would be on
9 the 30th of August, in reference to recovering that bullet that
10 was found in her living room.

11 During the course of the investigation as well they
12 also executed the search warrant on the defendant's residents
13 where he's living, actually his aunt's residents, and he had a
14 vehicle outside in the driveway. They also recovered a spent
15 shell case from the back seat of that vehicle that ended up
16 matching the shell casings at the Dorchester Manor incident as
17 well as the shooting of Herman Ward at that incident the [REDACTED]
18 [REDACTED].

19 They were also able to determine through
20 eyewitnesses that three individuals Roger Rutledge, Xzavier
21 Walker and an unknown third party that we've not been able
22 determine the identity confronted the victim at the [REDACTED]
23 [REDACTED] locations. The three of them went up to the car, got
24 Mr. Ward from the vehicle, kinda made -- they made their way
25 to the back of the car where struggled ensued. The struggle

1 had finished up and as Mr. Rutledge and his co-defendants were
2 walking off, there were some words exchanged between the
3 victim and the defendant and co-defendant. When Mr. Rutledge
4 turned around and fired a series of shots back towards the
5 direction of the victim. It was believed at that time one of
6 those bullets struck Mr. Ward in the head. Based on that
7 information a warrant was obtained. Mr. Rutledge was
8 arrested. Mr. Ward did die several days after he was taken to
9 the hospital, um, to be taken off of life support.

10 THE COURT: Now, Mr. Rutledge, obviously, you
11 weren't there during the investigator part of this case and,
12 of course, Mr. Hilton has told me about the investigation. My
13 question to you is this, and it really goes to the last part
14 of what Mr. Hilton was telling me, did you in Dorchester
15 County shoot Mr. Herman Ward?

16 THE DEFENDANT: I - I can talk to him for a second?

17 THE COURT: Of course.

18 (Defendant talked to his counsel.)

19 THE DEFENDANT: Yeah.

20 THE COURT: All right. And, um, and the reason I'm
21 asking you that, in that regard, is there was fair amount of
22 conversation about things that happened at Dorchester Manor
23 and other locations, ■ -- well other locations, particularly
24 Dorchester Manor. I'm not asking you what happened at
25 Dorchester Manor but Mr. Hilton has to tell me those matters

1 because of what's called probable cause to -- for the
2 investigation to lead to you, okay. So it's important that he
3 tells me that, but my question to you is whether or not the
4 part of the factual recitation that Mr. Hilton went over, that
5 there were words exchanged between you and Mr. Ward and then
6 you -- then you turned around and shot Mr. Ward and in
7 shooting him in the head with which he ultimately died. Do
8 you understand what I'm asking?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Okay. And is that what you're
11 responding to when you told me yes that's what happened?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Okay. And is that in fact what
14 happened?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Okay. Now, Mr. Rutledge, now, I know
17 that there's a negotiation, I'm aware of that, obviously. So
18 I want you to set that aside because the next question that
19 I'm going to ask you is really something different is this,
20 has anyone promised you anything to get you to plead guilty?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: Has anybody offered you any kind of
23 reward to get you to plead guilty?

24 THE DEFENDANT: No, ma'am.

25 THE COURT: Anybody try to force you to make you

1 plead guilty?

2 THE DEFENDANT: No, ma'am.

3 THE COURT: Threat you to make you plead guilty?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: Has anyone overcome your will to make
6 you plead guilty?

7 THE DEFENDANT: Huh?

8 THE COURT: Has anyone over come your will to make
9 plead guilty?

10 THE DEFENDANT: No, ma'am.

11 THE COURT: Have you had enough time to make up your
12 mind that this is what you want to do?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: You have not had ---

15 THE DEFENDANT: I mean, yes, ma'am.

16 THE COURT: You are sure?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Because it's important that have -- you
19 can understand this. It's important that you have enough time
20 to make up your mind, right?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: All right. And are you absolutely one
23 hundred percent sure that you've had enough time to make up
24 your mind and this is what you want to do?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: All right. And are you pleading guilty
2 here today?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Freely and voluntarily?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: And are you pleading guilty because you
7 are, in fact, guilty?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: And guilty of voluntary manslaughter?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: All right. Now, you are satisfied with
12 the services of your lawyers?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Have you -- have you discussed with your
15 attorneys these matters?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Okay. Have you spoken to them both
18 either -- I note that you met with Ms. LeMatty and Mr. Farly
19 then sometime probably together, right?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Okay. Have you met with them for as
22 many times, just the number of times you think appropriate?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Have you met with them for as long of
25 period of time as you think appropriate?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: All right. Now, have, have, Mr. Farly,
3 Ms. LeMatty, have they been over the information with you the
4 state has?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: The discovery -- do you know what I mean
7 when I say, your discovery?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Okay. Have they been over that with
10 you?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And if you wanted copies of it, did they
13 give you copies of it?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Okay. And did they do all the
16 investigation, meaning did they talk to the people that you
17 thought they needed, that you think they needed to talk to?

18 THE DEFENDANT: Like - yeah -- I guess.

19 THE COURT: In other words, did they investigate
20 your case?

21 THE DEFENDANT: I guess.

22 THE COURT: Okay. Now, tell me why you say, I
23 guess?

24 THE DEFENDANT: I -- I mean, I guess they did their
25 job.

1 THE COURT: Okay. You guess they did their job,
2 okay. Tell me, what do you base that on, your conversations
3 with them?

4 THE DEFENDANT: Yeah. Yes, ma'am.

5 THE COURT: Okay.

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: I mean, obviously, you've been in the
8 jail so did they say I went and talk to so and so? You
9 weren't with them were you, when they went and talked to
10 somebody because you were at the jail?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: So you had to rely on what they tell
13 you, right?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Okay. And do you -- do you have any
16 information that you want to share with me that they haven't
17 done what they were supposed to do?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: Okay. Have they answered your
20 questions?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Okay. And have they done everything for
23 you in your case that you think they should have done or could
24 have done to properly represent you?

25 THE DEFENDANT: Well, yes, ma'am.

1 THE COURT: Have they done anything in your case
2 that you think they shouldn't have done?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: No. And are you completely satisfied
5 with their services?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Has anyone associated with your case,
8 your lawyer, or your lawyers, the solicitor or solicitors, the
9 police officers, has anyone -- the folks at the detention
10 facility, has anyone involved in your case, mistreated you in
11 anyway?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: Have you understood my questions?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And, Mr. Rutledge, I want you to stop
16 and think, is there anything that you want to ask me about
17 what we've just been over?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: You sure?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Okay. You know I would do my very best
22 to answer any questions that you have?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Okay. Do you understand that you have a
25 right to appeal your guilty plea. Do you understand that?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: And you have a right to appeal any
3 sentence that I impose?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: And if you wish to appeal you or an
6 attorney on your behalf must appeal within ten days, ten days?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Do you understand that?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Okay. Now, with respect, Mr. Rutledge,
11 with respect to each and every answer that you've given me
12 here today, have you been absolutely candid with me?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Have you been absolutely honest with me?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Have you told me the truth?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Have your answers been your answers?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Has anyone told you how to answer my
21 questions?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: Okay. Your answers have been the
24 answers of who?

25 THE DEFENDANT: Me.

1 THE COURT: Okay. Mr. Rutledge.

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Your answers have been your own?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: No questions about that?

6 THE DEFENDANT: No question.

7 THE COURT: Okay. Now, as you pause at this moment,
8 Mr. Rutledge, we close -- very close to the end, okay ---

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: --- of your plea. Can you think of any
11 issues that you need to ask me about?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: Or your lawyers?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: All right. I find that there's a
16 substantial factual basis for this plea. I find the decision
17 of Mr. Rutledge to plead guilty is freely and voluntarily,
18 knowingly and intelligently made, that he has had advice of
19 counsel with whom he tells me he's satisfied.

20 I have read the report of Dr. Schwartz and clearly
21 he is competent. He makes wonderful eye contact. I think
22 he's followed these proceedings exactly and he's not asked any
23 questions. I think he understands that he can certainly do
24 that and hearing all these matters and was listening being
25 carefully to Mr. Rutledge I believe he is entering into this

1 proceeding freely and voluntarily, knowingly and
2 intelligently. There's a factual basis which is sufficient
3 and I will accept the plea. Tell me about his record and then
4 I'm happy to hear from any of the family members of Mr. Ward.

5 SOLICITOR: He has -- he does have a little record
6 Your Honor, back in 1997 he had a trespassing. He had a
7 resisting arrest and a CDV in 1998. In 1991 he had a failure
8 the stop for a blue light. Then he had a possession of crack
9 cocaine in 2003 which he receive YOA sentence for. And then
10 he had an assault and battery of a high and aggravated nature
11 charge back in 2003.

12 THE COURT: Did he, did he, spend any time after
13 2003 or was it a probationary matter, do you know?

14 SOLICITOR: I think he served some time ---

15 THE COURT: Okay.

16 SOLICITOR: --- in some facility but I'm not sure
17 exactly how much.

18 THE COURT: Okay. Very well, I'm happy to hear from
19 the family.

20 THE COURT: Good morning. How are you? I just need
21 you to identify yourself.

22 MS. WARD: Mary Ward. I'm Herman's mother.

23 THE COURT: I'm listening to you. I'm so sorry for
24 your loss.

25 MS. WARD: I would like to ask the court if I could

1 get permission to ask him why did he killed my son? What is
2 the reason why? I was on the way going to work on that
3 morning after five and I saw a vehicle and I saw the person
4 laying in the street but it was still sort of dark. And I
5 stopped and I called 911 and I waited for back until the
6 police got there. And I went on to work and they came later
7 on and told me that was my son I called about. I'm living
8 this everyday. I can't sleep and I want to know why. My
9 family, they all couldn't be here because they can't handle
10 it. Herman was a loving person. Herman would help anybody if
11 he could. He would try to talk to little kids and try to tell
12 them to do the right thing in life. And I want to know why,
13 why did he kill my son?

14 THE COURT: You know, Ms. Ward here's what I would
15 say to you about that. Your heart is broken, your heart is
16 broken, and there isn't any good reason, you know that. So
17 whatever he's going to say to you in response to that is going
18 to give you no peace. There's no good reason for that. Do
19 you know what I'm saying?

20 MS. WARD: (The witness nodded head.)

21 THE COURT: I mean, there is no good reason for
22 that. I mean, anything -- here's what reason I fear, anything
23 that he is going to say is going to give you no peace. Do you
24 know where -- you know where I'm coming from?

25 MS. WARD: (The witness nodded head.)

1 THE COURT: You know your son to have been a good
2 and deceit man and as you say a kind man. So there is no
3 justification. There is no justification for that, yes. Do
4 you understand?

5 MRS. WARD: (The witness nodded head)

6 THE COURT: So if I ask him that question and I ask
7 him to give you the benefit of his reason ---

8 MS. WARD: Yes, ma'am.

9 THE COURT: --- that I know is going to bring you no
10 peace. It's just going to add to your heartache. Do you see?

11 MS. WARD: That he was Herman's friend. He was his
12 friend. I want to know why. I really do. This is something
13 that I have to live with for the rest of my life.

14 THE COURT: Yes, ma'am.

15 MS. WARD: Because right down the street from where
16 I live I have go down that street.

17 THE COURT: Everyday?

18 MRS. WARD: Everyday.

19 THE COURT: And you know what? It's been two and
20 half years going on three years and you -- the first two
21 years, um, an unanticipated violent death of a child. You
22 understand this is the worst grief that there is?

23 MS.: Yes, ma'am.

24 THE COURT: Science will tell that. So you have it
25 all. The first two years, two and half years there have been

1 moments where you couldn't breath. Am I right?

2 MS. WARD: Yes, ma'am.

3 THE COURT: And there have been moments when you
4 just didn't think you were going to be able make another
5 moment.

6 MS. WARD: (The witness nodded head.)

7 THE COURT: Then it yields a little bit and you
8 would have a happy memory of your son and you can breathe from
9 them and then it would come crashing down again.

10 MS. WARD: Yes, ma'am, it does.

11 THE COURT: Yes, ma'am. Over lots of time the
12 crushing pain will begin to yield more and more to the sweet
13 and dear memories but it take a lot of time and that's because
14 the grief that you're living through because you loved your
15 boy.

16 MS. WARD: Yes, ma'am.

17 THE COURT: Is the worse grief. I wish I could take
18 it away. I wish I could have this man say something to you
19 that would lessen ever so slightly and - what I want you to
20 know that in time and it takes a lot of time the crushing
21 overwhelming pain does yield to the sweetness of the memories.
22 That's little to offer to someone that is where you are.

23 MS. WARD: His family can go visit him.

24 THE COURT: I know. I know. I know.

25 MS. WARD: Sorry.

1 THE COURT: No, don't. You don't need to apologize
2 to me I understand completely. I understand completely.

3 SOLICITOR: Your Honor, I will point out to the
4 court that he has -- the victim as well as Ms. Ward, is
5 supported by the family members that are seated in the court -
6 - the front row.

7 THE COURT: Thank you all. Raise your hands so I'll know who
8 I'm talking to. These three folks right here? (Indicating)

9 SOLICITOR: Yes, ma'am.

10 THE COURT: Thank you so much for being here today.
11 Thank you for being the support system for Ms. Ward it's just.
12 It's just a crushing, crushing, terrible thing she's going
13 through. It will continue but this will hopefully,
14 prayerfully bring her some closure for her.

15 All right, Mr. Farly?

16 MR. FARLY: Ms. LeMatty is going to do this portion.

17 THE COURT: Ms. LeMatty?

18 MS. LeMATTY: May it please the court, Your Honor?

19 THE COURT: Yes.

20 MS. LeMATTY: As Mr. Rutledge told you, he's thirty
21 one years of age. He's single. He has no children. He was
22 raised largely by relatives in the Tri County area. His aunt
23 Brenda Barnett and his girlfriend, Cheryl Copper are here in
24 the court on the front row. They have been very attentive to
25 his case, very attentive about seeing him. Making sure that

1 you know, he stays as okay as he can be under the
2 circumstances and I know that they are going to continue to do
3 that because they love him very much and they definitely want
4 the best thing for him.

5 Your Honor, you've got Dr. Schwartz-Watts' report.
6 This young man struggled a great deal growing up and went
7 through some very difficult and challenging time with school,
8 with other things. He did get some employment, was doing well
9 with that. He's recently expressed an interest to me on what
10 they have available where he would go so that he can cultivate
11 a career so that when he has completed serving the sentence in
12 this matter that he could go back and he could just have a
13 nice normal life. He's here before the court today accepting
14 responsibility for his portion of this situation which was a
15 tragic situation but there are others involved who will
16 hopefully ultimately addressing the situation as well. We
17 would respectively request that the court accept the
18 negotiations in this matter and give Mr. Rutledge credit for
19 all the time that he's served since September 15, 2008 which
20 would understand is 1,008 days.

21 THE COURT: Just a second.

22 All right. Mr. Rutledge, I'm going to commit you to
23 the state department corrections for a period of twenty years
24 giving you credit for the time that you have served and I'm
25 going to order that the South Carolina Department of

1 Corrections continue your medication which are needed for your
2 mental health well being. This will conclude this sentence.

3 MS. LeMATTY: Thank you, Your Honor.

4 SOLICITOR: Thank you.

5 END OF PROCEEDINGS

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1 STATE OF SOUTH CAROLINA)

2) CERTIFICATE

3 COUNTY OF DORCESTER)

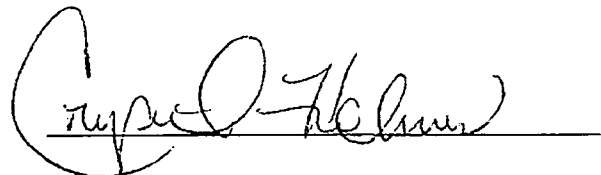
4

5 I, the undersigned, Crystal Holmes, Official Court
6 Reporter for the 5TH Judicial Circuit of the State of South
7 Carolina, do hereby certify that the foregoing is a true,
8 accurate, and complete Transcript of Record of all the
9 proceedings had and evidence introduced in the hearing of the
10 above captioned case, relative to appeal, in the Court of
11 General Sessions for Dorchester County, South Carolina, on the
12 20thth day of June, 2011.

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

15

16



17

Court Reporter

18

19 Dorchester, South Carolina

20 September 28, 2012

21

FORM 5

STATE OF SOUTH CAROLINA

CERTIFIED COPY

IN THE COURT OF COMMON PLEAS

County of Dorchester

2012 JUL -2 PM 1:12

2012-CP-18- 1406

Roger Rutledge #310245
Full name and prison number (if any) of Applicant

Cheryl Graham
CLERK OF COURT
DORCHESTER COUNTY

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

FILED - RECORDED
2012 JUN -5 PM 4:06
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (possibly 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 Lieber

2. Name and location of Court which imposed sentence General Sessions in Dorchester County

3. Name(s) of co-defendant(s) (if any) Xavier Walker; Lousie Pinckey

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) 2008-GS-18-1690 In (Voluntary Manslaughter)

- (b) _____
- (c) _____

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

- (a) _____
- (b) _____
- (c) _____

6. Check whether a finding of guilty was made:

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

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

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

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

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

(c) the date of each such result:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

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

(a) Counsel fail to file Appeal; Incompetent

- (b) _____
- (c) _____

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

- (a) 6th. Amendment Violation
- (b) 14th. Amendment Violation
- (c) _____

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

- (a) Involuntary Guilty Plea
- (b) Ineffective Assistance of Counsel
- (c) _____

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

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

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

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

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

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

N/A

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

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

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

- (a) Counsel failed to raise issue ; Incompetent
- (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? N/A
- (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. MARY LEMATY 107 W.6. Ph North Street
Suite 100 Summerville, SC. 29483
 - ii. Mitch Folly 107 W.6. Ph North Street
Suite 100 Summerville, SC. 29483
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. plea hearing
Sentencing hearing
 - ii. _____
 - iii. _____

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

Vacate conviction and sentence Reverse
and remand for a New Trial

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of Dorchester)

VERIFICATION

I, Roger Rutledge, 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.

Roger Rutledge

SWORN to and subscribed before me this 30th
day of May, 2012.

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

FILED - RECORDED
2012 JUN -5 PM 1:06
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

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

I, Roger Butledge, 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.

Roger Butledge
Applicant

SWORN or affirmed to and subscribed before me this
30th day of May, 2012.

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)
)
 ROGER RUTLEDGE, 310245)
)
 Applicant)
)
)
)
 STATE OF SOUTH CAROLINA)
)
 Respondent,)
)

IN THE COMMON PLEAS COURT

DOCKET NO.: 2012-CP-18-1406

AMENDED APPLICATION FOR
POST CONVICTION RELIEF

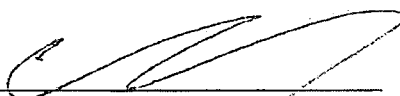
The Applicant, Roger Rutledge, through undersigned Counsel wishes to Amend his
 Application for Post Conviction Relief as follows:

SEE ATTACHED PAGES NUMBERED 1 - 8

Charles T. Brooks, III
 CLERK OF COURT
 DORCHESTER COUNTY

CERTIFIED COPY
 2012 JUL 25 AM 11:22

RESPECTFULLY SUBMITTED ON BEHALF OF
APPLICANT, Roger Rutledge



 Charles T. Brooks, III
 Attorney for Applicant
 309 Broad Street
 Post office Box 3512
 Sumter, South Carolina, 29150
 (803) 418-5708

July 23, 2012

COUNTY OF DORCHESTER
ROGER RUTLEDGE 316249
Plaintiff/Applicant

IN THE COURT OF COMMON PLEAS

CA NO: 2012-CP-18-1406

COUNTY OF DORCHESTER, S.C.D.C.)
MUNICIPALITY OF SUMMERVILLE STATE.)
OF SOUTH CAROLINA, SOLICITORS.)
OFFICE ET AL INDIVIDUALS IN
THEIR OFFICIAL AND PROFESSIONAL
CAPACITIES DEFENDANTS

AMENDED APPLICATION FOR
POST CONVICTION RELIEF

PURSUANT TO S.C.P.C. RULE 71.1(C)

2012 JUL 25 AM 11:22
CERTIFIED COPY
CLERK OF COURT
DORCHESTER COUNTY

NOW HERE COMES THE APPLICANT, BY AND THROUGH THE
RULES OF CIVIL PROCEDURE HEREBY REQUEST THAT MY COURT
APPOINTED COUNSEL AMEND MY ACTION BY SUBMITTING THESE
ADDITIONAL CLAIMS AND THE NECESSARY COMPENSATORY RELIEF

PURSUANT TO RULE 71.1(C) THE POST-CONVICTION RELIEF ACT
IS AN INDEPENDENT ACTION AT CIVIL LAW IN WHICH THE
APPLICANT CAN BE ALSO GRANTED MONETARY RELIEF IN THAT

PURSUANT TO 15-78-20 (B) THE GENERAL ASSEMBLY PROVIDES
FOR LIABILITY ON THE PART OF THE STATE ITS POLITICAL
SUBDIVISION AND EMPLOYEES, WHILE ACTING IN THEIR OFFICIAL
CAPACITIES. LIKEWISE 15-78-70 PROVIDES FOR LIABILITY
STATING THAT NOTHING IN THE CHAPTER MUST BE CONSTRUED
SO AS TO GIVE AN EMPLOYEE IMMUNITY IF IT IS FOUND
THAT THE OFFICIAL CONDUCT WAS NOT WITHIN THE SCOPE
OF HIS OFFICIAL DUTY, OR THAT SUCH CONSTITUTES FRAUD
ACTUAL MALICE AND INTENT.

THIS COURT ALSO HAVE JURISDICTION PURSUANT TO 15-77-50
TO HEAR THIS ACTION AGAINST THE STATE AGENCY AND ITS
OFFICIALS AND CAN GRANT AN AWARD OF DAMAGES
OF A MILLION TWO HUNDRED THOUSAND DOLLARS AGAINST
THE AGENCY OR ITS POLITICAL SUBDIVISION PURSUANT TO
15-78-120 A (4)

THE APPLICANTS CLAIMS ARE AS
FOLLOWS

- (1) THE APPLICANT IS BEING HELD TO ANSWER FOR AN
OFFENSE TO WHICH HE WAS NOT INDICTED BY A GRAND
JURY AND WITHOUT AN INQUEST IN VIOLATION OF
USCA 5, SOUTH CAROLINA CONST ARTICLE 1 CLAUSE 11
STATE STATUTE 17-5-530 (B) 17-7-170

- (2) THE PLAINTIFF APPLICANT IS BEING PUNISHED BY BEING CONFINED IN THE DEPARTMENT OF CORRECTIONS WITHOUT BEING LEGALLY CONVICTED IN A COURT HAVING COMPETENT JURISDICTION OF THE CAUSE AND OF THE APPLICANT IN VIOLATION OF 17-27-20 A (2)
- (3) THE PLAINTIFF APPLICANT WAS MALICIOUSLY SUBJECTED TO CRIMINAL PROSECUTION BY THE SOLICITORS OFFICE, WHO KNEW OR REASONABLY SHOULD HAVE KNOWN THAT NO PROBABLE CAUSE EXISTED FOR THE OFFENSE THAT THE APPLICANT WAS ALLOWED TO PLEA GUILTY TO
- (4) THE DEFENDANTS DID KNOWINGLY SEIZE, KIDNAPED, DECEY INVEISLE, CARRY AWAY AND CONFINE THE APPLICANT IN VIOLATION OF HIS FOURTH AMENDMENT RIGHT TO BE FREE FROM UNREASONABLE SEIZURE IN VIOLATION OF U.S.C.A. 4 AND SOUTH CAROLINA CONST ARTICLE 1 § 10 THE FEDERAL AND THE STATE KIDNAPPING STATUTE 16-3-910 AND 18 USC 1201 (B)
- (5) THE APPLICANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL WHEN HE WAS ADVISED TO PLEAD GUILTY TO VOLUNTARY MANSLAUGHTER AS A LESSER INCLUDED OFFENSE OF MURDER.
- (6) THE COURT LACKED SUBJECT-MATTER JURISDICTION TO ACCEPT GUILTY PLEA AND SENTENCE APPLICANT TO TWENTY (20) YEARS FOR MANSLAUGHTER

- (1) THE UNITED STATES CONSTITUTION AND SOUTH CAROLINA CONSTITUTION U.S. CONST ART 1 § 11 PROVIDES THAT 'NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL, OR OTHER INFAMOUS CRIME UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY NOR DEPRIVED OF LIFE LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW.
- (2) STATE STATUTE 17-25-10 PROVIDES THAT 'NO PERSON SHALL BE PUNISHED UNTIL LEGALLY CONVICTED IN A COURT HAVING COMPETENT JURISDICTION OF THE CAUSE AND OF THE PERSON
- (3) (A) RULES OF PROFESSIONAL CONDUCT RULE 3.8 STATES THAT A PROSECUTOR SHALL NOT KNOWINGLY PROSECUTE THAT IS NOT SUPPORTED BY PROBABLE CAUSE.
- (B) NO WARRANT WAS EVER ISSUED FROM THE CIRCUIT COURT AND NO JUDICIAL DETERMINATION WAS MADE OR FILED WITH THE CLERK OF COURT FOR THE OFFENSE OF VOLUNTARY MANSLAUGHTER.
- (4) THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND S C CONST ARTICLE 1 CLAUSE 10 STATES "THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS AND EFFECTS AGAINST UNREASONABLE SEARCHES AND SEIZURES SHALL NOT BE VIOLATED. THE APPLICANT IS BEING ILLEGALLY CONFINED WITHOUT A WARRANT OR INDICTMENT FOR VOLUNTARY MANSLAUGHTER."

(5) COUNSEL ADVISE AND ASSISTANCE IN RELATION TO HIS PLEA OF GUILTY TO MANSLAUGHTER WAS NOT WITHIN THE RANGE OF THAT REQUIRED BY STRICKLAND V WASHINGTON BECAUSE HE DID NOT RESEARCH THE CHARGE THAT THE PLAINTIFF APPLICANT PLED GUILTY TO, AND THE STATUTORY CODE TO WHICH THEY RELATES. HAD HE DONE SO HE WOULD HAVE FOUND OUT THAT VOLUNTARY MANSLAUGHTER IS NOT A LESSER INCLUDED OFFENSE OF MURDER PURSUANT TO 16-3-10 OF THE 1976 CODE OF LAWS. AND ALSO FOUND THAT THE 1976 CODE WHICH IS EXEMPT FROM CLASSIFICATION CARRIES A PUNISHMENT OF (10) YEARS AND THAT SUCH WAS FOUND UNCONSTITUTIONAL THEREFORE HIS ADVICE WAS ERRONEOUS.

(6) (A) INDICTMENT AND INFORMATION, KEY (1) (5) PROVIDES EXCEPT FOR CERTAIN MINOR OFFENSES CIRCUIT COURT DOES NOT HAVE JURISDICTION TO HEAR GUILTY PLEA, UNLESS THERE HAS BEEN INDICTMENT, WAIVER OR CHARGE IS LESSER INCLUDED OFFENSE OF CRIME CHARGED IN INDICTMENT.

(B) THE TEST FOR DETERMINING WHEN CRIME CHARGE IS LESSER INCLUDED OFFENSE, IS WHETHER THE GREATER OF THE TWO OFFENSES INCLUDES ALL THE ELEMENTS OF THE LESSER OFFENSE. INDICTMENT AND INFORMATION KEY 191

(C) THE PLAINTIFF/APPLICANT DID NOT EXECUTE WRITTEN WAIVERS OF PRESENTMENT, THE CHARGE IS NOT A LESSER INCLUDED OFFENSE OF THE CRIME CHARGE IN THE ORIGINAL INDICTMENT INDICTMENT AND INFORMATION KEY 5 159 (2)

MURDER IS DISTINGUISHABLE FROM VOLUNTARY MANSLAUGHTER WHICH IS A DISTINCT AND SEPERATE OFFENSE.

MURDER IS THE KILLING OF A PERSON/SOMEONE WITH MALICE AFORETHOUGHT EITHER EXPRESS OR IMPLIED

BUT VOLUNTARY MANSLAUGHTER IS THE UNLAWFULL KILLING OF A HUMAN BEING IN THE SUDDEN HEAT OF PASSION UPON SUFFICIENT LEGAL PROVOCATION WITHOUT MALICE

(6) (D) THE CIRCUIT COURT WAS ALSO WITHOUT SUBJECT-MATTER JURISDICTION BECAUSE CO-EXTENSIVE JURISDICTION WAS LACKING THE PLAINTIFF WAS ARRESTED ON THE BASIS OF A MUNICIPAL WARRANT WHICH DOES NOT SHARE CONCURRENT JURISDICTION WITH THE STATE COURT IE COURT OF GENERAL SESSIONS WHICH HAS 'EXCLUSIVE-JURISDICTION' IN CASES OF MURDER THE PLAINTIFF DEMANDED A PRELIMINARY HEARING AND FAST AND SPEEDY TRIAL WHICH WAS NOT GRANTED

KEY 2.22 NATURE AND REQUISITE OF THIS PROVISION STATES FAILURE TO CONDUCT PRELIMINARY HEARING Properly DEMANDED BY A DEFENDANT OF A CHARGE THAT IS BEYOND THE MUNICIPAL COURTS JURISDICTION DEPRIVES THE GENERAL SESSIONS COURT OF POWER TO INDICT OR TRY DEFENDANTS CASE. COURTS KEY 40 STATE V FUNDERBURG 191 SE 2d.

(6) (E) THE COURT FURTHER WAS WITHOUT SUBJECT-MATTER JURISDICTION BECAUSE THE CHARGES IN THE INDICTMENT WAS ALTERED'S SEE KEY 159 (1) DEFENDANT WAS SUBJECTED TO A NEW CHARGE WITHOUT RESUBMITTING SUCH TO THE GRAND JURY, CITING STATE V BEST 257 SC 361, 373. 37 186 SE 2d 272, 277, 278 (1978) NOTICE THAT THE COURT LACKS SUBJECT-MATTER JURISDICTION TO MODIFY, CHANGE, ALTER A CHARGE. US V BOLSEN 325 F 3d 471 4th Cir 2003) DEFENDANT MAY ONLY BE TRIED ON CHARGES ALLESED IN AN INDICTMENT AND ONLY THE GRAND JURY MAY BROADEN OR ALTER THE CHARGES IN THE INDICTMENT

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMONS)
PLEAS)

59

ROSER RUTLEDGE 310245)

PLAINTIFF / APPLICANT)

ACTION NO 2012-CP-18-1406

v

COUNTY OF DORCHESTER, SCDC)
MUNICIPALITY OF SUMMERVILLE)
STATE OF SOUTH CAROLINA, SOLICITOR)
OFFICE ET AL INDIVIDUAL, OFFICIAL)
AND PROFESSIONAL CAPACITIES)
DEFENDANTS.

MOTION TO WITHDRAW
OR
VACATE
GUILTY PLEA

NOW HERE COMES THE APPLICANT WHO BY THE FED
RULES OF PROC RULE 11 AND THE HOLDINGS IN BOYKIN V ALBANY
MOVE BEFORE THE COURT FOR AN ORDER VACATING HIS CONVICTION
AND SENTENCE FOR A FAILURE OF THE HEARING COURT TO ESTABLISH
CERTAIN FACTS ON THE RECORD BEFORE ACCEPTING APPLICANT'S
GUILTY PLEA TO VOLUNTARY MANSLAUGHTER AS A LESSER INCLUDED
OFFENSE OF MURDER.

THE APPLICANT PLEA IS INVALID BEFORE THE COURT BECAUSE
THE HEARING JUDGE DID NOT ESTABLISH PERTINENT FACTS
SUCH AS (1) WHETHER THE DEFENDANT INITIATED THE REQUEST
(2) WHETHER THE CHARGE WAS IN FACT A LESSER INCLUDED
OFFENSE OF THAT CHARGED IN THE ORIGINAL INDICTMENT
(3) WHETHER THE DEFENDANT WAS IN FACT COMPETENT
TO ENTER GUILTY PLEA.

(4) WHETHER THE PLEA WAS KNOWINGLY, INTELLIGENTLY
OR UNDERSTANDINGLY MADE.

(5) WHETHER THE DEFENDANT WAS ENTERING SUCH
WITH THE UNDERSTANDING OF THE MINIMUM AND MAXIMUM PENALTY
THAT COULD BE IMPOSED. THE ELEMENTS OF SUCH OR THE
CONSTITUTIONAL RIGHTS THAT WOULD BE WAIVED BY SUCH

b.

UNDER THE RULE THE SENTENCING JUDGE MUST DEVELOP ON THE RECORD THE FACTUAL BASIS FOR THE PLEA FOR EXAMPLE, HAVING THE ACCUSED DESCRIBE THE CONDUCT THAT GAVE RISE TO THE CHARGE. CITING SANTIBELLO V. NEWYORK 404 U.S. 257 (1971) THE ESTABLISHMENT OF A FACTUAL BASIS IS NECESSARY TO ENSURE THAT THE CONDUCT ADMITTED BY THE ACCUSED CORRESPOND TO THE ELEMENTS OF THE CHARGED OFFENSE SEE EG- M'ARTHUR V UNITED STATES 594 U.S. 459 (1996)

THE APPLICANT WAS PRESENTED SUCH A CASE TO THIS COURT VOLUNTARILY MANSLAUGHTER WAS NOT CHARGED BY WARRANT OR INDICTMENT AGAINST THE APPLICANT, AND IT IS ALSO NO A LESSER INCLUDED OFFENSE OF THE ORIGINAL CRIME CHARGED IN THE ORIGINAL INDICTMENT

THIS AMOUNTS TO PREJUDICE BECAUSE THE APPLICANT IS NOW BEING HELD TO ANSWER FOR AN OFFENSE FOR WHICH HE WAS NOT INDICTED FOR BY A LEGALLY QUALIFIED GRAND JURY IN VIOLATION OF HIS CONSTITUTIONALLY PROTECTED RIGHTS AS SECURED BY U.S.C.A. 5 AND SOUTH CAROLINA CONSTITUTION ARTICLE 1 CLAUSE 11

FOR SUCH AMOUNT TO A CONSTRUCTIVE AMENDMENT IN VIOLATION OF CRIMINAL LAW KEY 1163 (1) CRIMINAL LAW 1152 (1)

AND BURDEN SHIFTING IN NATURE VIOLATING SANDSTROM

INDICTMENT AND INFORMATION KEY 159 (1) "A DEFENDANT MAY ONLY BE TRIED ON CHARGES ALLEGED IN AN INDICTMENT AND ONLY THE GRAND JURY MAY BROADEN OR ALTER THE CHARGES IN SUCH THEREFORE PREJUDICE HAS BEEN ESTABLISH SEE ROSCOVEN STATE 345 SC 16 546 SE2d 417 (SC 2001)

PLEA NOT KNOWINGLY MADE

APPLICANTS PLEA WAS NOT KNOWINGLY MADE BECAUSE THE DUE TO THE JUDGE'S FAILURE TO DECLARE TO DECLARE THE LAW AS REQUIRED BY SC CONST ARTICLE 5 § 21

THE APPLICANT WAS NOT TOLD THAT THE OFFENSE CONTAINED DIFFERENT ELEMENTS SEPERATE FROM EACH OTHER, AND THAT HE COULD NOT BE SENTENCE IN EXCESS OF (10) YEARS ON THE ORIGINAL CHARGE, AND THAT HE WOULD BE ENTITLED TO EARN WORK CREDITS, GOODTIME AND REQUIRED TO DO ONLY 1/3 OF THE SENTENCE TO BE ELIGIBLE FOR PAROLE BASED UPON THE CLASSIFICATION SYSTEM

INSTEAD THE APPLICANT ENTERED A PLEA TO A SENTENCE THAT IS MORE ONGEROUS THAN THAT OF WHICH HE WAS INDICTED HAD APPLICANT KNEW THIS. AND UNDERSTAND SUCH HE WOULD NOT HAVE PLED GUILTY THEREFORE APPLICANT SHOULD BE ALLOWED TO WITHDRAW HIS PLEA OR HAVE THE COURT VACATE SUCH. AND THE SENTENCE. SEE STATE V SMITH SC 280 SE2 200.

COMPETENCY

61

A DEFENDANT CANNOT BE TRIED OR CONVICTED FOR AN OFFENSE WHILE HE IS MENTALLY ILL. U.S.C.A. 14. SC CONST ARTICLE 1 § 3

THE TEST FOR MENTAL COMPETENCY TO STAND TRIAL AND TO "PLEAD GUILTY" AND A FAILURE TO MAKE ANY FINDING ON THE APPLICANTS ABILITY TO "PLEAD GUILTY" OR UNDERSTAND THE GUILTY PLEA PROCEEDINGS WAS ERROR REQUIRING VACATION OF APPLICANTS CONVICTION AND SENTENCE. MENTAL HEALTH KEY 432

WAIVER

THE DUE-PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION U.S.C.A. PROVIDES FOR EQUAL PROTECTION OF THE LAWS AND TO BE TREATED EQUALLY IN LIKE CIRCUMSTANCES.

SOUTH CAROLINA STATUTORY LAW 17-23-120 THROUGH 17-23-140 PROVIDES THE PROCEDURES FOR THE MANNER IN WHICH "GUILTY PLEA" FELONIES AND MISDEMEANORS ARE TO BE DISPOSED OF AND STATES IN PERTINENT PART THAT EXCEPT FOR MINOR OFFENSE THE CIRCUIT COURT DOES NOT HAVE JURISDICTION TO ACCEPT A GUILTY PLEA UNLESS THERE HAS BEEN AN "INDICTMENT" THE DEFENDANT SIGNS A WAIVER OF PRESENTMENT OR THE CRIME IS A LESSER INCLUDED OFFENSE OF THE CRIME CHARGED IN THE ORIGINAL INDICTMENT RETURNED BY THE GRAND JURY. IN SHORT ABSENT THESE THREE (3) CRITERIA BEING MET AND IS SUPPORTED BY THE RECORD THE APPLICANT WAS IMMUNE FROM PROSECUTION SC CONST ARTICLE 1 § 3

THE EXHIBIT SENTENCING SHEET WOULD REFLECT THAT THE RECORD IS VOID AS TO THESE REQUIREMENTS AND THEREFORE APPLICANTS MOTION MUST BE GRANTED

PRAYER

WHEREFORE APPLICANT REQUEST THAT THIS POST-CONVICTION RELIEF COURT GRANT SUCH WITHIN THE INTEREST OF JUSTICE

RESPECTFULLY SUBMITTED
ROSC. RUTLEDGE
APPLICANT

STATE OF SOUTH CAROLINA)
 COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT

Roger D. Rutledge, #310245)

Case No. 2012-CP-18-1406

Applicant,)

v.)

RETURN

State of South Carolina,)

Respondent.)

The Respondent, making its Return to the application for post-conviction relief filed June 5, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. The Applicant was true bill indicted during the February 5, 2009 term of the Dorchester County Grand Jury for Murder (2008-GS-18-1690). Applicant was represented by Mary LeMatty, Esquire. On June 20, 2011, the Applicant pled guilty to the lesser included offense of voluntary manslaughter. The Honorable Diane S. Goodstein, sentenced the Applicant to confinement for a period of twenty years pursuant to negotiations between Applicant and the State. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Dorchester County Clerk of Court regarding the subject conviction and the Applicant's records from the South Carolina Department of Corrections; Applicant's guilty plea transcript has been ordered and will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Involuntary Guilty Plea
2. Ineffective Assistance of Counsel

III.

The Respondent submits that the Applicant's allegation that his guilty plea was entered involuntarily is without merit. 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, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The State submits the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Boykin, supra; Dover, supra. Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The State submits the Applicant should not be allowed to depart from the truth of the statements he made during his guilty plea hearing.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective

standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, the Respondent submits that the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it should therefore, be treated as such.

IV.

Finally, the Respondent submits that the Applicant's allegations of ineffective assistance of counsel are without merit. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness

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

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

VI.

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

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on the issues of involuntary guilty plea and ineffective assistance of counsel.

[signatures to follow]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan Harrigan
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

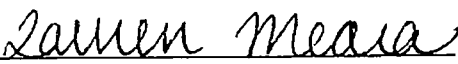
August 13, 2012

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER)	
)	
)	2012-CP-18-1406
)	
ROGER D. RUTLEDGE, 310245,)	
)	
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:

Charles T. Brooks, III, Esquire
Law Office of Charles T. Brooks, III
309 Broad Street
Sumter SC 29150

DATED this 17th day of August, 2012.


 Lauren Meara, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)
)
 ROGER RUTLEDGE, 310245)
)
 Applicant)
)
)
)
 STATE OF SOUTH CAROLINA)
)
 Respondent,)
)
 _____)

IN THE COMMON PLEAS COURT

DOCKET NO.: 2012-CP-18-1406

AMENDED APPLICATION FOR
POST CONVICTION RELIEF

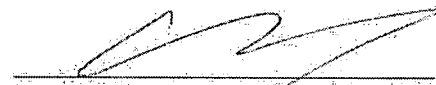
2012 OCT 18 AM 11:48
 IDENTIFIED COPY
 CLERK OF COURT
 DORCHESTER COUNTY

The Applicant, Roger Rutledge, through undersigned Counsel wishes to Amend his Application for Post Conviction Relief filed on June 5, 2012, to include:

The claim of fraud as it relates to applicant's indictment and whether or not a Grand Jury was convened. Using the attached calendar listing the terms in which the Grand Jury met in Applicant's county revealed that no events took place.

Applicant wishes to also include Jurisdictional Defect as part of his claim for relief.

RESPECTFULLY SUBMITTED ON BEHALF OF
APPLICANT, Roger Rutledge



Charles T. Brooks, III
 Attorney for Applicant
 309 Broad Street
 Post office Box 3512
 Sumter, South Carolina, 29150
 (803) 418-5708

October 15, 2012

Search #1: Judge Information Search

Judge: Select a Judge
Begin Date: January 01 2012
End Date: January 01 2012

Search #2: County Information Search

County: Select a County
Court Type: Select Court Type
Begin Date: January 01 2012
End Date: January 01 2012

Search #3: Circuit Number Information Search

Circuit: Select a Circuit
Court Type: Select Court Type
Begin Date: January 01 2012
End Date: January 01 2012

Search #4: Family Court Information Search

Event Title: Family Court
Begin Date: January 01 2012
End Date: January 01 2012

Search #5: Circuit Court Information Search

Event Title: General Sessions/State Grand Jury
Begin Date: February 01 2009
End Date: February 28 2009

Christina Williams
CLERK OF COURT
DORCHESTER COUNTY
2012 OCT 18 AM 11:49
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Search #1: Judge Information Search

Judge: Select a Judge
Begin Date: January 01 2012
End Date: January 01 2012

Cheryl Robinson
CLERK OF COURT
DORCHESTER COUNTY
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Search #2: County Information Search

County: Select a County
Court Type: Select Court Type
Begin Date: January 01 2012
End Date: January 01 2012

Search #3: Circuit Number Information Search

Circuit: Select a Circuit
Court Type: Select Court Type
Begin Date: January 01 2012
End Date: January 01 2012

Search #4: Family Court Information Search

Event Title: Family Court
Begin Date: January 01 2012
End Date: January 01 2012

Search #5: Circuit Court Information Search

Event Title: General Sessions/State Grand Jury
Begin Date: January 01 2009
End Date: January 30 2009

South Carolina Judicial Department Circuit Court Search Results

Event Title: General Sessions/State Grand Jury
Judge: Russo, Thomas A.
County: Darlington
Circuit No: 4
Start Date: 01-05-2009
End Date: 01-09-2009

Charles H. Anderson
CLERK OF COURT
DORCHESTER COUNTY
2012 OCT 18 AM 11:49
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**South Carolina Judicial Department
Circuit Court Search Results**

Event Title: General Sessions/State Grand Jury
Judge: Cottingham, Edward B.
County: Lexington
Circuit No: 11
Start Date: 02-04-2009
End Date: 02-04-2009

Event Title: General Sessions/State Grand Jury
Judge: Cottingham, Edward B.
County: Lexington
Circuit No: 11
Start Date: 02-09-2009
End Date: 02-13-2009

Event Title: General Sessions/State Grand Jury
Judge: Cottingham, Edward B.
County: Lexington
Circuit No: 11
Start Date: 02-16-2009
End Date: 02-20-2009

Event Title: General Sessions/State Grand Jury
Judge: Russo, Thomas A.
County: Marlboro
Circuit No: 4
Start Date: 02-19-2009
End Date: 02-19-2009

Event Title: General Sessions/State Grand Jury
Judge: Few, John C.
County: Pickens
Circuit No: 13
Start Date: 02-20-2009
End Date: 02-20-2009

Event Title: General Sessions/State Grand Jury
Judge: Cottingham, Edward B.
County: Lexington
Circuit No: 11
Start Date: 02-23-2009
End Date: 02-27-2009

Edward B. Cottingham
 CLERK OF COURT
 LEXINGTON COUNTY
 2012 OCT 18 AM 11:49
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No events matching the search criteria were located.

Carol Anderson
CLERK OF COURT
DORCHESTER COUNTY
2012 OCT 18 AM 11:49
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1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF DORCHESTER

CASE NO. 2012-CP-18-1406

3 ROGER RUTLEDGE)

4 vs.)

TRANSCRIPT OF RECORD

5 STATE OF SOUTH CAROLINA)

6

7

MAY 28, 2014
ST. GEORGE, SC

8

9

B E F O R E :

10

HONORABLE MAITÉ MURPHY

11

12

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

13

CHARLES T. BROOKS, III, ESQUIRE
Attorney for the Applicant

14

15

MEGAN E. HARRIGAN, ESQUIRE
Attorney for the State

16

17

Ruth L. Mott, RPR, CRR
Official Court Reporter

18

19

20

21

22

23

24

25

1 I N D E X

2

3 WITNESS DIRECT CROSS REDIRECT RECROSS

4 ROGER RUTLEDGE

MR. BROOKS 6

5 MS. HARRIGAN 12

6 MARY LEMATTY

MS. HARRIGAN 22

7 MR. BROOKS 31

8 CERTIFICATE OF REPORTER 37

9

10

E X H I B I T S

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12 NO. DESCRIPTION ID EVD

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(NONE MARKED)

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1 MS. HARRIGAN: May it please the Court.

2 THE COURT: Yes, ma'am.

3 MS. HARRIGAN: Your Honor, the next matter is Roger
4 Rutledge versus the State of South Carolina, Docket No.
5 2012-CP-18-1406. Mr. Rutledge was true-bill indicted during
6 the February 2009 term of the Dorchester County Grand Jury
7 for murder. He was represented by Mary Lematty. On June
8 20th, 2011, Mr. Rutledge appeared before the Honorable Diane
9 S. Goodstein, where he pled guilty to the lesser included
10 offense of voluntary manslaughter. Pursuant to negotiations
11 between Mr. Rutledge and the State, Judge Goodstein sentenced
12 him to 20 years imprisonment. Mr. Rutledge did not appeal
13 his guilty plea or sentence. On June 5th, 2012, Mr. Rutledge
14 filed a timely application for post conviction relief,
15 alleging that he was being held in custody unlawfully based
16 on general allegations of ineffective assistance of counsel
17 and involuntary guilty plea. Those are set forth in the
18 application that's currently before Your Honor. The State
19 made its return on August 13, 2012, requesting an evidentiary
20 hearing be held. Thereafter he filed an amended application
21 challenging the grand jury proceedings, and he's represented
22 in this action by Charles T. Brooks, III.

23 THE COURT: Mr. Brooks.

24 MR. BROOKS: Please the Court, Judge, my client first
25 wants me to make a motion for continuance, and he also wants

1 to address the Court about my continued representation.

2 THE COURT: All right. Mr. Rutledge.

3 THE APPLICANT: Yes, ma'am.

4 THE COURT: You have a motion before the Court.

5 THE APPLICANT: Well, like when I first had -- this is
6 from the last time we had something going on, me and Mr.
7 Brooks, and like I told him, I didn't want him to be my
8 attorney no more.

9 THE COURT: All right, sir. Mr. Brooks, were you
10 retained or appointed?

11 MR. BROOKS: Court appointed.

12 THE COURT: Mr. Rutledge, you've been appointed an
13 attorney to represent you in this matter, and obviously
14 you're entitled to an attorney in these proceedings. You
15 have a very good attorney that's experienced in these
16 matters, and this case is going forward. Are you ready to
17 proceed?

18 THE APPLICANT: Well, actually, I don't have my
19 paperwork today to continue with the proceedings.

20 THE COURT: Mr. Brooks, are you ready to proceed?

21 MR. BROOKS: Judge, I haven't been before you before,
22 but I have done a vast number of post-conviction reliefs.
23 His case, as the Attorney General's indicated, it was a
24 negotiated plea. That means the record is very small. But I
25 do respect my client's position that he wanted me to ask the

1 Court for a continuance.

2 THE COURT: And, Mr. Rutledge, what's the basis of your
3 continuance?

4 THE APPLICANT: I don't have my stuff together right now
5 because I didn't know I was coming to court today, I mean,
6 not today because they didn't bring me actually to court,
7 like I came here yesterday, like I was -- I came here
8 yesterday on a bus ride, and I didn't know I was coming here.

9 THE COURT: Mr. Rutledge, I'll allow you to talk to your
10 attorney, see if there's any other documentation; but during
11 the course of this proceeding you will be allowed to testify,
12 so certainly you can testify as to what you want me to know
13 regarding your case, okay? So that's really not good cause
14 shown for the basis of a continuance, so I'm not going to
15 grant your motion for a continuance; but you'll be allowed to
16 testify and tell me what you need for me to hear, okay?

17 THE APPLICANT: But I don't have my paperwork.

18 THE COURT: I understand, but you can testify as to what
19 is contained in that paperwork; and if it's something that
20 the Court may, depending on what it is that you want me to
21 consider, I may allow you to submit paperwork after,
22 depending on what it is. But we're going to proceed with
23 today's hearing.

24 Are you ready to proceed, Mr. Brooks?

25 MR. BROOKS: In light of Your Honor's ruling, I am,

1 Judge.

2 THE COURT: All right, sir, you may call your first
3 witness.

4 MR. BROOKS: I would call Mr. Roger Rutledge to the
5 stand.

6 THE COURT: All right, Mr. Rutledge.

7 THE CLERK: Please stand right there for me. Please
8 raise your right hand. State your full name for the record.

9 THE APPLICANT: Roger Rutledge.

10 ROGER RUTLEDGE,
11 being first duly sworn, testified as follows:

12 THE COURT: Your witness.

13 MR. BROOKS: Yes, ma'am.

14 DIRECT EXAMINATION BY MR. BROOKS:

15 Q. Mr. Rutledge, how are you today?

16 A. All right.

17 Q. Who was your attorney when you plead guilty?

18 A. Mary Lematty.

19 Q. And she was Court appointed to represent you?

20 A. Yes.

21 Q. Okay. Now, you ended up pleading guilty to this case.

22 It was originally charged with murder, and you pled guilty to
23 voluntary manslaughter.

24 A. Yes.

25 Q. Now, I do have to ask you this question just for

1 background purposes, and we've talked about this: You do
2 understand that the only remedy that the Court has is to set
3 aside your guilty plea and have you start over.

4 A. Mm-hmm.

5 Q. You understand that?

6 Now, you're going to have to give a verbal response
7 because the court reporter can't take down a nodding of the
8 head or uh-huh or uh-uh. You've got to say yes or no. Do
9 you understand that?

10 A. No, I really don't understand that.

11 Q. Okay. Let me help you out. When I ask you the
12 questions that I ask you or the Attorney General asks you,
13 you're going to have to give a verbal response because the
14 court reporter cannot record or take down a nodding of the
15 head or uh-huh or uh-uh. You've got to say yes, no, give
16 some type of verbal response. Do you understand that?

17 A. Yes.

18 Q. Okay. Now, do you understand what I said about the
19 Court and the only remedy you can get on PCR -- you can't get
20 a time cut or anything like that. If Judge Murphy rules in
21 your favor, the only thing you can do is you could get
22 another trial. You understand that?

23 A. Yes.

24 Q. And you understand that what that would mean is you
25 would go back and face the murder charge all over again?

1 A. Yes.

2 Q. Is that what you want to do?

3 A. I mean, yes, I would like to proceed because you all
4 give me no choice but to go on, and I told you that I don't
5 have my paperwork to help me what I need to take care of.

6 Q. Okay. All right. Now, why did you end up pleading to
7 this case, Mr. Rutledge?

8 A. Because at the time I was kind of scared, and I didn't
9 actually know what was really going on at the time because
10 they started giving me medicine when I got in the county, and
11 I started taking the medicine, and at that time I didn't
12 really understand what been going on. I still kind of not
13 really do, not know, not understand because I'm not no
14 attorney, you know what I'm saying? I'm just trying to
15 figure out what's really going on.

16 Q. Do you understand what I told you about what's going on?

17 A. Yes, I understand you telling me that.

18 Q. Now, was it your intent to plead guilty to this case?

19 A. No.

20 Q. What was your intent?

21 A. To figure out like what was really going on because
22 right now I'm the only one that's accountable for everything
23 that's in this case, and I really didn't understand at the
24 time what was going on, and I still don't.

25 Q. Do you realize what you didn't understand back then?

1 A. I mean, I didn't understand the law. I didn't know the
2 law.

3 Q. What do you know now that you didn't know then that
4 would have changed your decision-making process?

5 A. Like what I have now is on papers, and I have to go
6 through my paperwork to explain what -- in my plea, in my
7 case, I have to explain that off my paperwork is what I'm
8 trying to tell you and explain to you.

9 Q. I understand that, but nobody knows the factual scenario
10 of your case better than you -- nobody should.

11 A. I don't have no paperwork.

12 Q. The facts, what happened in your case, how you ended up
13 pleading, you know that because --

14 A. Because I was scared.

15 Q. What were you scared of?

16 A. I mean, being in prison.

17 Q. Is that something that your lawyer impressed upon you?

18 A. I mean, really to tell you the truth, they ain't did no
19 investigation to really find out what was really going on.

20 All I been hearing is, "Plead. Plead to this. Plead to
21 that. Plead to this." That's all I been hearing. At the
22 time I was scared. I mean, a little younger than I am now.

23 Q. How old were you then?

24 A. Like 27.

25 Q. Do you recall how many times you met with your lawyer?

1 A. I mean, I really -- like, okay, 'my aunt's right here in
2 the back of the court right now, and she can tell you, like
3 during the times that I had that attorney I didn't even
4 really see her like that.

5 Q. How did you see her?

6 A. Like when it be time for me to go to Court.

7 Q. Is that the only time you saw her?

8 A. Yes.

9 Q. Did you talk to her about any defenses in your case?

10 A. Plead.

11 Q. Okay. Did you ever tell her that you wanted to go to
12 trial?

13 A. I didn't know what that stuff meant at the time, like
14 when I been going, I didn't understand that.

15 Q. Okay. Did you tell her that you didn't understand what
16 was going on in Court, that you didn't understand the
17 terminology, that you didn't understand the process?

18 A. I mean, at the time, being on medicine, when you be on
19 medicine like that, you really don't -- my mind wasn't
20 focused on what -- like everything at the time. I wasn't
21 really focused because the medicine had me in a state of like
22 unawareness.

23 Q. What kind of medicine were you taking?

24 A. I can't remember exactly what the name of it was.

25 Q. Okay. Whatever you were taking, what was it prescribed

1 for?

2 A. Like something to keep me calm and something for
3 sleeping.

4 Q. Have you taken any of this medication today?

5 A. No, not today.

6 Q. Are you still taking that kind of medication?

7 A. Yes. They gave me the medicine now because I'm in the
8 mental health ward.

9 Q. Okay. Is there anything else you want to tell the Court
10 as to why your guilty plea should be set aside?

11 You want your guilty plea set aside and you start over,
12 correct?

13 A. Yes.

14 Q. Is there anything you want to tell this Judge as to why
15 your guilty plea should be set aside and you get a chance to
16 start over?

17 A. Because I would like a fair chance.

18 Q. Okay. And you didn't get that when you pled; is that
19 correct?

20 A. No, yes.

21 Q. Is there anything else you want to add?

22 A. That's it.

23 MR. BROOKS: Okay. Answer any questions of the Attorney
24 General.

25 THE COURT: Ms. Harrigan.

1 MS. HARRIGAN: Thank you, Your Honor, may it please the
2 Court.

3 THE COURT: Yes, ma'am.

4 CROSS-EXAMINATION BY MS. HARRIGAN:

5 Q. Good morning, Mr. Rutledge.

6 A. Good morning.

7 Q. You testified before that you only met with Ms. Lematty
8 at the courthouse, correct?

9 A. Yes.

10 Q. She never came to see you at the local county jail?

11 A. No, not -- I don't remember that.

12 Q. You don't remember or she didn't?

13 A. No, she didn't come to see, not as far as I can
14 remember.

15 Q. She didn't come to see you enough is what you said?

16 A. Yes.

17 Q. Do you know how many times she did come to see you?

18 A. At the time when she came to see me, like towards like
19 going to court is what I'm saying.

20 Q. So she would come to see you in anticipation of you
21 coming to court?

22 A. Yes. When it's time for me to go, like a hearing or
23 something, and I could -- I mean, it wasn't that much because
24 I'd been in the county jail for three years.

25 Q. Were you ever released on bond or were you --

1 A. They wouldn't give me none.

2 Q. Did you review your discovery with Ms. Lematty or any
3 other attorneys?

4 A. What do you mean?

5 Q. Your discovery, the evidence the State had against you,
6 did she show you any of the --

7 A. No.

8 Q. Do you remember your guilty plea in front of Judge
9 Goodstein?

10 A. I mean, somewhat, some kind -- a little bit.

11 Q. Do you remember Judge Goodstein specifically asking you
12 if you had reviewed the State's discovery with your attorney?

13 A. No.

14 MS. HARRIGAN: Court's indulgence.

15 Q. So your testimony today is that she never reviewed that
16 discovery with you?

17 A. No.

18 Q. Did she ever give you a copy of it?

19 A. Of what?

20 Q. Of your discovery, the evidence the State had against
21 you.

22 A. No, I -- I mean, at the time after I got where I been
23 going at, then that's when I got all my paperwork.

24 Q. When did you get all your paperwork sir?

25 A. I can't remember exactly when it was.

1 MS. HARRIGAN: Your Honor, may I approach?

2 THE COURT: You may.

3 MS. HARRIGAN: Charlie, page 33.

4 MR. BROOKS: Okay.

5 Q. Mr. Rutledge, I'm handing you your guilty plea
6 transcript. If you would read page 33 to yourself, please.

7 A. Okay.

8 Q. Do you see in there when you told Judge Goodstein that
9 you had reviewed all your discovery with your attorneys?

10 A. I mean, at the time that's what they told me to do.

11 Q. So your testimony today is that you've never reviewed
12 any of that discovery, but you lied under oath?

13 A. I mean, if that's what you want to call it.

14 Q. Well, what do you call it? You told Judge Goodstein
15 that you had reviewed all your discovery and that your
16 attorney had actually given you a copy of all your discovery,
17 and you were under oath then; and then you're coming into
18 court today, and you're saying that you never received your
19 discovery, and she never showed it to you.

20 A. At that time I'm scared. I'm not scared today.

21 Q. So were you lying then when you were under oath before
22 with Judge Goodstein?

23 A. I mean, if that's what you're saying.

24 Q. Well, how do you interpret it? You told her before
25 you'd seen it. Have you seen your discovery?

1 A. I was scared. No, I didn't see no discovery.

2 Q. So you were lying to Judge Goodstein before. Is that a
3 yes or a no?

4 A. I mean, I guess.

5 Q. And you testified that you never reviewed any defenses
6 with your attorneys, correct?

7 A. Yes.

8 Q. But you told Judge Goodstein that you had reviewed
9 defenses with your attorney and they'd investigated for you,
10 correct?

11 A. I mean, I guess if that's what that said; but, I mean, I
12 don't remember that.

13 Q. But you were lying again to Judge Goodstein then --

14 A. I was on medicine.

15 Q. -- if that's what the transcript says?

16 A. I was on medicine, so I don't know.

17 Q. Does your medicine often make you lie?

18 A. I mean, I wouldn't call it a lie. I mean, I was scared.
19 If you scared, then sometime you do things that you wouldn't
20 normally do.

21 Q. Did you give Ms. Lematty or any of your other attorneys
22 any potential witnesses to investigate?

23 A. I didn't know nothing about none of that at the time.

24 Q. You didn't know any witnesses that could have been used
25 on your behalf for your defense?

1 A. I mean, I was scared.

2 Q. Why were you scared?

3 A. I mean, I just -- I just was scared. I mean, I had
4 never been through nothing this severe in my life, so I would
5 have a choice to be scared. Anybody would.

6 Q. You were scared of going to prison.

7 A. Yes.

8 Q. And so because you were scared of going to prison, you
9 didn't give your attorneys any leads to investigate or help
10 them prepare defenses for your case?

11 A. I didn't -- I mean, at the time I was scared. That's
12 all I could tell you.

13 Q. You were originally charged with murder, correct?

14 A. Mm-hmm.

15 Q. Did Ms. Lematty explain to you that murder carries a
16 mandatory minimum sentence of 30 years imprisonment?

17 A. I mean, I found all that out like doing research, but I
18 really don't remember that because the medicine had me out of
19 my mind.

20 Q. So your testimony is that you don't recall whether Ms.
21 Lematty ever told you it was 30 years up to life sentence for
22 murder?

23 A. I mean, I found that out, like being in the jail I found
24 that out.

25 Q. And you pled to the lesser included offense of voluntary

1 manslaughter, correct?

2 A. Yes.

3 Q. And this was a negotiated guilty plea, correct?

4 A. Yes.

5 Q. So you understood that you were going to get a 20-year
6 sentence if you pled before Judge Goodstein on that day,
7 correct?

8 A. I mean --

9 Q. Did you know you were going to get a 20-year sentence
10 that day when you walked into the courtroom?

11 A. Not really. I mean, I didn't know what to really
12 expect.

13 Q. What did you think "negotiated 20-year sentence" meant?

14 A. I didn't know.

15 Q. Did you ever ask your attorney?

16 A. No.

17 Q. Do you recall signing your sentencing sheet in this
18 case?

19 A. Yes.

20 MS. HARRIGAN: Your Honor, may I approach?

21 THE COURT: You may.

22 Q. Mr. Rutledge, do you recognize this as the sentencing
23 sheet that you signed in this case?

24 A. Yes. I still have that in my paperwork.

25 Q. Is that your signature there?

1 A. Yes.

2 Q. Do you see where it's marked "negotiated sentence" and
3 that's checked?

4 A. Yes.

5 Q. And do you recall the State telling Judge Goodstein
6 during your guilty plea that it was for a negotiated 20-year
7 sentence?

8 A. I mean, I really don't remember.

9 Q. Do you recall agreeing with the State and telling Judge
10 Goodstein that you understood it was for a 20-year sentence?

11 A. No.

12 Q. You don't recall that?

13 Do you recall Judge Goodstein telling you on the record
14 that this was a no parole offense and you'd have to assume
15 you'd serve all 20 years of your sentence?

16 A. Yes, I kind of remember that.

17 Q. Do you remember agreeing with her that you understood
18 that and that Ms. Lematty had told you that?

19 A. No, I don't remember that.

20 Q. Do you recall telling Judge Goodstein that you wanted to
21 plead guilty to voluntary manslaughter?

22 A. I mean, at the time, like I said, at the time I was
23 scared.

24 Q. But do you recall telling her you wanted to plead guilty
25 while you were under oath?

1 A. Yes, because I was scared.

2 Q. Do you recall telling Judge Goodstein that you were
3 guilty?

4 A. Yes. I was scared.

5 Q. So you are guilty?

6 A. No.

7 Q. And you already said before you were lying before when
8 you were under oath in front of Judge Goodstein, you were
9 lying about being guilty?

10 A. I was scared. What else you want me to tell you if I
11 was scared.

12 Q. Why did you plead guilty then if you weren't guilty?

13 A. Because I was scared. I just told you that.

14 Q. What were you scared of?

15 A. I mean, I was scared of lot of things. I didn't know
16 what was gone happen.

17 Q. Were you scared that you'd receive a harsher sentence if
18 you went to trial and were convicted?

19 A. I mean, I was scared. That's all I can tell you, ma'am.

20 Q. What were you scared of, though, Mr. Rutledge? Were you
21 scared you'd receive a 30-year sentence up to life
22 imprisonment?

23 A. I was scared. That's all I can tell you, ma'am.

24 Q. Do you recall telling Judge Goodstein that you were
25 satisfied with Ms. Lematty's representation of you?

1 A. I mean, at the time that's the only choice I had.

2 Q. So, again, you lied to Judge Goodstein because you're
3 not satisfied today?

4 A. I mean, would you be satisfied doing time in prison?

5 Q. I'm asking the questions right now. So you were lying
6 before when you told Judge Goodstein --

7 A. I was scared, ma'am.

8 Q. Are you scared today? Are you lying today?

9 A. No.

10 Q. So today you're telling the truth?

11 A. Yes.

12 Q. You were evaluated by Dr. Schwartz-Watts, correct?

13 A. Yes.

14 Q. And she found you criminally responsible and competent
15 to stand trial, correct?

16 A. I don't know what -- I never -- I mean, I don't know
17 what her diagnosis was because she left after we talked.

18 Q. Do you recall your attorney telling Judge Goodstein that
19 you were evaluated and found competent?

20 A. No, I don't remember that.

21 Q. And you testified before that you are currently housed
22 in the psych ward?

23 A. Yes.

24 Q. You're currently housed at Lieber Correctional
25 Institute, correct?

1 A. Yes.

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

3 THE COURT: Yes, ma'am.

4 Q. You allege that Ms. Lematty didn't do an investigation.
5 What additional investigation did you want her to do?

6 A. I mean, don't lawyers supposed to have investigation
7 like what goes on in the crime or what happened, anything
8 like that?

9 Q. So there's nothing specific that you asked her to do or
10 wanted her to do that she didn't do?

11 A. I mean, at the time I didn't know nothing about that. I
12 mean, I just figured that that's the type of stuff that they
13 do.

14 Q. Now here today, after having seen your discovery, what
15 additional investigation did you want her to have done?

16 A. I mean, like right now I don't have my paperwork to go
17 through all my stuff like what I have. I don't have that, so
18 I really, to tell the truth, I didn't really want to go
19 forth, but I have no choice to go forth.

20 Q. And you can't remember without your paperwork what these
21 allegations are?

22 A. I need my paperwork.

23 MS. HARRIGAN: Okay. No further questions, Your Honor.

24 THE COURT: Any redirect?

25 MR. BROOKS: No, ma'am.

1 THE COURT: You may step down, Mr. Rutledge. Thank you.
2 You may call your next witness.

3 MR. BROOKS: That's the Applicant's case, Judge.

4 THE COURT: Thank you.

5 MS. HARRIGAN: The State would call Mary Lematty.

6 THE CLERK: Raise your right hand. State your full name
7 for the record.

8 THE WITNESS: Mary Lematty.

9 MARY LEMATTY,

10 being first duly sworn, testified as follows:

11 THE COURT: Your witness.

12 DIRECT EXAMINATION BY MS. HARRIGAN:

13 Q. Ms. Lematty, how long have you been practicing law?

14 A. Since 1993.

15 Q. And where are you currently employed?

16 A. First Circuit Public Defender's Office.

17 Q. How long have you been there?

18 A. In its current form, since 2008. Prior to that I was a
19 contract public defender for Dorchester County from April of
20 2005.

21 Q. And you were appointed to represent Mr. Rutledge in that
22 capacity as a public defender, correct?

23 A. I was.

24 Q. Do you recall your approximate date of appointment?

25 A. I believe it was maybe December 2008.

1 Q. And he pled guilty in June of 2011, correct?

2 A. Yes.

3 Q. So you represented him for about two and a half years
4 before his guilty plea?

5 A. Yes.

6 Q. Were you his first attorney?

7 A. Yes.

8 Q. And you were his counsel of record?

9 A. Yes.

10 Q. How many times did you meet with Mr. Rutledge prior to
11 his guilty plea?

12 A. You know, I'm not sure. More than ten. Mr. Rutledge
13 and I -- he did not like me very much. This courthouse
14 opened, I believe in 2009. Prior to that, when we were in
15 the old courthouse in 2008, part of 2009, we would go to the
16 detention center to see folk, or we would see them in the
17 grand jury room or the jury room behind the old courtroom in
18 the old courthouse. Mr. Rutledge told me from the --
19 basically the time I was appointed to represent him that his
20 family was going to be retaining him private counsel, that he
21 did not want to schedule a bond hearing in his case, that he
22 did not want me to do anything in his case. I told him I
23 would get his discovery and send it to him, which I did. I
24 can't remember exactly how many times I met with him, but
25 there were times I would go to the jail to meet with him, and

1 he would refuse to come out of the cell and come and meet
2 with me. He just didn't want to communicate with me about
3 his case.

4 Q. When you say that he didn't want you to work on his
5 case, did you still, without his involvement or help, work on
6 his defense and his case?

7 A. Yes. And he did have a very involved family, some of
8 whom are here today, Ms. Barnett I believe I recognize in the
9 back, who would come to see me and that kind of thing, and I
10 think they were trying to get him another attorney. And I
11 did the things that I would normally do in a case, get the
12 discovery, advise him of his rights and the charge and that
13 kind of thing, but he was always going to get another
14 attorney.

15 Q. Did you review -- I know you said you gave him a copy of
16 the discovery materials. Did you review the discovery with
17 him as well?

18 A. I tried.

19 Q. When you say you tried, can you elaborate on that?

20 A. There were times I would go in and try to review things
21 with him, and he would tell me that this has nothing to do
22 with me, that he didn't understand. He would tell me that he
23 was someplace else that night. We talked about alibi. I
24 asked him who he was with. He would not tell me. One time
25 he got angry enough with me that he told me that he was with

1 me the night that the incident happened.

2 Q. Did you explain to him that wouldn't work as a viable
3 alibis defense?

4 A. I did. I really struggled to try to communicate with
5 Mr. Rutledge. Toward the end of my representation of him I
6 brought in Mitch Farley, who is another attorney in our
7 office who was on my side of the conflict wall because
8 sometimes in these situations just having another perspective
9 can help; and Mr. Farley and Mr. Rutledge seemed to get along
10 quite well, and it wasn't long after that that we resolved
11 the case.

12 Q. Were you present for most of the meetings between Mitch
13 Farley and Mr. Rutledge?

14 A. No, not all of them.

15 Q. But you still continuously met with Mr. Rutledge as
16 well?

17 A. Yes.

18 Q. Do you recall what evidence was in his discovery from
19 the State?

20 A. It was -- his file was the size of the plastic box on
21 your credenza. It was probably two banker's boxes full.
22 There were at least 19 videotapes of witness interviews that
23 North Charleston had done. It was a pretty voluminous file.
24 There was also ballistic evidence, numerous witness
25 statements, things of that nature.

1 Q. When you say ballistic evidence, there's some discussion
2 in the guilty plea transcript about the casings matching
3 other shots known to have been fired by Mr. Rutledge. Does
4 that --

5 A. Yes.

6 Q. -- seem correct to you?

7 Can you elaborate on that a bit for the Court?

8 A. There were shell casings, if I remember correctly, found
9 at the incident location. There were also shell casings or
10 bullet or something of that nature found I believe in a car
11 that was parked at Ms. Barnett's house where there was a
12 search warrant executed. That's where Mr. Rutledge was
13 living at the time. Those items, I believe, were ultimately
14 matched up to shell casings found from a shooting at a
15 barbecue at a neighborhood in close proximity. Witnesses at
16 that barbecue had provided statements that Mr. Rutledge was
17 shooting a gun that night.

18 Q. Did you think, based on your review of the discovery,
19 the State had enough evidence to convict Mr. Rutledge if he
20 proceeded trial?

21 A. It was my belief that they could have.

22 Q. Did you share this with him?

23 A. Yes.

24 Q. Did you advise him that murder carried a mandatory
25 minimum sentence of 30 years day-for-day imprisonment?

1 A. Yes.

2 Q. Did he seem to understand that?

3 A. As much as he seemed to understand anything. That's one
4 of the reasons I had Dr. Schwartz-Watts evaluate him was
5 because there were times he would tell me he didn't
6 understand things, and I was concerned about that and wanted
7 to make sure that he did because he's certainly very smart.
8 It's just a matter of at times he didn't appear to want to
9 engage in the process.

10 Q. When did you have him evaluated by Dr. Schwartz-Watts?

11 A. I'm sorry, I don't remember. It was within the year
12 before he pled, I believe.

13 Q. Do you recall the findings in her report?

14 A. Just that he was competent and criminally responsible.
15 I know that there were some things in there that I had
16 brought out in the mitigation portion of our presentation at
17 the plea.

18 Q. And in terms of discussing his version of the facts, his
19 defense or what he told you is just that he wasn't present
20 that night of the shooting, correct?

21 A. Correct.

22 Q. Was that story consistent or did it ever change?

23 A. It was either that or I don't know anything about this.

24 Q. Did you discuss any other defenses beyond alibi with
25 him?

1 A. No, not that I recall anyway.

2 Q. Did he ever give you any witnesses to go talk to? I
3 know he didn't give you any alibi but any other witnesses to
4 help in his defense?

5 A. He did not, no.

6 Q. Did you ask him for some?

7 A. Yes.

8 Q. What sort of investigation did you do?

9 A. I really don't recall specifics at this point. The case
10 went on what seemed like forever, but I just don't recall any
11 specifics. I'm sorry.

12 Q. Did you utilize the private investigator that your
13 office has or the investigator?

14 A. I don't remember. I think we actually had an
15 investigator for part of that time, but I just don't
16 remember. I'm sorry.

17 Q. Did he ask you to enter into plea negotiations on his
18 behalf with the State?

19 A. I don't remember specifically. I mean, it was always
20 just difficult to communicate with him. I always take these
21 things on two tracks. Obviously, you've got to prepare for
22 trial; you've also got to see if you can resolve it. So
23 specifically, "Do you want me to do this? "Yes, I do." "No,
24 I don't." I don't recall anything like that, but it would be
25 something that I would always say, you know, "I've had these

1 discussions with the State. Is this something you're
2 interested in doing?"

3 Q. Did he ever tell you he wanted to go to trial?

4 A. Yes.

5 Q. What plea offers did the State make?

6 A. I don't remember anything specific other than -- I think
7 they may have said the minimum on murder at one point. His
8 case changed solicitors part way through, if I remember
9 correctly. It was Mr. Hilton at the end, it may have been
10 Mr. Sorenson for a while before that. There were three
11 codefendants: One the charge was dismissed against, one went
12 to federal prison, and I don't know if the charge was still
13 out there or if it was nolle pros'ed with leave to restore
14 and it's been restored but one -- I believe charges against
15 Xavier Walker are now pending again, and Mr. Pinckney's
16 charges were dismissed.

17 Q. And he pled guilty to voluntary manslaughter, the lesser
18 included, correct?

19 A. Yes.

20 Q. And the State offered a negotiated 20-year sentence?

21 A. Yes.

22 Q. Did you explain what that meant to him?

23 A. Yes.

24 Q. Did you explain he would no longer have to do the
25 day-for-day 30 years?

1 A. Yes.

2 Q. Did you inform him that he'd be waiving various
3 constitutional rights by entering a guilty plea?

4 A. Yes. And Mr. Farley, I believe, did all of this as
5 well. Like I said, his response to Mr. Farley was much
6 better than his response to me.

7 Q. Whose decision was it for Mr. Rutledge to plead guilty,
8 his or yours?

9 A. It was his.

10 Q. Did you see any reason to challenge the indictments or
11 the grand jury procedures?

12 A. I did not.

13 Q. How does the grand jury work in Dorchester County, what
14 day do they typically meet?

15 A. I'm not aware of a scheduled day that they typically
16 meet. It's -- I will become aware at times if I call for a
17 solicitor and they say he's up in grand jury, but to my
18 knowledge they don't place that on the court website calendar
19 or anything like that. They just meet about once a month,
20 and things get true-billed or no-billed.

21 Q. To the best of your knowledge, and if you don't know
22 then I apologize, does the foreman then come in and give a
23 report to the chief administrative judge or --

24 A. I do not know. I've never been present for grand jury.

25 Q. Did you see any reason here to challenge the indictment

1 process with Mr. Rutledge?

2 A. I did not.

3 Q. If you did see a reason, would your standard practice be
4 to move to quash or challenge the indictment?

5 A. Whatever would be legally appropriate if I thought there
6 was reason to.

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

8 THE WITNESS: Thank you.

9 THE COURT: Cross-examination.

10 CROSS-EXAMINATION BY MR. BROOKS:

11 Q. Ms. Lematty, how are you?

12 A. Fine. How are you?

13 Q. I'm doing good. Can you, if you recall, can you give a
14 brief synopsis of what the State's case was against Mr.
15 Rutledge?

16 A. It was a murder case. There was a young man who was
17 found deceased in the roadway by his mother at 4:00 or so in
18 the morning. I believe it was maybe September of 2008.
19 Through their investigation they developed their nicknames
20 were Bongo, Tank and Axe. Tank was Louis Pinckney, Axe was
21 Xavier Walker, Bongo was Roger Rutledge. And they took
22 evidence from that, they had witness statements, they -- it
23 was a very voluminous file.

24 Q. So it was like the statements would have come from like
25 other people in the neighborhood kind of deal?

1 A. Well, I'm not sure if it was -- there may have been some
2 people from the neighborhood. It was girlfriends and that
3 type thing. I mean, I just -- I tried to read a lot of this
4 on the computer before this, but I just -- I've not retained
5 much of it.

6 Q. So this was kind of, like you said, an extensive case
7 where the police went out and talked to a large number of
8 witnesses?

9 A. It was back when they actually videotaped folk in North
10 Charleston for their witness interviews.

11 Q. Okay. So a lot of this was actually videotaped?

12 A. Yes.

13 Q. Did you share that with Mr. Rutledge? I guess you
14 testified you tried to.

15 A. He knew there were videotapes out there. In terms of
16 actually showing him all of the videotapes, no, he did not
17 see them, but he had the written statements and the synopses
18 of them.

19 Q. It was your expectation that State would be able to
20 produce these witnesses to testify against him at a potential
21 trial?

22 A. It was.

23 Q. Had there -- to your knowledge had there been any deals
24 done with any of those codefendants in exchange for them to
25 testify against Mr. Rutledge?

1 A. Not that I recall. I can't remember -- I believe Mr.
2 Pinckney was exonerated on an alibi. That's my recollection.
3 Mr. Walker had some very serious federal drug charges at the
4 time. I believe Mr. Smiley was representing him. He got a
5 federal prison sentence, and his case seemed to sort of go by
6 the wayside as far as Dorchester County. I believe it's back
7 now.

8 Q. So those, in essence, were the codefendants?

9 A. Yes.

10 Q. And this case had been pending for quite some time; is
11 that correct?

12 A. It had.

13 Q. And you said it had gone from like solicitor to a
14 different solicitor?

15 A. I believe so, yes.

16 Q. Started out with a 30-year offer, and it came down to a
17 voluntary manslaughter, 20-year negotiated?

18 A. Yes.

19 Q. And you did say Mr. Farley had a better time
20 communicating with Mr. Rutledge?

21 A. He did.

22 Q. Okay.

23 A. And sometimes that happens with people; just was the way
24 that it worked.

25 Q. Now, you testified that Mr. Rutledge said he wanted to

1 go to trial.

2 A. He did.

3 Q. And were you a part of his decision-making as far as
4 going from trial to taking this plea, or more so Mr. Farley?

5 A. I know that, you know, I brought it to him and I brought
6 Mr. Farley to him. The substance of the conversations they
7 had when I was not present I do not know.

8 Q. The substance of your conversation with him about this
9 was -- was it something to the effect of, hey, I got this
10 deal, I got this offer of 20 years?

11 A. Yes. I certainly conveyed to him the offer and my
12 thoughts on the offer.

13 Q. Okay. And were your thoughts -- were your thoughts
14 along the line of recommending he take this deal?

15 A. Yes.

16 Q. And you communicated that to him?

17 A. Yes.

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

19 THE COURT: Yes, sir.

20 (Brief pause.)

21 MR. BROOKS: No other questions.

22 THE COURT: Any redirect?

23 MS. HARRIGAN: No, Your Honor.

24 THE COURT: You may step down Ms. Lematty.

25 MS. HARRIGAN: The State has no additional witnesses to

1 call but has brief argument.

2 THE COURT: I'll be happy to hear from both of you.

3 MR. BROOKS: Judge, briefly, as you heard from my
4 client, he was obviously scared. There's a lot of things
5 that he doesn't remember. He's testified that he didn't
6 really have an appreciation for this, the conversations that
7 he may or may not have had with his attorney. We would
8 respectfully ask the Court to grant him his post-conviction
9 relief application and grant him a new trial for the reasons
10 we just argued towards the Court as well as all the
11 testimony, particularly my client's testimony here today.

12 THE COURT: Thank you, Mr. Brooks.

13 MS. HARRIGAN: Your Honor, the State requests that Your
14 Honor deny Mr. Rutledge post-conviction relief. Under the
15 two-prong analysis required under Strickland v. Washington
16 the State would first submit that no deficiency has been
17 shown. We had testimony from Ms. Lematty, as well as the
18 record when Mr. Rutledge was under oath, where he gave -- all
19 discovery was given to him. She attempted to explain it to
20 him several times. She explained the elements of the crimes
21 and other matters. When she had trouble communicating with
22 him, she then brought in another person from her office who
23 she testified had better success communicating with him.
24 There's been no testimony of any deficiency here today, and
25 the State would argue that Mr. Rutledge has failed to meet

1 his burden of proof in regards to deficiency.

2 Additionally, in regards to the second prong of
3 Strickland for prejudice the State would argue that he's
4 failed to show any prejudice. This is a situation where
5 there was a voluminous amount of evidence showing he was
6 guilty, the State would argue overwhelming evidence of guilt.
7 Additionally, he pled pursuant to negotiations with the State
8 for a 20-year sentence. There was testimony today that he
9 understood it was for a 20-year sentence. Additionally, when
10 he was under oath in front of Judge Goodstein, he told Judge
11 Goodstein he understood that; and any of his testimony today
12 cannot be deemed credible because he admitted he lied when he
13 was under oath to a Court at his earlier proceedings, so for
14 those reasons the State would argue deficiency and prejudice
15 have both now been shown, and we'd ask you to deny this
16 application.

17 THE COURT: Thank you, Ms. Harrigan. I'll take the time
18 to review the record and issue a ruling by writing to both
19 parties.

20 MS. HARRIGAN: Thank you, Your Honor.

21 MR. BROOKS: Thank you, Judge.

22 --- END OF TRANSCRIPT OF RECORD ---

23

24

25

1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF DORCHESTER

4
5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the 1st Judicial Circuit Court for Dorchester County,
11 South Carolina, on the 28th of May, 2014.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 November 5, 2014

16

17 /s/ *Ruth L. Mott*

18 Official Court Reporter

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STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

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2014 AUG 28 AM 11:37
CLERK OF COURT
FOR THE FIRST JUDICIAL CIRCUIT
DORCHESTER COUNTY

Roger Rutledge, #310245,

Case No. 2012-CP-18-01406

Applicant,

Cheryl Graham
CLERK OF COURT
DORCHESTER COUNTY

v.

ORDER OF DISMISSAL

State of South Carolina,

FILED-RECORDED

Respondent.

8-27-2014
Cheryl Graham
Clark of Court
Dorchester County

This matter comes before the Court by way of an application for post-conviction relief filed June 5, 2012 and amended on October 18, 2012. The State made its Return on August 13, 2012, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on May 28, 2014, at the Dorchester County Courthouse. Applicant was present at the hearing and was represented by counsel, Charles T. Brooks, III, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. After reviewing all testimony and other evidence presented at the hearing, along with a review of all records provided to the Court, this Court finds that there are no constitutional deprivations or other grounds on which to grant relief and is denying and dismissing this application with prejudice.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. Applicant was true bill indicted during the February 5, 2009 term of the

Dorchester County Grand Jury for Murder (2008-GS-18-1690). Applicant was represented by Mary LeMatty, Esquire. On June 20, 2011, Applicant appeared before the Honorable Diane S. Goodstein, where he pled guilty to the lesser included offense of voluntary manslaughter. Judge Goodstein sentenced the Applicant to confinement for a period of twenty years pursuant to negotiations between Applicant and the State. The Applicant did not appeal his conviction or sentence.

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

1. Ineffective assistance of counsel
2. Involuntary Guilty Plea

In his amended application, filed October 18, 2012, Applicant added the allegation of "jurisdictional defect," with the specific allegation that no grand jury was convened on the date listed on his indictment.

SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from plea counsel, Mary LeMatty, Esquire (hereinafter "Counsel"). This Court also had before it Applicant's guilty plea transcript, the records from the Dorchester County Clerk of Court regarding the subject convictions, and Applicant's records from the South Carolina Department of Corrections.

Applicant testified first on his own behalf. Applicant testified that Counsel was appointed to represent him and that he only saw her when he was at the courthouse for hearings.

He testified that Counsel represented him for approximately three years and that she did not come to see him enough. He testified that Counsel never reviewed discovery materials with him, but acknowledged that he told the plea court while under oath that Counsel had reviewed all the State's evidence with him. He testified that he lied while under oath because he was scared and Counsel told him to lie. He testified that Counsel failed to conduct any investigation and did not discuss any defense with him. He testified that Counsel refused to discuss anything other than telling him to plead guilty. He testified that he did not want to plead guilty, but only did so because he did not know what was going on, was scared, and was afraid he would receive a life sentence if he went to trial. He testified that he lied during his plea proceeding when he told the plea court he wanted to plead guilty, was guilty, and was satisfied with Counsel. He again testified that he lied because he was scared and Counsel had advised him to lie. He testified that he has mental health issues, but could not recall whether he was evaluated prior to his guilty plea.

Following Applicant's testimony, Counsel was called to testify by Respondent. She testified that she has been practicing law since 1993 and has been employed by the First Circuit Public Defender's office since 2005, either as a contract attorney or full-time public defender. She testified that she was appointed to represent Applicant in December 2008 and that she met with him more than ten times. She testified that Applicant "didn't like her much" and often refused to speak with her. She testified that she asked for assistance from Mitchell Farley, a fellow public defender, who was able to better communicate with Applicant. She testified that she and Farley were able to review all discovery materials with Applicant, including nineteen

witness interviews, ballistics evidence, expert reports, and other materials. She testified that there was a great deal of evidence implicating Applicant and that the State would have likely received a conviction for murder if the case went to trial based on overwhelming evidence of guilt. She testified that she reviewed the elements of the crime with Applicant, as well as potential sentences. She testified that she advised Applicant that murder carries a mandatory minimum sentence of thirty years imprisonment, which must be served day-for-day, up to a maximum sentence of life imprisonment.

She testified that she tried to discuss Applicant's version of the facts, but his only responses were either that he was not present or he did not know. She testified that she also tried to discuss defenses, including a possible alibi defense, but that Applicant struggled to provide her any information. She testified that that Applicant appeared to be "very smart," but that she had him evaluated due to the seriousness of the charges and her difficulty communicating with him. She testified that Applicant was evaluated by Dr. Donna Schwartz-Watts, who found Applicant to be competent.

Counsel testified that she reviewed Applicant's indictment, which had been true billed by the Dorchester County Grand Jury. She testified that the indictment appeared to be regular and she saw no good faith basis for challenging the indictment. She testified that the standard practice in Dorchester County is for the grand jury to meet at a set time to review indictments, and then a report is placed on the record before the Chief Administrative Judge. She testified that she has no reason to believe that standard procedure was not followed in this case.

She testified that Applicant originally wanted to proceed to trial and she was in the process of preparing for trial while simultaneously negotiating a favorable plea offer with the State. She testified that the State's initial plea offer was for the mandatory minimum of thirty years for murder. She testified that she subsequently received an offer for the lesser included offense of voluntary manslaughter for a negotiated twenty year sentence. She testified that she presented this offer to Applicant and explained all aspects of the plea. She testified that Farley also explained the plea offer to Applicant and answered any questions he had. She testified that she thought the plea offer was a favorable resolution to the case and advised Applicant to accept the offer. She testified that it was Applicant's decision to plead guilty.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813

(1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

After careful review based on the standard discussed above, including a review of the testimony of the witnesses presented at the evidentiary hearing, this Court denies this application

on the basis that Counsel's performance did not fall below the standard required and there was no resulting prejudice to Applicant. This Court finds that Counsel's credible testimony reveals that she met with Applicant numerous times, sought assistance from another public defender in her office, investigated the case, reviewed all evidence with Applicant, and was in the process of preparing for trial when she was able to secure an extremely favorable plea offer from the State. This Court finds that Counsel's performance was reasonable according to professional standards and, therefore, did not perform deficiently in regards to this allegation. Furthermore, this Court finds that Applicant cannot establish any resulting prejudice, as there is no reasonable probability that he would have insisted on going to trial absent Counsel's advice. Applicant testified that he pled guilty to avoid a harsher sentence if convicted at trial, which was more than likely based on overwhelming evidence of guilt. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

Involuntary Guilty Plea

Applicant also alleges that his guilty plea was entered involuntarily. 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. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the post-conviction relief hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a

solemn, judicial admission of the truth of the charges against an individual, [an applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Statements made during a guilty plea should be considered conclusively, unless an [applicant] presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir. 1975) overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985). This Court finds that Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing. During his guilty plea, Applicant told the plea court that he wanted to plead guilty, that he understood the plea was for a negotiated sentence of twenty years imprisonment, and that he was entering his plea freely and voluntarily.

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given an applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such. As shown in Applicant's allegation of ineffective assistance of counsel presented above, this Court finds that Counsel acted reasonably and effectively. Therefore, this allegation must be denied and dismissed with prejudice.

Subject Matter Jurisdiction

Applicant alleges that the trial court did not have proper jurisdiction to accept his guilty plea. This Court finds that this allegation is without merit and must be denied and dismissed with prejudice. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003), citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001). In the present case, Applicant was true bill indicted by the Dorchester County Grand Jury for murder and pled guilty to the lesser included offense of voluntary manslaughter. The indictment sufficiently states the necessary elements of each offense and cites the applicable statutes and was signed by the foreman of the Grand Jury. A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. See, e.g., Tate v. State, 345 S.C. 577, 549 S.E.2d 601 (2001); Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986). This Court finds that Applicant has failed to establish any irregularity warranting relief. Furthermore, this Court finds that the indictment in question is sufficient on its face and properly conferred jurisdiction to the trial court. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) (“[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.”). Therefore, this allegation must be denied and dismissed with prejudice as a matter of law.

CONCLUSION

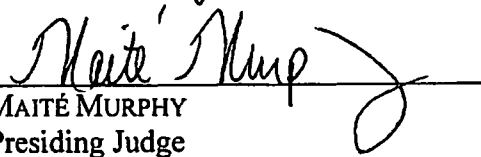
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a Notice of Appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on an applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

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


 MAITÉ MURPHY
 Presiding Judge
 First Judicial Circuit

St. Mary, South Carolina.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Honorable Maite Murpy, Circuit Court Judge

Case No: 2012-CP-18-01406

Roger Rutledge.....Appellant
S.C.D.C. No.: 310245

v.

The State.....Respondent

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 4th day of September, 2014, I served the foregoing **Notice of Appeal, Order of Dismissal**, as well as **Proof of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on September 4, 2014, addressed to the following as indicated below:


South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29211-1589

Office of Attorney's General
Attn: Megan Harrigan, Esquire
Post Office Box 11549
Columbia, South Carolina 29211-1549

Roger Rutledge, 310245
Lieber Correctional Institution
Post Box 205
Ridgeville, S. C. 29472

Dated: September 4, 2014



Charles T. Brooks, III
Attorney for the Appellant
309 Broad Street
Sumter, S. C. 29150
(803) 418-5708

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

Defendant

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

Defendant

Witness:

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

FILED - RECORDED:
2009 FEB -5 PM 1:01
CHERYL GRAMM
CLERK OF COURT
DORCHESTER COUNTY

CLERK OF COURT
DORCHESTER COUNTY

2012 JUN -7 AM 10:49

CLERK OF COURT

DOCKET NO. 2008GS18-1690

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

February 5, 2009 TERM

THE STATE
vs.

Roger D. Rutledge

Indictment for

MURDER

SC Code: 16-3-10

WITNESSES

M Giglio

Dorchester County Sheriff

08-008295

ARREST WARRANT NUMBER

H898770

Arrested: September 16, 2008

ACTION OF GRAND JURY

2/5/09
reperson of Grand Jury
te: February 5, 2009

VERDICT

reperson of Petit Jury
ite:

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

INDICTMENT
2008GS18-1690

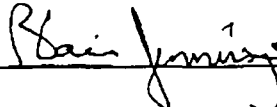
123
2012 JUN -7 AM 10:48
COURT CLERK
DORCHESTER COUNTY

At a Court of General Sessions, convened on February 05, 2009 the Grand Jurors of
Dorchester present upon their oath:

MURDER

That in Dorchester County on or about August 29, 2008, the defendant, Roger D.
Rutledge, did kill one Herman Ward with malice aforethought, by means of shooting the
victim. The victim did die as a proximate result thereof on or about August 29, 2008.
This offense being in violation of the Common Law and Section 16-3-10, of the South
Carolina Code of Laws, as amended.

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



Blair Jennings, Solicitor