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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Chester County

William Jeffrey Young, Circuit Court Judge

EARL MALCOLM BURR,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002072

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE GENERAL SESSIONS OF THE
COUNTY OF LANCASTER) SIXTH JUDICIAL CIRCUIT
CASE NO.: 2012-GS-12-006, 005

State of South Carolina)
vs.)
Earl Malcolm Burr, II)

TRANSCRIPT OF RECORD

May 8, 2012
Lancaster, SC

BEFORE THE HONORABLE BROOKS P. GOLDSMITH

APPEARANCES:

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CHESTER, SOUTH CAROLINA

ATTORNEY FOR THE PLAINTIFF

MIKE LIFSEY, ASSISTANT PUBLIC DEFENDER
CHESTER, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

NO TESTIMONY TAKEN

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
NO EXHIBITS			

1 (WHEREUPON, EARL MALCOLM BURR, II IS DULY SWORN
2 BY THE DEPUTY CLERK)

3 MS. HALL - May it please the Court. Your Honor,
4 before you is Earl Malcolm Burr the, II. He's waiving
5 venue and pleading guilty in Lancaster County to the
6 following true-filled indictments, felony driving under the
7 influence causing death, which is docket number 2012-GS-12-
8 006 and docket number 2012-GS-12-005, which is indictment
9 for hit and run involving death. He's here before you
10 today, Your Honor, to enter his plea. The State and Mr.
11 Lifsey have agreed to defer sentencing until May 17th,
12 during which time Mr. Burr will remain in the custody of
13 the Chester County Detention Center, and that will give Mr.
14 Lifsey time to have Mr. Burr examined by psychiatrist and
15 also -- and he'll discuss that with you more -- and also
16 will give the family of the deceased time to get here.

17 THE COURT - All right.

18 MR. LIFSEY - And I'm going to hand up a
19 Affidavit for Guilty Plea if I can.

20 THE COURT - Certainly.

21 MR. LIFSEY - And before we begin, Judge, since
22 Ms. Hall brought up -- I don't believe there's any question
23 as to his competency to stand trial. We may or may not
24 depending on conversations with my client and I have some

1 more of and I may need to approach alternative outside
2 funding sources, see about getting someone to speak in
3 matters of mitigation but not as to competency to stand
4 trial. He does have some mental history, which I'll detail
5 at the appropriate time for you, but I have no question
6 that he is competent to stand trial. I don't believe
7 whatever mental illnesses he suffer raise to the level --
8 come to the level of being a defense to the crime.

9 MS. HALL - And, Your Honor, we'll go back over
10 this too at the sentencing phase, but the State is
11 recommending a cap of twenty years and for the sentences to
12 run concurrent.

13 MR. LIFSEY - And I guess since we're all ---

14 MS. HALL - And he's pleading under North Carolina
15 v. Alford as well..

16 MR. LIFSEY - That's correct.

17 MS. HALL - Which the State has no objection to.

18 THE COURT - All right, I take it then, Mr.
19 Lifsey, you agree with your client's decision to enter
20 pleas to both of these charges pursuant to the case of
21 North Carolina vs. Alford.

22 MR. LIFSEY - Yes, sir, I do.

23 THE COURT - Have you explained to Mr. Burr that
24 if the Court accepts the pleas pursuant to Alford that the
25 Court -- excuse me -- that the pleas will nevertheless be

1 treated by the Court and viewed by the law just as though
2 he had been found guilty or had pled guilty?

3 MR. LIFSEY - Yes, sir, Your Honor.

4 THE COURT - Based on your investigation and the
5 facts and circumstances of these cases, do you believe it
6 likely then the State could convince a jury that your
7 client is guilty of both charges beyond a reasonable doubt?

8 MR. LIFSEY - Yes, sir, I do.

9 THE COURT - Mr. Burr, how old are you?

10 MR. BURR - Thirty-five years old.

11 THE COURT - Thirty-seven?

12 MR. BURR - Thirty-five.

13 THE COURT - Thirty-five. I'm sorry. Are you
14 married?

15 MR. BURR - No.

16 THE COURT - What kind of work have you normally
17 done?

18 MR. BURR - Most recently I did maintenance work.
19 Normally I do construction.

20 THE COURT - Have you ever been in Criminal Court
21 before?

22 MR. BURR - Yes, sir.

23 THE COURT - And the last time would've been
24 approximately how long ago?

25 MR. BURR - Within the last two years.

1 THE COURT - Two years or so ago?

2 MR. BURR - (No response)

3 THE COURT - What happened to you as a result of
4 you being in Court two years ago?

5 MR. BURR - (No response)

6 THE COURT - Anything?

7 (Discussion is held between Mr. Lifsey and Mr.
8 Burr which was not reported.)

9 MR. BURR - I did some community service.

10 THE COURT - Community service?

11 MR. BURR - Yes, sir.

12 MR. LIFSEY - It was in North -- the State of
13 North Carolina, Judge.

14 THE COURT - Have you ever been treated for the
15 abuse of alcohol, abuse of drugs or treated for any mental
16 illness?

17 MR. LIFSEY - Let me -- if I could at this point,
18 Judge, let me -- let me tell you ---

19 THE COURT - Certainly.

20 MR. LIFSEY - --- what I know about his mental
21 health history. He has consulted basically one time with a
22 family physician several years ago who put him on Zoloft at
23 that time. I don't believe he's ever really been properly
24 diagnosed by a mental health professional. I'm not downing
25 the doctor that talked to him, but from what I understand

1 of the appointment, it was a, you know, five or ten minute
2 consultation followed by a prescription. I do think he has
3 some mental issues, but I will tell you that I believe he's
4 -- he has been very attentive when he and I have talked; he
5 and I have -- he's asked pertinent questions. He's helped
6 me in the investigation of this case. I believe without a
7 doubt he is competent to stand trial. To the extent that
8 he has any mental problems, while I'm not a doctor, I don't
9 believe that any of them would rise to the very high
10 standard to provide a defense to the crime. I don't -- I
11 think he certainly knows the difference between right and
12 wrong. I think he -- he has the ability to conform his
13 conduct to the law, so -- he has some brief mental health
14 history. He is current -- I will tell you this. He is
15 currently taking Prozac per the prescription of the jail
16 physician in Chester, Dr. Hughes I assume, and he's
17 currently -- I will tell you this. He is also on -- takes
18 some Ibruprofen. As you might notice, he has a black eye
19 this morning. Apparently, there was some sort of
20 altercation at the jail last night and they gave him some
21 Ibuprofen, but other than that he's not on any medications
22 and I believe he understands what he's doing today and
23 that's what I know of his mental health history, Judge.

1 THE COURT - Mr. Burr, you heard your attorney's
2 statement to the Court. Do you disagree with anything he
3 just said to the Court?

4 MR. BURR - No, sir, not at all.

5 THE COURT - Mr. Burr, your attorney and the
6 solicitor both tell me they believe you wish to enter pleas
7 to hit and run involving death and felony DUI causing death
8 pursuant to the case of North Carolina versus Alford. Is
9 that correct?

10 MR. BURR - Yes, Your Honor.

11 THE COURT - And your attorney, has he explained
12 to you that if the Court accepts the plea -- pleas, excuse
13 me -- that the pleas would still be treated by the Court
14 and viewed by the law just as though you had pled guilty or
15 had been found guilty?

16 MR. BURR - Yes, Your Honor.

17 THE COURT - The solicitor is getting ready to
18 tell me what she believes the State could prove if you were
19 to go to trial on these charges. I ask you to please
20 listen to what she says.

21 MR. BURR - Yes, sir.

22 MS. HALL - Okay, Your Honor, I'll just go ahead
23 and couch the whole thing in terms of the fact that this is
24 what the State would show at trial which we were planning
25 to call on May 21st. The incident occurred on October 6th of

1 2011 on I-77 at mile marker 51 which is in Chester County.
2 It's actually -- that's when the incident occurred and for
3 jurisdictional purposes that's the location. But it
4 actually began earlier in the day. The accident occurred
5 at approximately 3:47 in the afternoon. At approximately
6 3:20, Mr. Burr had left Rock Hill. He had earlier in that
7 day dropped his girlfriend off at work, driving a green
8 Ford Explorer, which belonged to the girlfriend. At some
9 point in time he ended up in Rock Hill. According to what
10 the testimony would indicate, Mr. Burr had been upset about
11 something that had gone on with a tattoo artist. He had
12 gone to her house, which is located in Rock Hill. They had
13 gotten in some type of altercation. The witness stated
14 that he was very intoxicated at the time. He was falling
15 all over (sic). He was in her house, and to her he
16 appeared to be very intoxicated. She got him out of the
17 house only after he took a canvas that she had painted, and
18 that will be significant later on, but he placed that into
19 the green Ford Explorer. He was trying to get back in the
20 house to call Rock Hill Police Department. Mr. Burr,
21 according to her, went outside and waited in the yard for a
22 period of time, got up before the police got there and
23 left. And as I stated, that was approximately about 3:20
24 in the afternoon. Mr. Burr proceeded down I-77, indicated
25 to other people later on that he had gone the wrong way on

1 I-77. He apparently was trying to get back to Gastonia
2 which is where he had originally come from. He proceeded
3 down the interstate, approximately mile marker 65 he --
4 there was a - there was a call to dispatcher to star HP
5 from an individual by the name John Jackson who would also
6 been a witness at trial, stating that Mr. Burr was driving
7 erratically, that he -- he saw Mr. Burr; he gave a
8 description to -- to the dispatch officer of what Mr. Burr
9 looked like, said that he was driving erratically, was
10 going really, really fast which probably give the reason
11 why he'd gotten there so quickly, and that there were Mack
12 trucks trying to block him in; he was weaving in and out of
13 traffic, and he was concerned for the safety of other
14 people. He followed him approximately mile marker 55 at
15 which point the dispatch -- he was going to get off -- that
16 Mr. Jackson was going to get off anyway, and the dispatch
17 officer said go ahead and get off. He proceeded down the
18 interstate. There were a couple of -- there was at least
19 one other call to star HP concerned about Mr. Burr's
20 driving. At -- he was driving in the right -- he was
21 weaving in and out of traffic; as I stated before, he was
22 passing cars, and at some point he was in the right lane.
23 The car of the victim in the case was in the left lane.
24 Mr. Burr swerved over, clipped with the back left of his
25 vehicle, clipped the right front of the victim's vehicle.

1 Mr. Burr spun out into the median and the deceased in the
2 case, Brennon Conklin, spun out into the trees on the side
3 of the interstate. He was killed -- he was pronounced dead
4 at the scene. There was a passenger in the car with him
5 who is his girlfriend. She was transported to Richland
6 County. She did receive medical treatment, but it did not
7 rise to -- rise to the level of him being charged with any
8 injuries to her. When Mr. Burr spun out into the median,
9 there were other witnesses who tried to block him in, again
10 gave physical descriptions of him, also were called -- you
11 know, were calling star HP saying there's been an accident,
12 we're trying to -- and one witness in particular followed
13 him and was able to give a license plate number which came
14 back to that green Ford Explorer and also followed him from
15 mile marker 51 to approximately mile marker 40 where she
16 lost sight of him because again he was driving so fast.
17 There were text messages that the mate team was able to
18 recover from his phone that were being sent during the
19 course of all this driving, one to someone named Charlie,
20 which is indicated on his cell phone as Charlie saying I'm
21 so drunk, another one that was -- he was going -- he called
22 his uncle, who apparently had lived somewhere in that
23 vicinity of Fairfield County in that -- between mile marker
24 51 and 40 -- or even closer down to Columbia from Fairfield
25 County -- but had called him and asked him, you know, I'm

1 running out of gas, where can I get gas. Mr. Burr missed
2 the mark and got off at the wrong exit. He had intended to
3 get off at exit 34 which there is a gas station there. He
4 had been down to visit his uncle -- and his uncle would
5 testify to this -- had been down to visit his uncle
6 previously and the Peach Road is exit 32 I believe and that
7 was where he ended up getting off, so he missed his exit.
8 They -- I want to come back -- well, I'll come back to the
9 mate team in a minute, but the -- ultimately his car did
10 run out of gas. There is an individual by the name of
11 James Talbert who would also been a witness at trial who
12 came by approximately four hours after the accident and saw
13 the Ford Explorer, thought it was odd on the side. It had
14 North Carolina tags, and he called the sheriff's department
15 to verify that -- you know, see what was going on with it,
16 and they said, yes, there's a BOLO out on it and the police
17 ultimately went there and found the canvas in the car,
18 found Mr. Burr's shoes in the car, and strangely enough,
19 Mr. Talbert went on to the Sharp (phonetic) station which
20 is at exit 34 and he found Mr. Burr there. And he had
21 called -- he called the police, too, to let them know that
22 Mr. Burr was there, that, you know, they'd given the
23 description I think of him at the time. He called
24 initially about the vehicle. Anyway, he came down to the
25 Sharp (phonetic) station. There was -- there was some

1 recordings of Mr. Burr while he was at the Sharp (phonetic)
2 station. He was there, according to the staff at the Sharp
3 (phonetic) station for approximately two hours. He was
4 making phone calls; he didn't have any shoes on; he was
5 asking for a gas can; he didn't have any money; he was
6 begging them to get gas; he asked one of the individuals
7 will testify that he -- Mr. Burr had asked him to beat him
8 up, so that he would look like he was beat up and he
9 apparently -- while James Talbert was there, he observed
10 Mr. Burr -- and excuse my French -- but he was saying --
11 you know, saying, oh, shit, hiding down behind car (sic)
12 and saying -- and calling his girlfriend and saying you
13 need to hurry up and come get me, they're coming after me,
14 something to that effect, and that would be the people at
15 the Sharp (phonetic) station's testimony at trial. He was
16 -- ultimately the police did come; highway patrol came to
17 the Sharp (phonetic) station. They administered field
18 sobriety tests to Mr. Burr, and again this was
19 approximately four hours after the accident occurred. They
20 determined that Mr. Burr, pursuant to his field sobriety
21 tests, was materially and appreciably impaired at the time.
22 They placed him under arrest for driving under the
23 influence. He -- they did -- they took him to Fairfield
24 Memorial Hospital, obtained a blood sample and that was
25 sent to SLED. Again, the blood sample was obtained

1 approximately five hours after the accident and the results
2 of that was point zero eight nine, five hours after the
3 accident. Statements by Mr. Burr to law enforcement
4 indicated that he had not had anything to drink since -- he
5 had had a beer earlier in the day was what he said, so he
6 had basically stated that he had nothing to drink from the
7 time of the accident on. He also had been observed by the
8 people at the Sharp (phonetic) station for two hours,
9 hadn't had anything to drink according to them as well.
10 The mate team went out later on to investigate the accident
11 on the interstate. When Mr. Burr's car had spun out into
12 the median, that he -- there was a piece of light that -
13 the tail light that was found, that it fit like a glove to
14 Mr. Burr's vehicle and that would've been shown as evidence
15 in the trial as well. And with regard to his record, we'll
16 just -- we'll hold that in abeyance til sentencing.

17 THE COURT - You indicated there was a painting --
18 -

19 MS. HALL - Yes, sir, that canvas was located --
20 when Mr. Burr's car was located at the -- or the Ford
21 Explorer was located on the side of the road abandoned --
22 because -- and the mate team did determine later on too
23 that the car had indeed run out of gas, and the canvas was
24 found inside the vehicle.

25 THE COURT - Okay.

1 MS. HALL - And that would've been used as
2 evidence at trial as well.

3 THE COURT - Now, Mr. Burr, you've heard the
4 solicitor tell us what she believed the State could prove
5 if you were to go to trial on these charges. Based on that
6 and what you yourself may know about this case, do you
7 believe it likely then the State could convince a jury that
8 you're guilty of both of these charges beyond a reasonable
9 doubt?

10 MR. BURR - Yes, Your Honor.

11 THE COURT - Speak up.

12 MR. BURR - Yes, Your Honor.

13 THE COURT - Has your attorney explained to you
14 your right to have a jury trial on these charges?

15 MR. BURR - Yes, sir.

16 THE COURT - Do you understand by entering these
17 pleas you'll be giving up or waiving your right to have a
18 jury trial?

19 MR. BURR - Yes, Your Honor.

20 THE COURT - Is that what you wish to do?

21 MR. BURR - Yes, Your Honor.

22 THE COURT - Have you ever had a jury trial?

23 MR. BURR - No, sir.

24 THE COURT - If you were to have a trial and as I
25 said a moment ago, you're still -- even as you stand there

1 now entitled to have a jury trial -- but if you were, among
2 others things, the Court would instruct the jury that
3 you're presumed innocent and that the burden would be upon
4 the State to prove your guilt to the jury beyond a
5 reasonable doubt. You'd have the right to cross examine
6 any witnesses that the State might call to testify against
7 you. You could testify yourself or and have witnesses
8 present testimony on your behalf. If you decided not to
9 testify, the Court would instruct the jury that they could
10 not hold that against you because you have a constitutional
11 right not to testify. If you had made any confessions,
12 statements against your interest, things like that, you
13 would have the right to challenge the State's right to even
14 use that evidence against you, but of course you'd have the
15 right to challenge the State's right to use any evidence
16 against you. Do you understand you have all those rights
17 and that by entering these pleas you'll be giving up those
18 rights?

19 MR. BURR - Yes, Your Honor.

20 THE COURT - Once again, is that what you wish to
21 do?

22 MR. BURR - Yes, Your Honor.

23 THE COURT - Have you had enough time to discuss
24 these matters with Mr. Lifsey?

25 MR. BURR - Yes, Your Honor.

1 THE COURT - Has he answered all of your
2 questions?

3 MR. BURR - Absolutely, yes.

4 THE COURT - Are you satisfied with the way that
5 he has represented you?

6 MR. BURR - Yes, sir.

7 THE COURT - Any complaints of any kind against
8 Mr. Lifsey?

9 MR. BURR - Absolutely not.

10 THE COURT - Mr. Burr, has anyone threatened you
11 or coerced you in any way or made you or caused you to
12 enter these pleas?

13 MR. BURR - No, sir.

14 THE COURT - Has anyone promised you anything or
15 held out any hope of reward as an inducement to get you to
16 enter these pleas?

17 MR. BURR - No, sir.

18 THE COURT - Are you entering the pleas freely and
19 voluntarily?

20 MR. BURR - Yes, Your Honor.

21 THE COURT - The Court finds there is a
22 substantial factual basis for both pleas and the decision
23 to enter the pleas have been made freely and voluntarily
24 with the advice of an attorney with whom the defendant

1 states he's satisfied and the Court accepts the please.

2 Mr. Lifsey, anything else we need to do?

3 MR. LIFSEY - I don't think so, other than to say
4 Ms. Hall and I have discussed doing this on May the 17th,
5 which would be Thursday of next week during the Lancaster
6 General Sessions term. I told her that if I had any strong
7 objections to that particular date, I would notify her by
8 about mid-day tomorrow and let her know that. Right now I
9 think that's fine, but that -- absent some issue coming up,
10 which I'm sure Ms. Hall and I can work out, and if we
11 can't, I guess, we'll ask you, but our plan would be to
12 reconvene at that point at which you'll hear from family
13 and mitigation in regards to him as well. So thank you.

14 THE COURT - All right, thank you so much.

15 MR. BURR - Thank you, sir.

16 (END OF TRANSCRIPT)

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1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF CHESTER
4 2012-GS-12-0005 and 0006
5

6 State of South Carolina
7 vs.
8 Earl Malcolm Burr, II
9

10
11 Lancaster, South Carolina
12 May 18, 2012
13 Before the Honorable Brooks P. Goldsmith
14

15 APPEARANCES

16 For the State: Julie Hall

17 For the Defendant: Mike Lifsey
18

19 Reported by: Michael C. Watkins
20 Official Court Reporter
21
22
23
24
25

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NO EXHIBITS

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1 MS. HALL: Your Honor, before you is Earl Malcolm Burr,
2 II. As the Court will recall he pled guilty under North
3 Carolina versus Alford back on May 8th on true billed --
4 he's waiving venue, these are Chester County indictments --
5 indictment number 2012-GS-12-0005, which is an indictment
6 for a hit and run involving death, as well as docket number
7 2012-GS-12-006 which is an indictment for felony driving
8 under the influence causing death. He's represented by
9 Mr. Lifsey. The State is recommending a cap of 20 years.

10 THE COURT: We have taken the plea. Did Mr. Burr have
11 a criminal history?

12 MS. HALL: Yes, sir, he does. And if the Court would
13 like for me to go through the facts I will be happy to do
14 that.

15 THE COURT: If you would briefly. I remember some of
16 them but it might be helpful if you would do that.

17 MR. LIFSEY: This occurred back on October 6th of 2011
18 on I-77 at approximately mile marker 51 in Chester County.
19 It had actually begun earlier in the day. Had the State
20 gone to trial we would have called a witness by the name of
21 Kate Berry, Mr. Burr had been at her house in Rock Hill,
22 left there approximately 30 minutes prior to this incident
23 occurring. At that time Ms. Berry would have testified that
24 Mr. Burr was extremely intoxicated and falling all over her
25 house, he was angry with her, took a painting from her and

1 left Rock Hill. During the course of his travel south on
2 I-77 -- Mr. Burr is from Gastonia and everything indicates
3 that he was going -- he had accidentally gotten on I-77 going
4 in the wrong direction, he traveled south I-77. At
5 approximately mile marker 65 people began to call the
6 highway patrol to report him as being a dangerous driver.
7 At approximately mile marker 51 he clipped a car driven by
8 Brennon Conklin who is the deceased in this matter, also the
9 car was occupied by Shea Sistare who is Mr. Conklin's
10 girlfriend and will speak to the Court at a later time.
11 Fortunately she sustained only minor injuries. Mr.
12 Conklin's car -- when Mr. Burr clipped it Mr. Burr went into
13 the median, Mr. Conklin went off into the shoulder of the
14 road, his car hit trees and he was killed as a result of
15 injuries sustained, he died on the scene. And there was
16 other investigation that occurred after that that led to --
17 Mr. Burr spun out of the median, left headed toward
18 Fairfield County, he was -- several witnesses tried to stop
19 him from leaving the scene but he went around them and sped
20 off. He ended up running out of gas in Fairfield County and
21 was later found by a member of the community. His car was
22 found by an oddly -- the same member of the community found
23 him at the Sharp Station right off of exit 34. While at the
24 Sharp Station he was asking people to beat him up, he was
25 asking for a gas can, he didn't have any shoes on, his shoes

1 were found in the car as well as the canvas that had been
2 taken from Ms. Berry's house earlier that day. The MAIT
3 team pursuant to their investigation were able to indicate
4 the median of the road where Mr. Burr's car ultimately
5 landed immediately after the accident, they found a chip
6 from his taillight which matched perfectly to Mr. Burr's
7 vehicle which was a green Ford Explorer, and that car again
8 was found in Fairfield County having run out of gas. And
9 that's basically the facts the State would have shown had we
10 gone to trial. With regard to Mr. Burr's prior record he
11 has several moving violation offenses and I want to go into
12 those because I think they are very relevant to this
13 situation. September of 2011 he received his third offense
14 for driving under suspension, in 2008 another driving while
15 his license was revoked, in 2011 again another suspension
16 citation. He had possession of stolen goods -- I'm sorry,
17 that was dismissed. He had a 1999 conviction for possession
18 of LSD. And then -- I apologize, this is a North Carolina
19 NCIC report so it's a little bit difficult to read. A
20 reckless driving from September of 2011, another reckless
21 driving from 2011, another reckless driving from 2010. He
22 was sent -- the most troublesome of all of these convictions
23 which is what I'm getting to right now which is that in 2011
24 approximately six months before this incident occurred Mr.
25 Burr was convicted of driving while intoxicated which is

1 obviously the North Carolina equivalent of driving under the
2 influence of South Carolina. He received an active jail
3 sentence of 18 months and it was fairly soon after he was
4 released that this occurred. I said that and I'll come back
5 to this later when -- the State is asking for every day of
6 the 20 years.

7 THE COURT: Thank you, solicitor. Mr. Lifsey?

8 MR. LIFSEY: Thank you, Your Honor. Before I begin the
9 only quibble I have with the record is there is only one
10 reckless driving charge on there, I think that's a factor of
11 the way North Carolina enters their information on the rap
12 sheet. That's not a large, large point but I believe there
13 would be only one.

14 MS. HALL: And the State will stipulate to that if
15 that's the case.

16 MR. LIFSEY: Your Honor, I represent Earl Burr. Our
17 office was appointed shortly after his arrest, I didn't
18 become really involved in this until about probably I guess
19 mid-February of this year. Once I got the case -- obviously
20 this is just very, very tragic and I begin by saying what
21 I'm trying to do here today is tell you a little bit about
22 Mr. Burr and his history. I in no way want anybody to
23 interpret anything I'm going to say as minimizing the loss
24 that the victim's family has had in this case. It's beyond
25 comprehension the pain that they're suffering and I don't

1 want anything that I'm saying to be interpreted in any way
2 as lessening that impact that I know they're feeling. But I
3 do feel like I want to tell you a little about how our
4 office became involved and what we've done and then I want
5 to tell you most importantly about my client. As I said, I
6 became involved sort of toward the end of February, retained
7 the services of an investigator, Pete Skidmore. This case,
8 as Ms. Hall mentioned has witnesses spread throughout three
9 or four counties, so I retained the services of Mr. Skidmore
10 to investigate this matter for me, he did. After meeting
11 and speaking to my client it became clear to me that while I
12 believe without question he is competent to stand trial, it
13 also is clear to me -- I'm not a doctor but it is clear to
14 me that he suffers from mental illness, probably undiagnosed
15 was my opinion and probably was misdiagnosed to the extent
16 it was by any family practitioners involved. So I retained
17 the services of Dr. Price from Greenville, South Carolina to
18 conduct an examination which I have had done and handed up
19 to the Court to you earlier and a copy to Ms. Hall of his
20 psychological evaluation which I'm assuming the Court has
21 had time to go over and read.

22 THE COURT: I have.

23 MR. LIFSEY: I'm going to comment some more about his
24 actual conditions in a minute, but I would point out that
25 Dr. Price concurs in my opinion that he is competent to

1 enter this plea. Your Honor, he's got a -- as I said, he's
2 35 years old, he has a 12 year old daughter. You know, this
3 is -- I will tell you that -- and you know, I guess there's
4 tragedy all around in this case because obviously the
5 victim's family has lost a child. And I will tell you that
6 the two things I've probably spent the most time discussing
7 with my client are really not his actual defense, it's been
8 first of all he has been concerned about the victim's family
9 and the pain they're suffering and he's been focused on his
10 daughter who is 12. It's a terribly tough age for an
11 adolescent and the things -- and he realistically knows --
12 and I'm going to talk about sentence in a minute, but he
13 realistically knows he's going to be in prison for awhile
14 and he's had lots of concern about that. In addition --
15 those are the people that are probably -- the closest people
16 in his life are probably his fiance', his mother and his
17 daughter. There are a lot of people here who are here on
18 his behalf, I would like to take a moment or two to
19 introduce you to those folks, several of them will wish to
20 speak in a minute. To begin with, Your Honor, Lena Valencia
21 (phonetically) is his fiance, just raise your hand so the
22 Court will know who you are. Judy Burr is his mother,
23 Justin Burr is the brother, William Burr who is his brother.
24 Laura Auten who is a pastor from Maylo United Methodist
25 Church which is in Ranlo North Carolina which is in Gaston

1 County right near Gastonia. Marianne Tremble is a church
2 member, and Dewayne Brodie (phonetically) is a friend of the
3 family, and Nell Jenkins who is also a friend of the family.
4 I told them when I was talking to them they were asking me
5 what can we say, what should we do and I say, "Well, half
6 the battle is you are here." I find it very difficult
7 sometimes to -- I have a lot of cases where people face lots
8 of prison time where I'm lucky to find a mama or a grandmama
9 that will show up and I think the fact that these people
10 care enough about him to take time to show they care about
11 him is very important. As I said several of them would like
12 to speak to you, if I could I would like to call them up one
13 at a time to the microphone if I could so they'll speak. I
14 will start with Lena Valencia who is his fiance'. Ms.
15 Valencia, if you will come forward and make sure you can say
16 your name so the court reporter can get that down.

17 THE SPEAKER: My name is Lena Valencia, I'm Earl Burr's
18 fiance. I have known him since January of 2010 and my life
19 hasn't been the same since. I know this is not supposed to
20 be a love letter but I have never met someone who has so
21 much love to give and care about people as much as he does.
22 I never thought such a man existed and much less thought I
23 would get to experience the kind of unconditional love he
24 has. He has truly brought out the best in me as an
25 individual and with his unwavering support I have conquered

1 things I never thought possible. He also thrives on helping
2 others reach their full potential if it means they will
3 supercede his own. He has such a passion for spreading the
4 gospel. Before this accident happened he and I were very
5 much active in the church mainly with the youth because he
6 has such a passion for guiding them in the ways of the
7 gospel. Even presently he takes any opportunity that arises
8 to reach his fellow inmates about the gospel of Jesus
9 Christ. Your Honor, I am just asking you to please have
10 mercy on him, this man just wants to love and protect his
11 family and live his life for the Lord. Thank you for
12 allowing me to speak on his behalf.

13 THE COURT: Thank you, Ms. Valencia.

14 MR. LIFSEY: Your Honor, I would next ask his mother,
15 Judy, to come forward. And I will tell you that obviously
16 this is emotional, and of course I know it's going to be
17 emotional for the victim's family too, I told these people
18 that no one expects them to maintain absolute composure in
19 this situation.

20 THE SPEAKER: My name is Judy Burr, Mack is my son. I
21 love him very much. First of all I would like to say I am
22 so sorry for your loss and I know you are devastated and I
23 have prayed everyday for your family and for God to give you
24 some kind of comfort. I would just like to ask the Court to
25 show him some compassion and forgiveness. He tried so hard

1 to be a good father, he worked hard and was active in his
2 church. I've watched him struggle with problems, I've
3 watched him try to overcome them and I watched him strive to
4 be a better person and a better father and a better son and
5 I would just ask you today to consider that when you
6 sentence him. And his 12 year old daughter, she loves him
7 very much, she doesn't understand all of this, she has a lot
8 to deal with. And I just thank you for giving me this
9 opportunity to come and speak on his behalf.

10 THE COURT: Thank you, ma'am.

11 MR. LIFSEY: Reverend Auten I think wanted to say a
12 word or two to you.

13 THE COURT: Sure.

14 THE SPEAKER: My name is Laura Auten, I'm the pastor at
15 Maylo United Methodist Church. I have known Mack for three
16 years or so, he's been active in our church. This was a
17 very tragic situation and our hearts are burdened and we
18 have prayed for your family as well as for Mack. I see --
19 have seen Mack trying to do good in his life and also facing
20 a struggle in his life. I have seen him interact as a
21 father with his daughter in some very powerful and beautiful
22 ways. I have seen him seek God's will and presence and also
23 I have seen him struggle with those demons, that illness,
24 those addictions in his life. I ask for mercy in light of
25 the potential and the goodness that he can bring to society,

1 I ask that something good come out of something awful and
2 tragic. I ask for your mercy. Thank you.

3 THE COURT: Thank you.

4 MR. LIFSEY: Your Honor, Marion Tremble who is a friend
5 and a church member I think wants to say or speak to you.

6 THE COURT: Certainly.

7 THE SPEAKER: First of all I would like to say I have
8 been praying for both sides of this, all involved for
9 several months and today I'm praying for the Court as well
10 that they will show some passion. I'm a member of Maylo
11 United Methodist Church, have been all of my life, I strayed
12 away when I was younger. But for the last several years
13 Mack has been there, been there on Wednesday nights with his
14 daughter, even when she would go to the youth and study
15 groups he stayed there in Bible study, had a Bible in his

16 hand. He was there on Sunday mornings sitting beside his
17 daughter. I think this is just an awful mistake and if
18 there was something that I could do to change any of this I
19 would but I know that's not possible. I'm asking your
20 thoughts and prayers be with everybody and with the decision
21 that you make. Thank you.

22 THE COURT: Thank you, sir.

23 MR. LIFSEY: Finally I think Dewayne Brodie would also
24 like to say a word or two.

25 THE SPEAKER: My name is Dewayne Brodie and I joined

1 Maylo United Methodist Church in March of 2010. I became
2 active in the youth and I met Mack the first time on a
3 hiking trip that we took. Mack was -- or I was lucky enough
4 to have Mack ride with me in my car, his daughter, Nell, was
5 with us, and we got to see -- I didn't know Mack before that
6 because I was new to the church. We were able to spend the
7 day hiking and spending time together. He is a very, very
8 devoted father, he spends a great deal of time with his
9 daughter taking the time to see the things that are
10 interesting to her. After that we did a camping trip
11 together, the youth and Mack and I and Nell were all
12 chaperones for the camping trip. He is a very, very devout
13 person, he's a very devout christian, the person that I
14 know, the person that shared with me his past and his
15 fellowship which was very powerful to me because I have
16 never been involved with church. So I just want to stand up
17 today and say that the Good Lord has good in everybody and
18 I'm so sorry for your loss. And as a person and fellow
19 christian I believe that there is good in Mack, it just
20 needs to be found. He needs help so that he can be the
21 person that the Lord brought him to be and do the things he
22 is capable of doing. He knows the scriptures and shares
23 them with the youth in a level that they understand. And I
24 thank you for allowing me to speak.

25 THE COURT: Thank you.

1 MR. LIFSEY: Your Honor, in addition to the people that
2 have spoken there are three people including his sister that
3 could not be here today, and I hand up to you letters that
4 they have written. I shared those briefly with Ms. Hall
5 before we began.

6 THE COURT: Give me one second to read them.

7 (Break in proceedings.)

8 THE COURT: Mr. Lifsey, I have read those.

9 MR. LIFSEY: Thank you, Your Honor. I'm going to let
10 you hear from my client in a minute. Sort of my thoughts in
11 this matter is I had a judge several years ago tell me that
12 felony DUI cases were the worst and the hardest kind of
13 decisions he faced as a judge, they involve tragedy and
14 awful loss of life. But at the same time they're often
15 committed by people who are addicted to substances, they're
16 often committed by people who certainly made a free choice
17 to get in a car and drive, there's no question about that
18 but they're often committed by people that certainly didn't
19 set out and plan to kill anybody. The legislature in
20 determining appropriate sentences gives the Court a pretty
21 broad range, I think a minimum of one and up to 25 per the
22 statute. So, I mean, in my mind -- and clearly there are
23 certainly cases that the legislature contemplates that
24 people don't need to be incarcerated for long periods of
25 time. Now, I'm not going to tell you that is this case,

1 okay? But I've tried to think about what would be a
2 sentence that -- see, I guess here is the thing, there is no
3 way that any sentence you impose is going to compensate for
4 the loss of a human life. So my thought process is what
5 kind of sentence could both take into account the severity
6 of the loss of victims but also take into account at least a
7 couple of important mitigating factors that you ought to
8 consider, that I think you ought to consider. First of all
9 my client is mentally ill. Now, his mental illness does
10 not, I believe, provide a defense to the crime but I think
11 it provides some degree of explanation for why he found
12 himself in this position. As the doctor diagnosed I think
13 he's bipolar, I think the treatment he has received for that
14 has not been adequate. Now, I think he bears some
15 responsibility probably for not seeking out the proper
16 degree of care so I don't -- into that. But I do explain to
17 you that I think it would be an important part of whatever
18 sentence you impose if -- first of all I would like to hope
19 he would get the appropriate mental health treatment within
20 the department of corrections. I also think that if the
21 Court indicates either by way of the community supervision
22 program from the department or if at some point you made one
23 of the sentences consecutive afterwards suspended that he
24 were to be on actual probation that he receive mental health
25 counseling and treatment and I think that's something you

1 should consider doing. But, like I say, it's not an excuse,
2 I understand he's responsible for his crimes but I do think
3 you have to take into account that he is ill. I think you
4 have to take into account that he has addiction problems,
5 once again those are not an excuse but by way of some
6 explanation and I think that fact ought to weigh in there
7 somewhere. I think the fact that he pled on this charge
8 rather than go to trial is important. As you know as the
9 Court knows the Court is scheduled for next week in Chester,
10 and of course I know the solicitor was going to try the case
11 next week, but ever since I got involved, which has been
12 kind of late in the game, the solicitor and I have gone back
13 and forth trying to see if there's any resolution of this
14 case possible. Now, once again, this is an awfully
15 painfully process for the family and I can't imagine the
16 victim's family what they're going through but I think it
17 would be even more painful were he to have insisted on
18 having a jury trial and to hear the testimony of medical
19 examiners and relive those tragic moments, and I believe
20 that his decision to forgo putting the victim's family
21 through that merits some amount of consideration from the
22 Court. I also think the fact that he has good family
23 support and people that care about him is a factor for the
24 Court to consider. As I said very often it's hard to get
25 clients that have families that care enough about them to be

1 here and this man has people that care about him. I also
2 think the fact that the family is available to assist him
3 when he is released is important. All of these people have
4 pledged to me -- they all know he's going to go to prison
5 and they know he's going to be there awhile but they've all
6 pledged they will be there to support him when he gets out
7 and hopefully encourage him, because he will get out no
8 matter what the Court does today. He is 35 years old.
9 Obviously as you know any sentence you impose will have to
10 be -- he will have to do 85 percent of that at least if not
11 100 percent depending what happens in prison, so any amount
12 of time is significant. Taking all of that into
13 consideration -- and, of course, think of his daughter. And
14 I know they've lost a loved one, too. This is a child
15 that's 12 years old and I know at some point he would like
16 to be involved in her life in a more substantial way. I
17 would ask the Court to consider a sentence in the
18 neighborhood of ten years in this case, I think that would
19 keep him incarcerated for a long time. I think that
20 would -- while it would keep him out all of his daughter's
21 teenage years it would at least have him out when she's a
22 relatively young adult and it would have him out at some
23 point into his mid-forties. Like I say, it might be
24 appropriate, Your Honor -- I spoke to Ben Aplin who is the
25 general counsel for probation and parole to try to

1 understand the way community supervision interacts with
2 probation because as, you know, there has been some
3 litigation on those matters. My understanding is if you
4 gave him a split sentence, if you imposed, for example, a 20
5 year sentence suspended on ten then probation -- he would be
6 subject to serving the remainder while he would be under the
7 community supervision program rather than the probation
8 and -- regular probation he would be subject to being
9 incarcerated up to the original 20 year sentence. If as
10 another sentencing alternative you were to give him a
11 straight sentence on one of the charges and a consecutive
12 suspended sentence on the other charge he would first have
13 to complete the community service program before he began
14 his probation. And I point those options out to you because
15 I think there would be value -- he could serve a significant
16 prison sentence and still have the threat of more
17 imprisonment if he violated the laws again. Like I say,
18 none of this is anything good and there's nothing that I can
19 say to lessen the tragedy in this matter other than we're
20 sorry that it happened. He is pleading, he's not putting
21 the family through a trial, I would like you to take all of
22 that into account and consider a sentence you think is
23 appropriate in this matter. I would ask you to hear from my
24 client, Your Honor, who also wishes to speak to you.

25 THE COURT: Yes, sir. Thank you, Mr. Lifsey.

1 Mr. Burr?

2 THE DEFENDANT: Yes, sir. I'm sorry. Your Honor, I
3 can't begin to say how sorry I am for the situation, not for
4 the pain that I might suffer for time that I would be away
5 from my family but for the family of the victim, for my
6 family themselves, the people who come so far to show that
7 they love me. The words that they've spoken are the truth,
8 I only want to serve the Lord and it's not just something to
9 say, it's the truth. And I'm not perfect, I'm just a weak
10 man who wants to love the Lord. If I could take the place
11 of the victim right now I would lay my life down. I will
12 devote every bit of the rest of my life, whether it were
13 here a free man or in prison to try to change people's lives
14 who might go through something like this who might would if
15 they didn't speak to me first. There has to be a way that I
16 can change the future for other people to make this
17 situation worth while. And I'm not saying worth while in
18 any light, I can't begin to say how sorry I am to the
19 family, I can't imagine going through that situation. My
20 daughter who I have the greatest relationship with, I
21 haven't spoke to in seven months, not because I don't want
22 to but because this is a tough time and I don't know how
23 that is going to change her life if she'll ever decide she
24 wants to speak to me again. I just want to say I am really
25 honestly sorry. That's all I can say.

1 MR. LIFSEY: Thank you for hearing from us, Judge.

2 THE COURT: Thank you, Mr. Burr. Solicitor?

3 MS. HALL: Yes, sir. I have about five people who
4 would also like to address the Court, then I would like to
5 as well. First Sandra Gregg (phonetically) who is
6 Mr. Conklin's grandmother. And Your Honor, let me go back
7 and do that, Mr. Conklin was 23 at the time of his death.
8 This is his maternal grandmother.

9 THE SPEAKER: Your Honor, every grandparent thinks
10 their grandchild is special and I am no exception. Brennon
11 is and was special to me and all of his family. His life
12 was taken at age 23 by Mr. Burr while he was drunk. He
13 didn't care who he might kill or what he might do, he was
14 going to drive with no license and that didn't stop him.
15 Your Honor, I ask that you sentence Mr. Burr to the maximum
16 amount allowable by law in this state. Thank you for
17 allowing me to speak.

18 THE COURT: Yes, ma'am. Thank you.

19 MR. LIFSEY: Next is Sherry Jackson, she is the mother
20 of Shea Sistare. Ms. Sistare, y'all correct me if I'm
21 wrong, she and Mr. Conklin were involved in a relationship,
22 Ms. Jackson is well acquainted and Shea was also in the car
23 at the time of the accident.

24 THE SPEAKER: I am Rashea's (phonetically) mom. There
25 are no words to describe to you the agony that we have

1 experienced at the hands of Mr. Burr but I will try.
2 October 5, 2011 was a wonderful day because it was Shea's
3 22nd birthday. She was halfway through the fall semester at
4 Gardner Webb University where she had been succeeding, and
5 we were so excited because at the end of December she was
6 going to be a junior, a milestone that we had looked forward
7 to. But all of that changed the very next afternoon because
8 he decided to drive drunk. On October 6th I picked up the
9 phone in my office to hear my daughter sobbing
10 uncontrollably that she and Brennon had been in a wreck. My
11 mind went immediately to the thoughts of a minor fender
12 bender and attempted to calm her down so that I could help
13 ease her mind, that it wasn't a big deal, we will take care
14 of it, we have insurance. But this wasn't the case. Her
15 next words caught me completely off guard and changed my
16 world and my family's world forever. "Mom, you don't
17 understand, Brennon is trapped in the car." I couldn't
18 comprehend what she was saying. My heart fell to my feet
19 and I immediately started scanning my brain for the quickest
20 way to get to I-77 from Boiling Springs, North Carolina, I
21 just had to get there, my child was in trouble and she
22 needed me. The next moment my mind was brought back to
23 reality when Shea began pleading with Brennon to breath, all
24 I could hear was Shea saying, "Brennon, please breath,
25 please breath with me. Don't leave me, I love you, you

1 cannot leave me." I have never felt so helpless in my
2 entire life within that hurt and I could hear the panic in
3 her voice. As her mom I immediately was trying to figure
4 out was she hurt? How bad was she? What was really going
5 on? So I was trying to calm Shea down to tell me if she was
6 hurt but I couldn't, her thoughts were only on Brennon and
7 trying to get him out of the car and get him help. I left
8 work anxiously trying to get to her the quickest way I
9 possibly could staying with her on the phone as much as I
10 could between her conversations with emergency personnel and
11 others. Halfway there the next nightmare I get, I answer
12 the cellphone to my daughter screaming to me from the other
13 side, "He's gone, mama, Brennon is gone, he's dead. I tried
14 to save him but I couldn't." To this day I still wake up at
15 night hearing that phone call and my daughter's voice on the
16 other side will haunt me forever with the words. When I
17 finally got to my daughter she was in the hospital in
18 Chester County. While she did only suffer minor
19 physically -- physical injuries her emotional injuries are
20 so deep and so critical. I sat with her and tried to
21 comfort her as best I could while she continuously broke
22 into uncontrollable tears, there was nothing I could do to
23 comfort her. I walked with my child to the morgue at 22 to
24 see Brennon for one of the last times. She was terrified
25 that night to close her eyes. There was no sleep. The

1 horrific images of the wreck would just invade her mind, she
2 was so scared. Myself, I had to stay awake too, I had to
3 make sure that my child was still alive, that she was
4 breathing. I had to keep touching her to know that she was
5 safe. Also the words that the coroner had told her father
6 and I out in the hallway kept ringing through in my head, if
7 Rashea would have been sitting upright you would have been
8 making burial plans for her as well. I sat there that night
9 and I listened to my daughter cry, I listened to her blame
10 herself. She blamed herself because Brennon was driving her
11 car, she kept saying, "Mom, it should have been me." For a
12 mom to hear your child say such words tears at your very
13 soul. The agony she was going through was more than I could
14 bear. I'm supposed to make it better, I'm supposed to
15 protect her but I didn't and I couldn't protect her from the
16 drunk driver that hit them. In the next weeks we traveled
17 to New York to attend the funeral. We visited doctor's
18 offices in order to have glass removed to her feet. We have
19 had MRI's on her head due to the excruciating headaches that
20 she has and her inability to sleep, finally scheduling
21 counseling appointments with which she has now been
22 diagnosed with post traumatic stress disorder. She was
23 forced to drop many of her classes for the fall semester
24 which also erased her hopes of finishing as a junior that
25 fall term. Her books have been destroyed and her ability to

1 reason crushed beneath the feeling of helplessness. Because
2 of Earl Burr I have been forced to watch my confident,
3 young, energetic daughter become timid and afraid when riding
4 in a car. I long for the times when we would chatter
5 relentlessly with her in the front seat as we traveled
6 along. Now when we venture onto the interstate she sits
7 quietly, the tension making deep marks in her face. I see
8 the horror that comes across her face when a car begins
9 coming up beside the next lane. I hear her grasp for breath
10 when the brakes are applied a little too quickly or a little
11 too hard. I watch her emotionally fall apart when we come
12 upon a accident on the road and there's nothing I can do to
13 comfort her. There are no more happy birthdays for Rashea
14 and our family. Brennon and Rashea were heading to
15 Charleston to celebrate her birthday which was just the day
16 before. I have always made birthdays special for my
17 children, they don't have birthdays, they have birthday
18 weeks. But how will I ever now be able to remove the shadow
19 of the wreck from that very special day that was supposed to
20 be her day? From now on it will not consist of fond
21 memories of birthday cakes, parties, the special supper that
22 she wants, family and friends always there to wish her a
23 happy birthday, her day now will come with emotions and
24 horrors, it will not be just happy memories, Earl Burr
25 removed them from her and our family that day. Now her day

1 will consist of thoughts and memories of crashing metal,
2 squealing brakes, the impact of a car hitting the tree,
3 sirens and a visit to the morgue and the death of a young
4 man she was in love with. Our family has suffered a great
5 emotional event that will never ever leave our minds. The
6 apprehension that we feel every time Rashea leaves the house
7 is overwhelming. Will there be another phone call? Will
8 there be another drunk driver on the road? I have to watch
9 my child struggle to find peace, to find happiness. This
10 should not be a struggle, she had it before October 6th when
11 Earl Burr took that away. Her family watches her grieve in
12 pain knowing there is nothing we can do but love her. We
13 have been forced to struggle with learning what a normal
14 life is going to be and how to live it. Our lives now
15 consist of being on standby for court proceedings, lawyer
16 meetings, conference calls with insurance companies and with
17 the constant threat by bill collectors over the huge \$15,000
18 in medical bills that we are now faced and attempting to
19 pay. We have been forced to give up or independence as a
20 family and rely on others for our destiny and for justice.
21 Much has been taken from my daughter, much has been taken
22 from our family and we stand here before this Court trusting
23 in your judgment and asking for the maximum sentence to be
24 allowed. Thank you for letting me speak.

25 THE COURT: Thank you, ma'am.

1 MS. HALL: Your Honor, Brian Conklin who is Brennon's
2 brother.

3 THE DEFENDANT: I would like to start off by
4 apologizing ahead of time if I am not able to get through
5 this. I also want to address something that the defense
6 attorney said about Mr. Burr being diagnosed with a mental
7 illness. I was diagnosed with PTSD in 2007 because I'm a
8 veteran from Operation Iraqi Freedom and I carried on
9 without drinking or driving or smashing into people, I just
10 wanted to make that aware. My name is Brian Conklin, I'm
11 Brennon's brother. I drove here along Interstate 77, the
12 same road my brother died along side at mile marker 52 on
13 October 6, 2011 at 4:16 p.m. These are numbers and dates
14 and times that are etched in my memory for eternity much
15 like the pain and constant reminder that my brother is not
16 here is etched in my memory. One would think that like
17 other forms of pain time is a natural healer and with each
18 passing week or month it gets easier, this however is not
19 the case for me and my broken family. Each and every
20 Christmas, Thanksgiving and Easter from now on will be a
21 reminder of how our family is no longer whole. Every
22 January, the month Brennon's birthday falls in, will now be
23 a reminder of the pain and loss we endured beside it being a
24 happy time. These once joy-filled and happy holidays are
25 now searing reminders of what was ripped from our lives. We

1 will never get Brennon back and no action that I or anyone
2 in this court can perform will change that. We are sitting
3 with this burden today because of a selfish man who was also
4 a coward and was unable to learn from his mistakes. I for
5 one believe that he chooses not to adhere to the law from
6 the previous punishments bestowed upon him, that he simply
7 does not care and willingly chooses to endanger others.
8 Anyone would be able to look at this man's history with the
9 law and be able to tell you the same. My brother was killed
10 by a man who has numerous charges upon him for similar
11 incidents. Why is the question I would ask myself many
12 times over again after I looked up Mr. Burr online and found
13 his prior record. Why are we here? Why are we doing this
14 again? It's just a different family, it's just a different
15 group of people that he has touched in another infamous and
16 devious way. What matters now is that we have the ability
17 today to make sure he is not able to do this to anyone else,
18 unable to destroy another family, unable to kill again. I
19 ask the Court to please truly listen to my plea as I'm sure
20 you've heard many like it before in similar situations but I
21 ask you to draw from your natural immunity. Please take
22 Mr. Burr's previous actions into account when you sentence
23 him today, I ask this for peace of my mother, my family, and
24 most important for Brennon who I guarantee you is here today
25 in this courtroom. The only way the situation could be any

1 worse, any darker and any more painful is if Mr. Burr was
2 able to get out and do this again which as anyone from the
3 Gaston County District Attorney's office will tell you he
4 can and will. Brennon was in his second year of college in
5 the State of New York pursuing a degree shockingly in law
6 enforcement, he was studying criminal justice. My brother
7 was always the fair one, always far more braver than I and
8 he is here and I know he feels sorry for Mr. Burr's
9 situation because of his child and because of the poor
10 decisions that he has made time and time again. But on the
11 other hand much like justice and much how my brother would
12 see this situation something has to be said and accounted
13 for for his actions regardless of how he feels, regardless
14 of how devout he is to our Lord and savior Jesus Christ.
15 And giving him anything less than every day of 20 years
16 would be an insult to my brother. Thank you for letting me
17 speak.

18 THE COURT: Thank you, Mr. Conklin.

19 MS. HALL: Shannon Conklin is Brennon's mother.

20 THE SPEAKER: I'm going to try and not cry. I don't
21 understand, they sit here and say that he goes to church.
22 Is it okay to go to church on Wednesdays but by Thursday
23 you're out drinking and enjoy drugs? Where in this world --
24 in the Bible does it say that it's okay to do that, you
25 know? I don't understand, not in my world, not in my church

1 and then be back in church on Sunday. I understand he has a
2 12 year old but he gets to see that 12 year old in 20 years,
3 I don't get to see my son in 20 years. Brennon had 150
4 people come to his funeral and they weren't just
5 acquaintances, they were friends, they were people he had
6 time for. They came from Japan, from Georgia, from Alabama,
7 from South Carolina and North Carolina and New York. 150.
8 I would just wish that I could have 150 friends myself. He
9 was a smart, bright young man and he had the world at his
10 fingertips. And the only reason he is serving Christ is he
11 is going to miss his 12 year old, yes, he is, but he gets to
12 see her in 20 years. Brennon doesn't have 20 years. He
13 would take 20 years if he knew he could come back because he
14 wasn't ready to die. He absolutely hated to be in small
15 places. Can you imagine what that would feel like for him
16 to die in a tiny little car and he couldn't get out and he
17 tried? No, you don't. I'll never be the same and that man
18 has taken 20 years off of my life and most definitely off of
19 his father's. I'll be surprised if he is not in the
20 hospital within the year. He couldn't be here today, he
21 could not come, neither could his sister which them two were
22 best friends, they spent every moment they had together. I
23 will never forget the day that they came and told me that my
24 son was killed in an accident, my daughter was screaming in
25 the middle of the grocery store where we worked. I wish

1 that I could give Brennon 20 years because I would love to
2 see him again. I never got to tell him I loved him before
3 he died and nobody knows what that feels like. And how many
4 times in the United States do we have to hear the same
5 story, same thing, somebody who dies from a DUI, it's the
6 same story. The person that did the driving and drinking
7 and the drug use, how many times, three, four, five before
8 anything is done? It's really -- we the people of the
9 United States have failed terribly. I would like you to
10 please give him every day of 20 years, and that's if -- it's
11 a good thing she put a cap on it because if it were me he
12 would stay there until he died. That 12 year old, he's
13 lucky he gets to see her again, that's all I can say. Thank
14 you for listening to me.

15 THE COURT: Thank you, Ms. Conklin.

16 MS. HALL: Your Honor, the last lady that would like to
17 speak is Shea Sistare, she was Mr. Conklin's girlfriend and
18 she was in the car with him at the time of the accident.

19 THE SPEAKER: My name is Shea and I met Brennon when I
20 was a sophomore in high school. We were just friends for a
21 year or so, my senior year we began dating. We had the same
22 love for drama and the same sarcastic attitude. We just
23 seemed to fit. We couldn't stand to be away from each other
24 so when he moved to New York to be with his family I thought
25 my world would end. The distance was unbearable so I saved

1 money from my job and every Christmas and birthday I asked
2 money from my parents and my family so I could buy a plane
3 ticket and go visit him. We were like two peas in a pod.
4 He understood my obsession for the Twilight Series and I
5 always attempted to understand his obsession with video
6 games. I had been waiting for months for my birthday and
7 fall break to run around. As my mother said my birthday was
8 always a week long celebration. She had always tried to
9 make it special for us and this year was even better because
10 Brennon had decided to visit for my 22nd birthday. He had
11 even planned to take me to Grandfather Mountain because he
12 knew I had always wanted to go but never had the chance.
13 Those days were full of laughter and excitement and I had
14 the love of my life back with me. Since Brennon's brother
15 had recently had a new child and since he lived in
16 Charleston me and Brennon decided to go see them and his new
17 little nephew. That afternoon of October 6th we left to
18 spend the weekend camping and visiting with friends. I was
19 giddy and so happy, nothing in the world could top the
20 wonderful birthday I was having so far, I didn't think it
21 could get better but this didn't last. I had begged for him
22 to drive that day because I was getting a headache and I
23 wanted to lay back in the seat and sleep for awhile. Along
24 the way after I woke up I began singing Adele and Brennon
25 was making fun of me, and out of nowhere I see a car come

1 into our lane. I felt the impact of the hit on the
2 passenger's side where I was sitting, it pushed us into the
3 median and sent the car spinning back across the road down
4 an embankment, I saw the trees and all I could think was,
5 "Oh God, this is not good." I don't remember hitting the
6 trees and I don't know how long I was knocked out before I
7 woke up, but when I woke up my part-time job is a lifeguard
8 so my training kicked in, I automatically looked around to
9 check for injuries that I could stop or help and look for a
10 way out of the car. Brennon was knocked out and already
11 turning blue but I yelled at him anyway to wake up but he
12 never answered me. The radio was playing very loud so as I
13 made my way out of the car to run up the hill and to flag
14 help down I saw that a truck driver had already pulled over
15 and told me that he had already called 911. I immediately
16 asked him for his phone to call my mom. While I was on the
17 phone with her I heard Brennon making strange noises, it was
18 like a grunt and a groan and a cry all rolled into one. So
19 I ran back to him, I yelled over the radio asking him to
20 turn it down, so when he reached to turn it down I knew that
21 he could hear me and understand what was going on. He was
22 blue and stuck in the car, blood was pouring from his mouth
23 but I couldn't see any open wounds to fix, all he kept
24 telling me was that he couldn't breath so I tried to calm
25 him down, told him to breath with me. I kept telling him

1 that I loved him and I begged him not to leave me, to just
2 breath with me because help was on the way. He reached for
3 the blanket that I slept with every night to wipe his mouth
4 so I climbed back in the car to grab my phone and turn off
5 the car because it was still running. As I was climbing out
6 of the car Brennon struggled to get out of the car but I
7 knew that he couldn't, the top of the car had him trapped in
8 the seat so I talked him in to stop struggling so that he
9 could calm down before he hurt himself worse. I kept
10 talking to him until the rescue people arrived. The EMS
11 workers made me go to the top of the hill, one of them tried
12 to put me in a truck. I wanted to try to call his family
13 and my mother, the woman saw that I had blood all over my
14 hands so she tried to clean me up. Not long after the EMS
15 worker walked to the truck and told me that they had done
16 all they could do but Brennon had stopped breathing ten
17 minutes ago. I went completely numb. I knew what they were
18 going to tell me before I even heard them say it, he was
19 gone but I had still hoped, I hoped he would be all right.
20 I knew that he was hurt but he could get better and we could
21 go back to the way we were before. In disbelief I called
22 Brennon's brother to tell him that Brennon was dead, all I
23 could say was that I was sorry and it was all my fault.
24 Then I had to call his sister and one of my best friends
25 Cassie. I didn't know how else to say it so I blurted it

1 out, "Brennon is gone." Until this day I can still hear her
2 begging me to tell me it isn't true. My dad arrived shortly
3 after that and tried to convince me again to get in the
4 ambulance to go to the hospital but I couldn't leave
5 Brennon, I was not leaving until he did, but my dad finally
6 convinced me to let him take me to the hospital since I was
7 complaining of pain and I was having trouble walking. All I
8 remember is being carried to the car. At the hospital I
9 just remember that I couldn't stop crying, nothing was going
10 to make it better. I remember asking my parents if they had
11 brought Brennon to the hospital yet because I hadn't
12 accepted the fact that he was gone, so when they told me
13 that he had arrived I insisted on going to the morgue to see
14 him. There was no sleep that night because I couldn't get
15 the images of the wreck out of my head. I had cried until I
16 ached. The next day I was released, I couldn't bear the
17 thought of leaving because that meant leaving Brennon and I
18 couldn't do that, I couldn't leave him in a strange place
19 alone. And I was also afraid of the drive home, the thought
20 of getting in a car terrified me. The next few weeks are
21 just a blur. I remember going to New York for the funeral
22 but when it came time to leave New York I couldn't, leaving
23 New York meant leaving Brennon all over again. Once I was
24 back home I had to face the fact that the love of my life
25 and my best friend were gone. Our plans of the future and

1 the children that we had already named, Kaylen, McKenzie and
2 Kayla (all phonetically) were never going to be. Then
3 started the doctors visits to have glass removed from my
4 feet, the trips to the neurologist because I was suffering
5 from severe headaches. I couldn't sleep. The attempt to go
6 back to school which ended with my having to drop most of my
7 classes since I was unable to function normally and the fact
8 that my books had been destroyed in the wreck. Visits to
9 the lawyers office, the endless requests to retell what
10 happened never seemed to stop. I was so numb that normal
11 never existed and I couldn't remember what normal was like.
12 I cried at the drop of a hat and every time I got into a
13 vehicle terror was all I felt. I began counseling and after
14 three months I was diagnosed with post traumatic stress
15 disorder. So at 22 I felt like I was damaged goods, I felt
16 like I was responsible for the wreck. If only I had
17 insisted that Brennon drive he would still be alive. My mom
18 attempted to nurse me, and all of the bill collectors, but
19 the fact that the bills are somewhere around \$15,000 weighs
20 heavily on me. I don't know how we will ever get them all
21 paid off. Today I can sleep but only with the help of
22 medication. I can drive but only with the fact that I'm so
23 anxiousness when I'm in a car driving or riding with someone
24 I'm always expecting a car to come out of nowhere and run us
25 off the road. The slightest swerve of the steering wheel

1 sends uncontrollable fear up my spine. The interstate
2 terrifies me and I truly long for the day where I can just
3 get in the car and take a nice relaxing drive with my mom
4 again. I still have horrible headaches and I still have
5 horrible nightmares that when I wake up in the morning I
6 still feel tired and exhausted. I find myself still crying
7 at the drop of a hat. Any song, any memory or any picture
8 brings the memories of a planned future back to life.
9 Nothing can ever heal the loss of Brennon. He was my best
10 friend and the love of my life, he loved me like no one
11 else, he understood me and he was the one person that I
12 could confide in. I could tell him anything and though he's
13 not here he is not here because Earl Burr decided to drink
14 and drive. I have to live with the memories and the
15 nightmares the rest of my life. There are no blurry images
16 of the wreck for me, they're all very real. I would ask the
17 Court to consider these thoughts when issuing the sentence
18 for Mr. Burr. I ask for the maximum sentence. What
19 happened was not my fault, Brennon died and it wasn't
20 anything that he did, it was someone else, at the hands of
21 someone else and I only ask that the someone else, Mr. Burr,
22 be given the maximum sentence so that no one else would ever
23 have to suffer the nightmare and grief that I and his family
24 must live through for the rest of our lives. Thank you.
25 THE COURT: Thank you, ma'am.

1 MS. HALL: Just briefly, Your Honor. I wanted to state
2 too -- I think what they've said absolutely speaks for
3 itself. I wanted to state too -- and I had left this out --
4 during the plea I had stated it and I'm going to state it
5 again, at the time Mr. Burr was given a blood alcohol level
6 it was .08, it was five hours after the incident. SLED
7 through some of the technicians, they pushed it back and
8 according to the statements made by Mr. Burr that he hadn't
9 had anything else to drink and just reconstruction of the
10 time he would not have been able to have anything else it
11 was approximately two or three hours at the Sharp Station
12 during that time they saw him drink nothing else, they said
13 it would have been somewhere around .15 and .16 at the time
14 of the initial incident. And I appreciate what Mr. Lifsey
15 has said and in no way am I trying to discount his comments,
16 I just want to say, you know, as the State our job is to
17 seek justice for victims but it's also to protect the
18 community. In this instance when I thought about the cap
19 and considered the plea negotiations what I thought about in
20 terms of who are the people who deserve 25 years, and I
21 would submit to the Court that if it is not Mr. Burr he
22 comes pretty darn close. When the State agreed to the cap
23 of 20 years we did it with the understanding that a North
24 Carolina versus Alford plea would be entered, I would submit
25 to the Court that he has received a substantial benefit in

1 having the sentence reduced by at least five years
2 understanding that it could have been run consecutively,
3 very unlikely but it could have been run consecutively, so
4 possibly the benefit of 30 years, he's received the benefit
5 of that. And I understand what Mr. Lifsey is saying about
6 good people make bad decisions but I believe that the family
7 has touched on this, this child had no decision --
8 Mr. Conklin had no decision in this matter, his family is
9 suffering as a result of it, will for the rest of their
10 lives and while we're seeking justice for them not
11 necessarily in a retribution fashion we believe that the
12 protection of the community in this instance is paramount.
13 Mr. Burr has had adequate opportunity to address any mental
14 health issues he has had, he had ample opportunity to try to
15 get his life together after having received just six months
16 before serving time for a similar driving under the
17 influence, and the State again as I stated before is asking
18 for every day of the 20 years. We would just implore the
19 Court to give him that. I believe that is the only thing
20 that would be just in this matter.

21 THE COURT: Thank you, Ms. Hall. Ms. Hall, let me ask
22 you one other thing, I just cannot recall, in your
23 recitation of facts you indicated that Mr. Burr was
24 initially heading up the interstate in the wrong direction
25 and people were calling law enforcement?

1 MS. HALL: They were calling law enforcement at
2 approximately -- the only record that we have of the call to
3 law enforcement, he started out at exit 79. At the point
4 that he got to exit 65 that was when the calls started
5 coming into the troopers and we have the recordations of
6 that. There was a man who followed him from exit 65 to exit
7 55, following him, his statements to me and would have been
8 at trial that there were Mack trucks that were trying to
9 block Mr. Burr in, he was weaving in and out of traffic in a
10 very reckless manner. Mr. Jackson, which is the witness, he
11 got off at exit 55 which is where he was going, he was on
12 the phone the whole time with dispatch. Mr. Burr according
13 to Mr. Jackson was going somewhere between 80 and 90 miles
14 per hour and that would have been the testimony of the other
15 witnesses too. People did actually witness the collision.
16 All of those people who saw him going never saw anyone else
17 in the car. They were able to give a description of
18 Mr. Burr, gave a description of tattoos on his arms and
19 basically said it was a man of slight build and had a shaved
20 head.

21 THE COURT: Law enforcement was not involved in the
22 pursuit.

23 MS. HALL: No, sir. They were not involved in the
24 pursuit, they came on scene after the accident occurred.

25 MR. LIFSEY: Can I have one moment?

1 THE COURT: Yes, sir.

2 (Break in proceedings.)

3 MS. HALL: I want to make that point. He was in the
4 south bound lane. He was going -- there was text messages
5 that he was making to his uncle, Mr. William Burr, and to a
6 couple of other people, we had his cellphone dumped and he
7 was texting saying, "I went the wrong way on I-77." He was
8 in the correct lane but he was not going in the direction
9 for where he was intending to.

10 THE COURT: The direction that he was intending to go.

11 MS. HALL: Correct, if that's what the Court was
12 getting at, but he was going the wrong direction. There was
13 also text messages that went out, "I'm so drunk," and things
14 like that that had come off his phone.

15 THE COURT: Anything further, Mr. Lifsey?

16 MR. LIFSEY: No, sir. I wanted to clarify that point
17 as well that he was in the correct lane of travel. The
18 vehicle was in the correct lane of travel.

19 THE COURT: Mr. Burr, Mr. Lifsey was correct when he
20 said that many judges feel that these kinds of cases are the
21 most difficult kinds of cases for them to rule upon. He was
22 also correct when he said that the legislature had granted
23 to the Court great latitude in imposing sentences in these
24 kinds of cases, as little as one year could be. It's my
25 view that the legislature did that because of other

1 circumstances that may have been involved in these kinds of
2 cases, for instance the people in the car could have all
3 been drinking together and one is killed, two vehicles could
4 have been involved in an accident, there are all kinds of
5 reasons for the legislature to decide that one year might be
6 an appropriate sentence. I don't think in your case that
7 fits. Your prior driving record really in the past, what,
8 three or four years prior to the accident shows a complete
9 disregard for the law. It does appear to me that you were
10 well aware of what you were doing, you were well aware of
11 the consequences of what you were doing and going so far as
12 to attempt to cover up or hide your conduct. Mr. Burr, the
13 court sentences you to 20 years on each of the charges, they
14 would be concurrent and you get credit for time served.
15 Good luck to you.

16 (End of the hearing.)

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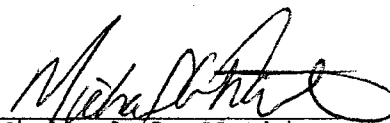
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25

1 I, the undersigned, Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of the proceedings had and
5 evidence introduced in the trial of the captioned case,
6 relative to appeal, in the Court of General Sessions for
7 Chester County, South Carolina, on the 18th day of May, 2012.

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

10
11 September 24, 2013

12
13 
14 Michael C. Watkins
15 Court Reporter
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FORM 5

2013CP/201224

63/ll C/M

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

County of ChesterEARL MALCOLM BURR #

Full name and prison number (if any) of Applicant

350918

State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEFCLERK OF COURT
CHESTER CO. S.C.
2013 MAY 21 AM 11INSTRUCTIONS TO READ CAREFULLY

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

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

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

1. Place of detention LIEBER CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence SIXTH JUDICIAL CIRCUIT
104 N. MAIN ST, LANCASTER SC 29721
3. Name(s) of co-defendant(s) (if any)
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) M252268 / 2012-GS-12-006
 - (b) M252267 / 2012-GS-12-005

(c) _____

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

(a) 5-18-12 20 yrs \$15,000 CONCURRENT(b) 5-18-12 20 yrs \$15,000 CONCURRENT

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ALFORD PLEA

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

yes

8. If you answered Ayes@ to (7), list:

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

i. THE SOUTH CAROLINA COURT OF APPEALS

ii. _____

iii. _____

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

i. NOTICE OF APPEAL

ii. _____

iii. _____

(c) the date of each such result:

i. JUNE 18, 2012

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) _____

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) I AM INNOCENT.
- (b) MY COUNSEL DID NOT TAKE APPROPRIATE
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) I DID NOT DRIVE SOUTH ON I-77 ON
- (b) I WAS FORCED TO FIRE MY ORIGINAL 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 Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No

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

(a) which grounds have been presented:

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

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

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

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

(a) _____

(b) _____

(c) _____

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

(a) your arraignment and plea? YES

(b) your trial, if any? _____

(c) your sentencing? YES

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered Ayes@ to one or more parts of (17), list:

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

i. MR MICHAEL H. LEESEY PO BOX 1809
LANCASTER, SC 29721

ii. _____

iii. _____

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

i. ORIGINAL PLEA FOR THESE CHARGES

ii. _____

iii. _____

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

I FEEL MY INNOCENCE DESERVES FULL EXONERATION.
I HAVE MAINTAINED MY INNOCENCE THROUGHOUT
THIS PROCESS. AT THE VERY LEAST I FEEL I SHOULD

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

No

STATE OF SOUTH CAROLINA)

County of CHESTER)

VERIFICATION

FILED
 2013 MAY 21 AM 11:11
 CLERK OF COURT
 CHESTER CO S.C.
 Revised 3/2003

I, EARL MALCOLM BIERE II, 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.

EB

SWORN to and subscribed before me this 15th
 day of MAY, 2013

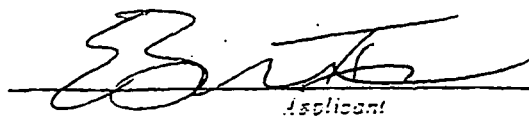
Ludwien Bryant (L.S.)
 Notary Public

My Commission Expires: May 26, 2020

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

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

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


Applicant

SWORN or affirmed to and subscribed before me this
14th day of May, 2013.

Ludieann Bryant
Notary Public

My Commission Expires: May 26, 2020

FILED

2013 MAY 21 A 11:11

CLERK OF COURT
CHESTER CO S.C.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTER	)	
	)	
	)	2013-CP-12-0224
	)	
Earl Malcolm Burr, II, #350912,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief filed May 21, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Chester County Clerk of Court. The Applicant was indicted at the January 2012 term of the Chester County Grand Jury for hit and run involving death (2012-GS-12-005). He was represented by Mike Lifsey, Esquire.

On May 8, 2012, the Applicant pled guilty before the Honorable Brooks P. Goldsmith and was sentenced to twenty (20) years imprisonment. The Applicant filed a Notice of Appeal (Appellate Case No. 2012-212238) but failed to provide a guilty plea explanation as required by Rule 203 of the South Carolina Appellate Court Rules. Accordingly, the case was dismissed by the South Carolina Court of Appeals. The Remittitur was sent on October 15, 2012.

Attached herewith and incorporated herein are the records of the Chester County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the appellate records. The plea transcript will be forwarded upon receipt.

II.

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

1. "I am innocent."
2. "My counsel did not take appropriate."
3. "I did not drive south on I-77."
4. "I was forced to fire my original counsel."

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

III.

The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of

justice;

5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.... S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Applicant's misunderstanding of what the sentence was is not a ground for relief. Therefore, the Court should summarily dismiss this application for post-conviction relief.

IV.

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

V.

WHEREFORE, having made its Return, the State requests that the application be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160.

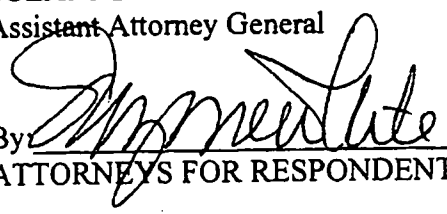
Respectfully submitted,

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By 

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Sept 4, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

))

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Earl Malcolm Burr, II,

[illegible]

2013-CP-12-0224

Applicant,

V.

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE BY MAIL

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

Narthan J. Sheldon, Esquire
Shaw Law Firm
P.O. Box 36250
Rock Hill, South Carolina 29732

Anne A. Mueller
Legal Assistant for the Respondent

DATED this 4th day of September, 2013.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHESTER) IN THE COURT OF COMMON PLEAS
3
4 Earl Malcolm Burr,)
5 Applicant,) TRANSCRIPT OF RECORD
6 -vs-) 2013-CP-12-0224
7 The State.) July 28, 2014
8) Lancaster, South Carolina
9
10

11 B E F O R E:

12 HONORABLE W. JEFFREY YOUNG, JUDGE
13
14

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

16 NATHAN J. SHELDON, ESQUIRE
17 Attorney for the Applicant

18 CROOM HUNTER, ESQUIRE
19 Attorney for the State
20

21 Linda D. Moffitt
22 Circuit Court Reporter
23
24
25

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77
Earl Malcolm Burr
Direct examination by Mr. Sheldon

1 THE COURT: All right. This is the case of Earl
2 Malcolm Burr, II, vs. State of South Carolina under docket
3 No. 2013-CP-12-224.

4 The plaintiff is represented Nathan J. Sheldon.
5 Which county is this?

6 MR. SHELDON: This is a matter out of Chester County,
7 Your Honor.

8 THE COURT: I'm sorry. Yeah, Chester County.

9 Nathan J. Sheldon is his attorney. The state is
10 represented by Mr. Croom Hunter.

11 Are y'all ready to proceed?

12 MR. HUNTER: Yes, Your Honor.

13 Mr. Sheldon, told me he wishes to approach, Your
14 Honor.

15 MR. SHELDON: Your Honor, can we approach?

16 THE COURT: Certainly.

17 (Bench conference held off the record.)

18 THE COURT: All right. Mr. Sheldon.

19 MR. SHELDON: Your Honor, we would call Mr. Earl Burr.

20 THE COURT: Mr. Burr, come forward and be sworn.

21 EARL MALCOLM BURR, having been
22 first duly sworn, testified as follows:

23 THE COURT: You may proceed.

24 MR. SHELDON: Thank you, Your Honor. May it please
25 the Court.

Earl Malcolm Burr
Direct examination by Mr. Sheldon

- 1 DIRECT EXAMINATION BY MR. SHELDON
- 2 Q Mr. Burr, please state your name for the record.
- 3 A Earl Malcolm Burr, II.
- 4 Q And were you convicted of essentially felony D.U.I.
- 5 resulting in death?
- 6 A Yes.
- 7 Q And how much time did you get on that charge?
- 8 A Twenty years.
- 9 Q And are you on any medication in S.C.D.C.?
- 10 A Yes, I am.
- 11 Q Where -- first of all, where are you incarcerated at?
- 12 A At Lieber Correctional Institution.
- 13 Q And what medication are you prescribed?
- 14 A I'm prescribed Depakote and Demerol.
- 15 Q And what are you prescribed those medications for?
- 16 A For -- for bipolar and paranoia schizophrenia.
- 17 Q So it's paranoia schizophrenia and bipolar disorder?
- 18 A Yes.
- 19 Q When was the last time you were given those
- 20 medications?
- 21 A About five days ago.
- 22 Q Why? Why have they not given you those medications?
- 23 A They don't have them and they weren't given them by
- 24 the state. I don't know why the county doesn't have them.
- 25 I haven't had them since I left the facility.

Earl Malcolm Burr
Direct examination by Mr. Sheldon

1 Q So since you've been transported to either Lancaster
2 or Chester you have not been given those medications?

3 A It's right, correct.

4 Q Do those medications -- being deprived of those
5 medications, does that affect your ability to think
6 clearly?

7 A Yeah, it does. It affects my ability to think and to
8 keep up with what's real and what's not real.

9 Q Okay.

10 MR. SHELDON: Your Honor, at this time we would move
11 to continue this hearing based on Mr. Burr's testimony.

12 THE COURT: All right. Mr. Hunter.

13 MR. HUNTER: Your Honor, the state's ready to go
14 forward.

15 We would refer Your Honor to Council vs. Catoe. The
16 cite for that is 359 S.C. 120. That's a 2004 case which
17 essentially states that Mr. Burr would not need to be
18 competent to go forward on his P.C.R.

19 THE COURT: Well, I'm listening to him right now, and
20 he seems lucid. He knows. He's answering your questions.
21 I'm going to go ahead and proceed.

22 The record is -- I've got the transcript and
23 everything like that. So we'll proceed.

24 MR. SHELDON: Thank you, Your Honor.

25 Q Mr. Burr, in this particular case you filed a P.C.R.

Earl Malcolm Burr
Direct examination by Mr. Sheldon

1 application alleging ineffective assistance of counsel, is
2 that correct?

3 A Yes, sir.

4 Q And your plea counsel was Mr. Mike Lifsey in this
5 case, is that right?

6 A That's correct.

7 Q But the entire time you were also represented by Ross
8 Burton at some point, is that right?

9 A That's correct.

10 Q But both of -- the entire life and the history of your
11 case prior to being convicted, you were represented by the
12 Chester County Public Defender's Office, is that right?

13 A That's correct.

14 Q Okay. What exactly are you alleging that the public
15 defender's office did improperly?

16 A Well, from the beginning I made several attempts to
17 get in touch with Ross Burton and he -- he would not speak
18 to me for the first four months that I was -- that I was
19 locked up.

20 It wasn't until after I had been locked up for several
21 months that he finally came to speak to me.

22 I had tried several times to get him to -- to help me
23 to get information about what was going on, what needed to
24 happen, and he would never speak to me.

25 He -- we made discussions about things that we would

Earl Malcolm Burr
Direct examination by Mr. Sheldon

1 do, and he went against those, against those things, and
2 essentially I fired him because he would -- he was not
3 doing anything that he was asked to do, and he was not in
4 any way trying to help me.

5 Q What about -- what about Mr. Lifsey once he took over
6 with the case? Was he able to -- what -- what did he do
7 that was ineffective?

8 A I mean, Lifsey -- I suppose he made an attempt to try
9 to help me, but he only had about a month to do anything
10 with this case.

11 Q Did -- was there an investigator hired in this case?

12 A There was, and the investigator stated for the record
13 that -- I mean, in his -- in his piece of document that I
14 have that he -- he didn't have enough time to investigate
15 the case.

16 Q Okay. So did -- was the investigator able to do any
17 investigation?

18 A I mean, I suppose he did a portion, but he came back
19 with maybe a page worth of information.

20 Q What exactly do you think either Mr. Lifsey or the
21 investigator could have found had they had more time?

22 A Well, if they had started in the beginning instead of
23 waiting until the end they would have had some investigating. I
24 mean, there was no evidence. There was no -- there was
25 nothing left at the end. I mean, that was one of the

Earl Malcolm Burr
Direct examination by Mr. Sheldon

1 things that the investigator -- that was one of the things
2 that he stated. One of the first things he asked me about
3 was where the vehicle was and he wanted to see the vehicle
4 and things like that. But that stuff had already been
5 released.

6 MR. HUNTER: Your Honor, we object to hearsay.

7 THE COURT: Sustained.

8 Q So, essentially, you're saying that due to a lack of
9 time Mr. Lifsey and the public defender's office deprived
10 you of a thorough investigation, is that right?

11 A Yes. They would.

12 Q Were you provided in the -- in the beginning were you
13 provided copies -- copies of all of the discovery, all of
14 the evidence against you?

15 A I was never provided with all of the discovery even
16 until this day.

17 Q Did you request the discovery in this case?

18 A I requested the discovery several times.

19 Q Okay. And so no one in the public defender's office
20 went over that with you, gave you a chance to review the
21 evidence against you?

22 A They -- they -- they came by to see me, and they
23 talked to me about it for a little bit, but they didn't
24 give me a chance to see everything that was against me, no.

25 Q Okay.

Earl Malcolm Burr
Cross-examination by Mr. Hunter

1 MR. SHELDON: Your Honor, I don't have any more
2 questions.

3 THE COURT: Thank you.

4 Mr. Hunter.

5 CROSS-EXAMINATION

6 BY MR. HUNTER

7 Q Mr. Burr, you pled guilty, is that correct?

8 A Yes, sir, versus -- based on the Alford, an Alford
9 plea.

10 Q Okay. And, Mr. Burr, just to be clear, you're not
11 saying today that you were incompetent to plea the day that
12 you pled guilty, is that correct?

13 A Pardon?

14 Q Are you today, are you saying that the day that you
15 pled guilty that you were not competent, or are you just
16 saying that you're not competent today?

17 A I didn't understand exactly what he was telling me to
18 do when it came to the plea.

19 Q Okay. But do you recall Mr. Lifsey telling the judge
20 that he thought you were competent and --

21 A I don't recall anything really from that day at all.

22 Q You don't recall anything. Okay. So you don't
23 remember the judge explaining to you that an Alford plea is
24 treated exactly like a guilty plea?

25 A No. Me and my lawyer have gone over that, but, I

Earl Malcolm Burr
Cross-examination by Mr. Hunter

1 mean, I understand that now, but, I mean --

2 Q But you're saying --

3 A -- like my point to Lifsey was that I wasn't guilty
4 and that I wasn't going to take a plea if it stated that I
5 was guilty.

6 Q Okay. But you did tell -- you did agree with the
7 judge that you believed a jury would find you guilty.

8 A But I don't really remember a whole lot about that
9 day, is what I'm saying already.

10 Q So you don't remember telling the judge that your --
11 Mr. Lifsey explained all of your rights to you and that you
12 were giving up those rights by pleading guilty?

13 A I mean, not at the moment. What I can --

14 Q Okay. And so...

15 MR. HUNTER: And, Judge, that was on page 17 of the
16 transcript.

17 Q Mr. Burr, you don't remember the judge asking you if
18 you had enough time to discuss your plea with your lawyer?

19 A No, sir.

20 Q Okay.

21 MR. HUNTER: Your Honor, that's on page 17 as well.

22 Q And you don't remember telling the judge that you were
23 satisfied with Mr. Lifsey's representation?

24 A No, sir.

25 MR. HUNTER: Judge. That's on 18.

Earl Malcolm Burr
Cross-examination by Mr. Hunter

1 Q Finally --

2 A I'm not saying that I don't believe that any of this
3 is true. I'm saying I've never even been provided with the
4 transcript after asking for that.

5 Q Okay. Would you like a copy to look over while I'm
6 asking these questions?

7 A I mean, if you don't mind.

8 (Pause.)

9 Q All right. Mr. Burr, if you could, please turn to
10 page 18.

11 A All right.

12 Q Excuse me. That was the wrong -- there are two
13 transcripts and I was --

14 THE COURT: Yeah. I was looking at this one as well.

15 MR. HUNTER: I apologize. Your Honor, does your --
16 does your packet have two transcripts in it?

17 THE COURT: No. It's only got one.

18 MR. HUNTER: What's the date of your transcript?

19 THE COURT: May 18th of 2012.

20 MR. HUNTER: Okay. I apologize, Your Honor. The
21 packet should have had a May 8th transcript and a May 18th
22 transcript. Mr. Burr appeared before Judge Goldsmith on
23 May 8th and pled guilty.

24 THE COURT: Yeah. I was looking for the colloquy.

25 MR. HUNTER: Yes, Your Honor.

Earl Malcolm Burr
Cross-examination by Mr. Hunter

1 THE COURT: And I did not see that. Apparently y'all
2 brought witnesses in later to talk for mitigation and for
3 aggravating circumstances. Yeah, let me see that one.

4 MR. HUNTER: I apologize, Your Honor. It's my fault.

5 THE COURT: Thank you. Okay.

6 MR. HUNTER: And, Your Honor, I'm -- all of these
7 questions I've asked, I'm referring to the May
8 8th transcript.

9 THE COURT: Right. Okay.

10 Q And so, Mr. Burr, going back to the May 8th when you
11 pled guilty. And I apologize. I don't have another
12 transcript to give you. But it's your testimony today that
13 you don't remember telling the judge when he asked if you
14 had any complaints about Mr. Lifsey, you don't remember
15 telling him absolutely not?

16 A No, sir. I mean, I just don't remember that stuff. I
17 mean, I barely remember the day. I mean, it was a very --
18 I mean, the whole thing was a pretty traumatic experience.

19 Q Okay. But you would agree that if it's in the
20 transcript that's what you said.

21 A I mean, I -- I can only suppose that it is.

22 THE COURT: Here. I'll let you use it. I see what
23 you're talking about, the colloquy, if you want to use it.
24 Then I'll read back over it again before I make my ruling.

25 MR. HUNTER: Okay. Now, Your Honor, I'm now going to

Earl Malcolm Burr
Cross-examination by Mr. Hunter

1 refer to the May 18th transcript.

2 THE COURT: Okay.

3 MR. HUNTER: The one everybody has.

4 Q Mr. Burr, do you remember the second time you went
5 before the judge your attorney asking for you to have a
6 sentence on the low end of the spectrum for a lesser amount
7 of years?

8 A Maybe. I don't really -- I mean, I have things I
9 remember from that day but --

10 Q Do you remember -- so you don't remember apologizing
11 to the victim?

12 A Yes.

13 Q Okay. You do remember apologizing, but you don't
14 remember anything else.

15 A Well, I mean, specifically, I just saw it in the
16 transcript. You told me to turn to that page.

17 Q Okay.

18 A But, I mean, I remember apologizing, because, I mean,
19 I've been sorry for the whole situation. But you're
20 talking about specifics about my lawyers, like, I mean,
21 now, that's the traumatic stuff that I remember, is the
22 victim and the people that were speaking on my behalf and
23 on the family's behalf.

24 Q Okay. And it's your testimony that Mr. Lifsey never
25 provided you with all of your discovery?

Michael H. Lifsey
Direct examination by Mr. Hunter

1 A I -- I never received all of my discovery. I still
2 don't have it.

3 Q Okay. And do you think Mr. Lifsey hired the
4 investigator too late to do any good?

5 A I think that Mr. Lifsey took the case too late for any
6 of it to do any good.

7 Q Okay.

8 MR. HUNTER: Your Honor, that's all the questions I
9 have.

10 THE COURT: Any redirect?

11 MR. SHELDON: No, Your Honor.

12 THE COURT: All right. You may step down.
13 Any other witnesses, Mr. Sheldon?

14 MR. SHELDON: No, Your Honor.

15 THE COURT: All right. Thank you.

16 MR. SHELDON: Your Honor, the state calls Mr. Lifsey.

17 THE COURT: All right.

18 MICHAEL H. LIFSEY, having been
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. HUNTER

21 Q Good morning, Mr. Lifsey.

22 A Good morning.

23 Q How long have you been practicing law?

24 A Since 1991.

25 Q Okay. And what is your current position?

Michael H. Lifsey
Direct examination by Mr. Hunter

1 A I'm the circuit public defender for the Sixth Circuit.

2 Q Okay. And how long have you worked for the public
3 defender's office here?

4 A Here, I've been circuit public defender since
5 March 1st of 2009.

6 Prior to that I served as the -- an assistant public
7 defender in York County. I was the chief public defender
8 in Chester County at some point in the 90's as well.

9 Q Okay. And so you were appointed this case as public
10 defender.

11 A Our office was appointed, yes. Our office was
12 appointed. Ross Burton was assigned the case initially.
13 He at that time was handling Chester cases for me.

14 Q Okay. And do you remember -- do you recall how many
15 times you met with Mr. Burr prior to his plea?

16 A Well, I mean, I took over representing his case. I
17 was looking at my notes during -- during the testimony. It
18 appears that I -- he had some sort of issue with
19 Mr. Burton, and so I decided I would take the case in March
20 of 2012.

21 I met with him first time on March 20th of 2012
22 according to my notes. That's the first in-depth
23 conversation we had.

24 I have a memory that we had spoken maybe one day
25 briefly before that, maybe when he was brought up for a

Michael H. Lifsey
Direct examination by Mr. Hunter

1 bond hearing or something like that. But our first
2 in-depth conversation was March the 20th. And then on
3 March 22nd I got orders authorizing a private investigator
4 to begin working on the case. And I met with him fairly
5 regularly between then and the time he entered the plea.

6 I also -- I will tell, also retained the services of a
7 psychologist, forensic psychologist, as well later on after
8 I had spoken to him a time or two.

9 Q Okay.

10 MR. HUNTER: Court's indulgence.

11 (Pause.)

12 Q Did you file the Rule 5 and Brady motions?

13 A Yes, sir.

14 Q Okay. Did you have any problems getting discovery in
15 this case?

16 A No, sir.

17 Q Did you go over the discovery with Mr. Burr?

18 A I did. My notes indicated that March 20th meeting
19 that we met and went over the discovery at that time. My
20 notes say portions of discovery. I think that's because
21 there were a number of recordings.

22 This was a MAIT -- the case was worked by the MAIT
23 team of the highway patrol, and they recorded interviews.
24 And I'm not sure whether that first day we listened to all
25 of the interviews or not, but we certainly went over

Michael H. Lifsey
Direct examination by Mr. Hunter

1 their -- their reports as well. And he told me his side of
2 it on that day. And I reviewed all the discovery with him.

3 Q Okay. What was Mr. Burr's side of the story?

4 A Mr. Burr told a story basically that had him not
5 driving.

6 His story was he was kidnapped out of Gastonia. And
7 I -- I'm going just by memory. A detail or two might be
8 off. But basically that he was a kidnap victim from
9 Gastonia, that he was not -- the only thing I don't
10 remember is whether he was driving under duress or whether
11 he was not driving at all. I can't remember the details.

12 But the gist of it was he went with these people
13 involuntarily out of North Carolina, and then of course
14 that somehow after the wreck and after he ran out of gas
15 that they disappeared and then he was able to get help.
16 It's consistent with the story that he told -- that he told
17 law enforcement basically at the time of his arrest.

18 I retained the services of Pete Skidmore who is an
19 experienced investigator to try to run down any leads on
20 that.

21 He -- the other weird part of this was part of the
22 reason he claimed to be so frightened of these people is
23 that he had witnessed them kill another person and dispose
24 of -- that he had witnessed them kill another person. So
25 Pete made an effort to track down any missing persons out

Michael H. Lifsey
Direct examination by Mr. Hunter

1 of Gaston County. This individual is from Gaston County,
2 or at least was living there when this happened. And so we
3 made an effort to try to track down any missing persons and
4 bodies that were found -- any of that -- and Pete was
5 unable to do that.

6 Q Okay. So did Mr. Skidmore indicate that he needed
7 more time to conduct this investigation?

8 A No. He never told me that at all.

9 I mean, frankly, the story -- obviously, I wasn't out
10 there, and I don't know what happened. But the story on
11 its face seems rather incredible.

12 But Pete is a good investigator. I mean, he's the guy
13 that I think on the Sterling Span death penalty case found
14 the guy under the bridge in Oklahoma, the homeless guy
15 somewhere out in the Midwest.

16 I mean, he's a competent investigator, and he never
17 could find anything to support the theory at all. He did
18 not indicate to me that he needed more time.

19 Obviously, I mean, I could see that it was a fairly
20 short time period between when he was retained until when
21 this case ultimately pled but he never -- he never told me
22 that he needed more time in this case.

23 In fact, he suggested -- it was Pete that confirmed
24 the idea that we needed a psychologist involved. I -- I
25 had had some worries. Yeah. Any time your client tells

Michael H. Lifsey
Direct examination by Mr. Hunter

1 you something that just on its face sounds hard to believe,
2 you know, you raise some issues about is he competent, does
3 he have mental illnesses.

4 And that was Pete's consensus, Pete's thoughts, after
5 he talked to me. And that's what led us ultimately to get
6 Dr. Price from Greenville to be our forensic
7 psychologist -- psychiatrist -- psychologist, I think, in
8 this case.

9 Q And did you go over all of the elements of the charges
10 that Mr. Burr was facing and the possible sentences if he
11 went to trial?

12 A Yes, sir. He had both a felony D.U.I. death and a
13 leaving the scene death. We talked about both of them and
14 the potential sentences on both.

15 Q And so did you think he had any kind of potential
16 defense that would likely win at trial?

17 A Factually, I mean, I don't have any problem. I've
18 sold, I mean, I've tried to sell plenty of stories to the
19 jury, and he had a defense that if the jury believed him
20 would make him not guilty.

21 The problem is that there was nothing that I could
22 find that supported that at all. And, in fact, there was
23 much evidence to the contrary including some interactions
24 he had with people between the time that he said he was
25 allegedly kidnapped and the time of the accident.

Michael H. Lifsey
Direct examination by Mr. Hunter

1 There was a person in Rock Hill. He had a run-in.
2 The state was prepared to call witnesses from Rock Hill
3 P.D. in, things like that.

4 Q Okay. And you did have him mentally evaluated prior
5 to his plea.

6 A I did. I have a copy of that report.

7 The doctor -- the doctor believes he suffers from
8 mental illness and diagnosed him with mental illnesses but
9 did -- did believe he was competent to stand trial, which
10 is consistent with my own observations of him. He never
11 gave me -- and I was -- I thought he had mental health
12 problems, but I didn't think he was not competent to stand
13 trial.

14 Q Did you review the constitutional rights that he was
15 waiving by pleading guilty?

16 A Yes, sir.

17 Q And did he appear to understand what was going on?

18 A He did.

19 Q And whose decision to plead guilty was it?

20 A It was his entirely. I mean, he entered -- he entered
21 an Alford plea, is my memory. I -- I also do not have a
22 transcript of the plea colloquy, but as I looked at it I
23 have a transcript of the -- of the mitigation and
24 sentencing. But my memory is that it was an Alford plea,
25 but he entered it intelligently.

Michael H. Lifsey
Cross-examination by Mr. Sheldon

1 Q Okay. I think that's all the questions I have.

2 THE COURT: Mr. Sheldon.

3 MR. SHELDON: Thank you, Your Honor. May it please
4 the Court.

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. SHELDON

8 Q Mr. Lifsey, I want to go back to the -- to the
9 forensic-psychologist evaluation. Specifically, in the
10 actual May 8th transcript -- do you have that transcript?

11 A I do not have the -- the May 8th, the plea, the plea
12 colloquy, I do not have. I have the -- I have the
13 sentencing -- the sentencing and mitigation.

14 MR. SHELDON: I can give the solicitor a copy.

15 THE COURT: Okay.

16 A I do have a copy of the report though if needed. Yes,
17 sir. I have it now with the transcript.

18 Q You've referenced in the transcript -- and I don't
19 know if you can go off of memory or not -- there's some
20 diatribe to the sentencing and to the judge that took the
21 plea -- Judge Goldsmith -- regarding that he is, in fact,
22 on Prozac in the jail but at the time of the guilty plea
23 was only -- was -- had only taken ibuprofen for a fight
24 that happened the night before. Do you recall that?

25 A If you give me one minute I'm thinking -- are you

Michael H. Lifsey
Cross-examination by Mr. Sheldon

1 looking on page eight of the transcript?

2 Q I am looking on page eight.

3 A Will you give he just moment to review that --

4 Q Sure.

5 A -- so I can see what it says?

6 (Pause.)

7 A Yes, sir. It looks like -- and I don't -- I'm going
8 by the transcript, because I don't have really an
9 independent memory exactly what I said. But it looks like
10 I said he was taking Prozac per the jail doctor's
11 prescription. And then I say, "Yes. He also takes
12 ibuprofen because he got in at a fight at the jail."

13 Q So you had -- so you were referring to him not solely
14 being on ibuprofen that day but in addition to the Prozac,
15 is that correct?

16 A Yes. That's what -- yes, sir, yes, sir. Dr. -- I
17 assume it was -- Rick Hughes is the Chester jail doctor.

18 Q Did you confirm with your -- with Mr. Burr that
19 morning that he had, in fact, taken his Prozac? Do you
20 recall?

21 A I don't recall independently asking him about that. I
22 don't know if I did or not. I don't remember there
23 being -- I don't remember having any -- I wouldn't have
24 gone forward if I'd had any concerns he was not competent.
25 But I don't know if I asked him specifically about the

Michael H. Lifsey
Cross-examination by Mr. Sheldon

1 medication.

2 Q I want to go back to talk about the beginning of this
3 case. It appears that you got involved, I think from your
4 own testimony, sometime in March, is that correct?

5 A That's correct.

6 Q And the incident -- and that would be March of 2012.

7 A Yes, sir.

8 Q The incident actually happened in, what, October of
9 2011, is that right?

10 A I believe that to be correct.

11 Q So between October of 2011 and March of 2012 your
12 office but not you represented Mr. Burr, is that right?

13 A Yes. Ross Burton was assigned the case.

14 Q And do you recall why the -- you took over
15 representation for Mr. Burton?

16 A Well, they had a falling out. I mean, he -- the --
17 the client complained about Mr. Burton. I don't honestly
18 remember the nature of his complaint.

19 Now, usually I don't automatically take a case just
20 because the client complains about it. But my rec -- my
21 memory is I asked Mr. Burton about it, and my memory is
22 that Mr. Burton requested that I take over the case as
23 well. So that's why I did it.

24 Q Okay. And there was no investigator hired or forensic
25 psychologist hired prior to your representation, is that

Michael H. Lifsey
Cross-examination by Mr. Sheldon

1 correct?

2 A That's correct.

3 Q So, and I know you can't speak for Mr. Burton today,
4 but would it be common for your office to wait five months
5 before doing those things?

6 A Well, I mean, it depends on the case. And I -- I'm
7 not privy, to be honest with you.

8 I don't remember -- I wasn't privy obviously to the
9 conversation between Mr. Burr and Mr. Burton. And it
10 depends.

11 I mean, when I got -- all I can tell you is when I got
12 involved in the case with what he told me is his account of
13 what happened I thought we would benefit by the services of
14 a private investigator, so.

15 Q Because of the -- because of the story that he told
16 you.

17 A The story combined with the compressed timeframe
18 involved.

19 In other words, yes, I -- you had a situation where he
20 told me we would have to run down -- for, one, his story --
21 seemed to me there would be a lot of leg work involved in
22 running down his version of the story, some of which would
23 be in North Carolina. And we had a compressed timeframe
24 because the state was pushing to move forward on the case.
25 So the combination of those two things is what got me to do

Michael H. Lifsey
Cross-examination by Mr. Sheldon

1 it.

2 Q Okay. At the actual plea itself did he appear to be
3 competent --

4 A Yes, sir.

5 Q -- in your opinion?

6 A Yes, sir.

7 Q And did you go over the results of the
8 forensic-psychologist exam with him?

9 A With the client?

10 Q Yes.

11 A I -- I believe I did, not so much as to the issue of
12 competency but more as a mitigating factor in regards to
13 what mental illnesses he talked about he had.

14 I remember telling him that one of the things we were
15 going to discuss is that he had undiagnosed and, frankly,
16 improperly -- probably improperly treated mental health
17 problems, was going to be part of our mitigation. So I do
18 remember discussing it with him. To what detail, I don't
19 know.

20 You know, there were a lot of -- there were a number
21 of mitigation witnesses that testified, and some letters
22 and things like that. So, but I remember discussing it
23 with him. I don't know in what detail.

24 Q Did -- going back to Mr. Skidmore's investigation, did
25 he provide you with a written report as to what he had

Michael H. Lifsey
Cross-examination by Mr. Sheldon

1 done, if he had done anything?

2 A I -- I do not believe he provided me with a written
3 report. He certainly billed us because we passed the bill
4 on to indigent defense. I mean, we paid it and were
5 reimbursed. So he billed us, which is probably somewhere
6 in my file if you want. But I don't believe he provided a
7 written report.

8 I mean, I believe I talked to Mr. -- I know I talked
9 to Mr. Skidmore multiple times. Pete got along pretty well
10 with the client. I mean, I think I got along pretty well
11 with the client too, but Pete did particularly. I know he
12 met with him even more than I did. My memory is he went to
13 the jail a time or two without me.

14 Q And based on your recollection of -- of your file and
15 everything else did -- did Mr. Skidmore do a thorough
16 investigation in investigating the alleg -- I'm sorry --
17 Mr. Burr's side of the story?

18 A I believe he did, sir.

19 Q And you communicated with him regarding the
20 investigation.

21 A Mr. Skidmore or Mr. Burr?

22 Q Yes.

23 A Both of them actually. Mr. Skidmore, yeah. He
24 updated me pretty regularly, and he and I met together a
25 couple of times about it, several times about it.

Michael H. Lifsey
Redirect examination by Mr. Hunter

1 Q And so even though there's a short timeframe of March
2 to May do you think that there was an opportunity for both
3 you and Mr. Skidmore to do what they were supposed to do?

4 A Yes.

5 Q Would it be fair to say though that between October
6 and March that almost nothing had gotten done?

7 A Well, certainly an investigator was not retained until
8 March.

9 What happened before that -- I mean, other than that I
10 don't -- I can't tell you what Mr. Burton did or didn't do.
11 I can tell you that an investigator was not retained until
12 March.

13 Q Okay.

14 MR. SHELDON: Thank you, Your Honor. I don't have any
15 more questions.

16 THE COURT: Any redirect?

17 MR. HUNTER: Briefly Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. HUNTER

20 Q Did you have any indication the date of the plea that
21 Mr. Burr hadn't taken his medicine?

22 A No. I don't remember discussing the issue of
23 medication. I really don't have an independent
24 recollection of discussing the issue of medication with my
25 client beyond what I said in the plea colloquy, which

Michael H. Lifsey
Redirect examination by Mr. Hunter

1 indicated he was on Prozac and ibuprofen.

2 I don't remember -- he didn't appear to be -- he
3 didn't appear to show any signs of not being competent or
4 any of the I-don't-remember type answers you were getting
5 when you examined him. I wasn't getting those.

6 Had I seen any indication that raised issues as to his
7 competency I would have taken the appropriate action
8 including inquiring further, perhaps moving for a
9 continuance, whatever would have been necessary. I don't
10 recall any of those things happening.

11 Q And you don't think he needed any more time to conduct
12 more investigation with you?

13 A No, sir. We didn't find anything to -- to support the
14 idea that what he was telling us was true.

15 Q Do you -- do you feel like you needed a written report
16 from Mr. Skidmore?

17 A No. I mean, investigators usually don't. Well, I
18 mean, I can't speak to everybody. I -- I generally use a
19 couple of investigators, and most of the time they
20 communicate with me in writing. I mean, excuse me. Not
21 in -- they don't communicate with me in writing. They call
22 me and tell me what's going on, update me that way.

23 MR. HUNTER: That's all I have.

24 THE COURT: Any re --

25 MR. SHELDON: No, no, sir, Your Honor.

1 THE COURT: All right. Thank you. You may step down.
2 Anything further from the state?

3 MR. HUNTER: No, Your Honor.

4 THE COURT: All right. I'll take this matter under
5 advisement. If I can have a copy of that transcript from
6 the plea hearing, I will notify you when I make my ruling.
7 Thank you.

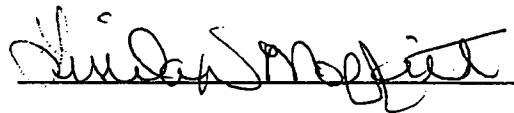
8 END OF REQUESTED TRANSCRIPT OF RECORD
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CERTIFICATE

I, the undersigned Linda D. Moffitt, official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Chester County, South Carolina, on the 28th day of July 2014.

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

November 21, 2014

A handwritten signature in cursive script, appearing to read "Linda D. Moffitt", is written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

Earl Malcolm Burr, II, #350912,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Case No. 2013-CP-12-0224

ORDER OF DISMISSAL

FILED
2014 SEP 12 A 9:53
CLERK OF COURT
CHESTER CO S.C.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on May 21, 2013. Respondent made its return on September 4, 2013. An evidentiary hearing into the matter was convened on July 28, 2014, at the Lancaster County Courthouse. Applicant was present at the hearing and was represented by Nathan J. Sheldon, Esquire. Respondent was represented by Assistant Attorney General J. Croom Hunter of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Chester County Clerk of Court. Applicant was indicted during the January 2012 term of the Chester County Grand Jury for hit and run involving death (2012-GS-12-005) and felony DUI causing death (2012-GS-12-006). Applicant was represented by Mike Lifsey, Esquire. On May 8, 2012, Applicant appeared before the Honorable Brooks P. Goldsmith, where he pled guilty as indicted. Judge Goldsmith sentenced applicant to twenty (20) years imprisonment.

Applicant filed a Notice of Appeal (Appellate Case No. 2012-212238). The South Carolina Court of Appeals dismissed the appeal for failure to provide sufficient explanation as required by Rule 203, SCACR. The Remitter was issued on October 15, 2012.

ALLEGATIONS

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

1. "I am innocent."
2. "My counsel did not take appropriate."
3. "I did not drive south on I-77."
4. "I was forced to fire my original counsel."

MOTION FOR CONTINUANCE

Immediately prior to the post-conviction relief hearing, Applicant moved for a continuance based upon the assertion that Applicant had not taken his medicine in six (6) days. The State objected to Applicant's motion for continuance. This Court denied Applicant's request pursuant to Council v. Catoe, 359 S.C. 120, 123, 597 S.E.2d 782, 783 (2004) (holding a petitioner's mental incompetency does not impede his ability to assert his meritorious PCR claims). Additionally, this Court had a full opportunity to observe Applicant during the PCR hearing and finds no deficiencies in Applicant's mental competency.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, Mike Lifsey, Esquire (Counsel). This Court also had before it a copy of the plea transcript, the Chester County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

During the evidentiary hearing, Applicant testified that he was represented at his plea by Mike Lifsey, Esquire. Applicant testified he had not taken his medicine for six days prior to the

PCR hearing. Applicant testified his medicine affects his ability to think clearly. Applicant testified that prior to being represented by Mr. Lifsey, he was represented by Ross Burton for four months. Applicant testified he fired Burton because they did not communicate enough. Applicant testified that Counsel tried to help him once he came on to the case, but he only had one month to prepare. Applicant testified that Counsel hired an investigator, but he came on the case too late to help. Applicant testified he was deprived of a thorough investigation of the facts surrounding his case. Applicant testified Counsel never provided him with his discovery. Applicant testified that he was not guilty of the crimes.

Following Applicant's testimony, Mike Lifsey, Esquire (Counsel), testified. Counsel testified he took over the case on March 20, 2012. He testified that he retained an investigator on March 22, 2012. Counsel testified he also retained a psychologist to evaluate Applicant. Counsel testified he reviewed discovery with the Applicant. Counsel testified he discussed the nature of the charges against Applicant the consequences of pleading guilty. Counsel testified he reviewed Applicant's constitutional rights with him. Counsel testified that Applicant's version of the facts did not line up with the discovery, and that the investigator did not find any evidence to support Applicant's story. Counsel testified the investigator did not provide a written report, but that the investigator met with Applicant numerous times. Counsel testified the investigator had enough time to perform a thorough investigation. Counsel testified that Applicant claimed he was kidnapped in Gastonia, North Carolina. Counsel testified, Applicant stated that he witnessed these people kill someone, and that is why they kidnapped him. Counsel testified that Applicant claimed he was not driving, and the kidnappers disappeared after the wreck. Counsel testified Applicant's story seemed incredible, and there was no evidence to support it. Counsel testified Applicant took Prozac and Ibuprofen. Counsel testified he did not remember whether he asked

Applicant if he took his medication the day of the plea. Counsel testified Applicant appeared to be competent at his plea. Counsel testified that he believed he went over the psychologist's report with Applicant. Counsel testified that he presented Applicant's mental health problems as part of his mitigation. Counsel testified he did not need more time to prepare for the case.

INEFFECTIVE ASSISTANCE OF COUNSEL

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

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

This Court finds Applicant failed to demonstrate that Counsel's performance was deficient in any way. This Court further finds that Applicant presented no evidence to show any prejudice resulting from Counsel's representation. Additionally, this Court finds Counsel's testimony credible and Applicant's testimony not credible.

This Court finds that Counsel met with Applicant multiple times prior to the guilty plea. This Court further finds Counsel obtained discovery from the solicitor and went over it with Applicant. Accordingly, this Court finds Applicant's claim that Counsel did not receive his discovery is without merit. This Court finds Counsel's belief that Applicant's version of the facts was not credible was reasonable. This Court finds Counsel had Applicant mentally evaluated. This Court further finds Applicant's claim that Counsel did not have adequate time to prepare is without merit. This Court finds that Counsel hired an investigator to determine whether evidence existed to support Applicant's story. This Court finds that the evidence against Applicant was overwhelming, and Counsel did everything he could reasonably have done to obtain a favorable outcome for Applicant. This Court further finds that Counsel thoroughly prepared Applicant's case, and Applicant's claim that he was prejudiced by the work done by prior counsel on the case is without merit.

Accordingly, this Court finds Applicant did not demonstrate any deficiencies in Counsel's representation. This Court finds that because Counsel's representation was well within the range of competence required in criminal cases, Applicant has further failed to make any showing that but for Counsel's alleged deficiencies, the result of Applicant's case would have

been any different.

INVOLUNTARY GUILTY PLEA

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

This Court finds Applicant has failed to demonstrate that his guilty plea was entered involuntarily.

This Court finds Applicant was aware of the nature of the charges he was facing and the

possible penalties. This Court further finds that Applicant was fully aware that an Alford plea carried the same ramifications as a guilty plea. This Court finds Applicant told the plea judge he was satisfied with his attorney and did not need any more time. This Court finds Applicant was well aware that by pleading guilty he was waiving his ability to challenge the evidence against him. This Court further finds Applicant was well aware of the constitutional rights he was waiving by pleading guilty. This Court further finds that Applicant pled guilty voluntarily and of his own free will.

Accordingly, this Court finds Applicant's guilty plea was knowingly and voluntarily entered. This Court finds that the evidence presented at the evidentiary hearing as well as contained within the guilty plea transcript clearly supports a finding that the guilty plea was not coerced or involuntary; rather, it was freely, knowingly, and voluntarily entered. This Court finds Applicant was informed of the nature and elements of the offenses with which he was charged and to which he pled guilty. This Court further finds that Applicant was fully apprised of the rights he was forfeiting in order to plead guilty and that Applicant decided to go forward with his guilty plea.

ALL OTHER ALLEGATIONS

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

CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application.

Plea counsel rendered effective assistance in regard to the claims raised by Applicant. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

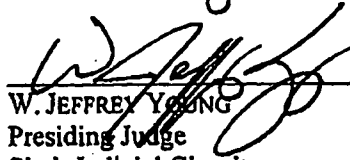
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

FILED
CLERK OF COURT
JUL 28 2014
S.C.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 28 day of Aug, 2014.


W. JEFFREY YOUNG
Presiding Judge
Sixth Judicial Circuit

Sumter, South Carolina

WITNESSES

A.S. Darby (SCHP)

3
1 *N. Holden*

DOCKET NO. 2012-GS-12-005

The State of South Carolina

County of Chester

COURT OF GENERAL SESSIONS

JANUARY TERM 2012

ARREST WARRANT NUMBER DOA

M252267 (DOA-10-7-11)

THE STATE
VS.

Earl Malcolm Burr, II

RETURN OF GRAND JURY
TRUE BILL

Donald W. Burr
Foreperson of Grand Jury
Date:

VERDICT

Indictment for

Hit and Run Involving Death

SC Code: § 56-5-1210(A)(3)
CDR Code: 2463
Class: Felony, B

Foreperson of Petit Jury
Date:

True and correct copy of original paper
On file in this office.

Lucy K. Carpenter

Clerk of Court
Chester County, SC

Date *5/31/2013*

STATE OF SOUTH CAROLINA)

INDICTMENT

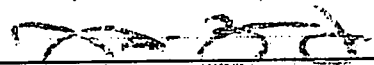
COUNTY OF CHESTER)

At a Court of General Sessions, convened on January 23, 2012, the Grand Jurors of Chester County present upon their oath:

Hit and Run Involving Death

That Earl Malcolm Burr, II did in Chester County on or about October 6, 2011, drive a vehicle that was involved in an accident which resulted in the death of Brennon Lee Conklin, victim, and Earl Malcolm Burr, II did not immediately stop the vehicle at the scene of the accident or as close to the accident as possible and failed to fulfill the requirements of § 56-5-1230 in violation of § 56-05-1210, *Code of Laws of South Carolina, (1976), as amended.*

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



Douglas A. Barfield, Jr., SOLICITOR

WITNESSES

A.S. Darby (SCHP)

15

E.A. Hudson

DOCKET NO. 2012-GS-12-006

The State of South Carolina

County of Chester

COURT OF GENERAL SESSIONS

JANUARY TERM 2012

ARREST WARRANT NUMBER/DOA

M252268 (DOA-10-7-11)

THE STATE

vs.

Earl Malcolm Burr, II

TRUED BILL

Earl Malcolm Burr
Foreperson of Grand Jury

Date:

VERDICT

Indictment for

Felony Driving Under the Influence
Causing Death

SC Code: § 56-05-2945(A)(2)

CDR Code: 0395

Class: Felony, B

Foreperson of Petit Jury
Date:

True and correct copy of original paper
On file in this office.

Lue H. Carpenter

Clerk of Court
Chester County, SC

Date *5/21/2013*

STATE OF SOUTH CAROLINA)

INDICTMENT

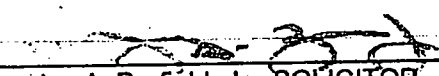
COUNTY OF CHESTER)

At a Court of General Sessions, convened on January 23, 2012, the Grand Jurors of Chester County present upon their oath:

FELONY DRIVING UNDER THE INFLUENCE CAUSING DEATH

That Earl Malcolm Burr, II did in Chester County on or about October 6, 2011, drive a motor vehicle while under the influence of alcohol, drugs, or a combination of both, and did an act forbidden by law and/or neglected a duty imposed by law, to wit: did improperly change lanes and struck a 1996 Honda Accord, which act and/or neglect proximately caused the death of Brennon Lee Conklin, in violation of § 56-5-2945(A)(2) *Code of Laws of South Carolina, (1976), as amended.*

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


Douglas A. Barfield, Jr., SOLICITOR