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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Chester County

William Jeffrey Young, Circuit Court Judge

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ANTHONY O. ISOM,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002269

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APPENDIX

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KATHRINE H. HUDGINS  
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

J. CROOM HUNTER  
Assistant Attorney General  
P. O. Box 11549  
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA

-----x

STATE,

Plaintiff,

Case No.

-against-

2012-GS-12-00442

ANTHONY O'BRIAN ISOM,

Defendant.

-----x

Chester, S.C.

B E F O R E:

HONORABLE BRIAN GIBBONS,

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

JULIE HALL, Esquire

Attorney for the State

MICHAEL LIFSEY, Esquire

Attorney for the Defendant

Aileen Butler

Official Court Reporter

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THE COURT: Miss Hall, it is my understanding there has been some developments.

MS. HALL: Yes, sir, Your Honor. My understanding from Mr. Lifsey is the defendant wishes to plead guilty. The State is requesting a cap of 15 years.

THE COURT: Guilty to what?

MS. HALL: I'm sorry, guilty to voluntary manslaughter.

THE COURT: Is that your understanding Mr. Lifsey?

MR. LIFSEY: It is and the dismissal of the charges against the co-defendant.

MS. HALL: Yes, we will dismiss the charges against [REDACTED] which is accessory after the fact.

THE COURT: All right, madame clerk, if you will please swear in the defendant.

ANTHONY O'BRIAN ISOM, having been duly sworn by the clerk, was examined and testified as follows:

THE COURT: I want to make sure I understand the terms and conditions of the plea. Will you state it again please.

MS. HALL: Yes, sir, Your Honor. He is pleading guilty to voluntarily manslaughter. The State is recommending a cap of 15 years. The State is the also going to be dismissing the case against [REDACTED].

1 She has one charge which is as accessory after the fact.

2 THE COURT: Is that your understanding of the plea  
3 negotiations, Mr. Lifsey?

4 MR. LIFSEY: Yes, sir, Your Honor.

5 THE COURT: And based upon your understanding of  
6 your client's case and your investigation into the  
7 matter do you agree with his decision to plead guilty?

8 MR. LIFSEY: Very much so.

9 THE COURT: All right. Mr. Isom I got a bunch of  
10 questions I need to ask you. First of all do you  
11 understand what you are doing in Court today?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Are you under the influence of any  
14 drugs or alcohol or any other mind altering substance.

15 THE DEFENDANT: No, sir.

16 THE COURT: Do you understand what you are charged  
17 with.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Of course you are charged right now  
20 with murder which carries up to life in prison. Do you  
21 understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And what you are doing now is pleading  
24 guilty to the charge of voluntary manslaughter which  
25 carries up to thirty years.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand that?

3 THE DEFENDANT: Yes, sir..

4 THE COURT: So understanding the charge against  
5 you and the potential maximum time you can receive how  
6 do you plead?

7 THE DEFENDANT: Guilty.

8 THE COURT: Now has anyone forced, pressured,  
9 coerced or made you plead guilty against your will?

10 THE DEFENDANT: No, sir.

11 THE COURT: After speaking with your family and  
12 speaking with your lawyer do you think it is in your  
13 best interest to plead guilty?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right, did you make up your own  
16 mind?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Did anyone coerce you into doing this?

19 THE DEFENDANT: No, sir.

20 THE COURT: This is what you want to do?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Now has anybody other than the states  
23 recommendation and the cap of 15 years has anybody  
24 offered any other hope, reward, or promise to you to get  
25 you to plead guilty?

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THE DEFENDANT: No, sir.

THE COURT: Now, you understand the Court is not bound by that cap? This is not a negotiated sentence. If I thought it was best for society and justice and all concerned I could give you more than that. Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: If I were to do that however I would tell you and allow you the opportunity to withdraw your plea. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Now, are you satisfied with your lawyer?

THE DEFENDANT: Yes, sir.

THE COURT: Has he answered all your questions?

THE DEFENDANT: Yes, sir.

THE COURT: Have you all been over your case in detail?

THE DEFENDANT: Yes, sir.

THE COURT: Have you explored every defense you have imaginable?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Do you understand all your constitution rights?

THE DEFENDANT: Yes, sir.

1 THE COURT: Do you understand that when you plead  
2 guilty you waive, that means you give up those rights?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now, a jury has been picked. It  
5 hasn't actually been sworn yet. I was going to do that  
6 this morning, but that jury that has been picked all 12  
7 of them unanimously would have to find you guilty. Do  
8 you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And the burden of proof is on the  
11 State of South Carolina. You don't have to prove  
12 anything. Do you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You have a right to remain silent.  
15 Nobody could force you to testify if you don't want to.  
16 Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You have the right to confront  
19 witnesses and try for make them look bad on cross  
20 examination. Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: You give up those rights when you  
23 plead guilty. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right, listen carefully and then I

1 will come back to you after the solicitor gives me the  
2 factual basis. Solicitor.

3 MS. HALL: Your Honor, this incident occurred on  
4 June 15th 2012 at [REDACTED] which is in the city  
5 of Chester. That morning Mr. Isom had gone over to the  
6 victim, [REDACTED] house, which is located at the  
7 [REDACTED]. He lived with the [REDACTED]  
8 who I mentioned earlier whose charges were going to be  
9 dismissed. He had gone over there to collect money that  
10 was owed to him and there is some discrepancy about  
11 whether he provided [REDACTED] with drugs and Mr.  
12 [REDACTED] owed him money for the drugs or whether Mr. Isom  
13 had lent [REDACTED] money to buy drugs. Regardless of  
14 that [REDACTED] obviously owed him money. He went in  
15 the house, [REDACTED] and Miss  
16 [REDACTED] two children were on the carport of the  
17 house.

18 Mr. Isom entered the house -- or actually [REDACTED]  
19 entered the house, Isom went in behind him. An argument  
20 ensued in the hallway. At which point there would have  
21 been testimony that [REDACTED] poked Mr. Isom in the  
22 forehead with a pocket knife. There is a lot of yelling  
23 and screaming according to what [REDACTED] would  
24 have testified to. Once the argument escalated it  
25 became physical at some point. They ended up in the

1 bathroom of the house. [REDACTED] ended up in the bath  
2 tub face up with Mr. Isom standing over him and Mr. Isom  
3 kicked [REDACTED] repeatedly and hit him repeatedly  
4 until he was rendered unconscious and ultimately died  
5 from the injuries he sustained during that altercation.

6 The pathologist would have come to Court and  
7 testified that he -- and the facts would have shown too  
8 that while [REDACTED] was lying down in the bathtub Mr.  
9 Isom was kicking him with his right foot on the left  
10 side of his head and the pathologist would have  
11 testified that those injuries to the left side of his  
12 head is what ultimately killed him.

13 That is the pretty much the basis for the entire  
14 thing. And with regard to Mr. Isom's prior record he  
15 has -- and I got it, I can tell you the dates if you  
16 need to hear them, but I no he has got two simple  
17 possession of marijuana convictions, PWID proximity  
18 conviction, and assault and battery second conviction  
19 which he is currently doing time at SCDC for. And I  
20 will tell the Court that those -- that that charge is  
21 shockingly similar to this, the basis for the assault  
22 and battery second, I prosecuted that too. Mr. Isom  
23 kicked a man in his face which ultimately broke his  
24 orbital bone and that was postured to go to trial and  
25 Mr. Isom plead to that and was sentenced to one year and

1 he would be released on that within the next couple of  
2 months and the saddest thing about this whole thing,  
3 while all of it is very sad, Mr. Isom and [REDACTED]  
4 were related. They were cousins. They grew up  
5 together. Some times in the same household living  
6 together as brothers.

7 We are asking for the full 15 years, the family of  
8 [REDACTED] is present in the courtroom. My  
9 understanding is they do not wish to address the Court  
10 at this time. They understand what is going on with the  
11 plea. They are in agreement with it but they do want  
12 the full 15 years.

13 THE COURT: And the basis of the plea for the  
14 State's recommendation, the voluntarily manslaughter is?

15 MS. HALL: The basis for the plea is because when  
16 [REDACTED] whether he stabbed him in the head or poked  
17 him with the closed knife, the State thinks that a jury  
18 might have been able to find sufficient legal  
19 provocation for the beginning of the altercation in the  
20 first place which might have taken it out of the murder  
21 realm and brought it back down to involuntary  
22 manslaughter realm, and the circumstances of the case  
23 with the drug money I just feel like -- and the family  
24 situation too, this would be -- it is an appropriate  
25 resolution of the case. With the 15 years I feel it is

1 very gracious on the part of the State what this 25 year  
2 old victim I gave up.

3 THE COURT: Thank you, Miss Hall. Was the defense  
4 seeking a self-defense?

5 MR. LIFSEY: Yes, sir.

6 THE COURT: So there was a possible opportunity  
7 for the jury to find self-defense.

8 MS. HALL: And I believe that while they might  
9 have been able to do that it would have been very  
10 difficult to do because the first prong of self-defense  
11 is the defendant was not at fault in bringing on the  
12 difficulty and I submit to the Court that in this case  
13 he completely was.

14 THE COURT: Got it. All right.

15 Mr. Isom, did you just hear what the solicitor told  
16 me as to the facts as to what happened?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Is that what happened?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: I accept your plea. Mr. Lifsey.

21 MR. LIFSEY: Thank you. Your Honor, I represent  
22 Mr. Isom. He is 25 years old. He has got some family  
23 here. I want to kind introduce the family to you. Some  
24 of them are going to speak later on. As I call your  
25 name will you raise your hand so the judge can see who

1 you are; his mother [REDACTED] that's his mom right  
2 there; [REDACTED] who is an aunt; [REDACTED] who is  
3 his aunt; [REDACTED] another aunt; [REDACTED] is his  
4 uncle; [REDACTED] is his great aunt; [REDACTED] a  
5 cousin and [REDACTED] who is also an aunt. They are  
6 people who care about him and love him. I met with  
7 them, I met with his mother for probably since right  
8 after this case happened.

9 Your Honor, I will tell you a little about my  
10 investigation and my thoughts on this matter and then I  
11 will tell you about Mr. Isom.

12 My office was appointed and I began representing  
13 him shortly after his arrest. I met with him multiple  
14 times both during his time in the Chester County  
15 Detention Center and I think I made three trips to  
16 Leiber Correctional where he has been the last few  
17 months. And I met with him here at the jail since he  
18 has been back.

19 I invested this case fully. If this case had gone  
20 to trial we would have maintained self-defense and that  
21 would have been our defense at the trial. There are,  
22 however, I must honestly report issues with  
23 self-defense. Both as to what Miss Hall stated, the  
24 first prong and also I felt-- was equally concerned the  
25 proportionality of the response. As the Court knows

1 self-defense must be proportional and I think there were  
2 questions with regards to that considering the injuries  
3 while real to my client were certainly not in comparison  
4 to the injuries to the victim.

5 It seemed to me, based on my investigation, like I  
6 say I looked at this, we had an immunity hearing under  
7 the Stand your Ground Law in front of Judge Goldsmith.  
8 We appealed that matter. That matter was sort of  
9 summarily denied when the Court changed the rules on how  
10 we handle appeals on those matters a few months ago.  
11 But, we investigated this matter fully. It is my legal  
12 opinion based on my understanding of the facts and my  
13 experience in doing this that voluntarily manslaughter  
14 was the most likely outcome of this trial.

15 As I told Mr. Isom from the beginning there is  
16 never any certainty when you go to a jury, and it is  
17 certainly possible that a jury could have found him not  
18 guilty. On the other hand it is certainly possible the  
19 jury could have convicted him of murder. But I think  
20 the most likely outcome is voluntarily manslaughter.  
21 And once we get to that point after having fully  
22 explored it, looked into things, listened to the  
23 evidence, watched the interviews, it seems to me that  
24 the question becomes what is the most appropriate  
25 sentence.

1 I think a sentence to the low to middle end of this  
2 range is appropriate. While there certainly was a death  
3 and nothing can change a death and nothing lessens the  
4 death in this case. I do think it is important to note  
5 that my client and the deceased were life long friends.  
6 They were cousins. They grew up together. They spent  
7 time living in each other's house before this incident  
8 happened. He had stated at the residence where all this  
9 happened for periods of time. He lived on the couch for  
10 days. There is absolutely no history of bad blood  
11 between the parties. The evidence in this case going to  
12 trial and the evidence that was produced at the immunity  
13 hearing was that everyone, the four people that were at  
14 the residence [REDACTED]  
15 and Mr. Isom were all calm. There was no anger. There  
16 was no upset until Mr. Isom and [REDACTED] went into  
17 that house.

18 Now, what exactly happened in that house and what  
19 exactly prompt this is one of those issues I guess no  
20 will ever know with one hundred percent certainty. But  
21 what I can tell you is I believe that my client if he  
22 could take it all back I know that he would. I know  
23 that he did not intend for it to end this way and it's a  
24 tragic mistake. I think what happened was when he got  
25 stabbed in the head, of course and I don't know if Your

1 Honor ever suffered a head injury in the forehead area  
2 it bleeds a lot and I think at some point between the  
3 stab, the seeing of the blood I think he just lost his  
4 temper and he lost control. I think the jury would have  
5 reduced the murder charge to voluntarily manslaughter on  
6 that basis. But I don't think it would have come all  
7 the way down to self-defense is what I told him and  
8 advised him.

9 He is 25 years old. He is from Chester. He has  
10 lived here most of his life. He went to Indiana for a  
11 brief period, for a couple years, but other than that he  
12 has lived here all his life. He has three children,  
13 Your Honor, six, four and one years old. The one year  
14 old is by [REDACTED] would was actually pregnant  
15 when all this events occurred. She has since had the  
16 baby. He had a brief period out on bond where he  
17 actually got to see that child, but other than that he  
18 really has had no time to visit with this child. He was  
19 very concerned about [REDACTED] and appreciative of the  
20 solicitor's decision to dismiss the charges and that was  
21 one of the the reasons he wanted to plead was to see if  
22 he could help [REDACTED] out in that regard. I think he  
23 has made a wise decision in this case.

24 Your Honor, I would ask the Court to consider a  
25 sentence more in the neighborhood of ten years. I don't

1 stand in front of you and ask for nothing on a death.  
2 There has to be a price paid. I understand that. You  
3 know the the fact is there is a drug charge, but other  
4 than the drug charge my client doesn't have any felony  
5 convictions. The assault and battery 2nd degree is a  
6 misdemeanor.

7 This was a family member he loved and it just seems  
8 to me that it calls for a sentence on a lower to middle  
9 range rather than the middle to high range.

10 If Your Honor would hear from them I would like one  
11 at a time family members to come forward and speak.

12 Beginning with [REDACTED]

13 State your name for the court reporter.

14 MS. JESSE: My name is [REDACTED].

15 THE COURT: Yes, ma'am.

16 MS. JESSE: Anthony Isom is my nephew. I of course  
17 have known him all his life and I know that people make  
18 mistakes. Things happen and you know he should have  
19 made better decisions. I just want him to know that I  
20 love him and I support him no matter what happens.

21 THE COURT: Thank you, ma'am. Thank you for being  
22 here.

23 MR. LIFSEY: Who else wants to speak?

24 MS. [REDACTED]: My name is [REDACTED]. I'm Anthony's  
25 cousin, slash second mom. I helped with the raising of

1 Anthony for a while when he was little. I know as well  
2 as everybody else in here knows that everybody makes  
3 mistakes and bad decisions at least once in their life.  
4 Nobody is perfect. But Your Honor, this boy is not what  
5 they are trying to make him out to be. He is actually a  
6 loving and kindhearted young man that just made a bad  
7 choice. So I ask you to please take that into  
8 consideration when you decide how long his life is going  
9 to be behind bars because to me that is not really any  
10 help either. We also lost a cousin on this side and we  
11 feel like we are torn between, but I don't think that he  
12 should have to serve 15 years or more for what happened.  
13 He wasn't the only fighting and he wasn't the only one  
14 in that house that day.

15 So please, please, take it into consideration when  
16 you do his sentencing.

17 Thank you.

18 THE COURT: Thank you, ma'am. Your name, ma'am?

19 MS: [REDACTED] My name is [REDACTED]. I Anthony's aunt.  
20 Anthony stayed with us, my husband and I for two years  
21 and I made sure he went to school. Anthony is a very  
22 kindhearted person. He would do anything in the world  
23 for you. He helped me when I got sick and he helped us  
24 out at the house. He come to my house. He cleaned my  
25 house for me. He is a very kindhearted person. This is

1 just a tragic mistake. Just a bad choice in life that  
2 he has made and I wish that you would just take that  
3 into consideration with him because he is a very  
4 kindhearted, like I said he would do anything in the  
5 world.

6 THE COURT: Thank you ma'am. Thank you for being  
7 here.

8 MR. LIFSEY: I final person that we have is his  
9 mom..

10 THE COURT: Okay. Yes ma'am.

11 MS. [REDACTED]: My name is [REDACTED] and I am  
12 Anthony's mother. First of all, I want to say that I am  
13 sorry to Beth and her children for the pain that they  
14 went through and to [REDACTED] and all the  
15 family for all that you went through. And it truly goes  
16 from my heart and I pray for all of you every single  
17 day. I hurt every day for you all and I want you all to  
18 know that. And I know in my heart that what happened  
19 was not intentional and I spoke with my son and he has  
20 got to wake up and he has got to live with this for the  
21 the rest his life, and yes, he needs to pay for his part  
22 what he did do. I just -- I just ask that you show some  
23 leniency.

24 THE COURT: Thank you ma'am for being here.

25 MR. LIFSEY: Thank you, Your Honor, I would like

1 you to hear from Mr. Isom if he would like to say  
2 anything.

3 THE COURT: Be glad to hear from you.

4 THE DEFENDANT: Yeah, I just apologize to the  
5 family. You know what I am saying, you know I have to  
6 deal with this for the rest of my life, my cousin that  
7 we grew up together and I would do anything to bring him  
8 back.

9 MR. LIFSEY: Your Honor anytime we have a homicide  
10 it is terribly tragic when someone life has been lost  
11 and you add the fracturing of the family as a result of  
12 this. I ask that you take all that into consideration  
13 with a sentence that is just and fair in this case..

14 THE COURT: Miss Hall anything further?

15 MS. HALL: Yes, sir, Your Honor. I do have some  
16 people who wants to speak. I indicate to the Court  
17 before that they did want to speak but now they do.  
18 Immaterial okay.

19 MS. HALL: First is [REDACTED] one of Mr.  
20 [REDACTED] aunts.

21 MS. [REDACTED]: I just want to say that no matter what  
22 happened [REDACTED] is dead. We will never get him back.  
23 He has got two small children. One of them will never  
24 know their daddy. One them does and it brings tears to  
25 my heart every time she comes to church, especially at

1 father's day. She looked up at the church and said I  
2 don't have no daddy. My daddy is living with Jesus.  
3 And it don't matter what happened or whatever, we can  
4 never get him back. Nobody can ever bring him back.  
5 And I just want to say that. I just want everybody to  
6 know that [REDACTED] was a good daddy and he was a good  
7 man. No matter what happened we love him. Appreciate  
8 it.

9 THE COURT: Thank you ma'am.

10 MS. HALL: [REDACTED] is [REDACTED] s uncle.

11 MR. [REDACTED]: Good morning Your Honor many I am  
12 [REDACTED], I was [REDACTED] uncle. I was hesitant  
13 to testify because I hate to cause anybody to have to  
14 serve more time then what they should, however, in this  
15 fact [REDACTED] and Mr. Isom did grow up together. He  
16 would go over to his sister's house. She practically  
17 help raised him. At times my own son was the same age  
18 with them he grew up with them. He knew how Anthony  
19 was. He knew there was always conflict between Anthony  
20 and [REDACTED]. Even though they loved each other cousins  
21 do fight. This was not the only isolated incident when  
22 they fought. My own son -- I wish he was here to  
23 testify today but he had a son he had to take care of  
24 and couldn't bring him to court. My own son, [REDACTED]  
25 came to him on other could he indications trying to get

1 my son to help keep Isom in check and keep him from  
2 beating on [REDACTED]. My son he served the military and  
3 came back, I had coached my son on several occasions  
4 don't get involved. Don't get involved. Some times I  
5 wish I hadn't because [REDACTED] may have been alive today  
6 if he had got involved. But I thank God he didn't get  
7 involved because he might be up here on trial. That's  
8 why I coached him.

9 Now people can change and I hope for his sake that  
10 Anthony has changed. But all I wanted to say this is  
11 not the only isolated incident where they fought. There  
12 have been fights ever since their childhood off and on.  
13 They loved each other too, I know that or else they  
14 wouldn't have stayed together. But I do feel for his  
15 children, if he is incarcerated for a long period time  
16 but I do ask that you take into consideration [REDACTED]  
17 children who will grow up without a father. And and  
18 that's all. Thank you.

19 THE COURT: Thank you.

20 MS. HALL: [REDACTED] is [REDACTED]'s mother.

21 MS. [REDACTED]: I am [REDACTED], I'm [REDACTED]'s  
22 mother. I think of Anthony all the time and I loved him  
23 and I never would have thought he would have killed my  
24 son. [REDACTED] wasn't a fighter. He would much rather  
25 try to talk to people and not fight. And Anthony knows

1 that. When [REDACTED] died I died. And I never can get  
2 that back. And his oldest talks to me all the time and  
3 they tell me they want to die to see their daddy and I  
4 want to die too because I don't know how to go on.  
5 Right now I am angry at Anthony and I hate him for what  
6 he has done to me and I hope that one day I can forgive  
7 him. If I really know he really meant to didn't do it I  
8 no I could. But right now in my heart I can't because  
9 the wound is still this and to me ten years is just not  
10 enough time for him to sit and think for what he really  
11 done. I am hoping he can find God, you know, because  
12 God is only the one that is going to help him. And I  
13 hope he can find God in his life but I just want to let  
14 you know my son was a good man and I loving son and  
15 loving father and I miss him every day.

16 THE COURT: Thank you ma'am.

17 MS. HALL: The only thing I have left and with all  
18 due respect for Mr. Lifsey, you know we talk about no  
19 history of bad blood between the two of them and while  
20 he offers it in mitigation I would offer that in  
21 aggravation. May be they did care about each other.  
22 They were raised as brothers, however Mr. Isom with the  
23 history of the exact same type of behavior, did the  
24 exact same thing that he did to the first man that to  
25 [REDACTED], however he did not stop. Took it way

1 too far and I would just submit to the Court that 15  
2 years which is a mid-range voluntarily manslaughter is  
3 a very gracious offer from the State and I believe that  
4 anything less would not be adequate punishment.

5 Thank you.

6 THE COURT: Thank you Miss Hall. Mr. Lifsey.

7 MR. LIFSEY: I don't want to revisit that other  
8 case, but I will say if Miss Hall felt that strongly  
9 about it she should have prosecuted it as a felony not  
10 as a misdemeanor. I would ask you to take in  
11 consideration the general age, lack of record and take  
12 that into consideration.

13 THE COURT: All right. I will take a brief recess  
14 to consider all these things back in chambers and I will  
15 come out here shortly and administer the sentence. Give  
16 me just a moment.

17 (Short recess was taken.)

18 THE COURT: Both sides of the family described it  
19 the best way it can be described. It's a tragedy.  
20 Nothing I do can bring back the life [REDACTED].  
21 You know one of the biggest concerns, the major concerns  
22 that I have is that we have five children who are  
23 without their daddies. Two forever, three for a long  
24 time during the most formative time of their lives and  
25 that's just plain sad. Over \$180.

1 I understand speaking to the victims, I understand  
2 Mr. [REDACTED] s mom, I understand your anger, I understand  
3 your frustration, I understand your resentment. You  
4 know, I can understand that as a parent myself. I can  
5 the not imagine being where you are. At the same time  
6 Mr. Isom it appears you have a loving and supportive  
7 family as well. Many people who come in front of me  
8 especially the juveniles I use to deal with when I was a  
9 Family Court judge never really had any family there.  
10 So it has made impression on me the fact that you have  
11 this supportive family here with you. So, I have to  
12 balance the anger, frustration, resentment with  
13 temperance, forgiveness and redemption. That's what God  
14 tells us to do. But you need to be punished for what  
15 you did and you know that. And you are prepared to  
16 accept the punishment. But remember Mr. Isom, you know,  
17 as much as I can punish you, as much as I can do to,  
18 true redemption, true forgiveness, true temperance only  
19 comes when you decide to, okay.

20 I wish the very best of luck to you in the future,  
21 but in the next 15 years you will are going to be in the  
22 Department of Corrections. The sentence of the Court is  
23 15 years.

24 Good luck to you.

25 \* \* \*

## C E R T I F I C A T E

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I, the undersigned Aileen Butler, 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 in the captioned case, in the Circuit Court for Chester County, South Carolina, on the 28th day of January, 2014.

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

June 20, 2014

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# The South Carolina Court of Appeals

The State, Respondent,

v.

Anthony Isom, Appellant.

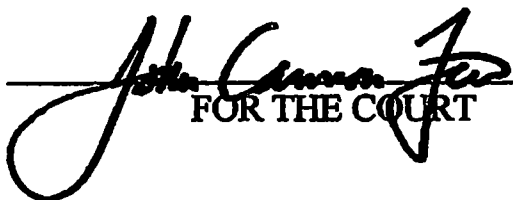
Appellate Case No. 2013-001244

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## ORDER

---

The notice of appeal filed by counsel for the appellant, Michael H. Lifsey, indicates that the appeal is from the denial of a request for immunity pursuant to the Protection of Persons and Property Act (the Act). See S.C. Code Ann. §§16-11-410 to -450 (Supp. 2012). The Court asked Mr. Lifsey to provide a copy of the order on appeal within five days of November 26, 2013. To date, the Court has not received a response from Mr. Lifsey. Accordingly, the appeal is dismissed. See *State v. Isaac*, 405 S.C. 177, 185, 747 S.E.2d 677, \_\_ (2013) (holding a denial of a request for immunity under the Act is not immediately appealable) (clarifying *State v. Duncan*, 394 S.C. 404, 709 S.E.2d 662 (2011)). Remittitur will be sent pursuant to Rule 221(b) of the South Carolina Appellate Court Rules.

 , C.J.  
FOR THE COURT

Columbia, South Carolina

cc:

Julie Gamburg Hall, Esquire  
Salley W. Elliott, Esquire  
Michael H. Lifsey, Esquire  
Robert Michael Dudek, Esquire

**FILED**

December 17, 2013

**WITNESSES**

Tammy Levister (CPD)

T. LEVISTER

**ARREST WARRANT NUMBER/DOA**

K289493 (DOA- 6-19-12)

**ACTION OF GRAND JURY**

**TRUEBILL**

*David W. Bell*  
Foreperson of Grand Jury

Date:

**VERDICT**

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-12-442

**The State of South Carolina**

**County of Chester**

**COURT OF GENERAL SESSIONS**

**SEPTEMBER TERM 2012**

**THE STATE**

**vs.**

**Anthony Isom**

**Indictment for**

**Murder**

SC Code: §16-3-10

CDR Code: 0116

Class: Felony, EXM

STATE OF SOUTH CAROLINA     )  
  )  
COUNTY OF CHESTER            )

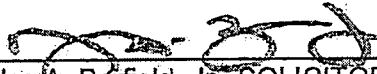
## INDICTMENT

At a Court of General Sessions, convened on September 11, 2012, the Grand Jurors of Chester County present upon their oath:

**MURDER**

That Anthony Isom did in Chester County on or about June 15, 2012, feloniously, willfully and with malice aforethought kill and murder Bradley McAteer by means of kicking and beating him causing severe body trauma, and/or asphyxiation, and that the said victim did die as a proximate result thereof, in violation of the common law of South Carolina and §16-3-10, *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

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Chester
STATE VS. Anthony O'Brian Isom
AKA:
Race: BLACK Sex: M Age: 25
DOB: SS#:
Address: Erlich St
City, State, Zip: Chester, SC 29706
DL#: SID#:

INDICTMENT/CASE#: 2012GS12442
A/W#: K289493
Date of Offense: 6/15/2012
S.C. Code § : 16-03-0010; 16-03-0020
CDR Code #: 0116

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was TO: Manslaughter / Voluntary manslaughter

CONVICTED OF or PLEADS

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

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

ATTEST: Julie Gamburg Hall, Julie Gamburg SC Bar# 6528
Anthony O'Brian Isom Defendant
Attorney for Defendant SC Bar# 015154

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable\*; the balance is suspended with probation for

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

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

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

SPECIAL CONDITIONS:

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

Recipient:

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/cn, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$133.90

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

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

Clerk of Court/ Deputy Clerk: Julie H. Carpenter
Court Reporter: Ailene Butler

Presiding Judge:
Judge Code: 2108
Sentence Date: 11/22/2014

STATE OF SOUTH CAROLINA

COUNTY OF Chester

Anthony O'Brain Isom  
356819 Plaintiff(s)

State of South Carolina  
Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014 -CP- 12 -00/89

(Please Print)

Submitted By: \_\_\_\_\_

Address: \_\_\_\_\_

SC Bar #: \_\_\_\_\_

Telephone #: \_\_\_\_\_

Fax #: \_\_\_\_\_

Other: \_\_\_\_\_

E-mail: \_\_\_\_\_

FILED  
2014 APR 17  
CLERK OF COURT  
CHESTER CO S.C.

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
- NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
- Constructions (100)
  - Debt Collection (110)
  - Employment (120):
  - General (130)
  - Breach of Contract (140)
  - Other (199)

- Torts - Professional Malpractice**
- Dental Malpractice (200)
  - Legal Malpractice (210)
  - Medical Malpractice (220)
  - Previous Notice of Intent Case #  
20\_\_\_\_-CP-\_\_\_\_
  - Notice/ File Med Mal (230)
  - Other (299)

- Torts - Personal Injury**
- Assault/Slander/Label (300)
  - Conversion (310)
  - Motor Vehicle Accident (320)
  - Premises Liability (330)
  - Products Liability (340)
  - Personal Injury (350)
  - Wrongful Death (360)
  - Other (399)

- Real Property**
- Claim & Delivery (400)
  - Condemnation (410)
  - Foreclosure (420)
  - Mechanic's Lien (430)
  - Partition (440)
  - Possession (450)
  - Building Code Violation (460)
  - Other (499)

- Inmate Petitions**
- PCR (500)
  - Mandamus (520)
  - Habeas Corpus (530)
  - Other (599)

- Administrative Law/Relief**
- Reinstate Drv. License (800)
  - Judicial Review (810)
  - Relief (820)
  - Permanent Injunction (830)
  - Forfeiture-Petition (840)
  - Forfeiture-Consent Order (850)
  - Other (899)

- Judgments/Settlements**
- Death Settlement (700)
  - Foreign Judgment (710)
  - Magistrate's Judgment (720)
  - Minor Settlement (730)
  - Transcript of Judgment (740)
  - Lis Pendens (750)
  - Transfer of Structured Settlement Payment Rights Application (760)
  - Confession of Judgment (770)
  - Petition for Workers Compensation Settlement Approval (780)
  - Other (799)

- Appeals**
- Arbitration (900)
  - Magistrate-Civil (910)
  - Magistrate-Criminal (920)
  - Municipal (930)
  - Probate Court (940)
  - SCDOT (950)
  - Worker's Comp (960)
  - Zoning Board (970)
  - Public Service Commission (990)
  - Employment Security Commission (991)

Special/Complex /Other

- Environmental (600)
- Automobile Arb. (610)
- Medical (620)
- Other (699)
- Sexual Predator (510)

- Pharmaceuticals (630)
- Unfair Trade Practices (640)
- Foreign Subpoenas (650)
- Motion to Quash Subpoena in Out-of-County Action (660)

Submitting Party Signature: \_\_\_\_\_

Date: 4-17-2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FORM 5 2014 CP/200189

STATE OF SOUTH CAROLINA )  
County of Chester )

IN THE COURT OF COMMON PLEAS

Anthony O'Brien #356819 )  
Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )  
)  
)  
)  
)  
)  
)

APPLICATION FOR  
POST-CONVICTION RELIEF

FILED  
2014 APR 17 A 11:28  
CLERK OF COURT  
CHESTER COUNTY, S.C.

**INSTRUCTIONS B 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 Chester County General Session Court

---

3. Name(s) of co-defendant(s) (if any) Crystal Purdue

---

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2012-B5-12-442 voluntary manslaughter

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) January 29, 2014 sentence to 15 years
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

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

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

No

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

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

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_

(c) the date of each such result:

- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_

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

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- (a) N/A

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) See Attachment
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) See Attachment
- (b) \_\_\_\_\_
- (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? \_\_\_\_\_
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? \_\_\_\_\_
- (d) any other petitions, motions or applications in this or any other Court? \_\_\_\_\_

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

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

- iv. \_\_\_\_\_
- (c) the disposition thereof:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (d) the date of each such disposition:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

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

No

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

- (a) which grounds have been presented:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings in which each ground was raised:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

- (a) My trial Attorney did not advise me of such right
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea?
- (b) your trial, if any? \_\_\_\_\_
- (c) your sentencing? \_\_\_\_\_
- (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. Michael H. Litsey Esq.
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Plea
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

New Trial

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA )  
County of Chester )

VERIFICATION

I, Anthony Isom, 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.

Anthony Isom

SWORN to and subscribed before me this 31<sup>st</sup> day of March, 2014.

Ludrean Bryant (L.S.)  
Notary Public

My Commission Expires: May 26, 2020

FILED  
2014 APR 17 A 11:29  
CLERK OF COURT  
CHESTER COUNTY, S.C.

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

I, Anthony Jison, 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.

Anthony Jison  
Applicant

SWORN or affirmed to and subscribed before me this  
31<sup>st</sup> day of March, 2014.

Leebean Bryant  
Notary Public

My Commission Expires: May 26, 2020

FILED  
2014 APR 17 A 11: 29  
CLERK OF COURT  
COUNTY OF F.C.

Attachment

Applicant set forth this cause of action pursuant to the jurisdiction that are set forth in Chapter 17-27-20 (1)(b) "Collateral attack upon his conviction of and grounds of alleged error heretofore available under this uniform Post Conviction Relief Act that are being submitted or amended."

The Applicant asserts ineffective assistance of trial Counsel. Applicant also asserts that due to his lack of understanding of the Law, Applicant request that Counsel be appointed pursuant to T.1 (d) JRCiv.P. and S.C. Code of Laws 17-27-90.

The Applicant further asserts that due to the lack of records and the assistance of Counsel it would be chronologically impossible for the Applicant to carry such burden to show his entitlement for relief by a preponderance of the evidence, and for the appointment of Counsel to insure that all available grounds for relief are included in the application.

Therefore, Applicant request that this court appoint Counsel in the above mention application. Applicant moves this Honorable Court to grant leave to amend this application in this cause of action due to the lack of Counsel and Applicant is a lay person at law.

Applicant seeks this Court approval of this application so that Applicant right to a PCR won't be deem abandon due to the fact that Applicant has only one year to file this Application from the date of a Final Judgment or from the remittitur to the Lower Court which ever comes first.

Respectfully Submitted,

March \_\_, 2014

Anthony Johnson

CLERK OF COURT  
 2014 APR 17 A 11:29  
 F.M.F.D.

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHESTER )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2014-CP-12-0189

Anthony O. Isom,  
 S.C.D.C. No. 356819,

Applicant,

v.

State of South Carolina,

Respondent.

**RETURN**

In response to the post-conviction relief application filed April 17, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Chester County Clerk of Court's orders of commitment. The Applicant was indicted at the September 2012 term of the Chester County Grand Jury for murder (2012-GS-12-0442). Mike Lifsey, Esquire represented the Applicant.

Prior to trial, Applicant sought immunity from prosecution pursuant to the Protection of Persons and Property Act. At a hearing on May 30, 2013, the Honorable Brooks P. Goldsmith ruled Applicant was not entitled to immunity. Applicant filed a Notice of Appeal from Judge Goldsmith's ruling. By Order filed December 17, 2013 the South Carolina Court of Appeals dismissed the appeal. The Remittitur was sent on January 9, 2014.

The Applicant subsequently pled guilty to the lesser-included offense of voluntary manslaughter. On January 28, 2014, the Honorable Brian M. Gibbons sentenced Applicant to fifteen (15) years imprisonment.

Attached herewith and incorporated herein by reference 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 application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.

## III.

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

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must

overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

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

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

#### IV.

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

V.

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

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

J. CROOM HUNTER  
Assistant Attorney General

P.O. Box 11549  
Columbia, S.C. 29211

By:

  
Attorneys for Respondent

June 06, 2014

STATE OF SOUTH CAROLINA )  
COUNTY OF CHESTER )

IN THE COURT OF COMMON PLEAS  
IN THE SIXTH CIRCUIT

2014-CP-12-0189

ANTHONY O. ISOM )

Applicant, )

vs )

AFFIDAVIT OF SERVICE BY MAIL

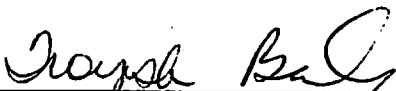
STATE OF SOUTH CAROLINA, )

Respondent )

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

**Nathan J. Sheldon**  
**Post Office Box 36250**  
**Rock Hill, SC 29732**

DATED this 26<sup>th</sup> day of June, 2014

  
\_\_\_\_\_  
Troyeshi Brailey, Legal Assistant  
For Respondent

1	STATE OF SOUTH CAROLINA	)	
2	COUNTY OF CHESTER	)	IN THE COMMON PLEAS COURT
3		)	
4	Anthony O'Brian Isom,	)	TRANSCRIPT OF RECORD
5	Applicant,	)	2014-CP-12-0189
6	-vs-	)	
7	The State.	)	July 28, 2014 Lancaster, South Carolina

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B E F O R E :

HONORABLE W. JEFFREY YOUNG, JUDGE

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

NATHAN J. SHELDON, ESQUIRE  
Attorney for the Applicant

CROOM HUNTER, ESQUIRE  
Attorney for the State

Linda D. Moffitt  
Circuit Court Reporter

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Anthony O'Brian Isom  
Direct examination by Mr. Sheldon.

1 THE COURT: All right. This is the case -- this is  
2 County of Chester, although it looks like the transcript  
3 was from Lancaster.

4 Is this a -- I guess he's in Chester or was from  
5 Chester so they filed it there?

6 MR. SHELDON: It's a Chester County case.

7 THE COURT: It was a Chester County case.

8 MR. HUNTER: Yes, Your Honor, it's a Chester County  
9 case.

10 THE COURT: Okay. Anthony O. Isom vs. the State of  
11 South Carolina under docket No. 2014-CP-12-189.

12 Present appearing representing Mr. Isom is Mr. Nathan  
13 J. Sheldon. And Mr. Croom Hunter is present and  
14 representing the state.

15 Are we ready to proceed?

16 MR. HUNTER: Yes, Your Honor.

17 MR. SHELDON: Yes, Your Honor.

18 THE COURT: Mr. Sheldon, you may call your first  
19 witness.

20 MR. SHELDON: Thank you. We'd call Anthony Isom to  
21 the stand.

22 THE COURT: All right. Come forward, Mr. Isom.  
23  
24  
25



Anthony O'Brian Isom  
Direct examination by Mr. Sheldon

1 Q Okay. The -- the thing that you're P.C.R.ing for  
2 today is the voluntary manslaughter charge, is that right?

3 A Yes, sir.

4 Q And do you remember what date you pled guilty to that  
5 offense?

6 A January 29th, I would say.

7 Q of 2013, right?

8 A No, of 2014.

9 Q Two thousand -- I'm sorry. 2014. Of this year.

10 A Yes.

11 Q When did that incident occur?

12 A June 15th of 2012, I think.

13 Q 2012. And was your attorney in this case the circuit  
14 public defender, Mr. Mike Lifsey?

15 A Yes.

16 Q And he represented you throughout the length of the  
17 entire case?

18 A Yes, sir.

19 Q Okay. And what specific relief are you seeking from  
20 the court today?

21 A Well, a sentence reduction or a new trial -- anything.

22 Q So you're seeking a new trial on the voluntary  
23 manslaughter charge.

24 Did -- are you alleging ineffective assistance of  
25 counsel against Mr. Lifsey?

Anthony O'Brian Isom  
Direct examination by Mr. Sheldon

1 A Yes, sir.

2 Q I -- let me start by talking to you about a hearing  
3 that occurred prior to the guilty plea. Do you recall  
4 having basically what we would call a stand-your-ground  
5 hearing?

6 A Yes, sir.

7 Q And at that hearing did -- was there -- did -- who --  
8 do you remember the name of the trial judge at that  
9 hearing? Was it Judge Goldsmith?

10 A Yes, Goldsmith.

11 Q And how did he rule at the stand-your-ground hearing?

12 A He denied it.

13 Q He denied the absolute immunity?

14 A Uh-huh.

15 Q Did you ask Mr. Lifsey to appeal that ruling?

16 A Yes. He said he was.

17 Q And did he appeal that ruling?

18 A No.

19 Q So it's your understanding that he didn't appeal?

20 A Yeah. I got the paperwork back there saying that they  
21 denied it because they gave me five days to file and he  
22 didn't file it.

23 Q So he filed something with the Court of Appeals, but  
24 then they denied it based on not following up with them, is  
25 that correct?

Anthony O'Brian Isom  
Direct examination by Mr. Sheldon

1 A I guess so.

2 Q Okay. Following that did you plead guilty to this  
3 offense?

4 A Yes, sir.

5 Q At the actual guilty plea itself did -- do you recall  
6 the trial judge going over your constitutional rights with  
7 you?

8 A Yes, sir.

9 Q And do you recall him asking you if you were  
10 voluntarily entering into this plea?

11 A Yes, sir.

12 Q And you said that you were, is that correct?

13 A Yes, sir.

14 Q Were you -- so tell the court what Mr. Lifsey did that  
15 was improper.

16 A I mean, he didn't -- he didn't -- for one, I was sent  
17 down to Lieber, and he come to see me like twice. I asked  
18 him for my motion for months and months. I got my motion  
19 two weeks before I went to court.

20 Q Let me -- let me stop you right there. When you say  
21 your motion are you talking about essentially your  
22 discovery packet?

23 A Yeah.

24 Q Okay. So you had asked him for months and months for  
25 that discovery?

Anthony O'Brian Isom  
Direct examination by Mr. Sheldon

1 A Yes, sir.

2 Q Did you receive it?

3 A Yeah. Two weeks before I went to trial. I don't have  
4 time to prepare for nothing.

5 Q And just to make the judge aware today, this guilty  
6 plea actually occurred on the morning of trial, is that  
7 right?

8 A Yes, sir.

9 Q Essentially, there was a jury that had been picked but  
10 not sworn.

11 A Yes, sir.

12 Q And that's...

13 MR. SHELDON: Your Honor, I believe that's all in the  
14 transcript, so.

15 THE COURT: Yeah. I'm looking at this transcript. I  
16 found the other transcript from the -- of Mr. Burr. It was  
17 in this packet. That's why I was wondering about the  
18 Lancaster and Chesterfield. It is the wrong transcript.

19 Q And so that morning did -- is that when you decided to  
20 plead guilty?

21 A Yes, sir.

22 Q And did -- were you under the belief that you would be  
23 eligible to appeal that stand-your-ground defense?

24 A Yes, sir.

25 Q And was that ever appealed?

Anthony O'Brian Isom  
Direct examination by Mr. Sheldon

1 A No, sir.

2 Q To this day have you had anything from the Court of  
3 Appeals other than that initial denial regarding that  
4 stand-your-ground hearing?

5 A No, sir.

6 Q At any point in time did Mr. Lifsey discuss with you  
7 the -- that that appeal would go away if you pled guilty?

8 A No, sir.

9 Q Did you want that to go up on appeal?

10 A Did I want what?

11 Q This -- the issue of the absolute immunity, stand your  
12 ground. Did you want that appeal?

13 A Yes, sir.

14 Q And you essentially wanted that appeal from day one,  
15 didn't you?

16 A Yes, sir.

17 Q Were you -- what else? What are your other complaints  
18 of Mr. Lifsey?

19 A I mean, that's what all, but then I asked for like  
20 pictures of -- of the knife that was part of the crime  
21 scene, and I never did receive them or get them.

22 He just kept on like warning me off on like it didn't  
23 make no difference if the knife was -- you know, in the  
24 crime scene. And I felt that was a big part of my defense.  
25 But he never even -- he just kept on shooting me down about

Anthony O'Brian Isom  
Direct examination by Mr. Sheldon

1 a lot of things I was asking him about.

2 Q And I think this is also referenced in the transcript,  
3 but just so the Court is clear, essentially, would it be  
4 fair to say that there was a dispute between your -- the  
5 victim and yourself and that you were, I guess, by some  
6 allegation stabbed by the victim prior to him dying, is  
7 that right?

8 A Yes, sir.

9 Q So your entire case would revolve around some sort of  
10 self-defense or stand-your-ground defense, is that correct?

11 A Yes, sir.

12 Q And did you understand at the time of the plea that  
13 you were giving up your right to a self-defense trial?

14 A I mean, not really. I didn't know what was going on.

15 Q You didn't know what was -- did -- did Mr. Lifsey  
16 clearly explain the benefits or potential consequences of  
17 going to trial with raising only self-defense?

18 A Yes.

19 Q Is there any other complaints against Mr. Lifsey?

20 A No. That's it.

21 Q Okay. And so just to recap, you did not get your  
22 discovery until two weeks before the plea, is that right?

23 A Yes, sir.

24 Q After you received your discovery did you meet with  
25 Mr. Lifsey again down in Lieber?

Anthony O'Brian Isom  
Cross-examination by Mr. Hunter

1 A No, sir.

2 Q So even -- even if you had had enough time to review  
3 it you still hadn't talked to him before you walked --  
4 before you were brought to the courthouse that morning, is  
5 that right?

6 A Yes, sir.

7 MR. SHELDON: Your Honor, I don't have any more  
8 questions.

9 THE COURT: Thank you.

10 Mr. Hunter.

11 CROSS-EXAMINATION

12 BY MR. HUNTER

13 Q Mr. Isom, you did plead guilty to this crime, correct?

14 A Yes, sir.

15 Q Okay. And as part of your plea weren't some charges  
16 against your codefendant dropped?

17 A Yes, sir.

18 Q Okay. Now, do you remember the judge telling you that  
19 you're pleading to voluntary manslaughter which would carry  
20 up to 30 years?

21 A Yes, sir.

22 Q Okay. And you told the judge that you still wanted to  
23 plead guilty after he told you that.

24 A No. I -- no, no. That ain't correct, because I went  
25 in. I didn't go in for no 30 years. - It was zero to 15.

Anthony O'Brian Isom  
Cross-examination by Mr. Hunter

1 They gave me a cap.

2 Q But you understand the charge could have carried 30  
3 years.

4 A Yes, yes.

5 Q Okay. Do you remember -- do you recall the judge  
6 asking you if you thought that pleading was in your best  
7 interest and you thought it was?

8 A Yes. That's what my lawyer told me.

9 Q Okay. Do you remember telling the judge that you made  
10 up your own mind to plead guilty?

11 A Yes.

12 Q Okay. So was it your own decision or your lawyer's  
13 decision to plead guilty?

14 A It was -- basically, it was my lawyer's decision. He  
15 made me feel like I needed to plea.

16 Q Okay. So you wish you had gone to trial.

17 A Yeah.

18 Q Okay. You don't remember the Court asking again?  
19 Judge said, "This is what you want to do." And you said  
20 "Yes."

21 A Yes.

22 Q Okay. And do you recall the judge telling you that he  
23 was not bound by the 15-year negotiation, that he could  
24 sentence you to more?

25 A No. My lawyer told me that if I went in for that plea

Anthony O'Brian Isom  
Cross-examination by Mr. Hunter

1 that I wouldn't get no more than 15 years. That's what I  
2 was told.

3 Q Okay. Do you remember telling the judge that you were  
4 satisfied with Mr. Lifsey?

5 A Yes.

6 Q And that he had answered all of your questions?

7 A Yes.

8 Q Okay. You told the judge that Mr. Lifsey and you had  
9 been over your case in detail.

10 A I can't recall.

11 Q You don't recall that?

12 A No.

13 MR. HUNTER: Judge, that's on page five.

14 Q So you don't recall the judge asking you if you and  
15 Mr. Lifsey explored every defense imaginable and that you  
16 told him you had.

17 A Yeah.

18 Q Okay. Do you recall the judge asking you if you  
19 understood that you were giving up your various rights at  
20 trial and the rights to challenge evidence?

21 A Yes.

22 Q Okay. So you believe that you could still appeal your  
23 stand-your-ground hearing?

24 A Yes.

25 Q Okay. Even though the judge told you that you were

Anthony O'Brian Isom  
Cross-examination by Mr. Hunter

1 waiving all of those rights?

2 A He didn't say nothing about waiving no rights on my  
3 appeal, on my stand-my-ground law.

4 Q Okay.

5 MR. SHELDON: Just a moment, Your Honor.

6 THE COURT: Yes, sir.

7 (Pause.)

8 Q So your main issue today is just that -- is your  
9 stand-your-ground hearing.

10 A Yes.

11 Q So you're claiming Mr. Lifsey was ineffective --

12 A Yes.

13 Q -- for not appealing it.

14 A Yes.

15 MR. SHELDON: No further questions, Your Honor.

16 THE COURT: All right. Thank you. Mr. Sheldon, any  
17 redirect?

18 MR. SHELDON: Your Honor, I -- no redirect. We would  
19 just -- I'm assuming the Court has a transcript.

20 THE COURT: I do.

21 MR. SHELDON: We would take some issues with the  
22 characterization of some of the statements by the A.G., but  
23 no more questions, Your Honor.

24 THE COURT: Okay. I'll reply on the transcript.

25 All right. Thank you. You may step down.

Anthony O'Brian Isom  
Cross-examination by Mr. Hunter

1 Any other witnesses?

2 MR. SHELDON: No, sir, Your Honor.

3 MR. HUNTER: Your Honor, the state would call  
4 Mr. Lifsey.

5 MICHAEL H. LIFSEY, having been  
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. HUNTER

8 Q Mr. Lifsey, how long have you been practicing law?

9 A Since 1991.

10 Q And were you appointed or retained on this case?

11 A I was appointed on this case.

12 Q Do you recall how many times you met with Mr. Isom?

13 A I met with him numerous times. As far as giving you  
14 an exact number, I can tell you I went and made three trips  
15 to Lieber Correctional to see him when he was incarcerated.  
16 But I saw him at least a couple of times in the jail in  
17 Chester initially before he had a bond hearing. We  
18 ultimately had a bond hearing. He was released on bond.  
19 And he -- I remember him coming to my office. So I met  
20 with him in my office while he was out on bond.

21 I also -- of course I had pretty good contact with his  
22 mother. His mother was actively involved in this case and  
23 e-mailed me and came to the office when necessary.

24 He ultimately got incarcerated again when the state  
25 moved forward on his other pending case, the assault and

Anthony O'Brian Isom  
Cross-examination by Mr. Hunter

1 battery second, that occurred prior to the murder charge.

2 And that put him back in Lieber.

3 As I said, I made three trips down to Lieber. They  
4 brought him back. The trips to Lieber were November 20th  
5 of 2013, January 2nd of 2014 and January 16th of 2014  
6 according to my -- my notes. And then they brought him  
7 back about a week or so before the trial to Chester, and I  
8 know I met with him at the jail at least one time after  
9 that.

10 Q Okay. Did you file appropriate discovery and Brady  
11 motions?

12 A Yes, sir.

13 Q Okay. Did you get all of the discovery in this case?

14 A I did.

15 Q Do you recall there being an issue with the knife?

16 A Yeah. There was a knife on the bathroom floor of the  
17 crime scene.

18 This is a fight that occurs in a house and begins,  
19 probably begins, out in the hall and ends in a bathroom.  
20 The decedent, the victim's body, was in a bathtub flat --  
21 flat of his back in the bathtub.

22 There was a knife on the floor, I believe, of the  
23 bathroom that was photographed by the Chester police  
24 department. For some reason that I have -- do not  
25 understand and have no way to figure out why the Chester

Anthony O'Brian Isom  
Cross-examination by Mr. Hunter

1 police department did not take that knife into evidence.  
2 So I didn't have a physical knife. But there were pictures  
3 of the knife.

4 Mr. Isom from the very beginning wanted that knife,  
5 which of course I don't blame him for wanting it. It would  
6 have been nice if they would have had it. But he kept  
7 telling me that there was -- you know, I can move that the  
8 case be dismissed because they didn't have the knife, which  
9 of course is not true.

10 what I told him is the absence of the knife would be a  
11 factor that I could cross-examine and critique the state on  
12 their adequacy of their investigation. But there was no --  
13 there was no legal reason to dismiss the charge because the  
14 Chester police department did not take into evidence the  
15 knife.

16 Q And could you kind of explain to the Court the whole  
17 issue of the stand-your-ground hearing and what -- where  
18 that went?

19 A Well, I made some notes so I can remember the dates of  
20 these things.

21 State vs. Duncan, which is the first, the  
22 stand-your-ground case that said it was immediately  
23 appealable comes out in May of 2011.

24 So at that point we are under the law that says if you  
25 file a stand-your-ground motion and lose you can

Anthony O'Brian Isom  
Cross-examination by Mr. Hunter

1 immediately appeal it.

2       Okay. The state was for some reason -- and you'd have  
3 to ask the solicitor -- was pretty intent on moving forward  
4 to this, on this case, in a rapid fashion, frankly, a  
5 little earlier than I had wanted her to do it -- the  
6 solicitor in this case.

7       So the solicitor was gearing up to try this thing in  
8 the -- probably I think in June of 2013, is my memory.

9       So shortly before that I filed a motion for immunity  
10 under the stand-your-ground under the Persons and --  
11 Protection of Persons and Property Act.

12       We had that immunity hearing on May 30th of 2013. We  
13 lost that hearing. Judge Goldsmith who was the judge who  
14 heard the hearing did not issue a written order.

15       Judge Goldsmith ruled orally from the bench. I don't  
16 have a transcript of that hearing, but my -- my memory is  
17 that I remember asking him, and maybe even jointly the  
18 solicitor and I both asking him, do you need to prepare or  
19 do you want one of us to prepare a written order. Judge  
20 Goldsmith said, no, I don't think my factual recitation on  
21 the record of my reasons is sufficient.

22       And I -- and I do have a memory that he made a pretty  
23 detailed factual account of why he denied the motion. So  
24 May 30th, we have the hearing. He denies it orally and  
25 says he's not going to do a written order.

Anthony O'Brian Isom  
Cross-examination by Mr. Hunter

1 I filed an appeal of that which stayed the prosecution  
2 of the case.

3 August 21st of 2013 the State vs. Isaac comes out  
4 which says forget about what we said in State vs. Duncan,  
5 they're no longer immediately appealable.

6 well, and this is the error, and if this is error I  
7 will tell you it's error on my part. And I think the  
8 solicitor and I shared this error, not being appellate  
9 lawyers.

10 The solicitor and I basically assumed at that point  
11 that the case was back to us. You know, the issue, the  
12 only issue, we appealed was the -- was the  
13 stand-your-ground issue, which is not longer immediately  
14 appealable.

15 so the solicitor and I probably in the fall of 2013,  
16 September or October, start trying to find a trial date  
17 that suits both of us.

18 we settle on January of 2014 as the trial date. So  
19 we're acting -- and both the solicitor and I are -- believe  
20 that we now have jurisdiction of the case and are going  
21 forward.

22 November 26th of 2013 is a letter from the Court of  
23 Appeals that says they want a copy of the written order. I  
24 did not respond to that letter in writing. I called and  
25 left -- I asked. I called the Court of Appeals and asked

Anthony O'Brian Isom  
Cross-examination by Mr. Hunter

1 for the staff attorney that had been assigned the case, was  
2 given somebody's voice mail and left a voice mail saying  
3 there's no written order, Judge Goldsmith ruled verbally.

4 And/but, frankly, it was not a particular concern of  
5 mine because I believe the case should have been remanded  
6 immediately.

7 I don't understand the -- I don't understand what --  
8 there was nothing being appealed beyond that issue. So I  
9 did not follow up with a letter to the Court of Appeals. I  
10 followed up with a phone call.

11 And then I got a letter saying we're -- an order  
12 dismissing the case, both citing, saying, we didn't get a  
13 letter from Mr. Lifsey or a copy of the written order,  
14 which, as I said, didn't exist. But it also cited the  
15 State vs. Isaac. I think it was the Isaac case that  
16 clarified that they weren't immediately appealable.

17 So that's as best I can tell you the -- where we stood  
18 on the eve of trial was that the -- at least the position I  
19 took was that the motion had been denied.

20 Q Did you tell Mr. Isom prior to his plea that he would  
21 be waiving any challenges to the stand your ground?

22 A Yes, yes. Well, I told him he waived all defenses. I  
23 mean, you can't plead guilty and then claim a defense. We  
24 don't have conditional guilty pleas in South Carolina.

25 So he certainly was aware that any plea, that's the

Anthony O'Brian Isom  
Cross-examination by Mr. Hunter

1 end of any defenses.

2 This was a good -- you know, this was a triable case.  
3 This is -- this is not a situation of he had defenses.  
4 They were not perfect. But he had defenses and could  
5 have -- I -- we were prepared to try it. We picked a jury  
6 and were prepared to go forward. There were pluses and  
7 minuses to going to trial.

8 Q what -- you said he had some defenses.

9 A Yes, sir.

10 Q I assume you're talking about self-defense.

11 A That's correct.

12 Q Could you kind of -- did -- what were the problems  
13 that you saw in his defense?

14 A Well, here's -- let me just -- so I'll give you the  
15 pluses and minus, okay, of a self-defense claim.

16 The plus is he was unarmed and that the victim at some  
17 point had a knife. That's a positive obviously for us. He  
18 had a wound, not a severe wound, but he had a wound, a sort  
19 of a -- I called it a stab. The solicitor called it a  
20 poke. But he had a -- in the pictures which are in the --  
21 I've got them on a jump drive in here. You can see. He  
22 has a small puncture type wound in his -- the middle of his  
23 forehead, which is consistent with what he said about being  
24 stabbed by the defendant. So those are all good for us.

25 But here's the negatives. I mean, first of all, it

Anthony O'Brian Isom  
Cross-examination by Mr. Hunter

1 happens at the victim's house, which is never great for us.  
2 The whole dispute is over drugs, which is never great for  
3 us.

4 And then, most importantly, you've got repeated blows  
5 to the head that -- that I met with the medical examiner.  
6 I can't remember if it was Dr. Maynard or Jenkins, one --  
7 one of that crowd, the Rock Hill pathology people.

8 And, you know, he died of traumatic brain injury. In  
9 other words, he had swelling of the brain. There were no  
10 fractures of the skull, so the brain swelled and didn't  
11 have anywhere to go similar to a lot of things when the  
12 soldiers are suffering with roadside bombs. So he had  
13 that.

14 And -- and there's an autopsy photo that -- where  
15 the -- where the skull is removed and you see several  
16 poolings of blood that are consistent with someone being  
17 kicked repeatedly in the head, which was what the victim's  
18 wife described. The victim's wife described not seeing the  
19 beginning of the fight but coming in and seeing my client  
20 over her husband who was at that point flat of his back in  
21 the bathtub being kicked repeatedly in the head.

22 Now, I would have obviously challenged her  
23 believability and credibility, but the pathologist report  
24 was consistent with that. And, you know, while you have --  
25 you don't have to -- there's a charge. You don't have to

Anthony O'Brian Isom  
Cross-examination by Mr. Hunter

1 make a fine distinction about when the self -- need for  
2 self-defense is over. At the same time, the state would  
3 have maintained the defense was over and he was kicking a  
4 helpless man.

5 I mean, those are all questions that 12 people on the  
6 jury would have had to decide. I'm not a fortune teller  
7 and I don't predict what juries will do. I could see a  
8 jury coming back not guilty in this case; I could see a  
9 jury coming back guilty of murder.

10 I honestly thought the most likely outcome was  
11 probably voluntary. I thought they'd probably compromise  
12 in the middle when I allege self-defense and the solicitor  
13 says it's murder. But there's -- you know, there's no way  
14 to tell.

15 The defendant made a -- what I think was a wise  
16 decision. I mean, you know, it's a -- if he had been  
17 convicted of murder, obviously, it's a minimum of 30, and  
18 much more than that.

19 If he's convicted of voluntary manslaughter it carries  
20 up to 30 years.

21 My experience with the trial judge in this case is  
22 that he often and almost always gives tougher sentences for  
23 people that go to trial than he does at pleas.

24 So, you know, he got an offer that was half of what  
25 voluntary carries, and he made the decision to go forward.

Anthony O'Brian Isom  
Cross-examination by Mr. Hunter

1 It was -- like I said, it's not an indefensible case. It  
2 could have gone either way, but I think he made a knowing  
3 and intelligent decision in this case.

4 Q Did you represent Mr. Isom on his assault and battery  
5 charge that Mr. Sheldon was talking about?

6 A No. Mr. Stubbs in our office did that. And I'm  
7 familiar with the case. I think I talked to him a time or  
8 two about it. But we just kind of decided that since I had  
9 him on the murder and I didn't want to conflict the two,  
10 and so I let another lawyer in my office handle the plea, a  
11 younger lawyer.

12 Q Okay.

13 A And he got a year, I think, a year or two years or  
14 something like that for kicking the guy in the head.

15 Q So make sure I covered everything. Did you review all  
16 of his constitutional rights before he pled?

17 A Yes, sir.

18 Q He pled. And did he appear to understand everything  
19 that was going on?

20 A He did.

21 Q Okay.

22 A I never had any concerns as to his mental competency.

23 Q And whose decision was it ultimately to plead guilty?

24 A Oh, the client's.

25 MR. HUNTER: And, Your Honor, I think that's all the

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Cross-examination by Mr. Sheldon

1 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 talk briefly about the  
9 stand-your-ground.

10 A Yes, sir.

11 Q The hearing and subsequent -- what happened subsequent  
12 to that. Did -- so it's my understanding that you have  
13 this hearing sometime in August, is that correct, or I'm  
14 sorry. In May of 2012.

15 A My notes indicate May 30th of 2013.

16 Q I'm sorry. 2013.

17 A Yes, sir.

18 Q And subsequently the law changes, but you timely filed  
19 the appeal after the hearing in May, is that right?

20 A Yes, sir, I did do that.

21 Q And the law changes sometime in August, and then you  
22 get essentially a dismissal letter from the Court of  
23 Appeals in early December of 2013.

24 A I think that's correct. I think they asked for the  
25 written order. My notes say -- their letter is dated

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1 November 26th of 2013, and I think when I -- when they  
2 ultimately dismissed it, sometime in December.

3 Q Would you agree that a -- that a stand-your-ground  
4 hearing would essentially be absolute immunity from  
5 prosecution in this case had he won?

6 A Oh, yes, sir, absolutely.

7 Q And therefore the state would not be able to proceed  
8 with murder, manslaughter, anything else stemming from this  
9 case, is that right?

10 A Yes.

11 Q And all of this is assuming had he won.

12 A That's correct. They could have -- they could have  
13 appealed the decision, but, yes, that precludes them from  
14 prosecution.

15 Q So it was appealed by you, and then the appeal was  
16 dismissed, I think for essentially two reasons, but it  
17 seems -- I mean, and I think -- wouldn't you agree that it  
18 seems from the Court of Appeals' order signed by Chief  
19 Justice -- Chief Judge Few that it was dismissed because of  
20 the State vs. Isaac case and therefore would have probably  
21 been allowed to be appealed after a trial, is that right?

22 A Yes. I believe that had we gone to trial -- I  
23 didn't -- I don't think the Court of appeals made a ruling  
24 on the substance of the case. They dismissed it pursuant  
25 to Isaac. So, yes, just because it's no longer immediately

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1   appealable doesn't mean it would ultimately not be  
2   appealable upon review. So I do agree with that.

3   Q   And I -- you mentioned that there are no conditional  
4   guilty pleas in South Carolina, is that right?

5   A   Not in state court that I'm aware of.

6   Q   And that's your understanding of the law. Do you  
7   believe that -- is it -- is it possible that a  
8   stand-your-ground defense because of the absolute immunity  
9   nature of the offense, that that is separate and distinct  
10  from any other issue the Court has taken up regarding  
11  conditional pleas?

12  A   Well, I don't think the exact question of whether or  
13  not that's an exception to the no-conditional-guilty-plea  
14  rule -- I don't think the Court's decided that.

15       I have found over the years our -- our courts -- I  
16  don't think there's any exceptions to the no-conditional  
17  guilty pleas that I'm aware of.

18       So, I doubt -- I mean, I'm not predicting what three,  
19  at least three, people on the Supreme Court will rule at  
20  some point, but I -- I'd be very surprised if they said --  
21  I was -- frankly, I was surprised by State vs. Duncan to  
22  begin with. I was pleasantly surprised, and, of course,  
23  you know, that turned out about like most things. I'm  
24  pleasantly surprised when the Supreme Court -- they change  
25  their mind. So, I don't know to answer your question. I'm

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Cross-examination by Mr. Sheldon

1 just -- I'm just -- I can't predict the future. I just  
2 don't think it's an exception to it.

3 Q Are there any other circumstances based on your  
4 experience, which is essentially 20-plus years of all  
5 criminal prosecution or defense, where there -- are there  
6 any other circumstances that you could think of where the  
7 end outcome would be absolute immunity?

8 A In the criminal area? You know, I don't know. I  
9 haven't really thought about it. I mean, I was surprised  
10 by Duncan not only as to the -- not only as to the  
11 immediate appealability, but I was surprised that they  
12 viewed the stand-your-ground as an immunity issue rather  
13 than a -- just a modification of our law of self-defense.

14 But, no, I can't -- I don't know. I'm sure there are.  
15 I've never thought about it. I'm not aware of any other  
16 issues that would give automatic immunity.

17 I mean, I suppose -- not -- not that -- I mean, there  
18 are certainly defenses to the crime, plenty of crimes, but  
19 I'm not sure of any immunity. Nothing comes to mind off  
20 the top of my head.

21 Q Okay. And have you had an opportunity to review the  
22 transcript from the actual guilty plea itself?

23 A I did look at it. I have a copy if -- if you need to  
24 ask me anything on it.

25 Q Yeah, if I could. First of all, did you do a plea

Anthony O'Brian Isom  
Cross-examination by Mr. Sheldon

1 affidavit in this case?

2 A No. I was -- I don't think I did. I -- I usually --  
3 it's usually my habit, like I believe on the last plea we  
4 did there was a plea affidavit done, I believe. It's  
5 usually my habit on serious cases, but my recollection  
6 is -- you know, my recollection is we had picked a jury in  
7 this case. We either had or were about to. I think we  
8 had. And this was kind of a last-minute decision for him  
9 to enter the plea.

10 So I don't -- I don't -- I don't think I did, but I  
11 can't find one in my file. But/and I don't reference it in  
12 the transcript.

13 Q But you said that it would not be uncommon for you to  
14 do a plea affidavit within a case involving a -- what's  
15 classified as a serious crime.

16 A Yes, sir. In -- in most cases, not all, because, you  
17 know, some of them you have to judge the dynamics of the  
18 client and the dynamics of how big of a hurry the judge  
19 might be in or anything else, but in most serious cases I  
20 do do a plea affidavit.

21 Q And in that plea affidavit does it specific -- in the  
22 one that you would normally use or in the one that I think  
23 Judge Kinard typically makes you use would it not  
24 specifically say in that affidavit that the client is  
25 giving up his right to any defenses in the case?

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Cross-examination by Mr. Sheldon

1 A Yes, sir.

2 Q And so -- and also typically -- well, let me ask you  
3 this. Would it be fair to say based on your experience  
4 that the judge would typically inform someone that they're  
5 giving up their rights to any defenses?

6 A That's part of most judges' plea colloquy. And my  
7 experience tells them, you know, you're giving up any  
8 defenses you may have to the crime. Most judges ask some  
9 variation of that question.

10 Q Do you think that in this case that based on your  
11 experience that Judge Gibbons adequately addressed the  
12 notion of giving up your right to any -- to any defenses  
13 that you may have?

14 A Would you give me just one moment then to review  
15 the --

16 THE COURT: Sure.

17 (Pause.)

18 Q And if it helps, I'm looking at the bottom of page  
19 five and the top of page six of the transcript.

20 A Well, I'm -- I'm -- well, I don't think he  
21 specifically asked that question. He certainly asked a  
22 number of questions around that issue, I mean.

23 Q I -- I -- and I don't think I'm going to dispute that,  
24 but let's take a look at what you did ask. "Have you  
25 explored every defense you have imaginable?" And the

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Cross-examination by Mr. Sheldon

1 defendant answered, "Yes, sir." Is that right? And this  
2 is at the bottom of page five.

3 A Give me one second. I'm sorry. Yes. I see that.

4 Q And I think that that's probably true, right?

5 A Oh, I see, I see.

6 Q You referenced the self-defense claim in the  
7 mitigation, and that -- the basis for the reduction of  
8 voluntary manslaughter was self-defense, is that right?

9 A Yes, sir.

10 Q And you had already had a stand-your-ground hearing.  
11 So I'm assuming that you -- that it had been explored at  
12 some time, is that right?

13 A Yes.

14 Q And the judge then says, "Do you understand when you  
15 plead guilty you waive," or I'm sorry. The judge says,  
16 "Has -- have you -- do you understand all of your  
17 constitutional rights?" And then he says, "Do you  
18 understand that when you plead guilty you waive -- that  
19 means you give up -- those rights?" And so, but then he  
20 goes on to list all of the constitutional rights, doesn't  
21 he?

22 A I see he kind of --

23 Q But in that he never -- in there the judge never talks  
24 about giving up the defenses to the charge. Would you  
25 agree with that?

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Cross-examination by Mr. Sheldon

1 A Yeah. I agree that he does not ask the -- most  
2 judges -- I mean, most judges would say do -- would ask the  
3 question about defenses and then ask do you understand  
4 you're giving up those rights, then go to constitutional  
5 rights and then ask them. He kind of conflates the two for  
6 what it's worth.

7 Q And/but a plea affidavit would have covered that  
8 issue, correct?

9 A Well, it would have, yes, sir. My plea affidavit  
10 would have.

11 Q And/but we don't have that in this case.

12 A No, sir.

13 Q And we don't have anything in the record that  
14 specifically says he's giving up his rights to the  
15 defenses.

16 A I guess that's correct, yes, sir. I mean, you are  
17 correct. I'm not disputing.

18 Q So in any way -- so other than you saying that you  
19 told him he gives up his rights to appeal that  
20 immunity-defense issue, we have absolutely nothing else to  
21 substantiate that, is that correct?

22 A That's true.

23 Q And typically you would put that in writing.

24 A Well, I mean, typically --

25 Q For --

Anthony O'Brian Isom  
Cross-examination by Mr. Sheldon

1 A -- in serious cases I -- more -- most times I do a  
2 plea affidavit.

3 I -- I -- my purposes for a plea affidavit are  
4 multiple, not just to make sure the client -- I mean, part  
5 of it is -- part of it -- part of it is to make sure that  
6 the client understands all of the questions that the judge  
7 is going to ask in advance, because I hate it when a client  
8 gets up there and acts like he's never done it and hasn't  
9 heard the question before.

10 Q And part of it is to make sure he doesn't come in here  
11 and say that you never said it, is that right?

12 A Yes, sir. That's certainly part of it.

13 Q And you talked about in most -- in serious cases you  
14 would typically do that.

15 A Yes, sir.

16 Q And by all -- by -- would it be fair to say that by a  
17 layman's definition or by a legal definition that voluntary  
18 manslaughter, no matter how you spin it, is a serious case?

19 A Oh, there's no question this is a serious case, and I  
20 typically do it, but I don't think it's a hundred percent  
21 and I don't think there's a court rule to the effect that  
22 plea affidavits are required, at least as of today.

23 Q So there was -- just to -- just to briefly summarize,  
24 would it be fair to say that there was a stand-your-ground  
25 hearing that was denied and appealed?

Anthony O'Brian Isom  
Cross-examination by Mr. Sheldon

1 A Yes, sir.

2 Q And then a guilty plea which got rid of his right to  
3 continue that appeal.

4 A Yes, sir.

5 Q And-but no written evidence or transcript evidence  
6 stating that he waived that right to appeal that defense.

7 A Well, that's -- there's certainly no written evidence.  
8 I guess depends on how you read that question of Judge  
9 Gibbons on the rights, whether that question applied both  
10 just to the rights or to the other defenses as well. But I  
11 agree with you there's not a specific do-you-understand-  
12 you're-giving-up-your-right-to-appeal-any-defenses-you-may-  
13 have.

14 Q But you -- but you would agree that he specifically  
15 goes over the rights after that question is asked, is that  
16 right?

17 A Yes, sir.

18 Q And in there mentions nothing about defenses.

19 A That's correct.

20 Q And you did -- just to be clear, you did not appeal  
21 this guilty plea.

22 A No, sir.

23 Q Is that right?

24 A If he had instructed me to, I would have.

25 Q okay. And there's -- and not...

Anthony O'Brian Isom  
Redirect examination by Mr. Hunter

1 MR. SHELDON: Not to beat the proverbial dead horse,  
2 Your Honor. I'm almost done.

3 Q There's nothing in the transcript that said -- where  
4 Judge Gibbons also acknowledges that you have ten days to  
5 appeal the decision today.

6 A No, sir.

7 Q would -- and would that be common based on your  
8 experience for a circuit court judge to inform the  
9 defendant that he does have ten days to appeal the  
10 decision?

11 A Most judges ask that. I've never -- I've never been  
12 of the opinion that was constitutionally required but --  
13 but I'm not a scholar on it. Most judges tend to ask it,  
14 tend to tell them they have a right to appeal.

15 Q Thank you.

16 MR. SHELDON: Your Honor, no more questions.

17 THE COURT: Any redirect?

18 MR. HUNTER: Briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. HUNTER

21 Q Mr. Isom never asked you to appeal the guilty plea?

22 A No, sir.

23 Q Okay. And so from your discussion with Mr. Isom prior  
24 to his plea you did -- did you discuss, you know, the fact  
25 that he was going to be waiving his stand-your-ground

Anthony O'Brian Isom  
Redirect examination by Mr. Hunter

1 defense by pleading guilty?

2 A Yes, sir. We discussed in detail that he was giving  
3 up any claim of self-defense or immunity or anything else  
4 to prosecution, because there's no conditional guilty pleas  
5 in South Carolina.

6 The only way to preserve his argument on the  
7 stand-your-ground or on his -- his argument that he was  
8 defending himself in general, which was, by the way, much  
9 better than his stand-your-ground argument -- his  
10 self-defense argument -- was to go to trial.

11 Q Okay. And just a last question. Based on your  
12 experience would he have had a good chance of having his  
13 immunity hearing overturned by the Court of Appeals?

14 A You know, I don't think considering this did not even  
15 occur at his own residence -- this occurred at the victim's  
16 residence -- I found, frankly, the idea that he would be  
17 granted immunity not a -- not a -- it was a very long shot.  
18 I'll put it that way.

19 To me the benefit -- and maybe this is why the Supreme  
20 Court has changed how we do the immunity hearings -- I  
21 mean, to me the benefit of an immunity hearing from our end  
22 was to get the witnesses on the stand and give me an  
23 opportunity to cross-examine.

24 For example, the victim's wife, I was able to get her  
25 testimony kind of locked in as to what she saw and not saw

Anthony O'Brian Isom  
Redirect examination by Mr. Hunter

1 and, frankly, to delay the case a little bit because I  
2 thought the solicitor was in a hurry to try it and I wasn't  
3 quite -- didn't want to try it quite as soon as she did.

4 MR. HUNTER: I don't have any further questions.  
5 Thank you.

6 THE COURT: Any recross based on his redirect?

7 MR. SHELDON: No, sir, Your Honor.

8 THE COURT: Okay. Thank you. You may step down.  
9 Anything further from the state?

10 MR. HUNTER: No, Your Honor.

11 THE COURT: Thank you. I'll take this matter under  
12 advisement. I will inform you when I make my ruling.  
13 Thank you.

14 MR. HUNTER: Thank you, Your Honor.

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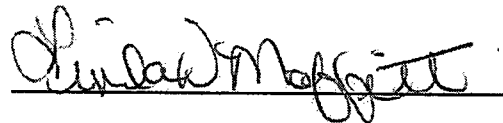
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CERTIFICATE

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.

December 30, 2014



Linda D. Moffitt  
Circuit Court Reporter

STATE OF SOUTH CAROLINA  
 COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS  
 FOR THE SIXTH JUDICIAL CIRCUIT

Anthony O. Isom, #356819,

Case No. 2014-CP-12-0189

Applicant,

v.

**ORDER OF DISMISSAL**

State of South Carolina,

Respondent.

2014 SEP 23 A 10:13  
**FILED**  
 CLERK OF COURT  
 CHESTER CO. S.C.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on April 17, 2014. Respondent made its return on June 26, 2014. 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**

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Chester County Clerk of Court's orders of commitment. The Applicant was indicted at the September 2012 term of the Chester County Grand Jury for murder (2012-GS-12-0442). Mike Lifsey, Esquire represented the Applicant.

Prior to trial, Applicant sought immunity from prosecution pursuant to the Protection of Persons and Property Act. At a hearing on May 30, 2013, the Honorable Brooks P. Goldsmith

ruled Applicant was not entitled to immunity. Applicant filed a Notice of Appeal from Judge Goldsmith's ruling. By Order filed December 17, 2013 the South Carolina Court of Appeals dismissed the appeal. The Remittitur was sent on January 9, 2014.

The Applicant subsequently pled guilty to the lesser-included offense of voluntary manslaughter. On January 28, 2014, the Honorable Brian M. Gibbons sentenced Applicant to fifteen (15) years imprisonment.

### **ALLEGATIONS**

At the post-conviction relief hearing, Applicant proceeded to argue his confinement is unlawful based upon the following grounds:

1. Ineffective assistance of counsel.
2. Involuntary guilty plea.

### **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 that he pled guilty to voluntary manslaughter. Applicant testified he was seeking a sentence reduction or a new trial. Applicant testified that prior to his plea, he sought immunity from prosecution pursuant to the Protection of Persons and Property Act. Applicant testified Judge Goldsmith denied immunity. Applicant testified he asked Counsel to appeal the denial of immunity but that Counsel never did. Applicant testified that he told the plea judge he was entering his plea voluntarily. Applicant testified Counsel only saw him

twice prior to his plea. Applicant testified he received discovery two weeks prior to his plea. Applicant testified he decided to plea on the morning his case was called for trial. Applicant testified he thought he could still appeal his denial of immunity, even after he pled guilty. Applicant testified he wanted to appeal the denial of immunity, and that he has not received any information regarding that appeal. Applicant testified he never received pictures of the knife that was used in the crime as part of his discovery. Applicant testified that Counsel explained the consequences of Applicant entering a guilty plea.

On cross-examination, Applicant testified that he told the plea judge he understood the crimes he was charged with and the possible sentences. Applicant testified he recalled telling the plea judge he was satisfied with Counsel, Counsel had answered all of his questions, and Counsel gone over his case with him. Applicant testified he told the plea judge that no one forced him to plead guilty. Applicant testified that he recalled the plea judge going over the rights he was giving up by pleading guilty. Applicant testified that he apologized to the victim's family when he pled guilty.

Following Applicant's testimony, Mike Lifsey, Esquire (Counsel), testified. Counsel testified he has been practicing law since 1991. Counsel testified he is the Circuit Public Defender for the Sixth Judicial Circuit. Counsel testified he made three trips to Lieber Correctional to visit Applicant. Counsel testified that after Applicant was released on bond, he visited Counsel at his office, until Applicant was re-incarcerated on other charges. Counsel testified he received discovery and went over it with Applicant. Counsel testified the knife Applicant referred to in his testimony was found on the bathroom floor, and the victim was in the bathtub. Counsel testified Applicant claimed the victim attacked Applicant with the knife. Counsel further testified that law enforcement did not take the knife into evidence, but they did

have pictures of the knife.

With regard to the immunity hearing, Counsel testified that at the time of Applicant's immunity hearing, the controlling case law was State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011), which said the denial of immunity was immediately appealable. Counsel testified the solicitor moved quickly in Applicant's case. Counsel testified the immunity hearing was held on May 30, 2013, at which point Judge Goldsmith ruled from the bench in denying immunity. Counsel testified Judge Goldsmith did not issue a written order. Counsel testified that at that point he filed an appeal, which stayed Applicant's case. Counsel testified that at that point, State v. Isaac, 405 S.C. 177, 747 S.E.2d 677 (2013) came out, which changed the manner in which appeals from immunity hearings were handled. Counsel testified that at that point, the solicitor set a trial date for January 13, 2014. Counsel testified that on November 26, 2013, he received a request from the South Carolina Court of Appeals for a copy of Judge Goldsmith's order. Counsel testified he called the Court of Appeals and left a voicemail message, in which he explained the order was verbal and Judge Goldsmith had never issued a written order. Counsel testified the Court of Appeals subsequently dismissed Applicant's appeal in December, 2013. Counsel testified he told Applicant he would waive any further appeal from the denial of immunity by entering a guilty plea. Counsel testified Applicant still made the decision to plead guilty.

Counsel testified that he and Applicant discussed the merits of going to trial and arguing Applicant acted in self-defense. Counsel testified there were some facts that might work in Applicant's favor, such as the fact that Applicant was unarmed, Applicant received a minor stab wound, and the victim had a knife. Counsel testified the negative factors that might influence a jury were the fact that the murder occurred at the victim's home, the dispute was over drugs, and

the victim died of repeated blows to his head. Counsel testified the victim died of traumatic brain injury, and the autopsy revealed several different poolings of blood inside the victim's head. Counsel testified he thought the likely outcome at trial would have been a manslaughter verdict. Counsel testified he thought Applicant made a wise decision to plead guilty because the plea judge tended to give tougher sentences for trials than guilty pleas. Counsel testified that he usually has his clients sign a plea affidavit for serious crimes, but he did not think he had Applicant do one in this case. Counsel testified there is no rule requiring him to have his clients sign plea affidavits. Counsel testified he went over everything with Applicant that would be contained in a plea affidavit prior to Applicant's plea.

#### 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. This Court finds Counsel's belief that Applicant had no competency issues was reasonable. This Court further finds that Counsel thoroughly prepared Applicant's case. This Court further finds that Applicant waived any constitutional challenges by pleading guilty. This Court further finds that Counsel thoroughly explained the trial process to Applicant, as well as the consequences of pleading guilty. This Court further finds that Counsel did not commit any errors in his handling of Applicant's immunity hearing and the appeal thereafter. This Court finds, additionally, that even if Counsel did commit any errors in his handling of the immunity hearing, any error would be harmless because Applicant was well-aware that he was waiving any further challenge to the ruling by entering his guilty plea. This Court finds that Counsel was fully

prepared to proceed to trial, but his advice to Applicant to plead guilty was well reasoned and based upon many years of trial experience. Finally, this Court finds Counsel's representation of Applicant and handling of this case were well within the standards required for effective representation.

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. Once again, this Court finds Counsel's testimony to be credible and Applicant's testimony to be not credible.

This Court finds Applicant was aware of the nature of the charges he was facing and the possible penalties. This Court finds Applicant was well aware that by pleading guilty he waived his ability to challenge the evidence against him. This Court additionally finds that Applicant was well aware that he waived any challenges to the outcome of the immunity hearing by pleading guilty. This Court further finds Applicant was well aware of the constitutional rights he was waiving by pleading guilty. This Court finds that Applicant made a well-reasoned decision to plead guilty, rather than proceed to a jury trial on the murder charge. This Court further finds that Applicant pled guilty voluntarily and of his own free will. As such, Applicant's claims are without merit.

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

#### **IT IS THEREFORE ORDERED:**

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 16 day of Sept, 2014.

  
W. JEFFREY YOUNG  
Presiding Judge  
Sixth Judicial Circuit

Sumter, South Carolina

FILED  
2014 SEP 23 A 10:13  
CLERK OF COURT  
CHESTER CO S.C.