

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

Appeal from Greenwood County

Frank R. Addy, Circuit Court Judge

GERALD GAINES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000219

APPENDIX

ROBERT M. PACHAK
Appellate Defender

ALAN WILSON
Attorney General

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

J. RUTLEDGE JOHNSON
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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State of South Carolina)
County of Greenwood) Court of General Sessions
) 2011-GS-24-2067, 2068
) 2012-GS-24-541
) 2012-GS-01-0011

State of South Carolina)
) vs.) Transcript of Record
)
Gerald Russell Gaines)
) DEFENDANT)

May 14, 2012
Greenwood, South Carolina

B E F O R E:

Honorable Cordell J. Maddox, Judge

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

Matt Swilley, Assistant Solicitor
Demetri Andrews, Assistant Solicitor
Attorney for the State

Christopher Pracht, Esq.
Sarah Drawdy, Esq.
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

1 EXHIBITS

2

3 State's

4	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
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9 Court's

10	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
11	1	Notice Life Without Parole	X		3

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1 THE COURT: Mr. Pracht.

2 MR. PRACHT: Your Honor, I guess we are going to do
3 the motion that our client shouldn't be subject to the
4 life without parole statute.

5 THE COURT: Okay.

6 MR. PRACHT: Your Honor, in regards to Gerald Gaines
7 the Solicitor's office served us notice on the 17th day of
8 April of 2012 with its notice of the State's intent to
9 seek life without parole. I have here, Your Honor, and I
10 will pass up, we have provided a copy of all of this to
11 the State. Their notice, a couple of statutes which I
12 would like for you to take a look. I am going to hand up
13 the case of State v. Lindsey which I believe is on point
14 in regards to this matter as well.

15 MR. SWILLEY: And, Your Honor, here is the actual
16 notice that I filed with the Clerk's office here in
17 Greenwood, can we make that a Court's exhibit at this
18 time?

19 (Whereupon, Court's Exhibit 1 was marked for
20 identification only.)

21 THE COURT: Yes, we can make that as an exhibit.
22 When did y'all serve him with that. When did you serve
23 him with the LWOP?

24 MR. SWILLEY: Your Honor, I mailed, I have the
25 receipts that were filed in the Clerk's file as well. I

1 did mail a copy to Ms. Drawdy as well as Mr. Pracht and
2 had an employee at the Department of Corrections at the
3 Kershaw Correctional facility personally serve Mr. Gaines.
4 And that should be in this file as well.

5 MR. PRACHT: And Your Honor, just for the record, I
6 don't believe there is an issue as to service or notice in
7 regard to the LWOP. I mean that is fine. Your Honor, if
8 you take a look at the State's notice they are basing
9 their two strikes for cause for purposes of this motion
10 on, one is a trafficking methamphetamine that we agree is
11 a serious offense under 17-25-45(c)(2). Mr. Gaines plead
12 to that earlier this year. And what we do contend though
13 is that his 1999 conviction for aggravated assault in the
14 State of Georgia should be classified as a serious or a
15 most serious offense under the LWOP statute. Your Honor,
16 basically the LWOP statute as you know sets forth a number
17 of crimes and statutes which are either serious or most
18 serious offenses. It also has a catchall provision. It
19 says any offense which is punishable by a maximum term of
20 imprisonment of 30 years or more which is not referenced
21 in subsection (1) of the offense list. I would note that
22 if you look at the section of the Georgia code to be
23 passed up you would note, one, to eliminate the catchall
24 that the crime of aggravated assault in the State of
25 Georgia only carries a maximum of 20 years imprisonment.

1 So the catchall is out. Now the next question that we
2 have to go is and this is where I would refer the Court to
3 State v. Lindsey. And State v. Lindsey is a 2003 Supreme
4 Court case which specifically dealt with this issue. If a
5 crime is not enumerated under section (c)(1) and (c)(2)
6 can it be used as a serious or a most serious offense.
7 And the Court said, yes, it can. But in order for it to
8 do so it must contain all of the elements of one of the
9 offenses enumerated specifically in (c)(1) or (c)(2). It
10 is our position that the crime in the State of Georgia
11 which is a violation of 16-5-21 of the Georgia Code of
12 Laws is assault, aggravated assault. We looked at the
13 enumerated statute of crimes that are considered serious
14 and most serious and to the best of our knowledge, to the
15 best of our research we found that assault and battery of
16 a high and aggravated nature is one that is most akin to
17 it. So then we look and I provided the Court with a copy
18 of our assault and battery of a high and aggravated nature
19 statute. And if you compare those two, Your Honor, what
20 you will clearly see is that assault and battery of a high
21 and aggravated nature has an element that the Georgia
22 crime does not. And that is why one is called aggravated
23 assault and one is called assault and battery of an
24 aggravated nature. If you read the first sentence of
25 assault and battery it says that you must injure the

1 victim. There is no requirement of injury in the Georgia
2 statute. So essentially without a physical touching or
3 without a physical injury one cannot be guilty of ABHAN in
4 South Carolina. In fact they would be guilty of AHAN and
5 that is an old common law offense you have probably taken
6 a million pleas on. Assault of a high and aggravated
7 nature.

8 THE COURT: Is AHAN a most serious offense under our
9 statute?

10 MR. PRACHT: No, Your Honor. AHAN is not mentioned
11 anywhere under serious or most serious. And so that is
12 our position is that the crime that Mr. Gaines was
13 convicted of in 1999 of assault, aggravated assault is
14 akin to AHAN and not akin to assault and battery of a high
15 and aggravated nature. We believe that, you know, if
16 there was anything else it would be, I mean I think
17 attempted murder is a real stretch. You have to have
18 malice aforethought and attempt to kill. I don't believe
19 that any of those elements are present in the Georgia
20 offense, certainly not malice aforethought. And I just
21 don't see where there is an element or there is a crime
22 enumerated under (c)(1) and (c)(2) that contains all the
23 elements or that the Georgia statute contains all the
24 elements of any of these South Carolina offenses.
25 Therefore we feel like Mr. Gaines is not subject to the

1 three strikes laws as it is commonly known and we would
2 ask the Court to rule as such.

3 THE COURT: Yes, sir.

4 MR. SWILLEY: Thank you, Your Honor. If you will
5 examine the Georgia code, that is Title 16-5-21.
6 Subsection (a) states a person commits.

7 THE COURT: Hold on a minute, let me find it. Have
8 you got it, did you hand it up?

9 MR. PRACHT: Yes, Your Honor, you should have a copy,
10 I have got an extra one if you don't.

11 THE COURT: Yea, I don't think it is up here. I have
12 got everything but the Georgia code. Let me read for just
13 a second. Okay, go ahead.

14 MR. SWILLEY: Your Honor, it states, a person commits
15 the offense of aggravated assault, he or she assaults,
16 subsection (1), with the intent to murder, to rape or to
17 rob. Your Honor, Mr. Gaines did plead guilty under this
18 statute, it says with the intent to murder, I think is
19 akin to an ABWIK under the old law and attempted murder.
20 After that it says to rape, aggravated assault, when he
21 assaults with intent to rape. I think that is akin to
22 criminal sexual conduct in the first degree. And it also
23 says or to rob. Your Honor, I think that is akin to armed
24 robbery or attempted armed robbery which are both most
25 serious offenses as well. Your Honor, I don't think that

1 we are concerned with the facts of what happened back in
2 Franklin County, Georgia. I think we are just concerned
3 with the actual statute to which, from which he was
4 convicted. I think it clearly states that there are
5 elements of attempted murder, ABWIK, CSC first as well as
6 armed robbery.

7 THE COURT: Well, the problem is that Lindsey case
8 with Markley Dennis heard, I think, because it was one of
9 the first ones to construe this LWOP statute. You know,
10 in that case the enhancing statute from out of the state
11 was actually more serious. I mean it was rape. And I
12 think they say in there that, you know, you need more than
13 the indictment to find out whether the rape was a CSC.
14 This LWOP statute has caused a lot of grief especially
15 with an out-of-state conviction because you just never
16 know what happened. I don't know how you would know what
17 happened. I mean, it is not your fault, there is just no
18 way to know.

19 MR. SWILLEY: And I understand that, Your Honor, but
20 the Lindsey case does seem to analyze the actual law of
21 rape and the common law as where here we can analyze the
22 law per the statute. I think the statute pretty much says
23 as a serious, the serious elements that they are akin to
24 armed robbery, CSC and ABWIK.

25 MR. PRACHT: Your Honor, I would only briefly

1 respond. If you turn to page two of the Lindsey case,
2 under headnote one and you look towards the bottom of that
3 paragraph. Quote four, it says here, then the question is
4 whether Lindsey's 1976 rape conviction necessarily
5 contains all the elements of the most serious CSC
6 offenses. So that is what we are doing. We are looking
7 at these crimes and we are seeing if they have all of the
8 elements. Mr. Swilley pointed you to attempted murder. I
9 don't see the elements of malice aforethought in the
10 Georgia statute. It has an intent element of, malice
11 aforethought has been found to be something more by our
12 courts, that is why it is such a high burden of proof to
13 burden of, or attempted murder. As to rape, there has to
14 be, to be convicted CSC, Your Honor, or sexual conduct
15 there has to be a sexual element to the charge. And there
16 is no evidence of any sexual nature to this charge
17 whatsoever. And then to rob. Well actually, Your Honor,
18 that is what it was, but armed robbery, I bet we can guess
19 what the element missing there is. There is no
20 requirement in the Georgia statute that you have to be
21 armed. You can just run up to somebody and snatch their
22 purse and run off and clearly you wouldn't be guilty of
23 armed robbery in South Carolina. You would be guilty of
24 the common law robbery.

25 THE COURT: You are pointing to section two where it

1 says that you are guilty if with a deadly weapon or with
2 any object, device or instrument which is used offensively
3 against a person.

4 MR. PRACHT: Right, exactly. It is or instrument
5 when used offensively and the State of Georgia interprets
6 that as your hands.

7 MR. SWILLEY: Judge, there is no or between
8 subsection (1) and (2). And I think that our armed
9 robbery--

10 MR. PRACHT: But there is between (2) and (3), Your
11 Honor, which clearly denotes and there is a semicolon.

12 MR. SWILLEY: That's correct but between (1) and (2)
13 there is no or, Judge. And also our armed robbery statute
14 doesn't demand that it has to be a gun or a knife to be an
15 armed robbery. It can be any weapon, it can be a
16 blackjack or a wrench.

17 MR. PRACHT: Or it can even be a hand underneath a
18 jacket, Your Honor, but you have to present it as a
19 weapon. I mean it is armed robbery, I don't see, why
20 would they do any between robbery and armed robbery if
21 there wasn't an extra element. And my point is, I am sure
22 that the State of Georgia has a robbery statute. This is
23 an assault statute. To be guilty of this you don't even
24 have to touch another person. You just have to have an
25 aggravating circumstance. And here that is seriously

1 seems to be what the underlining facts are but that is not
2 what is important here because as Mr. Swilley said, it is
3 what the statute reads. And I don't see where this
4 statute contains all the elements of any of these
5 enumerated statutes. Certainly not ABHAN and certainly
6 not attempted murder, certainly not criminal sexual
7 conduct and certainly not armed robbery.

8 THE COURT: When did he plead to this?

9 MR. SWILLEY: In 1999.

10 THE COURT: I notice that this law that is handed up
11 was modified in 2006. Do y'all have the 1999 statute?

12 MR. SWILLEY: That is correct, Your Honor. Oh no,
13 this is the law as it exist now.

14 MR. PRACHT: As it exist now, Your Honor. Yes, but I
15 would say--

16 THE COURT: Wouldn't I need the 1999 one?

17 MR. PRACHT: I would think so, Your Honor, to be
18 one-hundred percent accurate on it. And I would say that
19 in reading the indictments that was provided to us by the
20 Solicitor, it sounds to be identical but I think out of an
21 abundance of caution we ought to try to find that 1999
22 statute.

23 THE COURT: I just happened to look down at the
24 bottom and it says last modified, April 21st of 2006. If
25 he plead in 1999 I need to know what the statute said in

1 '99.

2 MR. PRACHT: Will get right on that, Your Honor.

3 MR. SWILLEY: And, Your Honor, just to be clear, he
4 also plead to a robbery charge along with that aggravated
5 assault at the same time. And I will try to retrieve the
6 statute as existed in '99.

7 THE COURT: Do you think that the robbery might rise
8 to that level?

9 MR. PRACHT: I do not, Your Honor. But, you know, it
10 is a separate argument.

11 THE COURT: Let me tell you the problem. I want to
12 make sure I am right because the difference obviously is
13 extreme. It is between, what is the max he could get if
14 he didn't get LWOP, 30?

15 MR. PRACHT: He is faced, in theory he could get 75,
16 I mean, life.

17 THE COURT: He could get 75 or life.

18 MR. PRACHT: Right.

19 THE COURT: That makes a difference so I need to make
20 sure I am right on this one. And I want to make sure I am
21 right so y'all try to find the 1999 statute and then I
22 will just need a little time to read it.

23 (Whereupon, a short break was taken.)

24 MR. PRACHT: What we have got there, Your Honor, is,
25 I printed this off of Westlaw and it shows you there and

1 then, it is a case of ninety-nine quotes, the section.
2 But also, Judge, in front of you is a Westlaw printout
3 that shows all of the amendments between 2000 and 2006.
4 For example in 2000 it says the statute was amended to add
5 the second sentence to subsection (e)(1). And so in
6 looking at that you can see any amendments to the
7 pertinent sections. I don't, quite frankly, Your Honor,
8 what we found is that there are none. I believe it is
9 substantially the same if not exactly the same.

10 MR. SWILLEY: We would concur with that, Your Honor.
11 I think the substance of what we are arguing hasn't
12 changed since '99.

13 THE COURT: How is the statute not different than our
14 armed robbery statute?

15 MR. PRACHT: How is it not different. Okay.

16 THE COURT: Or how is it different.

17 MR. PRACHT: How is it different. Your Honor, our
18 armed robbery statute requires that, it requires more than
19 the attempt to rob. It requires an additional element and
20 that element is you are either armed with a weapon or you
21 present yourself to be armed with a weapon. You create
22 the perception of being armed with a weapon. And quite
23 frankly you can be guilty of this crime, Your Honor,
24 aggravated assault in Georgia without presenting any kind
25 of a weapon whatsoever or having, you can just run up and

1 grab somebody's purse and take off and you would be guilty
2 of this crime. But you would not be guilty of armed
3 robbery.

4 THE COURT: Do y'all agree with that?

5 MR. SWILLEY: We don't, Your Honor. I mean I think
6 it states that there has to be an assault with intent to
7 rape or to rob and you have to have, and also you have to
8 have a deadly weapon device or instrument.

9 MR. PRACHT: Your Honor, it is strict statutory
10 construction. There are three ones, a, b, c, right. And
11 then between the second and third one there is an or.
12 Just like you would list things in he keeps saying, rape,
13 robbery or murder. That doesn't mean that you are
14 including an and element between rape and robbery. The
15 use of the word, or, in that statute clearly presents that
16 you can be guilty of one of those three and not the other
17 two. Otherwise you would have to go running through the
18 streets firing into the crowd because that is the third
19 element. The lack of the word, or, between the first and
20 the second, certainly does not denote that it is an and,
21 otherwise it would say and. Because if you look at the
22 first part it says assault and.

23 THE COURT: With intent to murder, to rape or to rob
24 with the deadly weapon or with any object, device or
25 instrument which when used offensively against a person is

1 likely to or actually does result in serious bodily injury
2 or basically firing a weapon in a vehicle.

3 MR. PRACHT: Right. Your Honor, if you look at the
4 preceding sentence where it list those three things. One
5 is guilty of assault, with the intent to rob or with a
6 deadly weapon or they shoot into a crowd.

7 THE COURT: If you do any of those three things with
8 a deadly weapon or with any object.

9 MR. PRACHT: Or without one, I mean I, Your Honor, if
10 you look at the facts underlined in this case I don't
11 think that is where our analysis should be. But my client
12 was guilty--

13 THE COURT: You are saying that this statute says
14 that you can assault somebody with the intent to rob.

15 MR. PRACHT: And never actually even touch them.
16 Because all an assault requires, Your Honor, is a
17 reasonable apprehension that you are about to be hit. I
18 mean, you know, that is why we call our statute here
19 assault and battery, it requires more than just a mere
20 assault, it requires a physical injury or touching.

21 MR. SWILLEY: Judge, I don't think, I think you can
22 do one and two or three to be guilty. There is no or
23 between that semicolon and the sentence with a deadly
24 weapon.

25 MR. PRACHT: Your Honor, if you look at our LWOP

1 statute it says, you know, so it is saying in subsection
2 (b) of our LWOP statute that you have to be guilty of a
3 serious offense and a most serious offense and a Federal
4 or out-of-state offense. That is exactly how our LWOP
5 statute is written, semicolons in between them and in
6 between three or four there is an or. It is just straight
7 statutory construction.

8 THE COURT: And y'all are satisfied that what you
9 have handed up is the correct law in '99?

10 MR. PRACHT: Yes, sir.

11 MR. SWILLEY: That is correct.

12 THE COURT: Y'all approach for a minute.

13 (Whereupon, a bench conference was held.)

14 THE COURT: I am ready to rule on this if y'all are
15 ready. At the end of the day, is there anything else?

16 MR. PRACHT: No, Your Honor.

17 THE COURT: At the end of the day these cases, I have
18 to look in the mirror and I am just going to have to tell
19 you I have got great concerns of this statute in Georgia.
20 Much like Lindsey, it could have been a much worse offense
21 than what our statute requires here or it could have been
22 less. There is doubt in my mind. And before someone is
23 tried with the possibility of life without parole which
24 would be nondiscretionary, there is nothing I could do
25 about it if I thought there was a problem with it later.

1 I am going to grant your motion to remove the life without
2 parole as a potential sentence. It is my decision. I
3 think the Solicitor's office quite frankly aggressively
4 approached it and did it right. I am just concerned about
5 this statute and concerned about the fact that at some
6 point later it is going to come back. There is a real
7 problem any time you use out-of-state statutes to enhance
8 because they are all so different. In the Lindsey case,
9 it has a paragraph in there that says, and the dissent
10 points out, rape is as bad as you can do and we still are
11 not going to use it to enhance because we can't tell what
12 it was out-of-state. I am not going to grant your motion
13 on that. Now, what is your other motion on your, on the
14 felony DUI?

15 MS. DRAWDY: Your Honor, may we confer with our
16 client just a minute before we proceed on that one?

17 THE COURT: Yes.

18 MS. DRAWDY: Thank you.

19 MR. PRACHT: Judge, we didn't want to argue a motion
20 if, based on your ruling that you just made it might be
21 wasting the Court's time to argue a dismissal of great
22 bodily injury.

23 MS. DRAWDY: Thank you, Your Honor. Your Honor, can
24 we take him back in the back?

25 THE COURT: Yes.

1 (Whereupon, a short break was taken.)

2 MR. SWILLEY: If it please the Court, Your Honor.

3 This is in the matter of the State versus Gerald Russell
4 Gaines. It is indictment 2011-GS-24-2067. Felony driving
5 under the influence resulting in death. Indictment
6 2011-GS-24-2068, felony of driving under the influence
7 resulting in great bodily injury. And indictment
8 2012-GS-24-0541, failure to stop for a blue light
9 resulting in death. The defendant is represented by Sarah
10 Drawdy and Chris Pracht of the Anderson Bar. Your Honor,
11 I will give you the facts when you are ready.

12 THE COURT: Okay. Hold on a second, I have got to
13 fill all of this out. Go ahead. So the Greenwood cases
14 are felony DUI resulting in death, felony DUI great bodily
15 injury and failure to stop for law enforcement. Then
16 there is an Abbeville case which is manufacturing meth, is
17 that right?

18 MR. ANDREWS: Yes sir, Your Honor.

19 THE COURT: Before we start, Mr. Gaines, raise your
20 right hand.

21 GERALD GAINES, being
22 first duly sworn, testified as follows:

23 THE COURT: Do you understand that one of the charges
24 you are going to plead guilty to today is an Abbeville
25 County case?

1 MR. GAINES: Yes.

2 THE COURT: And do you understand you have a right to
3 have that case heard in Abbeville, you can put your hand
4 down. You have a right to go over to Abbeville and to
5 have that case heard, do you understand that?

6 MR. GAINES: Yes, sir.

7 THE COURT: Do you give up your right to go to
8 Abbeville and have this case heard?

9 MR. GAINES: Yes.

10 THE COURT: And are you agreeing to have this case
11 heard today here in Greenwood?

12 MR. GAINES: Yes, sir.

13 THE COURT: Do you have any questions about your
14 right to venue and jurisdiction in Abbeville?

15 MR. GAINES: No, sir.

16 THE COURT: Have you had time to talk to your lawyer
17 about it?

18 MR. GAINES: Yes, sir.

19 THE COURT: Yes, sir.

20 MR. SWILLEY: Thank you, Your Honor. As to the
21 Greenwood County charges. Your Honor, on August the 17th
22 of 2011 Officer Abernathy who works for the Abbeville
23 County Sheriffs Department, he works in narcotics was at
24 the Hickory Point located in the Ware Shoals section of
25 Abbeville County. He sees Mr. Gaines driving a burgundy

1 Toyota Camry along with three other people, started acting
2 suspicious. They take a long look at him, Officer
3 Abernathy runs the tag, the car comes back stolen. As
4 they pull out they pull out in front of Parker White
5 Funeral Home and Officer Abernathy hits the blue light.
6 At that point the car stops. Three other passengers get
7 out of the car. Officer Abernathy gets out of the car.
8 At that moment Mr. Gaines still driving takes off going up
9 Greenwood Avenue towards downtown Ware Shoals. Officer
10 Abernathy gets back in the car and pursues him and he
11 takes a left onto East Summit Drive and he travels for
12 about a mile and a half, comes out at Highway or US 25,
13 excuse me, 25 business and runs a stop sign and plows into
14 a car being driven by Mr. Jimmy Turner here. In the
15 passenger seat is his sister, Ms. Williams and a Sandy
16 Fowler is in the backseat. Judge, when the cars collide
17 the explorer driven by Mr. Turner here rolls several
18 times. Ms. Williams is ejected, she is dead. She died
19 shortly thereafter due to blunt force trauma. Mr. Turner
20 here did suffer injuries for which he was hospitalized.
21 At that point Mr. Gaines who his car I believe had run
22 into the guard rail, got out and ran away. Officer
23 Abernathy was able to catch him on foot and apprehend him.
24 Upon arrest, Mr. Gaines, he was taken to the BA room, he
25 blew a 0.0. He was taken to the hospital, he had blood

1 and urine taken out. That was sent off to SLED and it
2 came back and tested positive for .22 for methamphetamine.
3 Your Honor, I have spoken with Shannon Surells,
4 (phonetic), of SLED, states that is an extremely high
5 level of methamphetamine. Your Honor, upon investigation
6 and it was revealed that there was a rolling meth lab in
7 the car, several items that are used in methamphetamine.
8 That is where the methamphetamine charge comes from, from
9 Abbeville, Your Honor. This is a straight up plea as to
10 the Greenwood charges.

11 THE COURT: Okay. What is the maximum for the
12 failure to stop for law enforcement resulting in death?

13 MR. SWILLEY: Up to 25 years.

14 THE COURT: 25 is the max?

15 MR. SWILLEY: That is correct.

16 THE COURT: And on the felony DUI resulting in great
17 bodily injury?

18 MR. SWILLEY: Up to 15.

19 THE COURT: 15. And the great, the felony DUI
20 resulting in death?

21 MR. SWILLEY: Up to 25. And, Your Honor, I believe
22 that Mr. Turner here does wish to briefly address the
23 Court when the Court is ready to hear him.

24 THE COURT: Sure. Demetri, you want to give us the
25 Abbeville County so I can just ask him all at once.

1 MR. ANDREWS: Yes sir, Your Honor, and I believe Mr.
2 Swilley put that on the record. When the officers did get
3 to the vehicle they found items consistent with the
4 manufacture of methamphetamine. Officer Abernathy
5 described what he found in the truck. Officers were also
6 able to do a Sudafed purchase log on the occupants of the
7 vehicle. As to Mr. Gaines, officers found that the day
8 before Mr. Gaines had purchased pseudoephedrine. And we
9 heard that Mr. Gaines did test positive for a very high
10 volume of meth in his system. Your Honor, as to the
11 Abbeville charge we have a negotiated sentence of 272
12 days, time served. That is how long Mr. Gaines has been
13 in custody on that charge. Furthermore, Your Honor, there
14 are three warrants that we will nolle prose. M510949 is a
15 failure to stop, M510950 is also a failing to stop. As
16 those got absorbed in the Greenwood case it doesn't make
17 any sense to go forward on those. M510951 is a possession
18 of a stolen vehicle and that vehicle belongs to Ms.
19 Fisher. She is the defendant's aunt and you will be
20 hearing from her very shortly, Your Honor.

21 THE COURT: Mr. Gaines, one other question I need to
22 ask you about the Abbeville case. That case has not been
23 sent to the Grand Jury. Do you understand that you have a
24 right to have each of these cases sent to the Grand Jury
25 and a determination made there as to whether or not the

1 matter should proceed?

2 MR. ANDREWS: Your Honor, it has been sent to the
3 Grand Jury. The indictment that I printed out for you, it
4 was just a copy but I did put certified copies, I think,
5 in your materials that showed that the case had been true
6 billed.

7 THE COURT: Okay. So the copy here that says, it has
8 been sent, y'all are sure?

9 MR. ANDREWS: Yes, sir.

10 THE COURT: Okay. Mr. Gaines I put you under oath
11 earlier but I need to ask you some questions. Do you
12 understand that?

13 MR. GAINES: Yes, sir.

14 THE COURT: And you need to speak up loud enough so
15 she can hear you. She is taking everything down, do you
16 understand that?

17 MR. GAINES: Yes, sir.

18 THE COURT: All right. How long have you been in
19 jail, 272 days, is that right?

20 MR. GAINES: I have been locked up since August the
21 17th.

22 THE COURT: Is that the 272?

23 MR. SWILLEY: Yes, Your Honor.

24 THE COURT: So you have been continuously in jail for
25 272 days, right?

1 MR. GAINES: Yes sir, since the wreck, the day of the
2 wreck.

3 THE COURT: And how old are you?

4 MR. GAINES: I will be 53 this month, the th.

5 THE COURT: Are you married?

6 MR. GAINES: No, sir.

7 THE COURT: Do you have any children?

8 MR. GAINES: No, sir.

9 THE COURT: Now, have you had any drugs or illegal
10 drugs or alcohol within the last twenty-four hours?

11 MR. GAINES: No, sir.

12 THE COURT: Are you taking any kind of prescriptions
13 or medications?

14 MR. GAINES: No, sir.

15 THE COURT: Has anybody threatened you in any way or
16 promised you anything to get you to plead guilty here
17 today?

18 MR. GAINES: No, sir.

19 THE COURT: Now you understand this morning I heard a
20 motion whereby the State was requesting that the ultimate
21 sentence be life without parole. Do you understand that?

22 MR. GAINES: Yes, sir.

23 THE COURT: And you understand that they
24 appropriately made that motion or made that application
25 and I have dismissed that. Do you understand that?

1 MR. GAINES: Yes, sir.

2 THE COURT: But do you understand that there has been
3 no other recommendation or negotiation and you could
4 theoretically receive what, 65 years?

5 MR. SWILLEY: That is correct, Your Honor.

6 THE COURT: A total of 65 years today if I ran
7 everything concurrent. Do you understand that?

8 MR. GAINES: Yes, sir.

9 THE COURT: In order to plead guilty in this State
10 you have to waive all of your constitutional rights. Do
11 you understand that?

12 MR. GAINES: Yes, sir.

13 THE COURT: Do you have any questions for me about
14 your waiver of constitutional rights?

15 MR. GAINES: I wanted to ask you something about
16 this--

17 THE COURT: I will get to that in a minute. But let
18 me ask you about the constitutional rights first. And you
19 need to listen to me because I am going to ask you if you
20 are waiving these rights. Okay?

21 MR. GAINES: Yes, sir.

22 THE COURT: If you have a question for me or if you
23 have a question for your lawyer I will stop and let you
24 ask it. Okay.

25 MR. GAINES: Yes, sir.

1 THE COURT: The first right that is important for you
2 is you have to waive your right to request a jury trial.
3 Are you waiving that right?

4 MR. GAINES: Yes, sir.

5 THE COURT: Are you also waiving your right to put up
6 a defense to this charge. In other words, you are not
7 going to put up a defense, you are going to tell me in a
8 few minutes, I assume, that you admit to these facts.

9 MR. GAINES: Yes, sir.

10 THE COURT: So you are waiving your right to a
11 defense?

12 MR. GAINES: Yes, sir.

13 THE COURT: You also have the right to require the
14 State to bring in witnesses to testify against you and you
15 have a right to confront those witnesses. That is your
16 right of confrontation in the constitution. Are you
17 giving up your right of confrontation?

18 MR. GAINES: Yes, sir.

19 THE COURT: And you are waiving that right?

20 MR. GAINES: Yes, sir.

21 THE COURT: You also have a right to remain silent.
22 Are you waving that right?

23 MR. GAINES: Yes, sir.

24 THE COURT: You are also waiving, as I said, any
25 other constitutional rights that may affect your trial.

1 Do you understand that?

2 MR. GAINES: Yes, sir.

3 THE COURT: And you are waving your right to a trial.
4 Is that correct?

5 MR. GAINES: Yes, sir.

6 THE COURT: Now, have you had plenty of time to speak
7 with your lawyers?

8 MR. GAINES: Yes, sir.

9 THE COURT: They have done a pretty good job and put
10 in a good bit of work as far as that motion went this
11 morning. But do you have any questions about anything for
12 your lawyers?

13 MR. GAINES: No, sir.

14 THE COURT: Have your lawyers met with you at the
15 jail?

16 MR. GAINES: Yes, sir.

17 THE COURT: And have they done everything that you
18 have asked them to do?

19 MR. GAINES: Yes, sir.

20 THE COURT: Have they not done something that you
21 wanted them to do. In other words, is there anything that
22 you want them to do that they have refused to do?

23 MR. GAINES: No, sir. They have done what they are
24 suppose to do.

25 THE COURT: Do what?

1 MR. GAINES: They have done what they are suppose to
2 do.

3 THE COURT: And have they answered all of your
4 questions regarding the waiver of constitutional rights?

5 MR. GAINES: Yes, sir.

6 THE COURT: And also your questions about bringing
7 this Abbeville case over to plead today?

8 MR. GAINES: Yes, sir.

9 THE COURT: And have they also told you that the
10 sentence is going to be up to me and that you could
11 receive up to 65 years in prison today?

12 MR. GAINES: Yes, sir.

13 THE COURT: Now, you have got a question. What is
14 your question?

15 MR. PRACHT: Your Honor, I have discussed this with
16 Mr. Gaines and I will let him -- well, essentially Mr.
17 Gaines wanted to explain to the Court his position on why
18 he didn't plead earlier and I will let him describe it.
19 It basically has to do with a letter he received.

20 MR. GAINES: I received a letter from the Public
21 Defender's office prior to getting Mr. Pracht to handle my
22 case. And it said the prosecution should provide a
23 written plea offer and Rule 5 Brady motion. And
24 Prosecutor should provide a list of outstanding material,
25 a written plea offer would remain valid until the end of

1 the day, go by appearance as scheduled. That day that I
2 come down here they offered a plea. I was expecting for
3 them to offer me another plea. And I didn't know that they
4 were going to turn around--

5 MS. DRAWDY: Your Honor, I shared this with the
6 State. I will give you a copy of it.

7 MR. GAINES: I got back to my institution and I
8 knowed that for three straight days, I want to let you
9 know that I wanted to plea and it was too late.

10 THE COURT: Hold on, let me read this letter. All
11 right, so you received this back in September, right?

12 MR. GAINES: Yes, sir.

13 THE COURT: When did you hire the private lawyers
14 that are here with you today?

15 MR. GAINES: I think it was, the last part of
16 September. I had already gotten this letter back.

17 THE COURT: Okay.

18 MR. GAINES: I had already got the letter back.

19 THE COURT: So you weren't represented, after October
20 you weren't being represented by the Public Defender?

21 MR. GAINES: Right. The only thing I had to go by is
22 I didn't know, I didn't know everything. I didn't know
23 that the plea was an offer, using two straight pleas
24 before, you know, acceptance. And that is what was going
25 on here but it wasn't.

1 THE COURT: Did you talk to your lawyers about that?

2 MR. GAINES: I talked to them and I asked them and
3 they told me, said you better take this. If you don't
4 take it they are going to take it off the table. I
5 thought they was bluffing.

6 THE COURT: You thought your own lawyers were
7 bluffing you?

8 MR. GAINES: I didn't know.

9 THE COURT: Well, they weren't.

10 MR. GAINES: Right.

11 THE COURT: I mean this is a letter that a Public
12 Defender sends out. I am not completely sure this is what
13 they tell people and I will leave it at that. But once
14 you have a private lawyer and once they start negotiating
15 on your behalf you have got to listen to them. Do you
16 understand that?

17 MR. GAINES: Yes, sir.

18 THE COURT: And did they tell you, did your lawyers
19 tell you when you were brought up here last time that this
20 was going to be the last plea offer?

21 MR. GAINES: I don't remember them coming in and
22 saying it was the last plea offer. I remember them saying
23 you better take this one. This is the best thing you are
24 going to get.

25 THE COURT: And did you ask her questions about

1 whether or not there was going to be another plea coming?

2 MR. GAINES: I asked her and she already told me she
3 didn't know but that she didn't think so.

4 THE COURT: Okay. All right. He is referring to a
5 portion of the Public Defender's letter to them on page
6 two that is underlined. I am going to make this is a
7 State's exhibit.

8 (Whereupon, State's Exhibit 1 was marked for
9 identification only.)

10 THE COURT: Do you have any more questions for me now
11 or your lawyers?

12 MR. GAINES: No, sir. Do I get to speak to you again
13 before?

14 THE COURT: I am just asking you in regards to your
15 waiver of rights if you have got any questions for me now.

16 MR. GAINES: No, sir.

17 THE COURT: Do you have any questions for your
18 lawyers?

19 MR. GAINES: No, sir.

20 THE COURT: Have you asked them any questions that
21 they have not answered. In other words, have they
22 answered every question that you have asked them?

23 MR. GAINES: Yes, sir.

24 THE COURT: Ms. Drawdy, Mr. Pracht, have you had
25 plenty of time to speak with your client?

1 MR. PRACHT: Yes sir, Your Honor, we have. Sarah and
2 I have visited him at the Kershaw Correctional Facility
3 and I have met him here several times before at the
4 Greenwood County Detention Center in preparation for
5 trial/plea today. So yes sir, Your Honor, I believe I
6 have.

7 MS. DRAWDY: Yes, Your Honor, we have had plenty of
8 time to meet with and go through these charges with Mr.
9 Gaines.

10 THE COURT: And have y'all explained to him the
11 waiver of constitutional rights and also, well, his waiver
12 of constitutional rights first?

13 MR. PRACHT: Yes we have, Your Honor.

14 MS. DRAWDY: On several occasions, as the Court
15 knows, we have been here before.

16 THE COURT: And do you think that he understands
17 those rights?

18 MS. DRAWDY: Yes, Your Honor, we do.

19 THE COURT: And do you think he also understands the
20 elements of these crimes?

21 MS. DRAWDY: Yes, Your Honor.

22 MR. PRACHT: Yes, Your Honor, I do believe he does.

23 THE COURT: Now, I am going to give you a chance, Mr.
24 Gaines, to speak to me but do you have any questions for
25 me now before I accept your guilty plea?

1 MR. GAINES: No, sir.

2 THE COURT: All right. Do you have any questions for
3 your lawyers?

4 MR. GAINES: No, sir.

5 THE COURT: All right. You heard the Solicitor tell
6 me the facts, do you agree with those facts as stated by
7 the Solicitor?

8 MR. GAINES: Yes, sir.

9 THE COURT: Okay. I am going to accept his plea on
10 each of these charges, the failure to stop for law
11 enforcement resulting in death, felony DUI resulting in
12 death, manufacturing meth and the felony DUI resulting in
13 great bodily harm. I find he waived his constitutional
14 rights knowingly, voluntarily on each of these, he has
15 also did that in consultation with his attorneys. I also
16 find that his dependence on a letter sent to him at the
17 jail prior to the hiring of these lawyers is not an issue
18 and shouldn't be a problem. So I am going to accept the
19 pleas, find them freely and voluntarily made. Yes sir, I
20 will be happy to hear from the victims.

21 MR. SWILLEY: Your Honor, this is the deceased, her
22 brother, Jimmy Turner who was riding in the car that day.
23 He was also injured in the accident.

24 THE COURT: Yes sir, I will be happy to hear anything
25 you would like to say.

1 MR. TURNER: Your Honor, Mr. Gaines actions cost my
2 sister her life. I would never be able to talk to her,
3 see her, anything like that again. On top of that my
4 shoulder will probably never be one-hundred percent again.
5 My family just believes that, from what we hear of Mr.
6 Gaines past and his age he is probably not going to learn
7 a lesson he should have learned a long time ago. And we
8 really don't feel like he should have any leniency.

9 THE COURT: Thank you.

10 MR. SWILLEY: Your Honor, Officer Abernathy,
11 Abbeville County Sheriffs office is also here.

12 THE COURT: Anything you want to tell me I will be
13 happy to hear.

14 MR. ABERNATHY: Your Honor, I would just like to say
15 that in my eleven years of experience it was one of the
16 worse things that I have seen, to see an innocent person
17 lose their life for his actions. I have dealt with Mr.
18 Gaines through the last years also and I also feel, you
19 know, that he has his chance. And ask you to take that
20 into consideration with his sentencing.

21 THE COURT: Okay. Anything else?

22 MR. SWILLEY: No, Your Honor.

23 THE COURT: And I want the family to know something
24 because you have more right than anybody to know what
25 happened this morning. I don't know if you were here but

1 the law in South Carolina gives a right for a Solicitor,
2 in a case like this if there are certain criteria met the
3 right to ask for a life sentence without parole. And this
4 morning, were y'all here this morning when we had that
5 motion? Well, those that weren't here and if you couldn't
6 quite understand what I was doing. They appropriately
7 made that motion, the life without parole. After
8 reviewing the case law and some of the sort of in's and
9 out's of that law which is not simple I took life without
10 parole off of the table, that was my decision. They made
11 it, they pushed for it, they object to the fact that I
12 took it off but I did take it off and I think y'all do
13 have a right to know that I did that based upon my concern
14 that the conviction in Georgia may not have met the
15 criteria in South Carolina. And that is all on me. If
16 you want to be mad and I might be mad too, be angry at me
17 because I am the one who had to make that decision. I
18 have been a Judge for eleven years, I have made a lot of
19 decisions that I worry about, I will probably worry about
20 that one. But I will be happy to answer any questions
21 that y'all have about that if you have any questions. But
22 that was my decision, I want you to know the appropriate
23 person to be upset, it wasn't the Solicitor's office
24 because they pushed hard for it. Okay. All right, yes
25 sir.

1 MR. PRACHT: Your Honor, I believe Sarah is going to
2 kind of bring you up to speed on Mr. Gaines and then we
3 are going to have some family members speak briefly on his
4 behalf and then Mr. Gaines will wrap it up.

5 MS. DRAWDY: May it please the Court, Your Honor.
6 Mr. Gaines, as you know, he is 53 years old this month.
7 He is from this area, he graduated high school at Ware
8 Shoals High. After graduation he worked as a brick layer
9 and a block layer and helped set up mobile homes. He
10 addiction and his problem behind all of these crimes,
11 these included have been, has been an addiction to
12 methamphetamines that began when he was 15 years old. I
13 want to couch this by saying ever sense Mr. Pracht and I
14 were brought onto this case from day one Gerald Gaines has
15 expressed remorse about the loss of the victim, Ms.
16 Williams, in this case. I only say what I am about to say
17 in mitigation. It is not an excuse, he is up here
18 accepting responsibility and not disputing the facts. But
19 his own father went to prison when he was two or three,
20 again when he was six years old. He was not raised by a
21 father and subsequent to that he got involved with
22 methamphetamines and he has been addicted to it his entire
23 life. If you really look at his record all of the
24 convictions he has are related to drugs. The one Georgia
25 offense we were talking about this morning was a purse

1 snatching and again we think this is the first time, I
2 hate that he is here, where actually there was a victim
3 other than himself minus the purse snatching. But someone
4 else that was a victim of his crime. He is not someone
5 who has gone and intentionally harmed other people, he was
6 high. He did fail to stop for the blue light and he did
7 crash and he took a life and for that he is taking
8 responsibility. At the end of the day his addiction to
9 methamphetamines he is unable to beat. He has been in ATU
10 in the Department of Corrections. This is a man, I have
11 met with him several times as has Mr. Pracht. He doesn't
12 show malice, he doesn't have evil heart, he has had a
13 battle his entire life and he knows that. I talked with
14 his sole family member and when she comes up she is having
15 trouble hearing in one ear so I would ask the Court to
16 perhaps be louder with her. She loves her nephew, she was
17 the one whose car he had taken and she continues to stand
18 beside him. I would just ask that the Court, if it can,
19 he understands he is facing up to 65 years, show a mercy
20 if you can and in your wisdom render a sentence that
21 balances justice with mercy.

22 MR. PRACHT: Your Honor, briefly, the only thing I
23 would add to that, again, solely in mitigation and not
24 really an excuse. In the last 272 days Mr. Gaines has
25 completed a number of correspondent courses relating to

1 fulfilling a religious basis, a foundation for him as well
2 as, he has had no problems involved in the Department of
3 Corrections. From what we can tell he is a model inmate
4 there and I will just add that. Briefly there is Laura
5 Fisher is here who is Mr. Gaines aunt.

6 THE COURT: Yes, ma'am.

7 MS. FISHER: Sir, I am 75 years old. And Russell is
8 all that I have got. And I have got nobody to help me.
9 But Russell has always been good to me. And he is all
10 that I have got and I am all that he has got. He knew the
11 woman who was in the wreck, he knew her. I didn't know
12 her. But he was sorry about it then and I mean I am too
13 because whoever she was they lost their mother, their
14 grandmother. And you can't replace a life. God don't
15 make no joke, I know that.

16 THE COURT: Okay. Thank you, Ma'am.

17 MR. SWILLEY: Your Honor, would you like to hear his
18 prior history.

19 THE COURT: Yes, I would.

20 MR. SWILLEY: In 1979, Myrtle Beach, possession of
21 marijuana, disorderly conduct. 1980, breaking into a
22 motor vehicle; 1981, house breaking, grand larceny; 1982,
23 grand larceny; 1984, failure to accompany an officer,
24 public drunk; 1985, violation of probation; he had some
25 stuff from some other states. 1987, Your Honor, he was

1 convicted of burglary, and grand larceny; 1998, strong
2 armed robbery, assault and battery of a high and
3 aggravated nature; 1987, possession of a controlled
4 substance; 1996, public drunkenness; 1997, leaving the
5 scene of an accident, he got a concurrent eight years for
6 what he was serving in Georgia. 1998, shoplifting; 2005,
7 common law robbery, assault and battery of a high and
8 aggravated nature and he received eight years. And the
9 most recent, Your Honor, he plead to trafficking
10 methamphetamine from Anderson County. He does have some
11 convictions. It appears, Tennessee, Nashville he was
12 convicted of attempted robbery in 1993, sentenced to eight
13 years for that. Your Honor, just in short, this is a
14 tragic manifestation that methamphetamine has on this
15 society. It is a cancer to society. It does immense
16 damage to all of the lives that it touches. Your Honor,
17 the State would just ask for a sentence that comports with
18 the damage that Mr. Gaines behavior has caused. And not
19 just to his family but in general to everyone.

20 THE COURT: All right. And he is 53 years old?

21 MR. PRACHT: That is correct.

22 THE COURT: Mr. Gaines, anything that you want to
23 tell me?

24 MR. GAINES: Yes, sir. I would like to say. I was
25 raised by my mom. This is the last thing in the world

1 that I would want to hurt somebody's mama. But I knew Ms.
2 Williams, I knew her older son. But it happened and I
3 didn't mean for it to happen. It wasn't something that I
4 meant to do. There is nothing that can replace her. I
5 want to tell her I am sorry, I am really sorry.

6 THE COURT: Mr. Gaines, did you stop the car and let
7 some people out of your car?

8 MR. GAINES: Yes, sir.

9 THE COURT: And then decided to run?

10 MR. GAINES: The people in the backseat of my car had
11 a meth lab in there. When I stopped they were suppose to
12 get out and run with the meth lab. And then I was suppose
13 to, to bring the police to me so they could get away. And
14 I had a wreck but they left the meth lab in the car. And
15 it was not my meth lab. I have a history of meth,
16 methamphetamine but never had I any prior convictions of
17 pseudoephedrine. I had the pseudoephedrine from the store
18 that the police found in the backseat. But the meth lab
19 was not.

20 THE COURT: But it was in your car?

21 MR. GAINES: Right.

22 THE COURT: And you were driving a car around with a
23 meth lab in the backseat.

24 MR. GAINES: They were in the backseat.

25 THE COURT: And you knew they had a meth lab?

1 MR. GAINES: At the time.

2 THE COURT: You have got to know.

3 MR. GAINES: Yes. At the time, I didn't expect. I
4 never expect to go downtown and run into nobody. To be
5 honest with you, the boy, I went by his house and he asked
6 me to give him a ride and so he could get some dog food
7 and cigarettes and that is what I was doing. Two people
8 in the backseat, I knew they had stuff in the car so I
9 can't say that is not, I can't say that I didn't know. I
10 did know but I definitely for them to bail out and run and
11 leave it all on me. But there again I wasn't expecting to
12 have a wreck either.

13 THE COURT: Why did you run?

14 MR. GAINES: Why did I run. Well, the car was my
15 aunt. I took off in it on Friday night and this was the
16 following Wednesday. And I didn't, I didn't know what to
17 do. The boy in the front seat told me, he said there is
18 Mr. Abernathy and they just come to my house two nights
19 before that. And I said, what. So why didn't you tell
20 me. I would have never been down here. Anyway, I left
21 and he jumped in behind me with his blue light, I didn't
22 pull over and I went in and pulled into Summit drive and I
23 stopped the car. And everybody run out, I hit the gas and
24 he come in behind me and got in the road. I tried to
25 stop, I slid to the stop sign and hit the man's SUV. It

1 wasn't something that I meant to do, it was an accident.

2 MR. SWILLEY: Your Honor, I hate arguing the facts to
3 the plea. But upon my conversations with one of the
4 occupants of that car, Mr. Gaines was heard to remark, get
5 out or strap up, I'm running.

6 THE COURT: I am just trying to figure out how these
7 other people got out and what I think he is telling me is
8 that even, under his theory is they were suppose to take
9 off and take the meth lab and he was going to run down the
10 street to keep the police from catching him. It doesn't
11 matter, I was just kind of curious as to why he would do
12 it. Okay. All right, anything else from the defense or
13 the State?

14 MR. PRACHT: No, Your Honor.

15 MR. SWILLEY: No, Your Honor.

16 THE COURT: As I said, I have accepted all of these
17 pleas and found them freely and voluntarily made based
18 upon the advice of counsel. I also found earlier and I am
19 going to refine that his attorneys have done a good job
20 because they kept the life without parole off through
21 their arguments this morning. All right, the sentence is
22 as follows and all of these are going to run concurrent.
23 So I am not running them consecutive as much as I may be
24 entitled to. I am also or may be inclined to, I am also
25 giving him 272 days credit for each one of these. The

1 sentence on the failure to stop for law enforcement
2 resulting in death is 20 years. On the felony DUI
3 resulting in death is 20 years. And the felony DUI
4 resulting in great bodily injury, that is 15 years and on
5 the meth charge in Abbeville it is 272 days. Just so
6 y'all understand, at 53, I am trying to calculate how long
7 he is going to be in so that he is not going to be
8 dangerous. The problem with these things, I can't really
9 sentence him to make it up to y'all, I can't really do
10 anything for you. But all I can do is try to make sure
11 that he is not driving around anymore on the streets. So
12 I hope y'all understand that. Thank you.

13 MR. SWILLEY: Thank you, Your Honor.

14 MS. DRAWDY: Thank you, Your Honor.

15 THE COURT: Thank you.

16 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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1 CERTIFICATE OF REPORTER

2

3

4 State of South Carolina)

5 County of Newberry)

6

7

8 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Greenwood, South
14 Carolina, on the day of May 14, 2012.

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

17

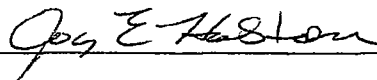
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July 25, 2012

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22

Joy E. Holston, Court Reporter

23

My Commission expires: March 13, 2016

24

25

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF

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

Gerald Russell Gaines
SCDC# 222430 v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

13CP2406336

APPLICATION FOR

POST-CONVICTION RELIEF

2013 APR - 9 PM 2:15

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Perry Correctional Institution
2. Name and location of Court which imposed sentence Greenwood County General Sessions
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

- (a) 2012-GS-01-0011 - Manufacturing Methamphetamines - 270 Day Time Served
- (b) 2012-GS-24-0541 - Failure Stop Resulting in Death - 20 years credit 270 Days Served
- (c) 2012-GS-24-2067 - Felony DUI Resulting in Death - 20 years credit 270 Days Served
- (d) 2012-GS-24-2068 - Felony DUI Resulting in Great Bodily Injury - 15 years 270 Days Served
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) May 14-2012 (2012-GS-01-0011) 270 Days Time Served
- (b) May 14-2012 (2012-GS-24-0541) 20 years credit 270 Days
- (c) May 14-2012 (2012-GS-24-2067) 20 years credit 270 Days
- (d) May 14-2012 (2012-GS-24-2068) 15 years credit 270 Days

Revised 3/2003

- ~~6.~~
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
no
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____ N/A
- 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 "no" to (7), state your reasons for not so appealing:
- (a) Time Lapsed
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE Assistance of Counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Illadvised of Guilty plea
- (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? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____ n/a
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____ n/a
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. _____
- ii. _____ n/a
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____ *N/A*
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____ *N/A*
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
NO
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____ *N/A*
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____ *N/A*
- 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) Post-Conviction Relief is proper forum and Remedy
- (b) ~~XXXXXX~~
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? N/A
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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

- (a) the name and address of each attorney who represented you:
 - i. The Drawdy Law Firm, LLC (Sarah Drawdy) Anderson SC
 - ii. Christopher PRABT, Esq. (Anderson, SC.)
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. GUILTY 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

21. I request to reserve right to alter + Ammend Application.

STATE OF SOUTH CAROLINA

)

VERIFICATION

County of

)

I, Gerald Russell Gaines, 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.

Gerald Russell Gaines

SWORN to and subscribed before me this 1st
day of February, 2013

Donna M. Mulaudy (L.S.)
Notary Public

My Commission Expires: January 7, 2016

13CP24 60336

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

I, Gerald Russell Haines, 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.

Gerald Russell Haines
Applicant

SWORN or affirmed to and subscribed before me this

1st day of February, 2013

Stewart M. Cantley
Notary Public

My Commission Expires January 7, 2016

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.
2013 APR -9 PM 2:15

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Gerald Gaines, #222430,

2013-CP-24-0336

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post conviction relief (PCR) filed April 9, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenwood County Clerk of Court. The Applicant was indicted at the March 2012 term of the Greenwood County Grand Jury for failure to stop for law enforcement vehicle that resulted in death (2012-GS-24-0541) and 2 counts of felony driving under the influence (2011-GS-24-2067; -2068). The Applicant was also charged with Manufacturing Methamphetamine in Abbeville County. The Applicant was represented by Christopher Pracht, Esquire, and Sarah Drawdy, Esquire. On May 14, 2012, the Applicant pled guilty before the Honorable J. Cordell Maddox, Jr. and was sentenced to confinement for twenty (20) years for failure to stop for law enforcement resulting in death, twenty (20) years, concurrent, for felony DUI resulting in death, and fifteen (15) years, concurrent, for felony DUI resulting in great bodily injury. The Applicant also waived venue and presentation to the grand

jury of Manufacturing Methamphetamine and was sentenced to time served. The Applicant did not appeal his conviction and sentence.

Attached herewith and incorporated herein are the records of the Greenwood County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Ineffective Assistance of Counsel"
 - a. "Ill Advised of Guilty Plea"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

III.

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

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, *Id.* The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

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

IV.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

June 19, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF GREENWOOD)

IN THE COURT OF COMMON PLEAS

2013-CP-24-0336

GERALD GAINES, 222430)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

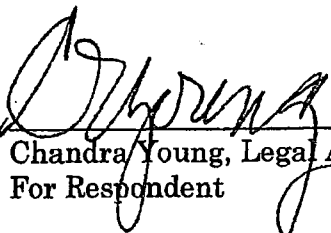
STATE OF SOUTH CAROLINA,)

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(s) by depositing same in the United States mail, postage prepaid:

Montford S. Caughman
P.O. Box 518
Lexington, South Carolina 29071

DATED this 19th day of June 2013.


Chandra Young, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA)
2) IN THE COURT OF
3 COUNTY OF GREENWOOD) GENERAL SESSIONS
4
5 GERALD R. GAINES,)
6 Plaintiff,)
7 Vs.) CASE NO. 2013-GS-24-0336
8 STATE OF SOUTH CAROLINA,)
9 Defendants.)

10 OCTOBER 13, 2014

11 GREENWOOD, SOUTH CAROLINA
12

13 HONORABLE FRANK R. ADDY JR, JUDGE

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

15 BY: JENNINGS ANDERSON, ESQUIRE

16 Attorney for the Plaintiff

17 BY: J. RUTLEDGE JOHNSON, ESQUIRE

18 Attorney for the Defendants
19

20 TARA T. SCOTT, CVR

21 OFFICIAL COURT REPORTER
22
23
24
25

I N D E XWITNESSDIRECTCROSSREDIRECTRECROSS**GERALD GAINES**

Mr. Anderson

5

33

Mr. Johnson

27

CHRIS PRACHT

Mr. Johnson

34

Mr. Anderson

41

SARAH DRAWDY

Mr. Johnson

49

60

Mr. Anderson

55

Certificate of Reporter

64

E X H I B I T S

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EX</u>
1				
2				
3	P-1	Letter		
4	P-2	SLED Report		
5	R-1	Handwritten Note		51
6	R-2	Advice of Rights		53
7				
8				
9				
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11				
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1 (WHEREUPON, Petitioner's Exhibit Number 1 and 2 were
2 marked before the hearing)

3 MR. JOHNSON: May it please the Court, Your Honor.

4 THE COURT: Yes, sir.

5 MR. JOHNSON: The case of Gerald Gaines verses the
6 State of South Carolina. It's Case Number
7 2013-CP-24-0336. Mr. Gaines was indicted at the March
8 2012 term of the Greenwood County Grand Jury for failure
9 to stop for law enforcement vehicle that resulted in
10 death. Two counts of felony driving under the
11 influence. He was also charged with manufacturing
12 methamphetamine in Abbeville County. On May 14, 2012,
13 he pled guilty before the Honorable J. Cordell Maddox
14 Jr. He also waived venue and presentment of the meth
15 charge and also pled guilty to that.

16 He was sentenced to 20 years for failure to stop for
17 blue light resulting in death, and for 20 years
18 concurrent for felony DUI resulting in death, and
19 15 years for felony DUI resulting in great bodily
20 injury, and time served for the meth charge. There was
21 no direct appeal filed; however, there was a time when
22 the PCR application filed April 9, 2013 and the State
23 filed its return June 19, 2013. And he is represented
24 here today by Mr. Jennings Anderson.

25 THE COURT: All right. Are you ready to proceed,

GERALD GAINES - DIRECT EXAMINATION BY MR. ANDERSON

1 Mr. Anderson?

2 MR. ANDERSON: We are, Judge. And I would only add
3 to that that there was an amendment that we filed to the
4 application that was filed August 21, 2014. I want to
5 make sure the Court has a copy of it in your file.

6 THE COURT: I do. I do.

7 MR. ANDERSON: Okay. And we are ready to proceed.

8 THE COURT: All right. Call your first witness
9 then, please.

10 MR. ANDERSON: Like to call Gerald Gaines.

11 THE COURT: Sir, if you'll come on up and have a
12 seat over here, please, sir.

13 GERALD GAINES,
14 being first duly sworn, was examined and testified as
15 follows:

16 THE COURT: Have a seat, please, sir.

17 DIRECT EXAMINATION BY ANDERSON:

18 Q State your name, please.

19 A Gerald Russell Gaines.

20 Q Mr. Gaines, how old are you?

21 A Fifty-five.

22 Q You were in the courtroom just now and you heard
23 the list of charges and sentence that you had from May
24 of 2012; is that right?

25 A Yes, sir.

1 Q That date was correct according to what you heard?

2 A Yes, sir.

3 Q Now, you filed this action today. You have some
4 issues with your attorneys who represented you at the
5 hearing; is that correct?

6 A Yes, sir.

7 Q And those were Chris Pracht and Sarah Drawdy?

8 A Yes, sir.

9 Q Okay. Now, when this case first started, you had a
10 Public Defender appointed to you, did you not?

11 A Yes, sir.

12 Q And who was that?

13 A Goranson --

14 Q Shane Goranson?

15 A Shane Goranson.

16 Q Okay. And did you meet with him?

17 A I met him one time.

18 Q Did you receive any communications from him?

19 A I got a letter from him with information about the
20 Brady motion and all that stuff and what would be
21 expected of me. I guess -- I had been on bond or
22 whatever was suppose to be expected of me.

23 MR. ANDERSON: If I could approach the witness, Your
24 Honor.

25 THE COURT: Please.

GERALD GAINES - DIRECT EXAMINATION BY MR. ANDERSON

1 Q I'd like to show you what's been marked as
2 Petitioner's Exhibit Number One. Is that the letter
3 you're referring to from Mr. Goranson?

4 A Yes, sir, I believe it is. Yes, sir.

5 Q Okay. Now, in that letter, you were told about
6 what would happen if a plea was offered to you; is that
7 correct?

8 A Yes, sir.

9 Q All right. What was your understanding from the
10 letter of what would happen if a plea was offered to you
11 from the Solicitor's Office?

12 A From the Solicitor's Office I understood that if a
13 plea was offered to me that I had until the end of the
14 working day to make a decision whether I wanted to take
15 that plea or deny it.

16 Q Okay. Now, shortly after you received that letter,
17 you hired private attorneys to represent you; is that
18 right?

19 A Yes, sir.

20 Q And that was Mr. Pracht and Ms. Drawdy?

21 A Right.

22 Q And at that point, had you received any kind of
23 plea offer?

24 A No response.

25 Q When you hired them, had you received any kind of

GERALD GAINES - DIRECT EXAMINATION BY MR. ANDERSON

1 offer before you hired them?

2 A Actually, I hadn't received an offer. The only
3 thing was Mr. Goranson said he thought he could get me
4 ten years.

5 Q Okay. But no offer was made to you?

6 A No offer. Right.

7 Q All right. So after you hired Mr. Pracht and
8 Ms. Drawdy, they discussed the case with you?

9 A Right.

10 Q Met with you several times, I believe?

11 A Right.

12 Q They had already represented you on different
13 charges, have they not?

14 A Right.

15 Q All right. So you were familiar with them then;
16 right?

17 A Yes, sir.

18 Q They came to visit you, I believe, at Kirkland and
19 then at Kershaw; is that right?

20 A I think they come to Kirkland, but I wasn't there.
21 I had already transferred and then they came to Kershaw,
22 but I didn't see them in Kirkland.

23 Q Okay.

24 A I'm pretty sure I'm right on that. I was at
25 Kershaw when I seen them.

GERALD GAINES - DIRECT EXAMINATION BY MR. ANDERSON

1 Q Okay. Now, when you -- at the point that you hired
2 them, you said you had not yet received any kind of
3 offer?

4 A Right.

5 Q But at some point you did receive an offer from the
6 Solicitor's office?

7 A Right.

8 Q And what was that?

9 A The first thing they talked to me, come to me, and
10 said anything about was that they were going to try to
11 give me a particular plea and then he said 1 to 25, but
12 then he said that they are going to give you 13 years if
13 you'll sign the plea.

14 Q When you say, "he," you're referring to Mr. Pracht?

15 A I'm talking about my lawyers.

16 Q All right. So the offer was 13 years?

17 A That was offered. It was laying on the table that
18 day.

19 Q When that was communicated to you, where were you?

20 A Where was I at when it was communicated to me?

21 Q Yes, sir.

22 A Right here.

23 Q Okay. And your answer to that offer was what?

24 A I signed to decline because I wasn't sure. I
25 wasn't sure, you know.

1 Q What were you not sure of?

2 A I wasn't sure of -- actually, I wasn't sure that
3 would be the last offer. I thought they would come back
4 and offer me something different. Because in previous
5 times that I had been in court, I had always been
6 offered and then they come back and offer me another
7 plea. And usually the first plea that I had every been
8 offered was always -- they would always come back and
9 offer another plea. And what I had went through before,
10 that's what I was relying -- I had relied on at that
11 point in time. And I spoke to her, you know.

12 Q That's Ms. Drawdy; right?

13 A Ms. Drawdy. And she said she didn't know if they
14 would offer me another plea.

15 Q So at that point when you declined the 13 years, am
16 I correct, you're saying you weren't sure if another
17 plea was coming or not?

18 A Right. I wasn't sure.

19 Q Okay.

20 A But I thought I was. I thought I was going to get
21 -- another one would be offered. But in reality...

22 Q So that offer was made here, you were in Greenwood?

23 A Right.

24 Q And then what happened the rest of that day?

25 A I signed the thing declining the 13 and they sent

GERALD GAINES - DIRECT EXAMINATION BY MR. ANDERSON

1 me back to the county jail. Once I got over there and
2 thought about it a while, I said, you know, I need this
3 plea. And I tried to get the officers at the county
4 jail to get a hold of them. The phone, you had to have
5 a pin number to use the phone, so I couldn't use their
6 phone. And I had talked to Mr. Smith over there, I was
7 trying to get somebody over there to do something and I
8 never could get a hold of nobody. So then as soon as
9 they put me on the van the next day, sent me to the
10 Department of Corrections, and I got on there, I got on
11 the phone and I started calling them there. Both of
12 them's office. And I finally got an answer at Mr.
13 Pracht's office. But the woman told me, said he's not
14 going to be in before Monday. And I said, I need to
15 talk to him. I need to talk to him. I even called my
16 aunt to try to get her to call.

17 Q This was on a Friday afternoon?

18 A Right. As soon as I got back -- as soon as I got
19 back down there, I got on the phone, and I started
20 calling them. I tried to call and call them.

21 Q Were you successful in reaching them on the Friday?

22 A Finally -- no. I finally got a hold of, I think it
23 was Mr. Pracht. I got a hold of him on Monday.

24 Q The following Monday?

25 A The Monday after the weekend that Monday. And he

1 told me, he says -- it was either him or Ms. Drawdy, I'm
2 not sure, but I was calling both. And he said, it's too
3 late, you know. You're going to have to go through the
4 process to do anything, you know. Ain't nothing I can
5 do. And I told him then, I said, well, you know, I'm
6 suppose to have until the end of the working day to make
7 that decision. And I couldn't get in touch with y'all.
8 So, you know, I was stuck.

9 Q And your understanding that you had until the end
10 of the day?

11 A End of the working day because that's what's in the
12 paperwork that the Public Defender gave me.

13 Q That was based on your understanding of the letter
14 that the Public Defender --

15 A The letter the attorney gave me, it's in there, it
16 says you've got until the end of the business working
17 day to make a decision on the plea.

18 Q All right. After that, at some point, the State
19 moved to give you life without parol; is that right?

20 A Right.

21 Q Okay. And you had a hearing in May of 2012 which
22 ended up being the hearing where you pled guilty?

23 A Right.

24 Q There was a motion made by your attorneys where
25 they were trying to defeat life without parol as an

GERALD GAINES - DIRECT EXAMINATION BY MR. ANDERSON

1 option?

2 A Get it dismissed.

3 Q And what happened with that motion that day?

4 A They got it dismissed on the elements of the -- the
5 elements of the charge. Which they done a good job on
6 that. I mean, I can't say they didn't because they got
7 that lifted.

8 Q So at this hearing, they defeat the life without
9 parole as an option and then what happened next?

10 A Right after that, we went back to the conference
11 room. I think it's that room over there. I sat down
12 and they said, well, you know, they're going to try to
13 make some kind of offer or whatever and they're going to
14 offer you the original plea. So, I said, well, I'll
15 take it. And I asked what all's going to go on or
16 whatever, and she said, just go along with what's going
17 on. There ain't no need to upset the Judge, the Courts,
18 and, you know, that's what I done. I done what --
19 that's what I was told -- I done what I was told.

20 Q You said that you were -- you understood from your
21 conversation with your attorneys that you were being
22 offered the original plea?

23 A The original plea. What I'm thinking 13 years.

24 Q The original plea to you meant the previous offer?

25 A Where I signed to decline. That's what I thought

1 it was?

2 Q Okay. So at that point, what position did you make
3 about whether to plea?

4 A I told them I would go ahead and take the plea.

5 Q And Judge Maddox ended up sentencing you to
6 20 years?

7 A Twenty years and I thought it was going to be 13.

8 Q Okay. Would you have pled the same way had you
9 known that was the possibility?

10 A No.

11 Q What would you have done?

12 A If I had knew all the circumstances of the crime
13 and elements of the situation, I would have went on to
14 court.

15 Q Gone to trial?

16 A I would have went to trial.

17 Q Okay.

18 A Some of this stuff that I found out once I got in
19 the law library about this case was the stuff that never
20 was brought up that I didn't know. And if I had knew
21 ahead of time that if they had brought it up to me, I
22 would of knew definitely not to take a plea.

23 Q Well, let's back up and talk a little bit about
24 some of those things. The day that this accident
25 happened was in August of 2011; is that right? The

GERALD GAINES - DIRECT EXAMINATION BY MR. ANDERSON

1 accident that led to you being charged?

2 A August 17, 2011.

3 Q Okay. Now, on that day, part of what happened was
4 and you can lead us through this, you had a wreck?

5 A Right.

6 Q And then tell me what happened after that?

7 A Well, I had a wreck and when I had the wreck, I
8 jumped -- I knocked my air bag out and jumped out of the
9 car and I run. I run from the highway down a hill which
10 is in Ware Shoals on East Summit Drive. I run behind
11 the curtain plant at the river. I ran all the way down
12 to the river, I jumped in the water, and Mr. Abernathy
13 come around in his truck, come all the way down behind
14 the building, come all the way down to the bank, got out
15 of his truck, throwed his gun out, get out the water!
16 Get out the water!

17 Q Excuse me. This is officer Abernathy from
18 Abbeville?

19 A Abbeville narcotics agent.

20 Q Okay.

21 A That's where he was then.

22 Q Okay. Go ahead.

23 A All right. At that point in time, I got out the
24 water, he throwed me on the ground, put the cuffs on me
25 and told me I had a right to remain silent, anything I

1 said would be used against me in a court of law. He
2 read me my full Miranda Rights.

3 Q Okay.

4 A And while I was on cuffs, he picked me up, and he
5 put me in his truck. Drove his truck back to the scene
6 of the accident. Took me out of the truck and put me in
7 a county car in the back seat.

8 Q All right. And at some point highway patrol
9 arrived?

10 A Sometime after that the highway patrol arrived
11 right after he was talking to them, this and that, and
12 they looked in the car and stuff, and I was still
13 sitting in the backseat. I would say it was at least
14 30, 35 minutes before the highway patrol got there or
15 before I seen him.

16 MR. JOHNSON: Your Honor, if they're trying to
17 challenge what the procedure of the highway patrol,
18 that's not part of this PCR. He plead guilty and agreed
19 to the facts as presented at the plea. I would object
20 to this testimony.

21 THE COURT: Are you giving this just by way of
22 background, Mr. Anderson, or how?

23 MR. ANDERSON: Somewhat, Judge. One thing that
24 we're going to be talking about is the time of the
25 arrest. We're not --

GERALD GAINES - DIRECT EXAMINATION BY MR. ANDERSON

1 THE COURT: Okay.

2 MR. ANDERSON: -- as I said, we're not getting into
3 the procedure. The specific time of the arrest is what
4 we're getting towards and that's it.

5 THE COURT: I'll give you some latitude. Overruled.
6 Go a head, please.

7 Q I'd like to show you what's been marked as
8 Petitioner's Exhibit Number Two.

9 A Yes, sir.

10 Q Do you recognize that document?

11 A Yes, sir.

12 Q What is that, the title of that document?

13 A That's a blood collection report from SLED.

14 Q Okay. What's the time of the arrest listed on
15 that?

16 A At the time of the arrest listed on this is 16:57.

17 Q All right. Which is military time for what?

18 A Military time would be --

19 Q 4:57 in the afternoon, wouldn't it?

20 A 4:57, yes, sir.

21 Q Thank you. Now, if you'd also look on there and
22 tell us what time is listed as when the blood was drawn?

23 A It says, test time, I assume that's a B, and says,
24 18:50. And then it says, slash 19:05 and it's got an E.
25 I don't know what those initials are, but...

GERALD GAINES - DIRECT EXAMINATION BY MR. ANDERSON

1 Q All right. What time did Officer Abernathy arrest
2 you?

3 A The callout on my incident report, I got it in my
4 thing there, was 3:27. From that time, I was at Hickory
5 Point. We left Hickory Point, went toward Ware Shoals
6 and turned down Summit Drive, went all the way through
7 Summit Drive, had the wreck which was maybe a half mile
8 from the store. And I run from there down to the river.
9 So I'm assuming or I'm pretty sure that it couldn't have
10 been no later than 3:40 when he put the cuffs on me.

11 Q How far did you run?

12 A Two hundred yards.

13 Q Okay. All right. Did you have any discussions
14 with your attorneys Ms. Drawdy and Mr. Pracht about the
15 time of the arrest?

16 A No, sir.

17 Q Did they bring up to you the fact that this blood
18 test had to happen within three hours of the arrest?

19 A No, sir.

20 Q Did y'all have any discussions about the timeline
21 that afternoon?

22 A No, sir.

23 Q That was never an issue that was brought up to you?

24 A Never was. I didn't even find out about the
25 timeline on the draw of the blood and urine or

GERALD GAINES - DIRECT EXAMINATION BY MR. ANDERSON

1 breathalyzer. They done the breathalyzer here and then
2 took me to the hospital and done a urine analysis and
3 then they done blood work. I never was knowed any time
4 limit occurred or whatever until I got to the Department
5 of Corrections and got in the law library and found it
6 myself that there's a three-hour window that they had to
7 draw the urine or blood from the time of the arrest.

8 The way I seen it, was I was arrested when I was
9 put in cuffs -- put cuffs on me and read me my Miranda
10 Rights, I was under arrest right then. Not at no 16:57
11 an hour later.

12 Q So was this an issue that was in your mind when you
13 were considering whether to plead guilty or not?

14 A I didn't know it then. When I was considering
15 pleading guilty, I didn't even know it. I didn't know
16 it until after I was down at the Department of
17 Corrections then that's when I found out that they had a
18 window. It never was brought up to me period.

19 Q Had you known that that was an issue, would you
20 still have pled guilty?

21 A Definitely not. Because the time speaks for
22 itself.

23 Q Okay. Let's move on. You said that your original
24 offer which you turned down was 13 years?

25 A Yes, sir.

1 Q Okay. After life without parole was taken off the
2 table, you had a meeting with your attorneys?

3 A Right.

4 Q This was the beginning of May of 2012?

5 A Right.

6 Q How long did you speak with them?

7 A I don't know. They was in there and they had
8 something else they wanted to run through real quick
9 going in there and spoke just a few minutes and come
10 back in here. It was no longer than 20, 30 minutes at
11 the most. Because they were in session, so it wasn't
12 long.

13 Q Okay. And, again, at that point, what was your
14 understanding about what you were pleading to?

15 A The original paper, I assume, 13 years. The
16 original plea.

17 Q Okay. When you say the papers you signed, what
18 piece of paper was that?

19 A The paper where Ms. Drawdy wrote it out on the
20 paper. You know, she wrote a note on the paper on what
21 it was. I got it in my thing.

22 Q It was a piece of paper that said you're declining
23 the 13 year offer; is that right?

24 A Thirteen years. If I was going to trial, then I
25 could receive a greater sentence, but I never had

GERALD GAINES - DIRECT EXAMINATION BY MR. ANDERSON

1 planned to go to trial at that time because I didn't
2 know the whole facts of the case.

3 Q Okay.

4 MR. ANDERSON: The Court's indulgence, Your Honor.

5 Q Now, Mr. Gaines, when you actually pled guilty at
6 this May 2012 hearing; right. The Judge went through a
7 number of questions with you about your understanding of
8 the agreement?

9 A Yes, sir.

10 Q Is that right?

11 A Yes, sir.

12 Q Okay. Asking you if you had talked to your lawyers
13 about the offer? Asking you if you understood the
14 offer? And in that conversation with him, you brought
15 up the letter from the Public Defender's office, did you
16 not?

17 A Yes, sir.

18 Q What was your point in bringing that up?

19 A The point of me bringing that up was that I didn't
20 have until the end of the working day to make a decision
21 on the plea. I was brought in here and asked if I
22 wanted it or whatever and I was shot out of here and I
23 was gone. There was no way I could contact my lawyer.
24 I tried my best to contact her. When I finally did
25 contact him, I'm quite sure that they're going to tell

GERALD GAINES - DIRECT EXAMINATION BY MR. ANDERSON

1 you and they should tell you that when I did contact him
2 that's the first thing I said.

3 Q And what did the Judge tell you about this letter?
4 Well, actually, I'll just let you read it if you don't
5 mind. If you would see the transcription. Start on
6 Line 11 there. This is on Page 30 of the transcript.

7 A Page 30 of the transcript. It says,

8 "THE COURT: I mean this is a letter that a Public
9 Defender sent out and I'm not completely sure. This is
10 what they tell people and will leave it at that. But
11 once you have a private lawyer and once they start
12 negotiating on your behalf, you have got to listen to
13 them. Do you understand that?"

14 Q All right. So -- and this is Judge Maddox saying,
15 once you have a private lawyer, you have to listen to
16 them?

17 A Yes, sir.

18 Q What did you take that to mean?

19 A Whatever they told me to do, I needed to do it.

20 Q Whether or not it was in your best interest?

21 A I guess. Because I had tried to say something
22 earlier and they said hold on. So, I assumed that
23 that's -- I was suppose to do what I was told.

24 Q Okay. After the Judge made that statement, what
25 happened next?

GERALD GAINES - DIRECT EXAMINATION BY MR. ANDERSON

1 A After the Judge made that statement?

2 Q Uh-huh. Did he continue to question you about the
3 plea?

4 A I don't remember right off, sir.

5 Q Okay. Well after he made that statement, did your
6 attorneys stop the plea hearing or talk with you anymore
7 about the plea?

8 A No.

9 Q Okay. From that point on, you pled guilty?

10 A Right.

11 Q All right. Did you have any discussions with your
12 attorneys about any fines that might be imposed upon
13 you?

14 A They never was a discussion about any fines at all.
15 The only thing that was ever discussed was a maximum.
16 If you see in the transcript that they said
17 theoretically -- it said in the transcript theoretically
18 I could receive 65 years if everything was run
19 concurrent. But theoretically there was four charges
20 counting the Abbeville charge. But in Greenwood, three
21 and Abbeville charge. Theoretically they said 65 years
22 if everything run concurrent theoretically. The highest
23 charge was a 25-year sentence and theoretically if
24 everything run concurrent, I could only receive
25 25 years.

1 Q But you didn't have any discussion with them about
2 any fines?

3 A Right.

4 Q Did you have any discussion with them about the
5 possibility of parole?

6 MR. JOHNSON: Objection. That is collateral
7 consequences not proper for PCR.

8 THE COURT: All right. Overruled. You can answer
9 that.

10 Q Did you have any conversation with them about the
11 possibility of parole?

12 A I asked Ms. Drawdy would this be a parolable
13 sentence and she said, yes, you'll be eligible for
14 parole. And the realty is not it's not.
15 Eighty-five percent, 20 years 85, 17 years, not even a
16 shot at parole.

17 Q Okay. You have alleged in your application that
18 one of the things that your attorneys did not do which
19 they should have done was object to you being subjected
20 to double jeopardy; is that right?

21 A Yes, sir.

22 Q Okay. Would you explain to the Court, please, what
23 you mean by that?

24 A Under double jeopardy clause, it states that multi
25 punishment for the same crime. And under my study of

GERALD GAINES - DIRECT EXAMINATION BY MR. ANDERSON

1 what I've done and the law from what I see, double
2 jeopardy claim was a DUI resulting in death and --
3 felony DUI resulting in death and felony DUI failure to
4 stop for blue light resulting in death is a multi
5 punishment for the same crime. There was only one
6 death. From my understanding of the law, one death, one
7 liberty. One liberty, one body.

8 That and they also -- the other was the body injury
9 which was the other victim in the vehicle and I
10 understood that. But I felt like that was double
11 jeopardy claim right there was stacking on one
12 particular charge, you know, one death and I got two
13 charges for death.

14 Q Okay. Did you have any discussions with your
15 attorneys about that?

16 A It was never brought up.

17 Q Okay. Did you have any discussions with your
18 attorneys about what witnesses would be called if you
19 did go to trial?

20 A What witnesses would be calling if I went to trial?

21 Q What witnesses you would call in your defense?

22 A I don't remember. We didn't have any discussion
23 about that.

24 Q All right. Did you have any discussions with your
25 attorneys about the driver of the other vehicle that was

1 involved in the accident?

2 A No. Never had a discussion with them about that.

3 Q Okay. Was there anyone that you wanted interviewed
4 as a part of this case that they did not interview?

5 A The driver of the other vehicle.

6 Q And who was that?

7 A Mr. Turner. Mr. Jimmy Turner. I never seen a
8 breathalyzer or anything else on that driver. And under
9 my understanding from the place that he left before they
10 came to that point in that wreck, they had just left
11 from a person's house on Poplar Springs Road and they
12 had just purchased Lortab.

13 MR. JOHNSON: Objection. This is speculation. He
14 has no personal knowledge of what happened.

15 THE COURT: No investigation had taken place. I
16 struggle to understand how he might know that. But I'm
17 going to sustain the objection unless you can establish
18 a foundation for this.

19 Q Mr. Gaines, that's my only question to you is was
20 there someone you wanted them to interview that they
21 didn't and you said it was Mr. Turner; right?

22 A Right.

23 Q Okay. Did you understand the consequences of the
24 guilty plea that you entered?

25 A When I entered the plea, I thought I understood.

GERALD GAINES - CROSS EXAMINATION BY MR. JOHNSON

1 But in realty, I didn't. Because I didn't know all the
2 facts or the law of the situation.

3 Q Knowing now, if you knew then what you know now,
4 would you have pled guilty?

5 A No, sir.

6 Q What would you have done?

7 A I would have went to court.

8 Q All right. So what are you asking the Court to do
9 today?

10 A I'm asking to vacate the sentence and go back to
11 court.

12 Q You asking to grant you a new trial and approve
13 this application for postconviction relief?

14 A Yes, sir.

15 Q Thank you. Please answer any questions that
16 Mr. Johnson or the Judge may have for you.

17 THE COURT: Mr. Johnson?

18 MR. JOHNSON: May it please the Court, Your Honor.

19 THE COURT: Yes, sir.

20 CROSS EXAMINATION BY MR. JOHNSON:

21 Q Mr. Gaines, you just claimed that you didn't
22 understand the consequences of pleading guilty; is that
23 correct?

24 A Right.

25 Q Okay. It's not your first rodeo in the criminal

GERALD GAINES - CROSS EXAMINATION BY MR. JOHNSON

1 justice system, is it?

2 A No, sir.

3 Q You have a long rap sheet, don't you?

4 A Yes, sir.

5 Q And you've pled before; right?

6 A Yes, sir.

7 Q Okay. You also state that you received a letter
8 from the Public Defenders and your understanding is that
9 you had until the end of the working day to accept or
10 reject the offer; correct?

11 A Yes, sir.

12 Q That's from the Public Defender's office; correct?

13 A Right.

14 Q That wasn't from these attorneys that you hired,
15 was it?

16 A No.

17 Q Okay. And you do realize if they run the three
18 sentences together consecutively, you face 65 years in
19 prison?

20 A Yes, sir.

21 Q Okay. Because you were driving and killed someone;
22 correct?

23 A I'm not on the stand whether I was guilty or not,
24 sir.

25 Q Sir, you've already pled guilty to it, have you

GERALD GAINES - CROSS EXAMINATION BY MR. JOHNSON

1 not?

2 A I took a plea.

3 Q You admit your guilt; correct?

4 A There again, I'm not on the stand for whether I'm
5 guilty or not. We're not determining that. This is a
6 PCR.

7 Q I'm asking you a simple question. Did you admit
8 your guilt at the plea?

9 A Yes, sir.

10 Q And you agreed with the facts as presented by the
11 Solicitor during the plea; correct?

12 A No response.

13 Q You agreed with the facts as the Solicitor read
14 them at your plea; correct?

15 A The facts as I understood them. Well, I didn't
16 understand them -- I didn't understand it the way the
17 law is.

18 Q I didn't say anything about the law. I said by the
19 facts of the case. You agreed with the Solicitor's
20 recitation of the facts at the plea?

21 A Intelligently I didn't accept the plea offer. Not
22 intelligently I didn't.

23 Q You never stopped --

24 A I didn't know.

25 Q You never stopped the Judge and said I don't

1 understand what I'm doing, did you?

2 A Because I was instructed by my lawyers.

3 Q You never told the Judge that, did you?

4 A No.

5 Q You actually said you were satisfied with your
6 attorneys; correct?

7 A I had been satisfied with them up until the point
8 that I found out that I didn't -- that the plea that was
9 offered to me I didn't get it.

10 Q But you rejected that plea offer, did you not? By
11 signing that sheet of paper, you rejected the 13 years?

12 A The first time.

13 Q And then once it's rejected, it's gone. The
14 Solicitor doesn't --

15 A It said until the end of the working day. By
16 contract law.

17 Q You didn't receive that letter from these
18 attorneys, did you?

19 A What letter?

20 Q The letter that you claim says you have until the
21 working day -- end of the working day to accept the plea
22 offer? That didn't come from these attorneys, did it?

23 A That's law, ain't it?

24 Q No, it's not.

25 A It's not law?

GERALD GAINES - CROSS EXAMINATION BY MR. JOHNSON

1 Q No, sir.

2 A Then why would the Public Defender give me that and
3 tell me that?

4 Q You were represented by these attorneys. We're not
5 here to talk about the Public Defender. We're talking
6 about these two attorneys. They did not provide you
7 with that letter, did they?

8 A No, sir.

9 Q Okay. You also state -- you also challenge the
10 time of the arrest in this case; correct?

11 A Challenged the --

12 Q The time of the arrest. You said it was 3:27?

13 A Right. When I was doing -- I was challenging the
14 fact that assisted counsel, they should have let me know
15 this prior to me taking the plea.

16 Q But on this sheet that you looked at, the time says
17 4:57; correct?

18 A Yes, sir.

19 Q Okay. Then it says time of test, 18:50 which would
20 be 6:50 p.m.; correct?

21 A Yes, sir.

22 Q Would you agree with me that's within two hours of
23 4:57?

24 A That's not the arrest time. That's the wrong
25 arrest time that's on that thing. If you go back and

1 look at Abbeville, it's in the report, you'll see on
2 that Abbeville incident report the arrest time that
3 Mr. Abernathy arrested me was at least an hour before
4 that on that paper.

5 Q But then you decided to take off in your car, you
6 run hid in the creek, and that's when he arrested you;
7 right?

8 A Yes.

9 Q And you were high on methamphetamine at that time,
10 were you not?

11 A No, sir.

12 Q No, sir. That's what the blood draw said it was
13 2.22 on methamphetamine.

14 A I know what it is. That's the reason I run.

15 Q Because you were high on meth?

16 A No. Because I had it on me. And I took it and I
17 run so he couldn't find it.

18 Q So how did you test positive for methamphetamine
19 during the blood draw?

20 A Because they waited four hours before they took
21 blood. It had time to get in my system. When I run
22 from the wreck, I took it in the river. That's the
23 reason I run to the river.

24 Q But at the guilty plea, they said you were under
25 the influence while driving and that's what you agreed

GERALD GAINES -- REDIRECT EXAMINATION BY MR. ANDERSON

1 to, am I not correct?

2 A Yes, sir.

3 MR. JOHNSON: No further questions at this time,
4 Your Honor.

5 MR. ANDERSON: Briefly, Judge.

6 THE COURT: Go ahead.

7 REDIRECT EXAMINATION BY MR. ANDERSON:

8 Q Mr. Gaines, when the Judge told you you had private
9 attorneys that you had to listen to, what did you take
10 that to mean?

11 A Do what they told me to do.

12 Q Did you have enough information in front of you at
13 that point to intelligently enter into a plea?

14 A No, sir.

15 Q Thank you.

16 MR. ANDERSON: I don't have any other questions,
17 Judge.

18 THE COURT: Thank you, sir, you can step down. Call
19 your next witness.

20 MR. ANDERSON: We don't have any other witnesses,
21 Judge.

22 THE COURT: Very good. Mr. Johnson, your case.

23 MR. JOHNSON: Call Chris Pracht to the stand, Your
24 Honor.

25 CHRISTOPHER PRACHT,

CHRISTOPHER PRACHT - DIRECT EXAMINATION BY MR. JOHNSON

1 being first duly sworn, was examined and testified as
2 follows:

3 DIRECT EXAMINATION BY MR. JOHNSON:

4 Q Good morning, Mr. Pracht.

5 A Morning.

6 Q Please tell the Judge how you became involved in
7 this case.

8 A I initially represented Mr. Gaines on a previous
9 charge. I think it was two or three drug charges that
10 originated out of Abbeville County. I was contacted by
11 a business acquaintance of Mr. Gaines who I believe had
12 just entered into a real estate transaction with him.
13 He was in, at that time, I believe either in the
14 Greenwood County Detention Center or Abbeville Detention
15 Center being held on bond. I associated Sarah Drawdy on
16 the case. We met with Mr. Gaines and got him out on a
17 bond on those charges.

18 Subsequent to that he did not appear. We lost
19 contact with him. A bench warrant was issued for his
20 arrest out of Abbeville and I didn't hear from him until
21 shortly after August 17th of 2011 at which time I
22 actually had read about this incident in the paper. And
23 reached out to me and Sarah and I began working with him
24 to try and not only to address the previous charges that
25 we had represented him on, but these as well. These new

CHRISTOPHER PRACHT - DIRECT EXAMINATION BY MR. JOHNSON

1 charges.

2 Q And once you started representing Mr. Gaines, did
3 you file Rule 5 Brady motions?

4 A We did. I believe that Ms. Drawdy handled that
5 portion of it. It's the filing of the case, but we
6 filed a Brady and Rule 5 motion.

7 Q And you received all the discovery from the
8 Solicitor's office?

9 A We did. We received extensive discovery which
10 included everything from blood sample to incident
11 reports. It was a pretty thick file.

12 Q And did you then discuss that with Mr. Gaines?

13 A We did. As Gerald testified earlier, I can't
14 remember whether we met with him at Kirkland or Kershaw,
15 but Sarah and I both drove down, spent an afternoon with
16 him going over everything. I remember some cafeteria
17 whichever SCDC facility it was.

18 Q And during your research on the discovery, did you
19 have a chance to review the blood collection report?

20 A I did.

21 Q And then you --

22 MR. JOHNSON: May I approach, Your Honor?

23 THE COURT: Please.

24 Q So you do recognize this document?

25 A I do. Yes.

1 Q What is that?

2 A It's a SLED urine blood collection report.

3 Q Is that a fair and accurate copy of what you would
4 have reviewed?

5 A It appears to be. Yes.

6 MR. JOHNSON: Your Honor, at this time, I introduce
7 that as Respondent's Number One.

8 THE COURT: Any objection?

9 MR. ANDERSON: No objection.

10 MR. JOHNSON: It's the copy you handed me. If it's
11 already in, Your Honor, that's fine.

12 Q And can you please tell me at the time of arrest
13 stated?

14 A The time of arrest on this form is 16:57 which
15 would be 4:57 p.m. on August 17, 2011.

16 Q And what is the time of collection?

17 A Time of the collection is 18:50 which would be 6:50
18 on August 17, 2011. Now next to it, it does say 19:05.
19 I'm assuming that's when they began the collection. I
20 don't know.

21 Q Okay. But would the 6:50 be within two hours of
22 the 4:57?

23 A It would be.

24 Q And that is in compliance our statute of blood
25 collection?

CHRISTOPHER PRACHT - DIRECT EXAMINATION BY MR. JOHNSON

1 A Yes, it is.

2 MR. JOHNSON: And, Your Honor, the statute I'm
3 referencing is 56-5-2933(I).

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

5 Q Did you have any reason to challenge that?

6 A Not really. If you look through the collection
7 incident report, there are several listed that related
8 to this. It appears that, you know, the accident
9 occurred sometime around or after 4 o'clock. And then
10 as Mr. Gaines said, there was a chase ensued after the
11 collision, and he said sometime after 4 o'clock he was
12 arrested. You know, it was really never a due point of
13 incident for Mr. Gaines in challenging the time of his
14 arrest. And most of the documents all seem to concur
15 with this, you know, 4:30 to 5 o'clock arrest time.

16 Q Okay. About how many times did you meet with
17 Mr. Gaines?

18 A I would say a few. In person, I would say we met
19 four or five times. Most of the time would be either
20 here or Abbeville when he would be up. We did go as I
21 said, we made a trip to Columbia. And then, of course,
22 we spoke to him on the phone on numerous occasions.

23 Q Did he seem to understand all of your conversations
24 with him?

25 A Yes, sir. Mr. Gaines is very intelligent. And he

1 was familiar with the criminal justice process. As we
2 point out, I think I actually had probably made it a
3 little more difficult in representing him because we
4 were trying to convince him that these latest charges in
5 August were much more serious than anything he had faced
6 before. All his previous charges, quite frankly, I
7 would have considered while certainly nothing great, but
8 they were miner -- somewhat miner charges. They
9 certainly weren't to the level where it involved a dead
10 body. You know, that was actually a challenge in
11 convincing him of the seriousness of these charges.

12 Q And then he has testified that he received a 13
13 year offer which he rejected. Do you remember that
14 occurring?

15 A I do. I do. As Gerald said it, did occur here.
16 We came up on a plea opportunity, I believe, in April of
17 2012. Judge Maddox was here holding court in Greenwood
18 and Maxwell the prosecutor and I met, and Sarah and I
19 met with Gerald, we discussed the case. We went back in
20 chambers with the prosecutors, spoke to the Judge about
21 the case, and it became clear to me that we had this 13
22 year offer and I thought it was an extremely good offer
23 considering you had a maximum of potentially 65 years in
24 prison that they were running consecutively. Even on a
25 good day if you lost at trial, you would be looking at

CHRISTOPHER PRACHT - DIRECT EXAMINATION BY MR. JOHNSON

1 probably 20, 25. And we advised Gerald to take that
2 offer. In fact, we pushed and pushed and pushed, and he
3 refused. And that was when we left court that day.

4 Q And what is your understanding of once a defendant
5 rejects a plea offer, is it still available?

6 A No.

7 Q And what do you base that assessment on?

8 A Just on my five years of practicing in private
9 practice in criminal defense and my one year clerking
10 with Judge Maddox who was, you know, when you're given
11 an offer and you say, no, they don't have to give it
12 back to you.

13 Q Whose decision was it to reject that offer?

14 A It was Mr. Gaines'.

15 Q Did you ever threaten or coerce him to not accept
16 the offer?

17 A No, that's fact. Anything, I strongly, strongly
18 encouraged him to take the offer.

19 Q He also has an allegation of double jeopardy. And
20 he's stating that the failure to stop for blue light and
21 the DUI resulting in death because it is one person's
22 death is double jeopardy claim. Did you research that
23 issue?

24 A I can't say that I did specific research into it
25 because it was readily apparent to me that those two

1 crimes carry very different elements. You know, one is
2 for operating a motor vehicle under the influence of
3 drugs or alcohol which results in death. The other is
4 failing to stop for law enforcement when they're in an
5 active pursuit and results in death. So, you know,
6 Mr. Gaines pled guilty to both. Both sentences were run
7 concurrent which I think fully addresses any prejudicial
8 effect it would have from a -- from the standpoint of
9 double jeopardy it is grounds of different elements.
10 And he very well had he gone to trial could have been
11 found guilty of one and not the other.

12 Q Last question, Mr. Pracht. He also claims that it
13 was his understanding that he had until the end of the
14 working day to accept the offer. Did he ever relay that
15 knowledge to you?

16 A Never the specific anything about having until the
17 end of the working day accept, you know, Gerald was --
18 it came up later when -- after the rejection of the
19 13 years. And when he came back to handle it all a
20 while and all the other issues we did on the day where
21 Gerald actually pled, he kept citing this letter that
22 obviously had created some confusion with him.

23 But, again, it was very clear at that hearing that
24 -- and this is something I want to point out, it was
25 very clear at that hearing that the 13 years was off the

CHRISTOPHER PRACHT - CROSS EXAMINATION BY MR. ANDERSON

1 table and that the plea that Gerald was entering into
2 was a straight up plea. And there was no recommendation
3 from the State because they had not renewed that
4 recommendation and that's what it was initially, also.
5 And they did not renew their recommendation, that we
6 were just essentially throwing ourselves at the mercy of
7 the Court. And that is why Gerald talked about that
8 issue with that letter was to persuade Judge Maddox at
9 that time that he had, you know, been somewhat confused
10 about his options that day.

11 Q So it's your understanding that he knew he was
12 pleading straight up?

13 A Yes..

14 Q And not to the 13 years?

15 A Yes. And I think the transcript would probably
16 reflect that.

17 MR. JOHNSON: That's all the questions I have at
18 this time, Your Honor.

19 Q Please answer any questions Mr. Anderson may have.

20 CROSS EXAMINATION BY MR. ANDERSON:

21 Q Mr. Pracht, you said you had represented Mr. Gaines
22 a couple of times before?

23 A Well, one incident on separate charges.

24 Q Okay. You testified, I believe, that it was clear
25 to you that the arrest happened sometime after 4 p.m.;

1 is that right?

2 A I believe so. Yes.

3 Q Okay. You would agree with me that sometime after
4 4 p.m. and 4:57 leaves a lot of latitude in there?

5 A Sure. There's a gap in there, there's no doubt.

6 It was very hard to determine, you know, exactly what
7 time, you know, you would consider him under arrest.

8 Because he ran from the scene and Officer Abernathy
9 apprehended him at some point thereafter. And it's just
10 very difficult to prove exactly what time that was when
11 it had occurred.

12 Q But the certainty about the actual time of the
13 arrest didn't raise any red flags for you?

14 A Well, you know, it wasn't enough to issue -- to me,
15 quite frankly, we had -- there were problems with the
16 case, quite frankly. And I honestly, our main trial
17 strategy -- or our strategy in the case was that our
18 main defense that we argued was that Abernathy should
19 have never initiated to begin with.

20 Q You had Mr. Gaines when he turned down the
21 April 10th offer of 13 years?

22 A Correct.

23 Q He signed a piece of paper saying I decline the 13
24 year offer?

25 A That's correct.

CHRISTOPHER PRACHT - CROSS EXAMINATION BY MR. ANDERSON

1 Q You also got him to sign a document saying that he
2 understood the consequences of pleading the rights that
3 he waived by doing so?

4 A That's correct.

5 Q And you did that again for the April 10th plea?

6 A I believe so. That's correct.

7 Q You didn't do either one of those -- well, not the
8 second one. You did not give him anything to sign
9 saying that he understood the consequences of his plea
10 when he actually pled guilty in May, did you?

11 A I don't believe so. Sarah may have. I haven't
12 seen -- I saw the April documents in front of me. I
13 haven't seen the May. I can't swear that we didn't, but
14 I don't have an independent recollection of that.

15 Q Okay. In between the defeating the LWOP motion and
16 the actual plea itself, you had some time to take him to
17 the back and talk with him?

18 A Yes. That's correct.

19 Q Half hour; is that about right?

20 A I would say, yes. I mean, you know, a half hour to
21 an hour in that range. No more than an hour, I don't
22 think. You know, it was Sarah, Gerald, and I and we
23 just discussed the repercussions of what it meant now
24 that the LWOP had been defeated. And it was really at
25 that point a choice of we're going to trial here in, you

1 know, pick a jury here in a few hours or at longest, the
2 next day. Or, you know, we enter into a straight up
3 plea.

4 Q When Mr. Gaines began asking his questions of the
5 Judge about the letter from the Public Defender's office
6 and, you know, the time that he had to accept that, did
7 you -- let me rephrase that. You didn't ask the Judge
8 for more time to talk with him about what he was about
9 to plead to, did you?

10 A No.

11 Q You didn't ask for a temporary hold in the
12 proceedings to make sure he understood what he was
13 doing?

14 A I don't believe we did. No.

15 Q And I believe it was your testimony that that
16 letter created confusion in his mind?

17 A I mean, I do think it absolutely confused Gerald.
18 I think we explained to him that, you know, the letter
19 is just a form letter that was sent out from the PD's
20 office and we went through all that. I mean, I don't
21 want to say we just said don't worry about it. We
22 explained to him what the letter meant. But, yes, I do
23 think that, you know, he was convinced that that letter
24 had somehow had more meaning, quite frankly, than we
25 did.

CHRISTOPHER PRACHT - CROSS EXAMINATION BY MR. ANDERSON

1 Q Okay. But yet your testimony is that it was clear
2 that 13 years was off the table; is that right?

3 A Yes. Absolutely.

4 Q Okay. Clear to you?

5 A Clear to me and clear to Mr. Gaines. And don't get
6 me wrong, I think what I told him was, you could get
7 13 years, you could get 15 years, you could get 60
8 years. It's -- but there's no, you know, the State is
9 not going to stand up here and say, Your Honor, we're
10 recommending 13 years.

11 Q If your client has a question about a plea
12 agreement that indicates his lack of understanding about
13 what he's about to enter into, is that a problem for you
14 as his attorney?

15 A Sure it is. You know, at the same time, you know,
16 I think we need to have a full understanding of the
17 elements of the charge, what they're giving up, what the
18 potential sentences are, but they're to be told or at
19 least my practice is to tell all my criminal defendants
20 that even if we have a recommendation that is, you know,
21 Judges will say in their standard plea language, they
22 don't have to take. You know, a Judge can deviate from
23 the recommendation from the State and go above below.

24 Q If the client is confused about the consequences of
25 his actions, does that in your mind make his plea

1 voluntary or involuntary?

2 A I think it would depend on the level of confusion
3 of what he was an advised. You know, if a client had
4 something fully explained to him and he still goes ahead
5 and pleads guilty and he's got some -- he doesn't fully
6 understand the term as far as maybe understanding the
7 years, but he doesn't understand what he got on
8 probation or parole or things like that, I don't think I
9 would say that makes his plea involuntary. But, you
10 know, certainly want to reduce the amount of confusion
11 with a client.

12 Q After the Judge told Mr. Gaines that he had to
13 listen to his private attorneys, couldn't that be
14 construed as taking the decision whether to plead or not
15 out of his hands?

16 A I think if you were to isolate that one statement
17 that Judge Maddox said, you could potentially, you know,
18 taking it out of context look at it that way. But when
19 you look at it in the context of the entire plea
20 hearing, I mean, it's very clear. But, you know,
21 Mr. Gaines happened -- was the decision maker. And
22 Sarah and I made it very clear to him that look,
23 ultimately this was the situation. And perhaps the best
24 thing that, you know, expresses that Gerald understood
25 that was that a couple of weeks earlier, he had not

CHRISTOPHER PRACHT - CROSS EXAMINATION BY MR. ANDERSON

1 followed our advice in not taking our recommendations of
2 doing 13 years.

3 Q You never had any conversations with him about the
4 three hour arrest window?

5 A No, we did not.

6 Q Blood test window, I guess I should say.

7 A Right. Blood test window.

8 Q Okay. Did you interview Jimmy Turner?

9 A I did not interview Jimmy Turner. We did -- Gerald
10 and I did discuss that issue or really more
11 specifically, I know Gerald had -- was an acquaintance
12 or knew the folks in that car. Ware Shoals being kind
13 of a smaller place where this town occurred, he knew
14 them and -- but I didn't know from speaking with the
15 prosecutors that the victims were pretty upset with
16 Gerald. And I didn't -- quite frankly, I didn't think
17 he would get much out of him. I know that the driver
18 was taken to the hospital by EMS shortly after the
19 accident, so I didn't really know what they would have
20 to offer.

21 Q Okay. Thank you.

22 MR. ANDERSON: I don't have anymore questions.

23 THE COURT: Anything on redirect?

24 MR. JOHNSON: No questions, Your Honor.

25 THE COURT: Real quick ones from the Court.

CHRISTOPHER PRACHT - EXAMINATION BY THE COURT

1 EXAMINATION BY THE COURT:

2 THE COURT: Did you -- at any point in time, did
3 Mr. Gaines tell you that he in fact ingested the meth
4 while on the run when he was in the river?

5 A I don't recall that, Your Honor. I know that there
6 was meth found in the vehicle as well. But I don't
7 recall specifically saying he ingested the meth when he
8 was on the run.

9 THE COURT: And prior to the plea, do you recall
10 whether you or co-counsel advised Mr. Gaines the non
11 parole nature of this and the collateral consequences?

12 A Yes. We extensively went through that as being a
13 -- because it was a violent 85 percent non parolable
14 offense, yes. And I specifically remember that because
15 we were dealing with all these issues serious -- more
16 serious basically the LWOP's. We had a lot of
17 discussions about what all with Gerald. Not only in
18 terms of LWOP obviously, but in terms of the ultimate
19 plea he entered.

20 THE COURT: All right. Any followup based upon my
21 questions?

22 MR. JOHNSON: No, Your Honor.

23 MR. ANDERSON: No, Your Honor.

24 THE COURT: Thank you. Step down. Call your next
25 witness, please.

SARAH DRAWDY - DIRECT EXAMINATION BY MR. JOHNSON

1 MR. JOHNSON: State calls Sarah Drawdy.

2 SARAH DRAWDY,

3 being first duly sworn, was examined and testified as
4 follows:

5 DIRECT EXAMINATION BY MR. JOHNSON:

6 Q Good morning, Ms. Drawdy. Can you please tell the
7 Court how you became involved in this case?

8 A I concur with what Mr. Pracht said. He brought
9 Mr. Gaines to me as a client on some drug charges.
10 Mr. Pracht was going to do, I think, a Greenwood or
11 Abbeville drug charge and I was going to represent him
12 on the Anderson County drug charges. And that's how
13 Mr. Gaines first came to me, I think.

14 Q And during your representation, he picked up the
15 Greenwood charges?

16 A He did.

17 Q And I can only assume that your discussions became
18 a lot more serious when the DUI with death resulting
19 came into play?

20 A They did. I got to know Mr. Gaines over a long
21 period of time because we worked on the drug charges
22 because they were in a number of counties. And in
23 essence, I'll concur with what Mr. Pracht said. We
24 talked about drugs, so much drugs so much, I don't know
25 if he -- this one was a drug induced offense, but it was

1 extremely serious.

2 Q And just to go on to what Judge Addy just asked
3 Mr. Pracht, did Mr. Gaines ever explain to you that he
4 ingested the methamphetamine while he was hiding in the
5 creek?

6 A No. I do not recall that at all. But I had -- in
7 my original file, I had my yellow notes that I take
8 whenever I meet with or discuss something with a client,
9 and I recall, on October 11th of 2011, Mr. Gaines had
10 been up 23 days prior to this incident. He had
11 blackouts. He said he had no alcohol and my notes
12 indicate that he had gone without meth for two days.
13 Not that it hadn't been in his system, but that was the
14 prelude to this incident.

15 Q Did you ever explain -- right to the issue, did you
16 ever explain to Mr. Gaines that he had until the end of
17 the working day to accept or reject the plea offer?

18 A Never said that. Never would. We were in this
19 courtroom, Mr. Gaines is correct, and we were sitting
20 over there to my left, and I begged Mr. Gaines to take
21 this 13 years. I remember exactly what he said.
22 Frankly, he put it all on god. And he said, no, god is
23 telling me not to take this plea today. That's when I
24 reduced to writing, "I Gerald Gaines decline an offer of
25 13 years. I understand I could be found guilty at trial

SARAH DRAWDY - DIRECT EXAMINATION BY MR. JOHNSON

1 and face a greater sentence." And he signed it. There
2 was no you have until 5 o'clock, you have until
3 tomorrow. It was gone.

4 MR. JOHNSON: May I approach, Your Honor?

5 THE COURT: Please.

6 Q Ms. Drawdy, do you recognize that document?

7 A I do.

8 Q What is that document?

9 A That's the note I just read where it said I wrote.
10 It's my handwriting. It's dated April 10, 2012. And
11 it's where I made sure with Mr. Gaines, are you sure
12 you're going to decline this offer. And I knew the
13 13 years was a fantastic offer, so I wanted to reduce
14 his refusal to take it to writing. And I did and that's
15 my signature and I'm the one who witnessed Mr. Gaines
16 sign it.

17 Q Is that a fair and accurate copy of that document?

18 A It is.

19 MR. JOHNSON: Your Honor, at this time, I move that
20 into evidence.

21 MR. ANDERSON: No objection.

22 THE COURT: Without objection that will be
23 Respondent's One.

24 (WHEREUPON, Respondent's Exhibit Number One was
25 marked and entered)

SARAH DRAWDY - DIRECT EXAMINATION BY MR. JOHNSON

1 Q And that was on April 10th?

2 A That's correct.

3 Q And did you also have him sign a waiver of rights
4 form?

5 A I did. When we got the 13 years, I've been
6 practicing for ten years, so it is my practice to have a
7 form. It's not a lengthy form, but it goes over the
8 basic rights, you give up your rights to trial, you
9 understand that, you know, you get probation, this,
10 that, or the other. It has a number of rights that I
11 just check off that I know I discuss with a client. And
12 I had Mr. Gaines sign one of those on that very day.

13 MR. JOHNSON: May I approach again, Your Honor?

14 THE COURT: Please.

15 Q Ms. Drawdy, do you recognize this document?

16 A I do. It's the document that I use with my
17 clients.

18 Q And is that the document you were just referencing
19 about the waiver of rights?

20 A It is. And Mr. Pracht was here, so I handwrote his
21 name in as well. And it just goes over the basic
22 information that he had been informed what the State was
23 offering, and he had been informed of the maximum
24 sentences. He understood the rights he was giving up if
25 he decided to plea. He understood that even though

SARAH DRAWDY - DIRECT EXAMINATION BY MR. JOHNSON

1 there was a recommendation offered, the presiding Judge
2 didn't have to follow that, he could get the maximum.
3 He understood if he was pleading to a felony, the
4 consequences of doing so. Cost associated with
5 probation if he got it. And then he could appeal within
6 ten days and he was satisfied with both Mr. Pracht's and
7 my services. And he signed this saying he had not been
8 forced, coerced, nor agreed to do so under duress to
9 accept this plea. So I was really positive or hopeful
10 we had the 13 years. He had signed this document and
11 then we were waiting.

12 Q Now, is that a fair and accurate copy of that
13 document?

14 A It certainly is.

15 MR. JOHNSON: Your Honor, I move that in as State's
16 Number Two.

17 THE COURT: Without objection?

18 MR. ANDERSON: Without objection.

19 (WHEREUPON, Respondent's Exhibit Number Two was
20 marked and entered)

21 Q And whose decision was it to reject the plea offer?

22 A It was Gerald's and Gerald's alone.

23 Q Concerning the parole eligibility, did you advise
24 Mr. Gaines concerning parole eligibility?

25 A I went over the rights that were on that -- what I

1 recall from the plea offer, 13 years or the straight up
2 plea that we ultimately did in May, and those rights
3 listed on that document. There may have been some
4 discussion about whether this was an 85 percent crime or
5 not, but not really. Because in chambers, there was a
6 big tadoo about whether all crimes were actively
7 85 percent or not. So if we said anything, I do recall
8 saying that this would be in the Department of
9 Corrections hands, you know. Different Judges will tell
10 you different things on that. And, again, it may have
11 been something along those lines, but that would be the
12 extent of it.

13 Q So you would have advised him that it's up to the
14 Department of Corrections to determine the parole
15 eligibility?

16 A His ultimate sentence, yes.

17 Q Do you feel like a plea offer or pleading straight
18 up was in his best interest?

19 A It was and I know it is. PCR packet now he's
20 talking about that blood test. But all the
21 documentation says it was timely. It met the statute.
22 As Mr. Pracht referenced here in our strategy, we were
23 going to have to impeach the officer, frankly speaking.
24 And what Mr. Gaines because he's not PCR, it fails to
25 explain there was overwhelming evidence of his guilt.

SARAH DRAWDY - CROSS EXAMINATION BY MR. ANDERSON

1 There was and found at the scene. There was a little
2 meth lab. The vehicle he was riding in was stolen. He
3 was the driver. It was his aunt's vehicle. He ran from
4 the scene. The others had jumped out, the other three
5 individuals in the vehicle. They were not there for the
6 impact with the oncoming vehicle. There were so many
7 things that made it just overwhelming. And to impeach
8 the officer, by the way, Mr. Pracht talked about this,
9 there may have come a time when Mr. Gaines would have
10 had to take the stand at trial and his record would have
11 made that extremely difficult to do.

12 MR. ANDERSON: I think that's all the questions I
13 have of this witness.

14 Q Please answer any questions Mr. Anderson may have.

15 THE COURT: Cross?

16 CROSS EXAMINATION BY MR. ANDERSON:

17 Q Ms. Drawdy, just briefly. I want to make sure I
18 heard you correctly. You said you would have informed
19 Mr. Gaines of the possibility of parole or that it would
20 be up to the Judge or that you did?

21 A Anything I would have done, would have said,
22 whatever you plead to, you got the 13 years. So if
23 we're talking about April with the 13 years, it's up to
24 the Department of Corrections what you actually serve.
25 A straight up plea, you could get 13 years, 15 years,

1 20 years, 25 years, it will be up to the Department of
2 Corrections whatever you get. Because in chambers, we
3 specifically had a discussion with Judge Maddox about
4 that issue. That very issue. And the Judge said he
5 thought it was 85 percent off the top of the number.
6 You know, when you do something like 20 suspended to 10.
7 But then the Assistant Solicitor said, no, it's off the
8 bottom of the numbers. So there was no consensus on
9 that at all. So I would have always said -- and I can't
10 remember specifically, but I know when we walked out of
11 that discussion, I would have said it's up to the
12 Department of Corrections.

13 Q So you're saying that's what you would normally do?
14 You can't remember for sure if that's what you did in
15 this case?

16 A That is correct.

17 Q So you can't remember specifically if you had a
18 conversation with him about parole --

19 A No. And it's not on my checkoff list. That's why
20 I don't. But I would have said it's up to the
21 Department of Corrections.

22 Q Usually you do?

23 A Yes.

24 Q Okay. The waiver of rights form or the form that
25 you referred to regarding the consequences of a plea,

SARAH DRAWDY - CROSS EXAMINATION BY MR. ANDERSON

1 you did one for the April 10th offer of 13 years?

2 A That's correct.

3 Q You did not do one for the May offer or the May
4 plea?

5 A That is correct. And we sat right in this room
6 over here as Mr. Gaines referenced and we were
7 discussing this. You have to remember, we had just
8 gotten the LWOP gift, the victims were here, the jury
9 was sitting in the back, we didn't have the luxury of
10 talking and filling out another paperwork for another
11 day or asking for continuances. We were up for trial.
12 We were game on. So I know what I said was -- and
13 remember we went over all these rights, so if you get a
14 plea, nothing's changed. And I didn't execute another
15 one. But that was because we did spend the 20 to
16 30 minutes that the Judge gave us to talk about this
17 plea.

18 Q So you think you had probably half an hour to
19 discuss the plea after the LWOP was defeated?

20 A Something like that.

21 Q Okay. And after that point, while the Judge was
22 asking Mr. Gaines questions about his understanding of
23 the agreement and the voluntariness of it, did it not
24 appear to you that his questions to the Judge indicated
25 some confusion on his part?

1 A I'd seen Mr. Gaines confused before. No, I believe
2 Mr. Gaines knew what he was doing and knew this plea at
3 the end of the day was in his best interest. He had
4 some questions. I think what we were all trying to do
5 was mitigate. This was not an intentional act. The
6 incident. He was high and there was a car accident that
7 resulted in someone's death and that was our entire plea
8 strategy, if you will. Gerald's had a tough life, but
9 he's street smart and he knew what he was doing.

10 Q What do you mean when he had appeared confused
11 before?

12 A Well, I had seen him shortly after when he had drug
13 charges and he had been using meth. So over the course
14 of my entire representation of Mr. Gaines, from the
15 early drug charges until the ultimate plea, his
16 appearance had changed over times. You could tell when
17 he was on drugs and when he had not been on drugs. And
18 he had been incarcerated for 272 days, we asked for
19 credit for time served. So he was clear headed. We had
20 been through everything with him just about four weeks
21 earlier. All the facts as we understood them, we went
22 through the issues with the LWOP to defend him. I mean,
23 I actually sent him discovery to Kershaw. They wouldn't
24 let him open the discs and they sent them back. We went
25 down there and we sat with him with our own laptop, I

1 don't know how many hours and parched through every
2 piece of evidence. I'm confident that at those stages,
3 you know, April, May, he knew where this was going.

4 Q Just so I'm clear, you're not comparing his
5 apparent confusion at the day of the May plea to some
6 previous confusion where he may or may not have been
7 under the influence of drugs? You're not suggesting
8 that?

9 A No. I think -- I think Mr. Gaines wished he had
10 taken the 13 and was doing everything he could to get
11 the 13. It was a long shot of possibility by May, but
12 he understood it was a straight up plea. We had just
13 gotten rid of the LWOP. That was best he could get was
14 a straight up plea. We didn't have the LWOP in April.
15 So I think he knew what he was doing.

16 Q Okay. In your -- based on your experience, if you
17 have a client that doesn't fully understand the guilty
18 plea that they're entering, that would constitute an
19 involuntary plea, would it not?

20 A If they didn't understand it. And I guess, you
21 know, what part -- I know we got to do just a yes or no
22 to that, if they have an understanding. I don't think
23 you understand all the consequences when you go to the
24 DMC or stuff like that. He understood that he was going
25 to be sentenced to time and that the maximum he was

1 looking at was 65 and then it could be consecutive. It
2 could be concurrent. He understood worse case scenario
3 and he went for it and entered that plea.

4 Q But you are under an obligation to ensure that he
5 understands every part of a plea that he enters into,
6 are you not?

7 A Right. And he understood. We went through the
8 elements to the offenses to which he was pleading. We
9 went over the sentences he was looking at. We made sure
10 he understood that Judge Maddox could sentence him to
11 whatever he wanted. And that 13 as much as we would
12 love it, that was gone.

13 Q So are you saying he did understand every part of
14 this plea or he did not?

15 A I believe he understood it.

16 Q Okay. Thank you.

17 MR. ANDERSON: I don't have any further questions.

18 THE COURT: Anything on redirect?

19 MR. JOHNSON: Just one question.

20 REDIRECT EXAMINATION BY MR. JOHNSON:

21 Q Ms. Drawdy, during the plea is it your
22 understanding that the Judge asked him why he didn't
23 take the 13 and his answer was because I thought my
24 attorneys were bluffing?

25 A That's not -- all I can tell you is what Mr. Gaines

SARAH DRAWDY - REDIRECT EXAMINATION BY MR. JOHNSON

1 told me when I relayed that 13 year offer to him. He
2 didn't say, well, I thought you were going to come back
3 with something better or if I wait out. He just said,
4 god is telling me not to take this plea. And I remember
5 telling him, you know, god gave you the ability to get
6 two lawyers to get to a decent plea, please consider
7 this plea. We talked about it at length and he
8 ultimately declined.

9 Q It was your understanding that he understood the
10 plea going into the actual hearing?

11 A I believe he understood everything about the plea.

12 MR. JOHNSON: That's all I have, Your Honor.

13 THE COURT: Thank you. You can step down.

14 MS. DRAWDY: Thank you, Your Honor.

15 MR. JOHNSON: The State has no further witnesses,
16 Your Honor.

17 THE COURT: Anything in reply?

18 MR. ANDERSON: We don't have any other witnesses.

19 THE COURT: All right. Anything that y'all want to
20 point out to me or emphasize; statements?

21 MR. ANDERSON: Would Your Honor prefer for us to
22 give a memorandum form any closing argument or --

23 THE COURT: If you want to argue anything to me at
24 this point in time, that's fine. I feel like I do have
25 a good understanding of the issues involved in this

1 particular case; however. Usually I'll take something
2 like this under advisement and try and rule if not
3 today, by tomorrow. But anything needs to be
4 emphasized, feel free to do that now.

5 MR. ANDERSON: Okay. Just briefly, Your Honor.

6 THE COURT: Sure.

7 MR. ANDERSON: Mr. Gaines' contention, obviously,
8 throughout is that he never had or had brief discussions
9 about these issues with his attorneys. And for that,
10 the discussions were so limited that his plea was
11 rendered involuntary.

12 His contention, obviously, the time question about
13 the blood test was not anything that he was aware of or
14 could have even been an issue. And based on that, he
15 did not understand or did not have a full ability to
16 enter into this plea on a voluntary basis.

17 He -- our position is, he was not informed about any
18 fines, about the affect of the plea and possibility of
19 parole. He, as you can tell from the transcript, was
20 basically told by Judge Maddox, you take this offer.
21 You do what your attorney said.

22 Now, a person who is not an attorney at that point
23 with a Judge up on the bench telling him to do that, I
24 mean, what else is he going to do. He's not an attorney
25 and he at that point felt like the Court was giving him

1 no choice but to take this offer.

2 We believe that except for the errors, the result of
3 the proceeding would have been different. That
4 Mr. Gaines would not have pled, but instead would have
5 insisted on a trial. And therefore, we're asking that
6 you approve this petition, Your Honor.

7 THE COURT: Thank you very much, Mr. Anderson.
8 Allow me if you would just to take a second look at the
9 file and the transcript and the other matters that you
10 brought to my attention. I hope to have y'all an order
11 if not today, certainly by tomorrow at the latest.

12 MR. JOHNSON: Thank you, Your Honor.

13 THE COURT: Thank you, Judge.

14 - - -END OF REQUESTED TRANSCRIPT OF RECORD- - -
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CERTIFICATE OF REPORTER

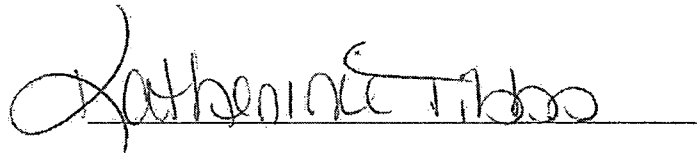
STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)

I, KATHERINE F. TIBBS, Registered Professional Reporter for the Twenty-fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenwood County, South Carolina, on the 13th of October, 2013.

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

(This transcript was transcribed from the record taken by Tara Scott)

April 7, 2015

A handwritten signature in cursive script, reading "Katherine F. Tibbs", is written over a horizontal line.

Katherine F. Tibbs

Registered Professional Reporter

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R

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Gerald Gaines, #222430,

2013-CP-24-0336

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

FILED COMMON PLEAS
8th JUDICIAL CIRCUIT
GREENWOOD, SC
2014 DEC 22 PM 4:06

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 9, 2013. The Respondent made its Return on June 19, 2014. An evidentiary hearing into the matter was convened on October 13, 2014, at the Greenwood County Courthouse. Jennings Anderson, Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, Applicant testified on his own behalf. Chris Pracht, Esquire and Sarah Drawdy, Esquire also testified. This Court also had before it a copy of the records of the Greenwood County Clerk of Court, records from the South Carolina Department of Corrections, and the guilty plea transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenwood County Clerk of Court. The Applicant was indicted at the March 2012 term of the Greenwood County Grand Jury for failure to stop for law enforcement vehicle resulting in death (2012-GS-24-0541) and two (2) counts of felony driving under the

AM

ATTORNEY GENERAL'S OFFICE
RECEIVED 12/22/14

ADMINISTRATIVE INSTRUCTIONS

FILE OPEN END HAVE COPIES MADE ROUTE TO ORDER: TRANSCRIPT PEN RECORDS CLERK RECORDS ✓ OTHER: Ch, sca;close 30 days;Send copy to counselJRT
12/29/14

influence (2011-GS-24-2067; -2068). The Applicant was also charged with Manufacturing Methamphetamine in Abbeville County. The Applicant was represented by Christopher Pracht, Esquire, and Sarah Drawdy, Esquire. On May 14, 2012, the Applicant pled guilty before the Honorable J. Cordell Maddox, Jr. and was sentenced to confinement for twenty (20) years for failure to stop for law enforcement resulting in death, twenty (20) years, concurrent, for felony DUI resulting in death, and fifteen (15) years, concurrent, for felony DUI resulting in great bodily injury. The Applicant also waived venue and grand jury presentment for a Manufacturing Methamphetamine charge, pled guilty, and was sentenced to time served. The Applicant did not appeal his conviction and sentence.

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

1. "Ineffective Assistance of Counsel"
 - a. "Ill Advised (sic) of Guilty Plea"

In an amended Application filed by Counsel on August 21, 2014, Applicant alleged ineffective assistance of counsel for "failure to fully apprise Petitioner of all consequences of his guilty plea, therefore allowing Petitioner to enter an involuntary plea; counsel's failure to object to Petitioner being subjected to double jeopardy in violation of the South Carolina and United States Constitutions; and counsel's failure to interview the driver of the other vehicle involved in the accident."

At the PCR hearing, the Applicant proceeded on these latter claims.

SUMMARY OF TESTIMONY

Applicant testified he was initially appointed Shane Goranson from the Greenwood Public Defender's Office as counsel. Applicant stated he met with Mr. Goranson once and a plea offer was

extended. Applicant testified it was his understanding that he had until the end of the working day to accept or reject the offer. Applicant then subsequently hired Chris Pracht and Sarah Drawdy as counsel. When Applicant met with his attorneys, he discussed his case with them and was extended an offer of thirteen (13) years. Applicant testified he signed a rejection letter because he thought he would receive a better offer. When Applicant spoke with Counsel Drawdy concerning the offer, Counsel Drawdy stated she was not sure if another offer would become available. Applicant then testified he signed the rejection letter, but after more thought, he wanted to accept the offer. He then spoke with both counsel, and Counsel Pracht told him it was too late to accept the offer. Applicant then stated he thought he had until the end of the working day to accept the offer based on the public defender's letter. Applicant testified he thought he was going to receive a sentence of thirteen (13) years and not twenty (20) years; otherwise, he would not have pled guilty.

Applicant testified that the August, 2011 incident was the incident in which he had a wreck and fled the scene. Applicant stated he jumped into a creek where law enforcement arrested him. He testified the arrest records indicate he was arrested at 4:57 pm and the time of his blood test was 6:50 or 7:05 pm. Applicant then claimed the actual time of arrest was 3:37 pm. Applicant testified he did not find out this information until after he pled guilty.

Applicant again testified he rejected the thirteen (13) year offer and then met with his attorneys after they were able to prevail on their motion to vacate the Life without Parole Notice which had been filed by the State. He was adamant that he was still receiving thirteen (13) years. Applicant also stated there was no discussion about fines and that Counsel Drawdy told him he was parole eligible when, in fact, he is not.

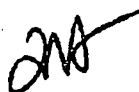
Additionally, Applicant testified both counsels were ineffective for not objecting to a Double

Jeopardy claim because he was charged with both DUI resulting in Death and Failure to Stop for a Blue Light resulting in Death. Applicant claims he did not discuss this issue with his attorneys. Applicant further testified he does not remember having discussions with his attorneys concerning the driver of the other vehicle involved in the incident. Applicant wanted Counsel to interview the driver of the other car and see the driver's BA results. Applicant lastly testified he did not understand the consequences of his plea and that he wanted a new trial.

On cross-examination, Applicant admitted his current counsel did not tell him anything about being able to accept the plea offer by the end of the working day. Applicant also admitted that he stated at the plea that he knew there were no negotiations or recommendations to get him to plead guilty and that this plea was "straight-up." He testified he was satisfied with his attorneys at the plea and agreed with the facts as presented by the solicitor. Applicant further admitted he was facing close to sixty-five (65) years' imprisonment.

Counsel Pracht testified he represented Applicant on a previous charge and was contacted by a third party on this case. After being retained, he associated Counsel Drawdy. Counsel testified he filed for discovery and received an extensive file, which he discussed thoroughly with Applicant. Counsel testified the blood report was within the two hour window and that he did not have a reason to challenge the report. Counsel testified he met with Applicant four (4) to five (5) times in person and spoke with him on numerous other occasions. Applicant understood all of their conversations.

Counsel then testified he remembered the plea offer as thirteen (13) years and believed it was more than reasonable. Counsel stated he advised Applicant to accept the offer but Applicant rejected it. Counsel also testified that once Applicant rejected the offer it was no longer available to accept. Counsel stated it was Applicant's choice to reject the offer and that there were no threats involved.



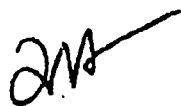
Additionally, Counsel testified he did not challenge the charges on a Double Jeopardy basis because the elements of the offenses were quite different from one another. Counsel then testified Applicant never mentioned the notion that Applicant thought he had until the end of the working day to accept the offer. Counsel lastly testified it was very clear that the plea was "straight-up."

On cross-examination, Counsel testified it was clear that Applicant's arrest occurred after 4 pm but that it was hard to determine the exact time of his arrest because Applicant fled the scene. Counsel also testified Applicant signed a plea rejection and waiver of rights form. Counsel then stated that after they prevailed on the Notice for Life without Parole issue, both he and Counsel Drawdy met with Applicant for 20-30 minutes to decide whether to pursue a trial or accept a guilty plea. Counsel stated at no time did Applicant ask for more time to discuss the case or to halt the proceedings.

Counsel then testified the letter Applicant received from the public defender's office was a form letter and he explained it to Applicant. Counsel stated while Applicant might have been confused by the letter, Counsel made it very clear that the offer for thirteen (13) years was off of the table after Applicant rejected it. Counsel then admitted he did not remember having a specific conversation with Applicant about the 2-3 hours blood draw window and that he did not interview Jimmy Turner, the driver of the other car involved in the incident.

Upon questioning by this Court, Counsel testified he does not remember Applicant ever telling him that he ingested the methamphetamines while he was fleeing law enforcement and not before driving the vehicle. Counsel also testified he advised Applicant that this charge would carry 85% parole eligibility.

Counsel Drawdy testified she was not initially associated by Counsel Pracht for the drug

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charges but that Applicant picked up these charges in the course of her representation of Applicant. Counsel, like Counsel Pracht, testified Applicant never explained to her that he ingested the methamphetamines while trying to elude capture. Counsel testified Applicant told her that he had been up for twenty-three (23) days straight and had gone without methamphetamine for two (2) days. Counsel then testified she did not advise Applicant that he had until the end of the working day to accept the offer; rather, she begged Applicant to accept the offer. However, Applicant stated that God told him not to take the plea offer. Counsel then introduced the plea rejection sheet along with the waiver of rights form she had Applicant sign. Counsel testified it was Applicant choice to reject the offer. Counsel then stated she advised Applicant that SCDC would determine his parole eligibility.

Counsel then testified that, as to the blood draw report, all of the documents she reviewed showed a timely test. Counsel also stated there was overwhelming evidence of Applicant guilt as methamphetamine was found in the car, a methamphetamine lab was found, the car was stolen, and Applicant had fled the scene. Counsel lastly testified that pursuing a trial would have been difficult for Applicant because he would have had to take the stand and testify, so he would be exposed to cross-examination and the potential for his prior convictions being revealed to the jury.

On cross-examination, Counsel testified that she would have advised Applicant that it was up to SCDC to determine Applicant's release date. Counsel then stated that she did not have a waiver of rights form for the May plea because that was the day Applicant's trial was scheduled to begin and they did not have the luxury of time. However, she did explain to Applicant the waiver of his rights.

Counsel testified Applicant was fully aware of the consequences of pleading guilty and that, in her opinion, the plea was in his best interest. Counsel stated she extensively reviewed the discovery with



Applicant and that Applicant completely understood the ramifications of his decision to plead guilty.

On re-direct examination, Counsel testified Applicant thought the attorneys were bluffing about the thirteen (13) year offer.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Apprising Applicant of Consequences of Guilty Plea

This Court finds both Counsel Pracht and Counsel Drawdy were competent and diligent in their representation of the Applicant in this case. Counsel sufficiently advised the Applicant of the charges against him, the potential penalties if convicted at trial, and the evidence the State would produce at trial. Counsel satisfactorily investigated this case based upon the information supplied by the Applicant and the evidence available. Counsel also engaged in plea negotiations which were beneficial to the Applicant. This Court also finds the Applicant was well informed by Counsel in this case. The Applicant expressed to the plea court that he was satisfied with Counsel's representation. The Applicant pled guilty without any threat or coercion and was not under the influence of any intoxicant at the plea. The Applicant voluntarily waived his Constitutional rights afforded to him. This Court finds the Applicant pled knowingly, voluntarily, and on his own free will.

This Court further finds the Applicant's testimony regarding Counsel's performance is not

credible while also finding Counsel's testimony is credible. This Court finds Applicant had a tough decision to make, but the decision to plead guilty was made by Applicant without any threats or coercion from Counsel or anybody else; accordingly, Applicant's plea was freely and voluntarily made with complete awareness of the consequences of his plea. This Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

Double Jeopardy

Applicant also alleges Counsel was ineffective for failure to challenge the charges as being in violation of the Double Jeopardy Clause. This allegation is without merit. Applicant was charged with DUI with death resulting and Failure to Stop for a Blue Light with death resulting. While each of these charges has the element of death resulting, Driving under the Influence and Failing to Stop for a Blue Light are wholly separate from one another and patently different charges. On its face, this allegation fails. Therefore, this allegation is denied.

Failure to Interview Driver of Other Car

Applicant finally alleges both Counsel Pracht and Counsel Drawdy were ineffective for failing to interview Jimmy Turner, the driver of the other car involved in the accident.

Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of

a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

Applicant presented no evidence or testimony from Mr. Turner in accordance with the rules of evidence to support his claim. Even if such testimony had been offered, based upon a review of the record as a whole, the court has difficulty imagining a scenario whereby Mr. Turner's testimony would have been so favorable to Applicant that he would have elected to proceed to trial. Therefore, this allegation is denied.

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of Applicant.

This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

CONCLUSION

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

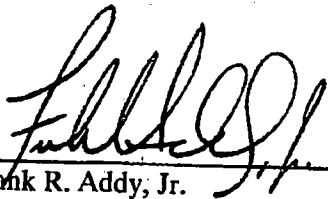
This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate

appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on Applicant's behalf. Your attention 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 is remanded to the custody of the Respondent.

IT IS SO ORDERED.


Frank R. Addy, Jr.
Presiding Circuit Court Judge
Eighth Judicial Circuit

November 26, 2014
Greenwood, South Carolina

WITNESSES

M V Harris
S C Highway Patrol

WARRANT NUMBER

F154417

Tracie Rice
Sharon W. Harwell

Foreman of the Grand Jury

Date: *11-4-2011*

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

November Term, 2011

Indictment # 11GS24- *2067*

THE STATE

vs.

Gerald Russell Gaines

INDICTMENT FOR
FELONY DRIVING UNDER THE INFLUENCE
56-05-2945

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

COUNTY OF GREENWOOD

FELONY DRIVING UNDER THE INFLUENCE
56-05-2945

At a Court of General Sessions, convened on the 4th day of November, 2011 the Grand Jurors of Greenwood County present upon their oath:

That Gerald Russell Gaines, did in Greenwood County, state aforesaid, on or about the 17th day of August, 2011 who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, did drive a vehicle and when driving the said vehicle did an act forbidden by law or neglect any duty imposed by law, to wit: that the said defendant drove with reckless disregard for the safety of others; and/or failed to change the course of travel to avoid causing the accident; and/or failed to slow down to avoid causing the accident; and/or failed to keep a proper lookout; and/or failed to maintain his vehicle under proper control, which act and/or acts of neglect proximately caused the death of one Linda Williams, in violation of Section 56-5-2945 of the South Carolina Code of Laws, 1976, as amended.

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

FILED
JAN 11 2012
GREENWOOD COUNTY
S. C.


Solicitor

WITNESSES

M V Harris
S C Highway Patrol

WARRANT NUMBER

F154418

Irene Bice

Sharon W. Harwell

Foreman of the Grand Jury

Date: *11-4-2011*

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

November Term, 2011

Indictment # 11GS24-*2068*

THE STATE

vs.

Gerald Russell Gaines

INDICTMENT FOR
FELONY DRIVING UNDER THE INFLUENCE
56-05-2945

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

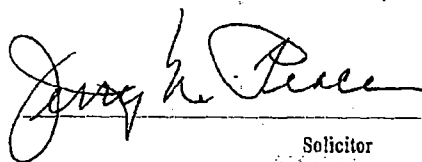
INDICTMENT FOR

FELONY DRIVING UNDER THE INFLUENCE
56-05-2945

At a Court of General Sessions, convened on the 4th day of November, 2011 the Grand Jurors of Greenwood County present upon their oath:

That Gerald Russell Gaines, did in Greenwood County, state aforesaid, on or about the 17th day of August, 2011 who, under the influence of alcohol, drugs, or the combination of alcohol and drugs, did drive a vehicle and when driving the said vehicle did an act forbidden by law or neglect any duty imposed by law, to wit: drove with reckless disregard for the safety of others, and/or failed to change the course of travel to avoid causing the accident, and/or failed to slow down to avoid causing the accident, and/or failed to keep a proper lookout, and/or failed to maintain his vehicle under proper control, which act of neglect proximately caused great bodily injury to another person, to wit: one Jimmy Albert Turner, in violation of the provisions of Section 56-5-2945 of the South Carolina Code of Laws, 1976, as amended.

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



Solicitor

Attest:
JERRY H. PEACE
SOLICITOR
GREENWOOD COUNTY
S. C.

WITNESSES

D. W. Turner
S C Highway Patrol

WARRANT NUMBER

2012GS2400541
DIRECT INDICTMENT

True Bill

DF

Foreman of the Grand Jury

Date: 3/30/12

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

March Term, 2012
Indictment # 12GS24-0541

THE STATE

vs.

Gerald Russell Gaines

INDICTMENT FOR

**FAILURE TO STOP FOR LAW
ENFORCEMENT VEHICLE
THAT RESULTED IN DEATH
56-05-0750(C)(2)**

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

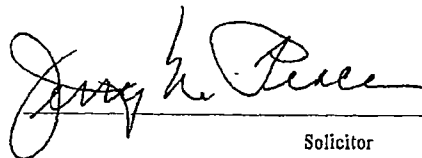
INDICTMENT FOR

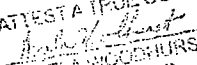
FAILURE TO STOP FOR LAW
ENFORCEMENT VEHICLE
THAT RESULTED IN DEATH
56-05-0750(C)(2)

At a Court of General Sessions, convened on the 30th day of March, 2012 the Grand Jurors of Greenwood County present upon their oath:

That Gerald Russell Gaines, did in Greenwood County, state aforesaid, on or about the 17th day of August, 2011 willfully and unlawfully while driving a motor vehicle on a public highway of South Carolina, in the county aforesaid, fail to stop when signaled to do so by a law enforcement vehicle by means of a siren or flashing light where death resulted to a person other than himself, in violation of Section 56-5-750(A) (C) (2), of the South Carolina Code of Laws, 1976, as amended.

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

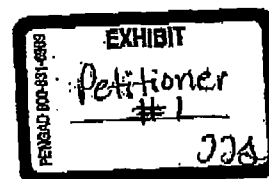

Solicitor

ATTEST A TRUE COPY

ANGELA WOODHURST
CLERK AND CS
GREENWOOD COUNTY
S. C.

PUBLIC DEFENDER

Circuit Defender for the Eighth Judicial Circuit
Abbeville, Greenwood, Laurens, and Newberry Counties
Suite 208, Park Plaza
600 Monument Street, Box P-133
Greenwood, South Carolina 29646
Phone: 864-229-9505 Fax: 864-227-1104

Shane Goranson
Assistant Public Defender
Abbeville County



September 26, 2011

Mr. Gerald Russell Gaines
C/o Abbeville County Detention Center
P.O. Box 9
Abbeville, South Carolina 29620

Re: State v. Gerald Russell Gaines
Our File Number: 01A11-00000138
Warrant Number(s): M-510949; M-5150950; M-510951; M-510952

Dear Mr. Gaines:

This letter is to acknowledge that this office has been appointed to your case, and I am the attorney who will be representing you. I will meet with you as soon as possible, either at the jail or at the courthouse, to discuss your case. In the meantime, however, please feel free to write me with any information that you believe that I should know. This office reviews and keeps all letters. I will take into account everything you tell me in a letter. Because of our schedules, this office cannot respond to every letter. Nevertheless, your letters can help us by letting us know what you want to achieve by our representation and by preparing us for meeting with you. In short, your letters will help me better represent you. However, please do not feel discouraged because you do not get a written response to every letter.

I am filing and serving the Rule 5 and Brady motions. These motions are the motions that require the prosecutor to inform us of the state's evidence against you and of any evidence that is favorable to you.

The purpose of this letter is to make you aware of some of the information that you need to know when charged with a crime(s) in General Sessions Court.

First, you should not talk to anyone, except your attorney about the facts of your case. You have a Constitutional right to remain silent and not give evidence against yourself. If you discuss your case with or write law enforcement, the prosecutor, or even your family members, then anything you say might be used against you in court and could make your case more difficult to resolve. If contacted by law enforcement, or if asked to participate in any line-ups, then you should tell the officer that you want to see your attorney and that you do not want to

waive any of your Constitutional rights.

Second, if you get out of jail, then you should contact the Public Defender Office immediately and (1) inform this office that you are out of jail, (2) provide you current and correct contact information, and (3) schedule an appointment. It is your responsibility to make sure that I know how to find you. Otherwise, if I am not able to locate you, then the prosecutor might get a bench warrant.

Third, you have the right to a jury trial. This right includes (1) the right to be presumed innocent, (2) the right to confront and cross-examine the witnesses against you, which means to require the state to call witnesses in open court so that you can hear the evidence against you and have me ask them questions, (3) the right to require the state to attempt to prove your guilt beyond a reasonable doubt, which is the highest standard in the court system, and (4) the right that the jurors verdict be unanimous. Please remember that the final decision whether to plead guilty or to have a jury trial is your decision. The discussion of plea offers later in this letter is merely to inform you of the process to expect and the importance of your court dates.

Fourth, it is your responsibility to know your court dates. When you went before the Magistrate or City Court Judge, you were given a court date. That date is your initial appearance date. If you are released from jail, then you will have to answer to a roll call on this date. This date supplied by a schedule prepared by the Eighth Circuit Solicitor's Office. At your initial appearance, you will be given your docket appearance date. If released and you fail to appear at these court dates or when requested by the prosecutor, then the prosecutor will get a bench warrant. Please remember that is almost impossible to get a validly issued bench warrant lifted. If you do not know your court dates, then please call this office.

Fifth, you need to know what will happen at these court dates in case you are released from jail before either court date. At the first appearance, a roll call will be conducted by the Solicitor's Office. During the roll call, the prosecutor will confirm whether you are represented by the Public Defender's Office. After roll, the prosecutor should provide a written plea offer and a response to the Rule 5 and Brady motions. If a complete response to the Rule 5 and Brady motions is not available, then the prosecutor should provide a list of outstanding materials. The written plea offer will remain valid until the end of the day your docket appearance is scheduled. Another roll call will occur at the docket appearance. If the plea offer is accepted by the docket appearance, then a time will be scheduled for the guilty plea. If the written plea offer is not accepted, then the offer could be withdrawn, and the prosecutor will place your case on a trial docket.

Sixth, you need to know that the initial and docket appearances are a part of a new docket management system that was recently introduced into the Abbeville court system by the Eighth Circuit Solicitor's Office. The docket management system sets time lines for law enforcement to send files to the Solicitor's Office. The Solicitor's Office is also required by law to at least attempt to contact the alleged victims in every case.

Seventh, if you are released from jail, then it is your responsibility to comply with any

conditions your bond. These conditions might include but would not be limited to restraining orders, travel restriction, and requirements that you live at a specific location.

Regarding preliminary hearings, this office typically does not request those hearings. There is not a constitutional right to a preliminary hearing. The main value of a preliminary hearing is to learn more about the state's case against you. Under the current discovery rules, however, the state's discovery response is the most effective means to learn about the state's case. In fact, the state's discovery response often contains information that is not discussed at the preliminary hearing. In addition, a preliminary hearing could harm your case because if the investigating officers have made a mistake in the investigation or have failed to consider certain evidence, then questions asked in the preliminary hearing could cause the state to do things to try to strengthen the case against you. Therefore, this office will not be requesting a preliminary hearing, and if one has been requested in your case, we will be telling the court that the hearing is not necessary.

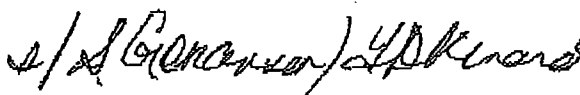
Regarding phone calls, while you are in jail our office will not discuss your case with you over the phone. Phone calls are recorded by the county detention centers. I make it to the Abbeville County Detention Center prior to every court term. We will discuss your case at this time.

Finally, if your economic status changes, then you should inform me. The court might review your continued qualification for a court appointed attorney.

Please write me with any questions, concerns, or information that you believe I should know. I will keep you posted on developments.

With kindest regards, I am

Yours very truly,



Shane Goranson

original

SOUTH CAROLINA LAW ENFORCEMENT DIVISION - URINE/BLOOD COLLECTION REPORT

Subject: Gaines Gerald Russell (24) Greenwood
 Last Name First Name Middle Name County of Arrest

Subject's Address: 14 Anderson St. 29626

Driver's License Number: _____ State: SC DOB: _____ Sex: M Race: W

Arresting Officer: A.W. Turner Agency: SLHP

Date of Arrest: 8/17/11 Time of Arrest: 1057 AM/PM Traffic Ticket Number: F154417

Date of Test: 8/17/11 Time of Test: 1850/1905 AM/PM Location of Collection: Self Regional Health Care

CHECK THE FOLLOWING (CHECK BOTH IF APPLICABLE)

- ☒ Subject is under arrest for Section 56-5-2930, 56-5-2933, 56-5-2945, 56-1-2120, 50-21-112, 50-21-113 or 23-31-415; or is in violation of Section 56-5-2945, 50-21-113 or 56-1-286 of the 1976 South Carolina Code of Laws as amended.
- ☒ Subject has been advised in writing of his/her Implied Consent Rights.

CHECK THE CORRECT ONE (ONLY ONE CAN APPLY)

- ☐ Subject has completed a valid breath test (DataMaster reading: _____) and the officer has reasonable suspicion that the subject is under the influence of drug(s) other than alcohol therefore a urine sample is requested.
- ☐ Subject has not completed a valid breath test and a voluntary blood sample has been requested to test for the presence of volatiles and/or drugs.
- ☐ Subject is unconscious or otherwise incapable of refusal (has not taken a breath test) and is considered informed, therefore, a blood sample is requested.
- ☐ A blood sample is requested by the arresting officer because a licensed medical person has informed the officer that the subject is unable to take a breath test at this time due to any reason deemed acceptable by that licensed medical person.

Name and Title of Licensed Medical Personnel: _____

(Please Print)

Signature of Licensed Medical Personnel: _____

- ☒ Subject is under arrest for, or in violation of, Section 56-5-2945 (Felony DUI) or 50-21-113 (Felony BUI), and, pursuant to Section 56-5-2946 or 50-21-116, a blood sample or a blood and urine sample is/are requested.
- ☐ A blood sample is requested by the subject for his/her own independent test.

THIS SECTION TO BE CHECKED BY SAMPLE COLLECTOR

- ☒ Using a non-ethanol prep, a blood sample was collected into an unused, uncontaminated vial and given directly to the arresting officer (or to the subject requesting sample for his/her independent test) after collection.
- ☒ A urine sample was collected into an unused, uncontaminated container and given directly to the arresting officer after collection.

Name of Licensed or Trained Collector: Deborah Page CPT / ASPT

(Please Print)

Signature of Licensed or Trained Collector: Deborah Page CPT / ASPT

FINAL CHECKS FOR LAW ENFORCEMENT OFFICER

- ☒ Sample collection was under my direct supervision.
- ☒ Sample container is properly labeled with the subject's name and time of collection.
- ☒ Sample is properly sealed and ready for transport.

Signature of Officer: A.W. TurnerDate: 8/17/11

Harold R. Gaines
 (Subject's Signature)

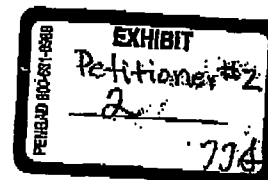
received a copy of this report on

8/17/11

Date

Copy to: Subject, Hospital, SLED

Case # 11-24-HP2-090	
SCDPS EVIDENCE	
Item #001	Record #TURNER
Name: GAINES, GERALD, RUSSELL	
	



4/10/12

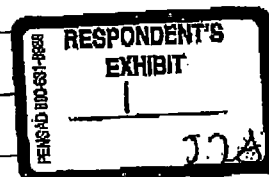
I Gerald Gaines decline an offer of 13 yrs

I understand I could be found guilty @ trial
& face a greater sentence.

Paul Orandy
Witness

Gerald R Gaines

Gerald Gaines



I Gerald Gaines, am in full agreement and understanding of the following statements:

- Chris Procht*
- 1) Ms. Drawdy has informed me of what the State of South Carolina is offering me.
 - Chris Procht*
2) Ms. Drawdy has informed me of the maximum sentences for the crime I am pleading guilty to committing.
 - 3) I understand that by pleading guilty I am giving up my right to a jury trial, my right to remain silent, my right to a defense, my right to cross-examine the witnesses against me, and the right to subpoena witness and documents.
 - 4) I understand that though the State of South Carolina may offer a recommendation, the presiding judge does not have to accept the recommendation and may sentence you to the maximum penalty prescribed by law.
 - 5) I understand that if I am pleading to a felony, I am informed of the possible consequences of doing so.
 - 6) I have been informed that there are costs associated with Probation, and if I accept an offered plea that includes probation, I will be responsible for the costs.
 - 7) I am informed that I may appeal my plea within 10 days of the plea.
 - 8) I am satisfied by the services of the attorney's who have worked on my cases.
 - 9) I have neither been forced, coerced, nor agreed under duress to accept this plea

Gerald Gaines
Print Name

4-10-12
Date

Gerald R. Gaines
Signature

