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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Sumter County

Clifton Newman, Circuit Court Judge

---

ASHERDON HOLLOWAY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002692

---

APPENDIX

---

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Columbia, SC 29211-1589

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF SUMTER	)	
ASHERDON HOLLOWAY,	)	
	)	TRANSCRIPT OF RECORD
PLAINTIFF,	)	C/A #: 2010-GS-43-00323
	)	
v.	)	
THE STATE OF SOUTH CAROLINA,	)	
	)	
DEFENDANT.	)	
_____	)	

February 16, 2012  
Sumter, South Carolina

BEFORE:                   HONORABLE R. FERRELL COTHRAN, PRESIDING

APPEARANCES:

Assistant Solicitor Jason Corbett  
Attorney for State of South Carolina

John C. Clark, Esquire  
Attorney for Asherdon Holloway

TAKEN BY MELISSA R. SINGLETARY  
CERTIFIED VERBATIM REPORTER

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EXHIBITS

(There were no exhibits marked in this hearing)

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1 Mr. Corbett: Your Honor may it please the court?

2 The Court: Yes sir.

3 Mr. Corbett: Your Honor this is the State of South  
4 Carolina versus Asherdon F. Holloway. Indictment 2010-GS-  
5 43-323. Mr. Holloway is before the Court on a multi count  
6 indictment. The pertinent counts to the plea today Your  
7 Honor are count one murder, count two assault and battery  
8 with intent to kill, and I believe it is count 4  
9 attempted armed robbery. He is represented by Attorney  
10 John Clark. Indicates he wishes to plead guilty to these  
11 charges.

12 Bailiff: Place your left hand on the Bible. State your  
13 name please.

14 Mr. Holloway: Asherdon Holloway.

15 Bailiff: Do you solemnly swear or affirm the testimony to  
16 the court will be the truth the whole truth and nothing  
17 but the truth so help you God?

18 Mr. Holloway: Yes sir.

19 The Court: Mr. Holloway, you want to plead guilty?

20 Mr. Holloway: Yes Your Honor I would.

21 The Court: Have you had enough time to talk to your  
22 lawyer about this?

23 Mr. Holloway: Yes sir.

24 The Court: Are you satisfied with his  
25 representation?

1 Mr. Holloway: Yes Your Honor

2 The Court: Do you have any complaints against him?

3 Mr. Holloway: No Your Honor.

4 The Court: You got any complaints about anybody at  
5 the solicitors office?

6 Mr. Holloway: No sir.

7 The Court: Anybody at law enforcement?

8 Mr. Holloway: No sir.

9 The Court: Anybody promised you anything or  
10 threatened you in anyway to get you to plead guilty?

11 Mr. Holloway: No sir they have not.

12 The Court: So you are pleading guilty freely and  
13 voluntarily?

14 Mr. Holloway: Yes sir.

15 The Court: You understand for murder it carries  
16 thirty to life?

17 Mr. Holloway: Yes sir.

18 The Court: It is a no parole offense. You've got to  
19 serve day for day. You understand?

20 Mr. Holloway: Yes sir.

21 The Court: And assault and battery with intent to  
22 kill is twenty years and it's a eighty-five percent, do  
23 you understand that?

24 Mr. Holloway: Yes sir.

25 The Court: Attempted armed robbery is the same

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1 thing. It's twenty years. You understand that?

2 Mr. Holloway: Yes Your Honor.

3 The Court: Are you under the influence of alcohol or  
4 drugs today?

5 Mr. Holloway: No sir I'm not.

6 The Court: Do you have any mental diseases that will  
7 keep you from understanding what you're doing?

8 Mr. Holloway: No, sir.

9 The Court: How far did you go in school?

10 Mr. Holloway: Twelfth grade.

11 The Court: You finished high school?

12 Mr. Holloway: Yes sir.

13 The Court: By pleading guilty you're giving up your  
14 Constitutional Right under the fifth amendment to remain  
15 silent because you're telling me you're guilty. Do you  
16 understand that?

17 Mr. Holloway: Yes sir.

18 The Court: You're also giving up your right to a  
19 jury trial. In a trial you would be presumed innocent.  
20 The State would have the burden of proving you guilty  
21 beyond a reasonable doubt to all twelve jurors. You would  
22 be able to sit at that table over there with your  
23 attorney and confront the witnesses that would testify  
24 against you. You could cross examine each one of the  
25 states witnesses. He could subpoena witnesses to testify

1 on your behalf. He could put up any defenses you have.  
2 If you plead guilty, you give every bit of that up. Do  
3 you understand?

4 Mr. Holloway: Yes Your Honor.

5 The Court: You're also giving up any appeals that  
6 could come out of that trial by pleading guilty.

7 Mr. Holloway: Yeah I understand.

8 The Court: If you want to appeal this guilty plea  
9 and sentence today, you or your lawyer must file it with  
10 the Clerk's office within ten (10) days. Do you  
11 understand?

12 Mr. Holloway: Yes Your Honor.

13 The Court: Do you want to ask me any questions  
14 concerning your rights?

15 Mr. Holloway: No sir.

16 The Court: Okay. The Solicitor is going to give me  
17 the facts to this case and I'm going to come back and  
18 talk to you about it okay?

19 Mr. Holloway: Yes Your Honor.

20 Mr. Corbett: Thank you Your Honor. Your Honor also  
21 if I may mention Det. Irene Culick from the Sumter Police  
22 Department is present with me today. If there is any  
23 information or anything that I leave out on the facts  
24 that the court needs or if she may feel that I left out  
25 she's available to help us with any context or

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1 background. Judge this incident took place on May the 8<sup>th</sup>  
2 of 2009 here in Sumter County at the residence of Cabrall  
3 Archie Sr. Mr. Archie is present in the court room at  
4 this time. On the late evening of May 8, 2009 Mr. Archie  
5 was at his home rocking his child. He had an infant child  
6 Cabrall Archie Jr. There was a knock on the door. He went  
7 to the door. The defendant who is standing before you,  
8 Mr. Holloway, was the person at the door. There was a  
9 brief conversation at the door. Mr. Archie really did not  
10 know, knew who he was, but didn't know him well.  
11 Indicated that he didn't have anything there for him. At  
12 this point, Mr. Holloway produced a handgun and opened  
13 fire at the doorway of the residence. Judge as near as we  
14 can tell, one of those early shots struck Mr. Archie's  
15 infant son that he was holding. At the front door of the  
16 house, as soon as you enter the front door of the house  
17 just to the right is a bedroom door. Mr. Archie is and we  
18 suspect that one of Mr. Archie's wounds was a bullet that  
19 passed through the child. So he is shot initially at his  
20 doorway. As near as we can tell he attempts to go into  
21 that bedroom in an effort to avoid the gunfire. The child  
22 is dropped in that room because Mr. Archie Sr. has a  
23 wound to his shoulder. The defendant, Mr. Holloway,  
24 follows him into that room continuing to fire. Mr. Archie  
25 manages to get back to the door and as he's trying to go

1 out the front door Mr. Holloway shoots him again causing  
2 him to collapse down the front steps of his house. I  
3 believe he had four bullet wounds at this point. Mr.  
4 Holloway fled from the scene. The infant child did make  
5 it to the hospital but died a short time there after. A  
6 terrible bullet wound that entered the back and exited  
7 the abdomen. Mr. Archie still is suffering from the  
8 effects of the gunshots his hospitalization, his  
9 rehabilitation took a long time. If I remember correctly  
10 I believe he still has one of the bullets in him. Judge  
11 just a terrible terrible situation. As I said Mr. Archie  
12 Sr. is shot in the back and left for dead on his steps.  
13 Judge making the matter worse there were other children  
14 who were in the house. Fortunately, they were at the  
15 other end of the house and were not in the line of  
16 gunfire. As police commenced the investigation they began  
17 to put the pieces of it together. There were a number of  
18 co-defendants arrested in this case. Individuals charged  
19 as accessories to this crime. We believe that at least  
20 two other individuals were at the location with Mr.  
21 Holloway but did not enter the residence. We believe they  
22 were standing in the yard way. We also talked with  
23 individuals that drove Mr. Holloway to the hospital  
24 emergency room in Manning. He injured himself with the  
25 handgun during the shooting. We believe that he went to

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1 Manning and we believe that the evidence and statements  
2 show that he went to Manning and lied about the nature of  
3 the injury to avoid being caught. Judge, in addition to  
4 the statements from the accessories and other individuals  
5 putting Mr. Holloway as the shooter in the case Mr.  
6 Archie has identified that Mr. Holloway is the individual  
7 who shot both him and his infant child. Also, Judge, Mr.  
8 Holloway gave a statement I believe he gave more than one  
9 statement but he eventually got to the point where he  
10 admitted to officers what he had done. Even in one  
11 statement saying "I saw the child. Knew I shouldn't have  
12 shot but I was in the zone." Judge just a tragic  
13 situation all the way around. Also, pleading to the  
14 count of the attempted armed robbery, our investigation  
15 revealed that was the motive to go to Mr. Archie's house  
16 to begin with. So for that reason Mr. Holloway is  
17 standing here today charged with the murder of the infant  
18 child, Cabrall Archie Jr., the assault and battery with  
19 intent to commit, assault and battery with intent to kill  
20 against Cabrall Archie Sr., and also the attempted armed  
21 robbery of Cabrall Archie Sr. And Judge just for factual  
22 basis, Mr. Archie did indicate that Mr. Holloway was  
23 basically asking to turn over whatever goods or monies he  
24 had.

25 The Court: Mr. Holloway, those facts correct sir?

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1 Mr. Holloway: Yes sir.

2 The Court: Are you pleading guilty because you are  
3 guilty?

4 Mr. Holloway: Yes sir.

5 The Court: You shot this man and his baby?

6 Mr. Holloway: Yes sir.

7 The Court: And went in with the attempt to rob him?

8 Mr. Holloway: Yes sir.

9 The Court: I find the factual basis for your plea is  
10 freely and voluntarily entered into. You've had advice  
11 of competent counsel whom you say you are satisfied and I  
12 accept your plea. Does anybody want to tell me anything?  
13 I'll come back to you. Does anybody want to tell me  
14 anything?

15 Mr. Corbett: Yes sir Your Honor. Present with us in  
16 the courtroom today is Mr. and Mrs. Archie and I believe  
17 that they did want to address the court. And I asked them  
18 to address you concerning this matter.

19 The Court: Yes sir.

20 Mr. Archie Sr.: How you doing? My name Cabrall  
21 Archie. I just want to say that they took something away  
22 from me that I can't receive back but memories. I just  
23 want to see that they get justice today and hopefully he  
24 will get life so he can deal with the pain I'm going  
25 through.

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1 The Court: Thank you sir.

2 Mrs. Archie: Okay. I didn't ...

3 Mr. Corbett: First of all say your name.

4 Mrs. Archie: Sorry. I'm Carmen. I'm Cabrall mother.  
5 I have a lot to say today but I really didn't know I was  
6 really confused but the only thing I have to say he left  
7 me stuck in '09. This is 2012 I'm still stuck back in  
8 '09. The time he came to my house and took my baby. I  
9 never hold him again. I never get to to even get to see  
10 him breath in my face. I always have that. I'll never  
11 have any I will never have peace in my own home wondering  
12 is there may be another man coming to the door and take  
13 one of my kids from me again. I deal with this everyday  
14 with a smile on my face it is hurting me and tearing me  
15 up inside so bad that I have to smile like it it's okay  
16 but it's not. He ain't nothing but been one. He just now  
17 been saying mommy. And when he call me mommy when I left  
18 that night I ain't seen him since that night and that's a  
19 hurting when you leave your home where your child is  
20 comfortable and safe and you come back and they's not  
21 there no more. So I just want them to know how bad they  
22 hurt me and my other kids. We go through this everyday  
23 not one day it's every day that I cry every single day  
24 myself to sleep.

25 Mr. Corbett: Do you need anything?

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1 The Court: Do we need to take a break.

2 Mr. Corbett: No sir Judge.

3 The Court: Mr. Clark.

4 Mr. Clark: Thank you, Your Honor. If it please the  
5 court. Your Honor, I was appointed to represent Mr.  
6 Holloway. Here today with his mother, Ms. Pamela  
7 Holloway and a very close family friend Ms. Mary Lewis.  
8 Now I want to begin by telling this family how sorry I am  
9 personally and how sorry I believe Mr. Holloway is for  
10 what happened. I can only imagine what they're going  
11 through. They're good people this should never have  
12 happen. In twenty-one years of practicing law I think  
13 this is perhaps the worst set of facts that I've ever  
14 seen. So I just want to be clear that I and my client are  
15 very very sorry and hurt by what happened. Now, Mr.  
16 Holloway stands before you today admitting what he did.  
17 He had a couple of other lawyers before I got the case.  
18 To be honest with you I was expecting to see a monster  
19 when I got there and I basically saw a young boy and I  
20 just could not make sense of what I read and what  
21 happened because what happened didn't fit who I was  
22 talking to. Your Honor, he comes in here today this is  
23 not a plea bargain. He is pleading to what he is charged  
24 with. From day one he told me that he knew he was  
25 responsible for what happened. He didn't intend for it to

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1 happen that way but he knew he was going to have to  
2 accept responsibility for it. I talked with his mother  
3 shortly after that and she came to my office. I really  
4 didn't know what to expect but I was surprised when she  
5 came and did not offer any excuse for him. She knew what  
6 he did was wrong and how horrible it was and just willing  
7 to accept what punishment you have for this young man  
8 today. Your Honor, he understands after extensive  
9 conversation that whether he ever sees the light of day  
10 again rests in your hands here today. While it's a  
11 horrible horrible thing that nobody ever wants, I  
12 believe, Your Honor, there are mitigating factors  
13 regarding this young man that would tip the scales and  
14 make it appropriate to give him a thirty year sentence  
15 instead of life. I have to ask you for that today. As  
16 hard as that is I have to look at the factors in his life  
17 and present those to you today the best that I can do it.  
18 Your Honor I want to begin by saying Mr. Holloway was  
19 eighteen years old when this happened. This happened on  
20 May 8<sup>th</sup> of '09. He was set to graduate from high school  
21 the next month. In fact, after it happened, he wasn't  
22 apprehended right away, he went back to school and he did  
23 graduate. He didn't have any adult record at this time.  
24 He never been in trouble though he did have a juvenile  
25 record, nothing violent, nothing violent. He had hopes

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1 and aspirations just like a lot of young people do. He  
2 said he wanted to be a cinematographer he wanted to be a  
3 writer, but at thirteen years of age the streets claimed  
4 him and seven, eight years later we're here before you on  
5 a most tragic case that anyone could imagine. Not making  
6 excuses but he didn't have the best of upbringing. As you  
7 notice his mother's here and family friend is here but  
8 his dad is not here. His dad is in New York. Mr. Holloway  
9 moved down here when he was eight years old with his  
10 mother. His mother was involved in a relationship with a  
11 man other than his father they came down here together.  
12 Shortly after coming down that relationship fell apart.  
13 Ms. Holloway found herself struggling. She found herself  
14 in a homeless shelter with her son. She was able by the  
15 grace of God to get on her feet somewhat. She got an  
16 apartment over at Bernie Circle apartments which has its  
17 own issues. Even after she got the apartment she  
18 struggled. Mr. Holloway recounted to me how it would be a  
19 common occurrence to have the lights turned off. To have  
20 the power turned off, be in the dark, not have heat, not  
21 have air conditioning, eating bologna everyday the way he  
22 described it. And he told me that because of the  
23 environment that he grew up in the only people he came  
24 into contact with in his neighborhood were involved in  
25 the street life. And at thirteen years of age is when he

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1 got involved. Somehow he managed to continue going to  
2 school. He was in the twelfth grade. He went to Mr.  
3 Archie's house to rob him because he believed that Mr.  
4 Archie was involved in a drug trade. That's what he tells  
5 me. He had no intentions of hurting anyone. He didn't  
6 even know a small baby was in the house. He rode there  
7 with some people whom we believe were somewhat involved  
8 and knew what was going to happen and after all the  
9 commotion happened and they heard it they drove off and  
10 left him there. He said that he went to rob Mr. Archie  
11 because he felt like a nobody. He said he didn't have  
12 what he considered to be the basic necessities. His  
13 friends they had cars they had clothes they had, they  
14 seemed to have so much and he said he didn't feel like he  
15 had anything. So that's why he wanted to rob someone. He  
16 said he had the gun before. Your Honor he said when he  
17 got to the door he expected Mr. Archie to be an easy  
18 victim but for some reason Mr. Archie was very cautious  
19 and proceeded very carefully, would not open the door.  
20 And when it didn't go as planned he said he attempted to  
21 wound Mr. Archie and he thought that Mr. Archie would go  
22 down not kill him but wound him and he thought he would  
23 go down and give him what he had of value. He said what  
24 surprised him is after he had fired the weapon Mr. Archie  
25 continued to, he did not go down. Apparently he ran to

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1 his child's room. Mr. Holloway didn't know that. He  
2 continued to fire and without intent Cabrall Archie Jr.  
3 was shot. Your Honor, I don't understand how a person can  
4 go from never being involved in something like this to  
5 going to this extreme, but it has happened. Your Honor he  
6 was apprehended a little over a month and a half later  
7 through detective work. He was apprehended in Georgia he  
8 was down at his uncles house. He didn't fight rebel  
9 extradition. He waived extradition the very day or the  
10 next day he was arrested. He came back, I think it was  
11 Detective Culick who went down, she was one of the  
12 officers that went down and picked him up. He did confess  
13 to her, admit, he gave two confessions. I think the  
14 second, the first confession he admitted to what he did  
15 he left out some details. The second confession he  
16 included all the details. Your Honor he knows that he's  
17 caused pain on this child's mother that can never be  
18 taken away. He knows he's caused pain to Mr. Archie that  
19 could never change. He knows he's caused pain to this  
20 family and every decent person who has a heart he knows  
21 he's caused pain. And he's going to have to pay a serious  
22 price for it. He was once a young man who had aspirations  
23 but he knows those will never materialize now. That's  
24 through no fault of anybody but his own. Since he's been  
25 in jail he hadn't had a problem. He hadn't caused any

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1 problems. He tells me that he has been the victim of two  
2 assaults by other inmates in jail. That once word got out  
3 with what he was charged with he's been assaulted out  
4 there and he understands that's going to come with the  
5 territory. Your Honor, if you see fit to sentence this  
6 young man to something other than life, when he does get  
7 out of jail he'll most likely have grey hair like I do.  
8 The prime of his life will be gone. And just from my  
9 interaction with him I think after that time is served I  
10 don't think society will be at risk. I don't think that  
11 it's in his character to do this again. He was just  
12 caught up way over his head and once the set of events  
13 started in motion he just did not have the fortitude to  
14 stop it. So I I'd ask you to consider how very young he  
15 was. That he was only eighteen. I'd also ask you to  
16 consider the fact that he says that he did not  
17 intentionally shoot the child. That the child was shot as  
18 a by product of the problem. So, Your Honor, he was very  
19 young without any prior history of violence, and so I  
20 don't believe that if he's ever released there would be a  
21 likelihood that he will commit another crime of this  
22 nature. Your Honor, he has indicated that he would like  
23 to address the court and then would ask that you hear  
24 from his mother and her friend here today.

25 The Court: Yes sir.

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1 Mr. Holloway: Your Honor, I'd like to take this  
2 moment to apologize to the family. I accept full  
3 responsibility for my actions. I would like to express  
4 how remorseful I am for the child. I would ask you to  
5 grant me thirty years and by the time I finish completing  
6 my sentence I will just ...

7 The Court: Thank you sir.

8 Ms. Holloway: My name is Pamela Holloway. I'm his  
9 mother ... (to upset, crying to start).

10 Ms. Lewis: My name is Mary Lewis. I'm Asherdon's  
11 and Pamela, his mother's friend. I knew Asherdon for a  
12 very long time. I am a friend of theirs and I'm a  
13 grandmother to this family. Asherdon would have never  
14 done what he done but your company you keep with you  
15 whatever you do he has to pay for it. I realize that. But  
16 Asherdon is a young child. Never was taught, never knew  
17 anything. His mother I knew her. I go to church with her.  
18 Pastor Boone was our pastor. Tracy was his wife. She  
19 always take up time with him. She always talked to him  
20 about the streets and what he's doing but I also know  
21 today Your Honor because I has children, eight of them,  
22 your company you keep with you whatever you do you has to  
23 pay the price but I do know that Asherdon today he is a  
24 innocent person he never would have done it but his  
25 company he kept cause him to be where he is today. And I

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1 plead to the Court today that you will not, that they  
2 will not give him life because everybody deserves  
3 something in life that never done nothing in their life.

4 The Court: Thank you ma'am.

5 Mr. Clark: Your Honor we just ask for the mercy of  
6 the Court and again emphasize he was eighteen and never  
7 has been in any violent incidences before and did not  
8 intentionally cause this child's death. That's all we  
9 have Your Honor. Judge, I'm just passing you some  
10 discovery I was provided and just for the reason that we  
11 explained why he went there, why he thought he was there.  
12 For whatever that is worth, Your Honor.

13 The Court: Taking into consideration the fact that  
14 you have not put this family through trial but you did a  
15 terrible thing that day you took something from them that  
16 I wish I could give back to them but I can't. I've shown  
17 about as much mercy as I can give you but on the crime of  
18 murder the sentence of the court is you are committed to  
19 the State Department of Corrections for a term of fifty  
20 (50) years. On the Assault and Battery with Intent to  
21 Kill is twelve (12) years to run consecutive and  
22 attempted armed robbery is fifteen (15) years to run  
23 concurrent along with the Assault and Battery with Intent  
24 to Kill. Good luck to you.

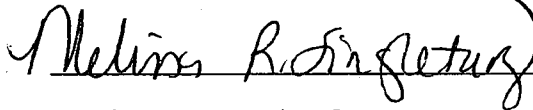
25 Mr. Corbett: Thank you Judge.

**CERTIFICATE**

This is to certify that the hearing in the matter of Asherdon Holloway vs. State of South Carolina, consisting of Nineteen (19) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this \_\_\_\_ day of August, 2012.



Melissa R. Singletary  
Certified Court Reporter

Notary Public for South Carolina  
My Commission Expires: 3-5-2014

WITNESSES

Irene Culick, Sumter Police Dept.

2

DOCKET NO. 2010-GS-43-0323

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2010

THE STATE

ARREST WARRANT NUMBER

- M193734, M193735, M193736, M193737, M001116,
- M001113, M001114, M001115, M001137, M001138,
- M001139, M001140, M001141, M001142, M001143,
- M001144, M001157, M001158, M001159, M001125,
- M001126, M001127, M001128, M001117, M001118,
- M001119, M001120, M001121, M001122, M001123,
- M001124, M001153, M001154, M001155, M001156

ACTION OF GRAND JURY

True 3:11

*Jerry A. Thompson Jr.*  
 Foreperson of Grand Jury  
 Date: 2-18-10

VERDICT

ASHERDON FARI HOLLOWAY  
 vs.  
 JESSICA PATRECE BROWN  
 MARCUS ANDREW HAYNESWORTH  
 HARRY JAVON PETERSON  
 QUINTON NAPOLEAN WELDON  
 CAMERON CAPEL DAVIS  
 TERRANCE DEANGELO HAYNESWORTH  
 KENYA A. HAYNESWORTH-KENNEDY

Indictment for

Murder / Murder, Attempted Armed Robbery; Assault and Battery with Intent to Kill; Possession of a Firearm during commission of a Violent Crime; Accessory Before Fact (3 counts); Accessory After the Fact (3 Counts); Criminal Conspiracy.

C. KELLY JACKSON, SOLICITOR

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SUMTER )

INDICTMENT FOR

Murder; Attempted Armed Robbery; Assault and Battery with Intent to Kill; Possession of a Firearm during commission of a Violent Crime; Accessory Before Fact (3 counts); Criminal Conspiracy; Obstruction of Justice.

CERTIFIED TRUE AND CORRECT  
 OF ORIGINAL FILE

*Barbara Stanger*  
 DEPUTY CLERK OF COURT  
 SUMTER COUNTY  
 SOUTH CAROLINA

At a Court of General Sessions, convened on February 18, 2010 the Grand Jurors of

SUMTER County present upon their oath:

COUNT ONE

MURDER

That Asherdon Fari Holloway did in Sumter County, on or about May 8, 2009, willfully, feloniously, and intentionally kill the victim, Ca'Brall Archie, Jr., with malice aforethought, either express or implied, by means of shooting the victim in the back, and the victim did die as a proximate result thereof on or about May 11<sup>th</sup>, 2009, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

COUNT TWO

ATTEMPTED ARMED ROBBERY

That Asherdon Fari Holloway did in Sumter County on or about May 8, 2009, while armed with a deadly weapon, to wit: a firearm, attempt to take and carry away the personal property from or in the immediate presence of Ca'Brall Archie, Sr. with intent to deprive him of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

COUNT THREE

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That Asherdon Fari Holloway did in Sumter County, on or about May 8, 2009, possess a firearm, or visibly display what appeared to be a firearm, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

COUNT FOUR

ASSAULT AND BATTERY WITH INTENT TO KILL

That Asherdon Fari Holloway did in Sumter County, on or about May 8, 2009, commit an unlawful act of violent injury with malice aforethought, either express or implied, upon the person of Ca'Brall Archie, Sr. by shooting said victim with a firearm, in violation of Section 16-03-0620, S. C. Code of Laws, 1976, as amended.

COUNT FIVE

ACCESSORY BEFORE THE FACT TO A FELONY

That Quinton Napoleon Weldon, Terrence Deangelo Haynesworth, Marcus Andrew Haynesworth and Cameron Capel Davis did in Sumter County, on or about May 8, 2009, advise or agree with or urge or hire or in some way aide, counsel or encourage the principal felon, to wit: Asherdon Fari Holloway, to commit the felony of Murder, but were not present when the crime was committed, in violation of the Common Law and Section 16-01-0040, S. C. Code of Laws, 1976, as amended.

*P. Kelly Jackson*

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR MURDER, ATTEMPTED ARMED ROBBERY, ASSAULT AND BATTERY WITH INTENT TO KILL, POSSESSION OF A FIREARM DURING COMMISSION OF A VIOLENT CRIME, ACCESSORY BEFORE THE FACT (3 COUNTS), ACCESSORY AFTER THE FACT (3 COUNTS), CRIMINAL CONSPIRACY AND OBSTRUCTION OF JUSTICE WITH THE AFORESAID NAME OF ASHERDON FARI HOLLOWAY, JESSICA PATRECE BROWN, MARCUS ANDREW HAYNESWORTH, HARRY JAVON PETERSON, QUINTON NAPOLEAN WELDON, CAMERON CAPEL DAVIS, TERRANCE DEANGELO HAYNESWORTH AND KENYA A. HAYNESWORTH-KENNEDY SHOWN THEREON:

**COUNT SIX**

**ACCESSORY BEFORE THE FACT TO A FELONY**

That Quinton Napoleon Weldon, Terrence Deangelo Haynesworth, Marcus Andrew Haynesworth and Cameron Capel Davis did in Sumter County, on or about May 8, 2009, advise or agree with or urge or hire or in some way aide, counsel or encourage the principal felon, to wit: Asherdon Fari Holloway, to commit the felony of Attempted Armed Robbery, but were not present when the crime was committed, in violation of the Common Law and Section 16-01-0040, S. C. Code of Laws, 1976, as amended.

**COUNT SEVEN**

**ACCESSORY BEFORE THE FACT TO A FELONY**

That Quinton Napoleon Weldon, Terrence Deangelo Haynesworth, Marcus Andrew Haynesworth and Cameron Capel Davis did in Sumter County, on or about May 8, 2009, advise or agree with or urge or hire or in some way aide, counsel or encourage the principal felon, to wit: Asherdon Fari Holloway, to commit the felony of Assault and Battery with Intent to Kill, but were not present when the crime was committed, in violation of the Common Law and Section 16-01-0040, S. C. Code of Laws, 1976, as amended.

**COUNT EIGHT**

**CRIMINAL CONSPIRACY**

That Quinton Napoleon Weldon, Terrence Deangelo Haynesworth, Marcus Andrew Haynesworth and Cameron Capel Davis did in Sumter County on or about May 8, 2009 combine with Asherdon Holloway, each other and/or with other persons, for the purpose of accomplishing a criminal or unlawful object or an object that is neither criminal nor unlawful through criminal or unlawful means, to wit: Armed Robbery, in violation of Section 16-17-410, S. C. Code of Laws, 1976, as amended.

**COUNT NINE**

**ACCESSORY AFTER THE FACT TO A FELONY**

That Terrence Deangelo Haynesworth, Jessica Patrece Brown, Harry Javon Peterson and Kenya A. Haynesworth-Kennedy did in Sumter County on or about May 9, 2009, knowing of the commission and completion of the felony of Murder, by the principal felon, Asherdon Fari Holloway, harbor or assist such felon after the fact with the intention of enabling the felon to escape detection or arrest or otherwise avoid the consequences of the crime, in violation of the crime of Accessory After the Fact in commission of the felony.

*P. Kelly Jackson*

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR MURDER, ATTEMPTED ARMED ROBBERY, ASSAULT AND BATTERY WITH INTENT TO KILL, POSSESSION OF A FIREARM DURING COMMISSION OF A VIOLENT CRIME, ACCESSORY BEFORE THE FACT (3 COUNTS), ACCESSORY AFTER THE FACT (3 COUNTS), CRIMINAL CONSPIRACY AND OBSTRUCTION OF JUSTICE WITH THE AFORESAID NAME OF ASHERDON FARI HOLLOWAY, JESSICA PATRECE BROWN, MARCUS ANDREW HAYNESWORTH, HARRY JAVON PETERSON, QUINTON NAPOLEAN WELDON, CAMERON CAPEL DAVIS, TERRANCE DEANGELO HAYNESWORTH AND KENYA A. HAYNESWORTH-KENNEDY SHOWN THEREON:

**COUNT TEN**

**ACCESSORY AFTER THE FACT TO A FELONY**

That Terrence Deangelo Haynesworth, Jessica Patrece Brown, Harry Javon Peterson and Kenya A. Haynesworth-Kennedy did in Sumter County on or about May 9, 2009, knowing of the commission and completion of the felony of Attempted Armed Robbery, by the principal felon, Asherdon Fari Holloway, harbor or assist such felon after the fact with the intention of enabling the felon to escape detection or arrest or otherwise avoid the consequences of the crime, in violation of the crime of Accessory After the Fact in commission of the felony.

**COUNT ELEVEN**

**ACCESSORY AFTER THE FACT TO A FELONY**

That Terrence Deangelo Haynesworth, Jessica Patrece Brown, Harry Javon Peterson and Kenya A. Haynesworth-Kennedy did in Sumter County, on or about May 9, 2009, knowing of the commission and completion of the felony of Assault and Battery with Intent to Kill, by the principal felon, Asherdon Fari Holloway, harbor or assist such felon after the fact with the intention of enabling the felon to escape detection or arrest or otherwise avoid the consequences of the crime, in violation of the crime of Accessory After the Fact in commission of the felony.

**COUNT TWELVE**

**OBSTRUCTION OF JUSTICE**

That Terrence Deangelo Haynesworth, Kenya Arisha Haynesworth-Kennedy and Harry Javon Peterson did in Sumter County on or about June 4, 2009, intentionally do an act which prevented, obstructed, impeded, or hindered the administration of justice, to wit: gave false statements to law enforcement, in violation of the Common Law offense of Obstruction of Justice.

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

*P. Kelly Jackson*

SOLICITOR

STATE OF SOUTH CAROLINA

1063

IN THE COURT OF GENERAL SESSIONS

30 to life

25

COUNTY OF Sumter VS. STATE

Asherdon Fari Holloway

AKA:

Race: 2 Sex: M Age: 21

DOB: -1990 SS#:

Address:

City, State, Zip: Sumter, SC 29150

DL#: SID#:

\*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Murder

INDICTMENT/CASE#: 2010-GS-43-0323

A/W#: M193734

Date of Offense: 5/8/2009

S.C. Code § : 16-03-0010

CDR Code #: 0116

CERTIFIED TRUE COPY SENTENCE SHEET OF ORIGINAL FILE

CONVICTED OF or PLEADS DEPUTY CLERK OF COURT

in violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # SOUTH CAROLINA

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Corbett, Jason W 065340 Defendant Attorney for Defendant 64296 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 50 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable\*; the balance is suspended with probation for

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

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP days/hours Public Service Employment

Total: \$ plus 20% fee: \$ Payment Terms: Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund Other:

Recipient: \*Fine:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

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

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

Clerk of Court/ Deputy Clerk James C. Campbell Court Reporter: Melissa Singletary SCCA/217 (03/2011)

Presiding Judge: [Signature] Judge Code: 2144 Sentence Date: 2-16-12

STATE OF SOUTH CAROLINA

COUNTY OF Sumter
STATE VS. Asherdon Fari Holloway
AKA:
Race: 2 Sex: M Age: 21
DOB: 1990 SS#:
Address:
City, State, Zip: Sumter, SC 29150
DL#: SID#:

\*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Assault and Battery with Intent to Kill

IN THE COURT OF GENERAL SESSIONS

0-20
INDICTMENT/CASE#: 2010-GS-43-0323
A/W#: M193735
Date of Offense: 5/8/2009
S.C. Code §: 16-03-0620
CDR Code #: 0014

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-03-0620 of the S.C. Code of Laws, bearing CDR Code # 0014
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
ATTEST: Corbett, Jason W SC Bar# 065340 Defendant Attorney for Defendant SC Bar# 4296

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

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

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

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

SPECIAL CONDITIONS:

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

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

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

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

Clerk of Court/ Deputy Clerk James C. Campbell
Court Reporter: Melissa Singletary
SCCA/217 (03/2011)

Presiding Judge Judge Code: Sentence Date: 02-16-12

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Sumter
STATE VS.

0-20
INDICTMENT/CASE#: 2010-GS-43-0323

Asherdon Fari Holloway

A/W#: M193736

AKA:
Race: 2 Sex: M Age: 21

Date of Offense: 5/8/2009

DOB: -1990 SS#:
Address:

S.C. Code §: 16-11-0330(B)
CDR Code #: 0026

City, State, Zip: Sumter, SC 29150
DL#: SID#:

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was TO: Attempted Armed Robbery

CONVICTED OF or PLEADS

in violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

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

ATTEST: Corbett, Jason W SC Bar# 165340 Defendant
Attorney for Defendant SC Bar# 64296

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

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

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
days/hours Public Service Employment

Payment Terms:
Set by SCDPPPS
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling

Recipient:
\*Fine: \$

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

Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

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

Clerk of Court/ Deputy Clerk James C. Campbell
Court Reporter: Melissa Singletary
SCCA/217 (03/2011)

Presiding Judge Judge Code: 2144
Sentence Date: 02-16-12

STATE OF SOUTH CAROLINA  
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

RECORDED  
2014 FEB 24 AM 10:47

JAMES C. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

2014-CP-43-318

Asherdon Holloway

Petitioner,

-vs-

State of South Carolina

Respondent,

CERTIFIED TRUE COPY  
OF ORIGINAL FILE  
Indict. No. 2010-GS-43-323

*Barbara Stage*  
DEPUTY CLERK OF COURT  
SUMTER COUNTY, SOUTH CAROLINA

PETITIONER'S MEMORANDUM IN  
SUPPORT IF APPLICATION FOR

POST CONVICTION RELIEF PURSUANT

TO §§17-27-20 thru 17-27-160

COMES NOW, Asherdon Holloway, pro-se, seeking relief in this Court pursuant to S.C. Code Ann. §§17-27-20 thru 17-27-160, claiming that his rights have been violated in a number of ways, including but not limited to his Sixth Amendment right to the effective Assistance of Counsel as well as his Fourteenth Amendment right Due Process of Law.

The issues, statement of facts and citations of authorities relied on herein will show unto this Honorable Court Petitioner's entitlement to the relief sought herein.

/s/ *Asherdon Holloway*  
Asherdon Holloway

FORM 5

STATE OF SOUTH CAROLINA

RECORDED

County of Sumter ) IN THE COURT OF COMMON PLEAS

2014 FEB 24 AM 10:47

Asherdon Holloway #349764 )  
JAMES C. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

2014-CP-43-378

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

v. )

State of South Carolina )

CERTIFIED TRUE COPY  
OF ORIGINAL FILE  
**APPLICATION FOR**  
DEPUTY CLERK OF COURT  
**POST-CONVICTION RELIEF**  
SOUTH CAROLINA

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 Broad River Correctional Institution, 4460  
Broad River Rd., Columbia, SC. 29210
2. Name and location of Court which imposed sentence \_\_\_\_\_  
Sumter County, General Sessions
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
(a) 2010-GS-43-00323, murder, ABWIK and attempted robbery

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

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

(a) February 16, 2012 (50) fifty years for murder, (12) years  
ADWIK (consecutive) and (15) concurrent for robbery  
(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty 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?

yes

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

(a) the name of each Court to which you appealed:  
i. South Carolina Court of Appeals  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_

(b) the result in each such Court to which you appealed:  
i. denied relief  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_

(c) the date of each such result:  
i. unknown  
ii. JANUARY 22, 2014  
iii. \_\_\_\_\_

(d) if known, citations of any written opinion or orders entered pursuant to such results:  
i. none  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_

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

(a) n/a

- (b) \_\_\_\_\_  
 (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ineffective assistance of counsel  
 (b) involuntary guilty plea  
 (c) denial of due process
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see attached memorandum  
 (b) see attached memorandum  
 (c) see attached memorandum
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no  
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no  
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no  
 (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. n/a  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_  
 iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- i. n/a  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof:

i. \_\_\_\_\_ n/a

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. \_\_\_\_\_ n/a

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. \_\_\_\_\_ n/a

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

\_\_\_\_\_ first filing for PCR

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

(a) which grounds have been presented:

i. \_\_\_\_\_ n/a

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_ n/a

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

- (a) first filing for post conviction relief  
 (b) \_\_\_\_\_  
 (c) \_\_\_\_\_

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

- (a) your arraignment and plea? yes  
 (b) your trial, if any? ~~xxx~~  
 (c) your sentencing? yes  
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? no  
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no

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. John D. Clark, esquire  
Sumter Bar  
 ii. same as above  
 iii. same as above

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

- i. plea  
 ii. sentencing  
 iii. \_\_\_\_\_  
 \_\_\_\_\_

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS  
CLERK OF COURT  
SUMTER COUNTY, S.C.

RECORDED

2014 FEB 24 AM 10:47

2014-CP-43-378

Asherdon Holloway -- Petitioner,

-Vs-

State of South Carolina -- Respondent,

---

PETITIONER'S MEMORANDUM IN SUPPORT OF  
APPLICATION FOR POST CONVICTION RELIEF  
PURSUANT TO §§17-27-20 thru 17-27-160

---

Asherdon Holloway  
SCDC#349764  
BRCI  
4460 Broad River Rd.  
Columbia, SC. 29210

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Exhibit (B),.....11

ISSUE (A) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE (50) FIFTY-YEAR MURDER SENTENCE THAT WAS HANDED DOWN AS BEING EXCESSIVE, DISPROPORTIONATE, AND AS THE RESULT OF PASSION AND PREJUDICE TO PROPERLY PRESERVE THE ISSUE FOR APPELLATE REVIEW?

#### Facts

Petitioner asserts he was denied his Sixth Amendment right to the effective assistance of counsel, when counsel failed to lodge a timely objection to the (50) fifty-year sentence that was handed down by the court for the murder offense as excessive, disproportionate and the result of passion and prejudice.

After entering a guilty based on counsel's advice the Plea Court sentenced Petitioner to (50), fifty-years for the murder, (12) twelve years consecutive for the assault and battery with intent to kill (ABWIK) and an additional (15) fifteen years concurrent for the attempted armed robbery, [Tr.p.19, L.16-24].

Subsequently, thereafter Petitioner was handed over to the South Carolina Department of Corrections ("SCDC") for commencement of the imposed sentences. While in SCDC on March 17, 2012, Petitioner received a letter dated March 15, 2012 that Petitioner's counsel (John D. Clark) sent to the South Carolina Court of Appeals Clerk, Honorable, Tanya A. Gee, ("Gee"), Petitioner's exhibit (A) attached hereto) advising Gee that the ground to be raised on appeal "involve the legality of Petitioner's sentence. The sentence on the murder plea was excessive, disproportionate and as a result of passion and prejudice", See exhibit (A).

Thereafter on August 2, 2012 Petitioner received correspondence from counsel (John D. Clark), Petitioner's attached exhibit (B), advising Petitioner that he (counsel) has appealed the sentence as being excessive, (emphasis original).

Petitioner asserts he was denied the effective assistance of counsel since counsel "failed" to lodge a timely objection to preserve the issue for appellate review.

#### Discussion

Petitioner asserts he was denied the effective assistance of counsel when counsel failed to lodge a timely objection to preserve the issue of Petitioner's sentence for murder as being excessive, disproportionate and as the result of passion and prejudice.

As is seen from the attached exhibit (A) counsel after filing the notice of appeal on Petitioner's behalf, advised the Court of Appeals Clerk that the issue to be raised on appeal was "excessive, disproportionate sentence as the result of passion and prjejuiced", and further advised Petitioner he had appealed the issue as well, See exhibit (B), but unfortunately the issue was lost because counsel failed to lodge a timely objection.

In South Carolina an "objection" is the act of a party who objects to some matter or proceeding in the course of the proceedings, or an argument that the matter or proceeding objected to [is] improper evidence [or] procedure.

Objection in open court is important so that such will appear on the record for purposes of the appeal, See Rule 103(a)(1),

SCRE (South Carolina Rules of Evidence).

Under Rule 103(a)(1), a party must state the specific ground for objection, if specific ground was not apparent from the context.

The Contemporaneous Objection Rule requires that a specific and timely objection to be made for the question or error to be considered on appeal, See *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315, 327 (1991) citing *Wainwright v. Sykes*, 433 U.S. 72, 90 (1977); *State v. Hoffman*, 312 S.C. 386, 440 S.E.2d 869 (1994).

These standards of reasonable competence are ingrained in every third-year law student, yet notwithstanding the obviousness and impropriety, Counsel failed to object to preserve the apparent issue for appeal. Had Counsel of lodged an objection to preserve the issue for appeal, there is a reasonable probability the results of the proceedings would have been different.

The underlying claim here is the excessive, disproportionate sentence that resulted from passions and prejudice. The Fourteenth Amendment to the United States Constitution provides that no state shall deprive any person of life, liberty, or property without due process of law. There exists in every court an inherent power to see that a defendant's fundamental rights are protected, *State v. Kimbrough*, 212 S.C. 348, 46 S.E.2d 273 (1948). Generally, a sentence that falls within the limits fixed by a statute is not cruel and unusual, *Id.*

However, even if it is not cruel or unusual "in kind" a particular sentence may be so severe in duration that it violates the constitutional prohibitions against cruel and unusual

punishment, *Id.*, construing South Carolina Constitution article 1, §19, see also *Hart v. Coiner*, 483 F.2d 136 (4th Cir.1973), *Stockton v. Leeke*, 269 S.C. 459, 273 S.E.2d 896 (1977).

In *Stockton*, our Supreme Court wrote that they had no jurisdiction to disturb a sentence if it were within the limits prescribed by the statute, unless the sentence was the result of partiality, prejudice, oppression or corrupt motive.

In the instant case a stringent review of exhibits (A) and (B), reveals that counsel was concerned with the sentence that was handed down, and felt the 50, Fifty-year sentence for murder was excessive, disproportionate and the result of passion and prejudice and clearly should have lodged a timely objection to preserve this issue for appellate review. Had counsel lodged the contemporaneous objection and preserved the issue for appeal, there is a reasonable probability the results of the appeal would have been different.

For the aforementioned reasons, Petitioner respectfully asks this Court to grant the requested relief of a new trial.

ISSUE (B) WAS COUNSEL INEFFECTIVE FOR FAILING TO ASK THAT THE CONSECUTIVE SENTENCES HANDED DOWN BY THE COURT BE RAN CONCURRENT SINCE THIS WAS ENTIRELY IN THE DISCRETION OF THE COURT?

#### Facts

Petitioner asserts that counsel was ineffective for failing to object to the imposing of consecutive sentences for two (2) different counts, by reason of the fact that the offenses were of the same character and grew out of the same transaction, and were in effect parts or aspects of one offense.

The Plea Court sentenced Petitioner to fifty (50) years for murder; twelve (12) years for assault and battery with intent to kill, [consecutive] to the murder and fifteen (15) years for the attempted armed robbery concurrent.

Under S.C. Code Ann. §17-25-50 which reads:

In determining the number of offenses for the purpose of imposition of sentence, the court shall treat as one offense any number of offense which have been committed in point of time that they may be considered as one offense, notwithstanding the law they constitute separate and distinct offenses.

As is seen in the above referenced statute, counsel should have asked the Court to considered concurrent sentences for sentencing purposes, as the crimes in connection to one another are in effect a continuous course of conduct.

### Discussion

Petitioner asserts counsel should have asked the trial court at least consider concurrent sentences since the all three (3) acts grew out of the same act. And §17-25-50 says (treat as one offense any number of offenses which have been committed at times so closely connected in point of time that they may be considered as one offense), notwithstanding under the law they constitute separate and distinct offenses.

Had the sentences under the two (2) counts been ordered to run concurrently, Petitioner would be entitled to no relief here, for concurrent sentences do not impose double punishment, but rather a single punishment measured by the sentence for the highest grade of offenses of which Petitioner had been convicted.

In *Legare v. State*, 509 S.E.2d 427, is in agreement that counsel was ineffective for failing to ask that the sentences be run concurrent, but that prejudice must be shown. Here there can be no doubt that Petitioner is prejudiced by having to serve the terms imposed in a consecutive manner, for not only will Petitioner have to serve the fifty (50) year sentence day-for-day before even being able to start the twelve (12) year sentence, which will in turn require Petitioner to serve nearly sixty-one (61) years.

The failure of counsel to object to the imposition of such a sentence amounted to a deficient performance by counsel, as there is a reasonable probability that the Court would have sentenced Petitioner to concurrent terms of imprisonment (since this was a matter in the discretion of the Court) had Counsel requested such

a sentence, and pointed out that the South Carolina Supreme Court said in *State v. Brown*, 461 S.E.2d 828 (1995)(The United States and South Carolina Constitution protects against multiple punishment for the same offense).

For the expressed reasons that this was a continuous course of conduct, Petitioner's consecutive term of imprisonment of twelve (12) years should be ran concurrent to the higher term of fifty (50) years that Petitioner is now having to serve.

Petitioner respectfully asks this Court to find counsel ineffective for failing to ask the Plea Court to impose concurrent sentences, and further asks this Court to modify the 12-year consecutive sentence to run concurrent to 50-years Petitioner is now serving.

**CONCLUSION**

WHEREFORE, based on the foregoing, Petitioner respectfully asks this Honorable Court to grant the relief deemed appropriate and just, or in the alternative, vacate and remand for a new sentencing hearing, and/or a new trial.

Respectfully Submitted,

/s/ Asherdon Holloway

Asherdon Holloway

RECORDED  
2014 FEB 24 AM 10:49  
JAMES C. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

---

**PETITIONER'S EXHIBIT (A)**  
**COUNSEL'S LETTER DATED MARCH 15, 2012 TO**  
**HON. TANYA A. GEE, CLERK**

---

JOHN D. CLARK  
jclark@theclarklawfirm.comSHARON BAKER CLARK  
sbclark@theclarklawfirm.com22 E. Liberty Street, P.O. Box 880, Sumter, SC 29151  
PH: (803) 775-1234 FX: (803) 775-8590

March 15, 2012

The Honorable Tanya A. Gee, Clerk  
The South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211RE: *The State of South Carolina, Respondent, v. Asherdon Fari Holloway,*  
*Appellant*  
Indictment No.: 2010-GS-43-00323

Dear Ms. Gee:

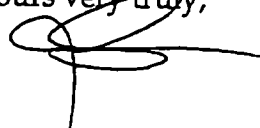
This is to advise that pursuant to SCACR 203 (d)(1)(B)(iv), the issues to be raised on appeal involve the legality of the Defendant's sentence. The sentence on the murder plea was excessive, disproportionate and the result of passion and prejudice.

By copy of this letter I am advising Mr. Holloway that he has twenty (20) days to write the Court and provide any other basis for the appeal of this matter.

Please feel free to contact me with any questions or concerns.

With kind regards, I remain

Yours very truly,

  
John D. Clark

JDC/rlm

cc: Loriene French - Office of Indigent Defense  
Asherdon F. Holloway ✓

---

**PETITIONER'S EXHIBIT (B)**  
**COUNSEL'S LETTER DATED AUGUST 2, 2012**  
**TO PETITIONER**

---

JOHN D. CLARK  
jclark@theclarklawfirm.com

EIN 57-1089772  
www.theclarklawfirm.com

SHARON BAKER CLARK  
sbclark@theclarklawfirm.com



22 E. Liberty Street, P.O. Box 880, Sumter, SC 29151  
PH: (803) 775-1234 FX: (803) 775-8590

August 2, 2012

PERSONAL & CONFIDENTIAL  
LEGAL MAIL  
Asherdon Fari Holloway, #349764  
B.R.C.I. Cong. 149 A  
4460 Broad River Rd  
Columbia, SC 29210

RE: State of South Carolina, Respondent v. Asherdon Fari Holloway, Appellant  
Indictment No.: 2010-GS-43-00323

Dear Asherdon:

This will respond to your letter received on August 1, 2012. Please be advised that I appealed your sentence as being excessive and discussed same with you during my visit with you.

Please contact me should you have any questions or concerns.

With kind regards, I remain

Yours very truly,

John D. Clark

JDC/rm



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

I, Asherdon Holloway, 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.

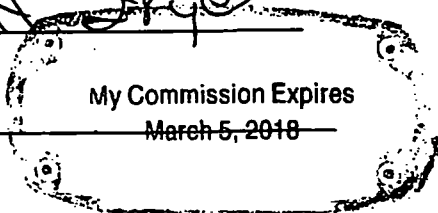
Asherdon Holloway  
Applicant

RECORDED  
2014 FEB 24 AM 10:14 9  
JAMES C. CAMPBELL  
CLERK OF COURT  
SUMNER COUNTY, S.C.

SWORN or affirmed to and subscribed before me this  
19th day of February, 2014.

Susan H. Frye  
Notary Public

My Commission Expires:



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Ahserdon Fari Holloway, #349764,	)	2014-CP-43-378
	)	
Applicant,	)	
	)	
v.	)	<b>RETURN</b>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed February 24, 2014, 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 Sumter County Clerk of Court. The Applicant was true bill indicted at the February 2010 term of the Sumter County Grand Jury under a four count indictment for Murder, Attempted Armed Robbery, Possession of a Weapon During the Commission of a Violent Crime, and Assault and Battery With Intent to Kill (2010-GS-43-0323). John D. Clark, Esquire represented Applicant. On February 16, 2012, Applicant pled guilty as indicted without negotiations or recommendations before the Honorable R. Ferrell Cothran, Jr. Judge Cothran sentenced Applicant to a fifty year term of imprisonment for Murder and twelve year term of imprisonment for Assault and Battery with Intent to Kill to run consecutively. Judge Cothran further sentenced Applicant to a fifteen year term of imprisonment for Attempted Armed Robbery running concurrently.

A timely Notice of Appeal was filed on Applicant's behalf by Robert Michael Dudek, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction. State v.

Asherdon Fari Holloway, No. 3014-UP-023 (Ct. App. filed January 22, 2014). The Remittitur was issued on February 24, 2014.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, Appellate records, and the 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. Counsel was ineffective for failing to object to the fifty year murder.
  - b. Counsel was ineffective for failing to ask that the consecutive sentences handed down by the court be ran concurrent.
2. Involuntary Guilty Plea
3. Denial of Due Process

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

## III.

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

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial

process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

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

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an

evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

#### IV.

The Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not 8"within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the

maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant’s knowing and voluntary waiver of statutory or constitutional rights in a guilty plea “must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

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

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

V.

The Applicant alleges that he was denied due process of law. The Applicant’s allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must “... specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held.

Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

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

*[Signature block on following page]*

VII.

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

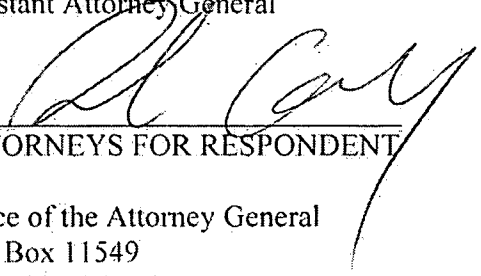
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

DANIEL GOURLEY  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

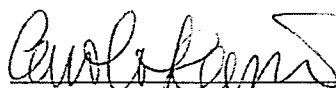
August 1, 2014.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2014-CP-43-378
AHSERDON F. HOLLOWAY, #349764,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

**Lance S. Boozer, Esquire**  
**The Boozer Law Firm, LLC**  
**1331 Park Street**  
**Columbia, SC 29201**

DATED this 1st day of August, 2014.

  
 \_\_\_\_\_  
 Caroline Kaiser, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA) )  
 ) COURT OF COMMON PLEAS  
COUNTY OF SUMTER ) )

ASHERDON F. HOLLOWAY )  
349764 )  
PETITIONER, )

TRANSCRIPT OF RECORD  
14-CP-43-378

v. )

STATE OF SOUTH CAROLINA, )  
 )  
\_\_\_\_\_  
RESPONDENT.)

October 02, 2014  
Sumter, South Carolina

**B E F O R E :**

THE HONORABLE CLIFTON B. NEWMAN, JUDGE

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

LANCE W. BOOZER, ESQ.  
Attorney for the Petitioner

DANIEL GOURLEY, ESQ.  
Attorney for Respondent

FRANCES B. RAY, RPR  
Circuit Court Reporter

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 Ruling of the Court	

(There were no exhibits submitted.)

1           MR. GOURLEY: This is Asherdon Holloway  
2 versus the State of South Carolina, docket number  
3 2014-CP-43-378. He's presently confined in the  
4 South Carolina Department of Corrections pursuant to  
5 orders of commitment of the Sumter County Clerk of  
6 Court. It was true bill indicted at the February  
7 2010 term of the Sumter County grand jury under four  
8 count indictment for murder, attempted armed  
9 robbery, possession of a weapon during the  
10 commission of a violent crime, and assault and  
11 battery with intent to kill. Mr. Clark represented  
12 him. February 16th, 2012, he pled guilty as  
13 indicted without negotiations or recommendations  
14 before the Honorable R. Ferrell Cothran, Jr. Judge  
15 Cothran sentenced the applicant to a 50 year term of  
16 imprisonment for murder and a 12 year term of  
17 imprisonment for the assault and battery with intent  
18 to kill running consecutively. Judge Cothran  
19 further sentenced the Applicant to a 50 year term of  
20 imprisonment for attempted armed robbery which is  
21 running concurrently. Timely notice of appeal was  
22 filed on the Applicant's behalf and the South  
23 Carolina Court of Appeals affirmed his conviction.  
24 Remittitur was issued on February 24th, 2014. He  
25 filed a timely family application from

PW - A. HOLLOWAY - DIRECT

1 post-conviction relief on February 24th, 2014,  
2 alleging being held in custody unlawfully based on  
3 ineffective assistance of counsel for failing to  
4 object to a 50 year murder and for failing to ask  
5 that the consecutive sentences handed down by the  
6 court be run concurrent, a involuntary guilty plea,  
7 and a denial of due process. The State filed its  
8 return August 1st, 2014 and he is represented in  
9 this matter by Mr. Lance Boozer.

10 THE COURT: All right, Mr. Boozer.

11 MR. BOOZER: Thank you, Your Honor, if it  
12 pleases the Court, we call the applicant to the  
13 stand.

14 THE COURT: All right, yes, sir.

15 THE CLERK: Place your left hand on the  
16 Bible, raise your right hand. State your name  
17 please.

18 THE WITNESS: Asherdon Holloway.

19 WHEREUPON,

20 **ASHERDON HOLLOWAY,**

21 having been duly sworn by the Clerk, testified as  
22 follows:

23 THE CLERK: Thank you. Have a seat up  
24 here please. Please state your full name and spell  
25 your last name for the record.

PW - A. HOLLOWAY - DIRECT

1 THE WITNESS: Asherdon Holloway, Holloway  
2 H-O-L-L-O-W-A-Y.

3 **DIRECT EXAMINATION**

4 BY MR. BOOZER:

5 Q Mr. Holloway, you know why you're here today?

6 A Yes, sir.

7 Q Why is that?

8 A It's two issues that I would like to address  
9 before ---

10 Q Okay, go ahead, I'm sorry.

11 A Two issues I would like to address before the  
12 Court involving ineffective assistance of counsel.  
13 You want me to?

14 Q Let's wait a second before we get there. You  
15 filed a PCR application?

16 A Yes, sir.

17 Q Okay. And do you understand what a PCR, what  
18 you're asking for?

19 A Yes, sir.

20 Q And what is that?

21 A For the sentence to be set aside and for me to be  
22 set up for a new trial or new sentencing hearing.

23 Q Well, for a new trial, not just a sentencing but  
24 you start over and go through a trial process again?

25 A Yes, sir.

PW - A. HOLLOWAY - DIRECT

1 Q Okay. And that's what you want to do? You're  
2 asking this Court to set aside your sentence, start  
3 it over with a new trial. That's what you said?

4 A Yes, sir.

5 Q Okay. All right now, currently you're serving 50  
6 year sentence for murder that was run consecutive  
7 with a 12 year sentence for assault and battery with  
8 intent to kill, and you got concurrent 15 years for  
9 attempted armed robbery?

10 A Yes, sir.

11 Q And you filed an application with a few  
12 allegations, and I'm gonna walk you through those  
13 and have you explain those to the Court, okay. All  
14 right, now you got ineffective assistance of counsel  
15 and you've got counsel's ineffective for failing to  
16 object to a fifty year murder sentence, correct?

17 A Yes, sir.

18 Q Tell the Court what your complaint is with regard  
19 to that allegation.

20 A My claim of ineffective assistance of counsel  
21 because he had failed to object to my sentence  
22 handed down, excessive in its portion as a result of  
23 passion and prejudice to properly preserve the issue  
24 for appellate review. As is shown in like exhibit A  
25 and exhibit B counsel was concerned with the, my

PW - A. HOLLOWAY - DIRECT

1 sentence handed down, and felt that the fifty year  
2 sentence on the murder was excessive as a result of  
3 passion and prejudice and should have clearly  
4 allowed a timely objection to specific a issue for  
5 appellate review. Had he allowed the timely  
6 objection it's a reasonable probability that the  
7 result of the hearing or the plea would have been --  
8 appeal would have been different. So...

9 Q Okay, so that's regarding one. You feel like  
10 your lawyer should have objected to the sentence  
11 that was handed down at your plea; is that correct?

12 A Yes, sir.

13 Q Okay. Now I'm gonna have you -- I know you may  
14 be a little bit nervous but I just want you to slow  
15 down a little bit 'cause this lady here has to take  
16 down everything you're saying, madam court reporter  
17 does, so just speak clearly and slowly so she can  
18 get everything down, okay. All right. You got  
19 your -- is there anything else with regard to that  
20 one allegation that you want to bring to the Court's  
21 attention today?

22 A If it is necessary I could elaborate on how  
23 important making an objection in the sentencing  
24 hearing would be.

25 Q Okay, elaborate.

1 A Well, in South Carolina an objection is the party  
2 to who objects to a matter, proceeding in the course  
3 of proceeding or argument that the matter or  
4 proceeding, objection is proper evidence or  
5 procedure. And it is important in court to such  
6 appear on record for appeal as pointed out in South  
7 Carolina Rules of Evidence Rule 103(a)(1). And  
8 under Rule 103(a)(1) party must state appears of  
9 record must state the specific ground for objection  
10 if the specific ground was not apparent from the  
11 context.

12 Q So, just so we all understand what it is that  
13 you're saying right now, your position is that  
14 because he didn't object it's not preserved for  
15 another court's review?

16 A Right.

17 Q Okay. And you feel he didn't do that?

18 A Yes, sir.

19 Q All right. Moving on to your next allegation  
20 you've got counsel was ineffective for failing to  
21 ask that the consecutive 12 year sentence you got be  
22 run concurrent with the others. Tell the Court  
23 about that.

24 A First I want to basically, you know, explain I do  
25 understand that the court was not obligated to

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1 sentence me concurrently; but according to statute  
2 17-25-50, you are to treat as one offense, any  
3 number of offenses closely related in time, they can  
4 be considered as one offense notwithstanding law  
5 they do constitute, that they do constitute separate  
6 and distinct offenses. But the crime were so close  
7 related point in time they could have been  
8 considered as one continuous course of conduct, and  
9 therefore, could be treated as one offense. So it's  
10 areasonable probability that had he asked that the  
11 consecutive sentence be ran concurrent, that the  
12 result of sentencing would be different.

13 Q Okay. So your claim is that because your lawyer  
14 didn't ask the court to run the sentences  
15 consecutively -- or concurrently, excuse me, that  
16 you feel you're prejudiced by that because you feel  
17 if he would have the judge may have done that?

18 A Yes, sir.

19 Q Okay. Is there anything else with regard to that  
20 allegation?

21 A Well, I cited a case law within my application, I  
22 believe it was Gather (ph) versus State which was in  
23 agreement with the fact that counsel was ineffective  
24 for failing to ask the Court to consider concurrent  
25 sentences but that prejudice must be shown. And

1 here I wanted to show that prejudice was shown in  
2 the position of consecutive sentences because of the  
3 murder plea, the murder sentence which was fifty  
4 years or having served that and day by day before  
5 even starting to serve the 12 years which would have  
6 put me in total of about 61 years.

7 Q All right. You have another allegation of  
8 involuntary guilty plea; is that correct?

9 A Yes, sir.

10 Q Okay. Tell the Court what allegation you have  
11 with regard to your involuntary guilty plea.

12 A Well, that this actually stem from me and my  
13 claims of, my counsel's performances as falling  
14 below objective standard of reasonableness and had  
15 the performance not been deficient, you know, I  
16 believe the result of the plea would have been  
17 different, I may have went to trial.

18 Q Okay. And what was it that you wanted your  
19 lawyer to do that he didn't do that forced you to  
20 plead guilty?

21 A Well, this is another, this is an inaction I  
22 asked as far as a witness who saw the incident and I  
23 believe his testimony would have been real critical  
24 toward my defense and the expert witness that I  
25 wanted on my case to basically process the crime

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1 scene. And I believe that I would have been able to  
2 obtain evidence also to prove the facts that I  
3 wanted to dispute, the State's facts ---

4 Q Who did you ask him to talk to?

5 A Oh, Mr. Brandon Wright.

6 Q Okay. Was that for purposes of trial or purposes  
7 of mitigation for your plea?

8 A Well, it really, it really went towards  
9 mitigation, you know, because I understand that  
10 within the hearing, I mean, it's mitigating and  
11 aggravating factors both considered and determine  
12 and as far as imposition of the sentence.

13 Q Okay. How do you think that would have assisted  
14 you?

15 A Well, there was a mitigating, there was a  
16 mitigating factor that I wanted to use basically to  
17 go toward the imposition of sentence, and I believe  
18 it could have reduced the sentence to be imposed.

19 Q Okay. Anything else in regard to your  
20 involuntary guilty plea allegation?

21 A No, sir.

22 Q Now you got also --- you have an allegation of  
23 denial of due process. What are your claims with  
24 regard to that allegation?

25 A Well, the Fourteenth Amendment to the United

1 States Constitution provides that no state shall  
2 deprive an individual life, liberty, or property  
3 without due process of law. I felt like that  
4 happened within my case as pointed out. And in one  
5 of the other cases I used, State versus Kuan (ph)  
6 where it's pointed out that generally a sentence  
7 falls within limits prescribed by statute do not  
8 violate constitutional prohibitions against cruel  
9 and unusual punishment; yet, a sentence can be so  
10 severe in duration to where it violates, does  
11 violate constitutional law against cruel and unusual  
12 and punishment as construing South Carolina article  
13 119. Also pointed out in two other cases I cite  
14 which is Hearts versus Kuan and Stockton (ph) versus  
15 Lee. And in Stockton our supreme court had wrote  
16 that it had no jurisdiction disturbing sentence that  
17 fell within the limits prescribed by statute unless  
18 it was a result impartiality or prejudice or corrupt  
19 motive.

20 Q Okay. So you feel that the sentence violated  
21 your due process rights?

22 A Right.

23 Q Okay. Anything else with regard to due process  
24 violation?

25 A No, sir.

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1 Q Okay. Let's -- are there any other allegations  
2 that you raise in your PCR application that we've  
3 not addressed here today?

4 A No, sir.

5 Q Okay. Let's talk about your, the representation  
6 that Mr. Clark provided you with. How did Mr. Clark  
7 come to represent you?

8 A He was appointed to me at due to a conflict of  
9 interest I had with my previous lawyer where he  
10 represented someone who was involved in that case  
11 that was basically against me so he was appointed  
12 shortly thereafter.

13 Q All right. Do you know about how many times you  
14 met with Mr. Clark?

15 A I think if I can remember correctly it was about  
16 twice. I believe it was about twice.

17 Q And where were those meetings occur?

18 A In the little -- okay, I was in lockup in county.  
19 We had like a little room off to the side where you  
20 can go talk to your attorney.

21 Q Okay. When you were meeting with Mr. Clark  
22 what did y'all discuss during your two meetings?

23 A The trial, the plea, the -- some of the  
24 aggravating factors that the State might use against  
25 me and some of the mitigating factors that I could

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1 possibly use for my benefit.

2 Q Okay. Well, did you discuss any defenses to the  
3 case that you might have?

4 A Well, my defenses weren't -- well, went toward  
5 mitigation and damages, you know, and that was  
6 dealing with the, what we just spoke on, and did  
7 grant right to expert witness.

8 Q Okay. So did you tell him about your witnesses  
9 and that you wanted an expert?

10 A Yes, sir.

11 Q And what was his response?

12 A He said that it would anger the judge because the  
13 plea was non-negotiated and basically encouraged me  
14 to just agree to the facts that the Solicitor had  
15 presented.

16 Q Okay. Did you want a trial in this case?

17 A I didn't want a trial. I just wanted to  
18 basically present my mitigating damages 'cause it  
19 wasn't about my innocence or guilt. It was just  
20 about the sentence to be imposed.

21 Q Okay. Well, why did you end up pleading guilty?

22 A Well, basically when I presented my defense as  
23 far as what was to go toward mitigation and damages,  
24 my counsel at the time had basically, you know, shut  
25 me down on everything that I wanted to present as if

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1 it was irrelevant or that it would make matters  
2 worse so basically just told me to agree to the  
3 facts, accept my responsibility, and put it on  
4 record that I was asking for specific plea.

5 Q Okay. Did you -- did you agree with the facts at  
6 the plea?

7 A No, I didn't.

8 Q Okay. Did you tell your lawyer that?

9 A Before we went, before we went into the court we  
10 discussed that. And during the hearing, like I say,  
11 the solicitor presented their case and as far as  
12 what me and my counsel had talked about prior to  
13 that, I just went ahead and agreed and...

14 Q Okay. Did your lawyer ever tell you the  
15 possibility of the time that you could face if you  
16 pled?

17 A Yes, he did.

18 Q Okay. And what was that?

19 A A mandatory minimum 30 years life without parole.

20 Q Did he tell you that the judge could run the  
21 charges consecutively as he did on two of them?

22 A I can't recall. I didn't know anything really  
23 about consecutive, concurrent sentence at that time.

24 Q Had he told you that you could receive  
25 consecutive sentences for this would you have pled

1 guilty?

2 A No.

3 Q Okay. Would you have insisted on a trial?

4 A Yes, sir.

5 Q Is there anything else with regard to your  
6 application PCR that you want to bring to the  
7 Court's attention today?

8 A No, sir.

9 Q Did we cover all of your allegations that you  
10 have?

11 A Yes, sir.

12 Q Okay.

13 MR. BOOZER: Your Honor, I don't have any  
14 further questions at this time.

15 THE COURT: All right.

16 **CROSS-EXAMINATION**

17 BY MR. GOURLEY:

18 Q Mr. Holloway, you stated that you met with your  
19 attorney twice before your plea?

20 A Yes, sir.

21 Q Okay. And did y'all go over discovery materials,  
22 stuff like that during those meetings?

23 A Yes, sir.

24 Q Okay.

25 A Did y'all talk about any defenses to the charges?

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1 A Yes, sir.

2 Q And what were those?

3 A Like I said, it went toward mitigation and  
4 damages and it included the witness that I had,  
5 Brandon Wright, as to testify to what he saw, and  
6 expert witness to process the scene and that I might  
7 be able to obtain some evidence to prove my version  
8 of the facts and go to mitigation and damages.

9 Q Is Brandon Wright here today?

10 A No, sir.

11 Q What about the expert witness?

12 A No, sir.

13 Q Okay. You recall waiving your constitutional  
14 rights, right to jury trial, right to present  
15 witnesses on your behalf, right to remain silent?  
16 You waived all that during your guilty plea, right?

17 A Yes, sir.

18 Q Okay. And you recall telling the plea judge you  
19 were satisfied with Mr. Clark's services?

20 A Yes, sir.

21 Q Okay. And again, you also stated that the plea  
22 judge advised you that you were facing minimum  
23 mandatory 30 years up to life in prison, right?

24 A Yes, sir.

25 Q And you stated that no one was promising you,

1 threatening you to get you to plead, right?

2 A Yes, sir.

3 Q And you recall telling the plea judge that you  
4 wanted to plead guilty?

5 A Yes, sir.

6 Q And you told the plea judge that you were indeed  
7 guilty?

8 A Yes, sir.

9 Q And you confessed to the crime, right?

10 A Yes, sir.

11 Q And at the end you told the plea judge that you  
12 wanted to accept full responsibility for your  
13 actions, right?

14 A Yes, sir.

15 Q Okay, so you are guilty of these crimes?

16 A Yes, sir.

17 Q All right.

18 MR. GOURLEY: Your Honor, I have no  
19 further questions. Thank you, Mr. Holloway.

20 THE COURT: Anything further, Mr. Boozer?

21 MR. BOOZER: No, sir, Your Honor.

22 MR. GOURLEY: Yes, Your Honor, we would  
23 call Mr. Clark to the stand.

24 THE CLERK: State your name.

25 THE WITNESS: John Derrick Clark.

RW - J. CLARK - DIRECT

1 WHEREUPON,

2 **JOHN D. CLARK,**

3 having been duly sworn by the Clerk, testified as  
4 follows:

5 THE CLERK: Thank you, sir. Please state  
6 your full name. Spell your last name for the  
7 record.

8 THE WITNESS: John D. Clark, C-L-A-R-K.

9 **DIRECT EXAMINATION**

10 BY MR. BOOZER:

11 Q Mr. Clark, how long have you been practicing law?

12 A Twenty-three years.

13 Q Were you appointed or retained?

14 A Appointed.

15 Q How many times did you meet with Mr. Holloway  
16 prior to his plea?

17 A I can't remember specifically, but it was more  
18 than one.

19 Q Okay. You filed Rule 5 Brady motions?

20 A I think they were already filed when I got the  
21 case.

22 Q Okay. And did you review discovery with Mr.  
23 Holloway?

24 A Yes, sir.

25 Q Did y'all discuss his version of the facts?

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1 A Yes, sir.

2 Q Do you recall what they were?

3 A Not in great detail, but he had given a  
4 confession; and the facts were, he went to a  
5 person's house I believe with the intent to rob  
6 them. He was armed with a weapon and the -- I  
7 believe he believed the person was a drug dealer and  
8 had a substantial amount of money. When the  
9 gentleman came to the door he was -- Mr. Holloway  
10 confronted him with the weapon, and from there shots  
11 were fired. The gentleman had a, what I would call,  
12 a toddler. I don't even think the child was a year  
13 old yet. And when Mr. Holloway started firing the  
14 pistol the gentleman tried to grab the toddler and  
15 exit harms way, and the toddler was shot and killed  
16 and the gentleman was also shot I believe.

17 Q Yes, sir. Would you characterize this evidence  
18 as overwhelming?

19 A Extremely overwhelming, extremely heinous, and  
20 add to those facts the fact that Mr. Holloway had  
21 confessed, gave a detailed written confession, and  
22 also after the crime was committed he fled the state  
23 and went to Georgia to evade arrest.

24 Q Did Mr. Holloway ever give you a witness named  
25 Brandon?

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1 A I don't have any specific memory of that.

2 Q Okay.

3 A He may have; he may not have. But looking back  
4 on it, it was my opinion that that witness would not  
5 be any help to Mr. Holloway, and I believe that  
6 witness may have dropped him off at the house and so  
7 in my view that witness was gonna have extreme  
8 credibility issues.

9 Q Okay. What about the expert witness that  
10 Mr. Holloway has talked about, do you recall  
11 anything about that?

12 A I don't remember anything about an expert  
13 witness, but I don't know that the expert witness  
14 examining the crime scene could have overcome his  
15 confession ---

16 Q All right.

17 A ---that he gave already.

18 Q Mr. Clark, whose decision was it to plead guilty?

19 A It was his decision after extensive discussion.  
20 I agreed with the decision. I think I even  
21 recommended the decision. My objective in  
22 representing Mr. Holloway was to avoid a life  
23 without parole sentence. I believe that if he  
24 denied responsibility for this case and insisted on  
25 a jury trial, took the mother of this child and the

RW - J. CLARK - DIRECT

1 injured father through the ordeal of a trial, I  
2 thought that that would incite the passion of the  
3 jury, and I — it's my opinion he was definitely  
4 going be found guilty because not only was it a  
5 murder, traditional murder case, it was a felony  
6 murder case as well so the deck was stacked against  
7 him. And I felt that if he did not accept  
8 responsibility, the judge was gonna give him life  
9 without parole. The -- you know, I still have  
10 memories of the child's mother explaining to Judge  
11 Cothran that this was what we called an arm baby.  
12 She left to go do laundry or run a chore, and when  
13 she came back her baby was dead. That's what the  
14 evidence was gonna be and he had pretty much  
15 confessed to it. It was an extremely difficult  
16 case.

17 Q Did you feel there was any basis to object to the  
18 sentence as given by Judge Cothran?

19 A Well, it wasn't life without parole. It wasn't  
20 what I was hoping for, but I thought that it was a  
21 lawful sentence.

22 Q Did y'all discuss the possibility of a  
23 consecutive sentence?

24 A I can't remember specifically, but it's my policy  
25 to advise defendants of consecutive sentences when

RW - J. CLARK - CROSS

1 there are multiple counts.

2 MR. GOURLEY: Your Honor, that's all the  
3 questions I have. Thank you, Mr. Clark.

4 THE WITNESS: Thank you.

5 **CROSS-EXAMINATION**

6 BY MR. BOOZER:

7 Q Mr. Clark, how are you doing?

8 A I'm fine, how are you?

9 Q Do you recall how many times you met with Mr.  
10 Holloway?

11 A I can't recall for sure. It was more than one.  
12 I think it was more than two. I can't recall for  
13 certain.

14 Q Did y'all discuss what any possible defenses  
15 would be to these charges for Mr. Holloway?

16 A We did. I looked at the facts. I remember one  
17 possible defense was that the gentleman who answered  
18 the door actually engaged him and, you know, that  
19 he, that the gentleman engaged him; but the fact  
20 remained that he went there for the purpose of  
21 robbing this person. And he had a weapon when he  
22 went there so that was discussed, but I didn't think  
23 that that was going to carry the bay.

24 Q And I think you've already testified to this, but  
25 I'll just ask it again. Do you have any specific

1 discussion with him, did you advise him the max  
2 penalties he could face for those charges?

3 A Life without parole.

4 Q Yeah. Did -- was there ever any sort of offer  
5 from the State other than pleading?

6 A I don't know if -- I don't know if this was a  
7 formal offer, but I believe they did not request a  
8 specific sentence. I don't think they requested  
9 life without parole. They left the sentencing  
10 entirely to the discretion of the judge.

11 Q Did you ever give Mr. Holloway maybe what your  
12 thoughts or what you maybe thought the judge may  
13 give him?

14 A Well, I told him that there was no way for me to  
15 know what the judge would give him. What we were  
16 hoping for was a 30 year sentence.

17 Q Did, during the plea did Mr. Holloway ever have  
18 any conversation with you as the plea was  
19 progressing that he didn't agree with the facts as  
20 the solicitor was stating them?

21 A All I can do is rely on the record, sir. I don't  
22 remember specific conversation. If he indicated to  
23 Judge Cothran that he agreed with the facts and if  
24 he had told me that he did not agree with the facts,  
25 then I probably would have taken some action.

RW - J. CLARK - CROSS

1 Q At the plea what type of mitigation did, was  
2 there, if any, presented on behalf of Mr. Holloway?

3 A I haven't gone back and read the record so I  
4 can't quote exactly what we told Judge Cothran in  
5 mitigation; but there wasn't much mitigation to be  
6 found under these circumstances other than the fact  
7 that Mr. Holloway was very young. He was -- I don't  
8 even think he graduated high school yet. He came  
9 from some very difficult circumstances. I remember  
10 a fact sticks out in my mind that he told me that,  
11 you know, his mother left New York with the children  
12 because of, I believe he said, violent family  
13 situation. I believe he told me that, you know, he  
14 had some hard circumstances. I think he said they  
15 were forced to live in a shelter at some point. And  
16 I distinctly remember him being struck by the fact  
17 that he was charged with this very serious crime,  
18 and he said his father never was aware of it and  
19 didn't come down from New York or contact him in any  
20 way. So he had some, you know, he had some very  
21 difficult circumstances, but the fact remains this  
22 baby was killed in cold blood.

23 Q Going back to his allegation on a witness who he  
24 contends would have been mitigation for him, Brandon  
25 Wright, do you have any recollection of y'all having

1 discussion on him being there for mitigation  
2 purposes versus a trial?

3 A Not any specific recollection, but based on what  
4 I remember about the facts, Mr. Holloway went to the  
5 door of this house. This witness was not with him  
6 on the doorstep where the confrontation began. The  
7 witness was not inside of the house when the weapon  
8 was fired. I don't know what the witness could have  
9 said to mitigate the matter, and in addition to the  
10 fact that he admitted that he was the one  
11 responsible for the crime.

12 Q Okay. If the record reflects that there wasn't  
13 an objection made to the fifty years given for the  
14 murder sentence, you would agree with that of  
15 course?

16 A I stipulate to what's in the record.

17 Q Certainly. Did you see a need, a reason to  
18 object to the sentence as being excessive?

19 A Well, I'll be honest with you, I was stunned by  
20 the sentence. But I was constantly reminded that  
21 this was a baby that had not even reached the age of  
22 being able to walk, and he was shot in the abdomen  
23 area while his father was holding him and his father  
24 was shot and so I was stunned by the sentence but  
25 when you think in terms of whether it's excessive or

RW - J. CLARK - CROSS

1 not and you're reminded of the facts of what  
2 actually happened and that fact that a baby was  
3 murdered, the father was shot, and all the pain and  
4 anguish that this mother and this whole family felt,  
5 I don't know whether it's excessive or not.

6 Q Did you have any, did you consider objecting to  
7 the sentence being ran consecutively or asked for  
8 concurrent sentences on all the charges?

9 A Judge Cothran is an experienced judge. He  
10 practiced law for many years before he went on the  
11 Bench, and it was my opinion that he knew exactly  
12 what he was doing, what he wanted to do with the  
13 case. And to be honest with you, I don't think an  
14 objection would have changed his opinion. I mean,  
15 this, you know, it's almost like you had to be there  
16 to hear the facts, to hear the cries of this mother,  
17 and so I don't think it would have changed his  
18 opinion. And you know, at the end of the day he in  
19 essence gave Mr. Holloway what may amount to a life  
20 sentence for him, but it's not technically a life  
21 sentence.

22 Q And going towards that did you have any  
23 discussion with Mr. Holloway after the case was over  
24 on asking for a reconsideration of the sentence as  
25 excessive?

1 A Well, we talked and, you know, I acknowledged  
2 that it was more than what I thought he would give  
3 him, but I don't know if we talked specifically  
4 about a reconsideration. I know he didn't request  
5 reconsideration because if he did I would have filed  
6 a motion for that.

7 MR. BOOZER: Court's indulgence, Your  
8 Honor. Your Honor, that's all the questions I have.

9 MR. GOURLEY: Your Honor, I have no other.

10 THE COURT: All right. Thank you, Mr.  
11 Clark.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Any other witnesses?

14 MR. BOOZER: No, Your Honor.

15 THE COURT: Any other argument?

16 MR. GOURLEY: I have none.

17 MR. BOOZER: No, Your Honor.

18 THE COURT: When Mr. Holloway pled guilty  
19 the judge explained to him that he was facing 30  
20 years to life on a murder charge. The judge  
21 explained to Mr. Holloway that he was facing the  
22 penalty that he was facing under attempted armed  
23 robbery charge, the penalty he was facing under  
24 assault and battery with intent to kill charge which  
25 is up to 20 years. Mr. Clark made a compassionate

1 plea on his behalf starting out in his colloquy with  
2 the judge saying that Mr. Holloway understands after  
3 extensive conversation that whether he ever sees a  
4 light of day again rests in your hands here today.  
5 And the -- it appeared clear from the record that  
6 given the nature of the crime where Mr. Holloway  
7 thought that Mr. Archie was a drug dealer and he  
8 decided to go there and rob Mr. Archie and he said  
9 that he recognized the baby was there and that he  
10 shouldn't -- the shooting or attempting to shoot the  
11 man holding a baby but that he was in the zone, as  
12 words he used, and killed the baby. And after  
13 killing the baby or shooting the baby he continued  
14 chasing and shooting Mr. Archie. And he confessed  
15 to the crime and came to court, pled guilty  
16 acknowledging that he was facing up to life in  
17 prison, acknowledging the penalty that he was  
18 facing.

19 Then his position here today is that he didn't  
20 understand what it meant to have a consecutive  
21 sentence, said he understood and the judge explained  
22 what he was facing, the penalty he was facing on  
23 each charge. And given the fact that a person who  
24 commits a murder during the commission of a robbery  
25 ultimately can face, could have faced the death

1 penalty murder accompanied by aggravating  
2 circumstances of commission of other serious crimes,  
3 the State did not seek the death penalty. They  
4 charged him with this offense. The judge explained  
5 that he could have gotten life in prison. Mr. Clark  
6 explained his life circumstances and any other  
7 mitigating circumstance that he thought might have  
8 swayed the judge, and the judge gave him the  
9 sentence that he thought was an appropriate sentence  
10 within the law. Some judges would have not  
11 hesitated to give life where someone takes the life  
12 of a two year old or one year old and someone who  
13 breaks in someone's house and tries to rob them and  
14 shoots up the place and shoots the people and for no  
15 apparent reason other than saying that there are  
16 other kids in the neighborhood who seem to have  
17 things that I didn't have or I didn't feel like I  
18 was worth anything, so since my life didn't mean  
19 anything to me then it appears that others whose  
20 life that he took in danger didn't mean anything to  
21 them.

22         You know, it's tragic for Mr. Holloway and  
23 certainly tragic for the victims as well. Mr. Clark  
24 did the best he could. He did not do anything less  
25 than what any other lawyer would have done, and

1 he — Mr. Holloway is not entitled to a PCR, and I  
2 deny, dismiss the application for PCR. If you'll  
3 prepare an order, Mr. Attorney General.

4  
5  
6 \* \* \* END OF REQUESTED TRANSCRIPT OF RECORD \* \* \*  
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STATE OF SOUTH CAROLINA  
COUNTY OF SUMTER

Asherdon Holloway, #349764,  
Applicant,

v.

State of South Carolina,  
Respondent.

RECORDED  
2014 NOV 20 PM 4:10  
IN THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT

JAMES C. CAMPBELL Case No. 2014-CP-43-378  
CLERK OF COURT  
SUMTER COUNTY, S.C.

**ORDER OF DISMISSAL**

CERTIFIED TRUE COPY  
OF ORIGINAL FILED

*[Signature]*  
DEPUTY CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on February 24, 2014. Respondent made its return on August 1, 2014. An evidentiary hearing into the matter was convened on October 2, 2014, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

**PROCEDURAL HISTORY**

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted at the February 2010 term of the Sumter County Grand Jury under a four count indictment for Murder, Attempted Armed Robbery, Possession of a Weapon During the Commission of a Violent Crime, and Assault and Battery With Intent to Kill (2010-GS-43-0323). John D. Clark, Esquire represented Applicant. On February 16, 2012, Applicant pled guilty as indicted without negotiations or recommendations before the Honorable R. Ferrell Cothran, Jr. Judge Cothran sentenced Applicant to a fifty year term of imprisonment for Murder and twelve year term of imprisonment for Assault and Battery with Intent to Kill to run

consecutively. Judge Cothran further sentenced Applicant to a fifteen year term of imprisonment for Attempted Armed Robbery running concurrently.

A timely Notice of Appeal was filed on Applicant's behalf by Robert Michael Dudek, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction. State v. Asherdon Fari Holloway, No. 3014-UP-023 (Ct. App. filed January 22, 2014). The Remittitur was issued on February 24, 2014.

### ALLEGATIONS

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

1. Ineffective Assistance of Counsel
  - a. Counsel was ineffective for failing to object to the fifty year murder.
  - b. Counsel was ineffective for failing to ask that the consecutive sentences handed down by the court be ran concurrent.
2. Involuntary Guilty Plea
3. Denial of Due Process

During the evidentiary hearing, Applicant proceeded on claims on ineffective assistance of counsel for failing to object to the fifty year murder sentence and failing to request the plea judge to run his sentences concurrently. Applicant further proceeded on a claim that his guilty plea was involuntary due to Plea Counsel's poor representation.

### SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from John D. Clark (hereinafter "Plea Counsel"). This Court also had before it a copy of the plea transcript, the Sumter County Clerk of Court records, Applicant's South Carolina Department of Correction records, appellate records, the PCR application, and return.

During the evidentiary hearing, Applicant testified he met with Plea Counsel approximately two times prior to his plea. Applicant recalled reviewing discovery material. Applicant stated that

he did not discuss any defenses with Plea Counsel. However, Applicant stated that he had various witnesses who could testify on his behalf and potentially form a defense. Applicant stated that the witnesses were not present for the PCR evidentiary hearing. Applicant recalled waiving his constitutional rights during his guilty plea proceeding. Applicant recalled telling the judge that he was satisfied with Plea Counsel's services. Applicant recalled the plea judge advising him that he was facing a mandatory minimum of thirty years up to life without parole. Applicant stated that he confessed to the crimes. Applicant recalled telling the plea judge that he was pleading guilty freely and voluntarily. Applicant recalled telling the plea judge that he wanted to plead guilty because he was guilty. During the evidentiary hearing, Applicant stated again that he was guilty.

However, Applicant stated Plea Counsel was ineffective for failing to object to the fifty year murder sentence. Applicant stated had Plea Counsel objected it would have been properly preserved for appellate review. Applicant further stated Plea Counsel was ineffective for failing to request that the plea judge run his sentences concurrently. However, Applicant stated that he understood the plea judge had no obligation to run the sentences concurrently. Applicant stated that he was prejudiced against because he must serve every day of the murder sentence prior to him serving any time on his assault and battery with intent to kill sentence.

Applicant further stated that his plea was involuntary because Plea Counsel's performance was deficient. Applicant stated that there were various witnesses who saw the shooting and could have testified on his behalf. Specifically, Applicant stated Brandon Wright would have testified on his behalf. Applicant further stated that Plea Counsel should have gotten expert's to process the crime scene. However, Applicant stated none of the witnesses nor experts were present at the PCR hearing to testify. Applicant concluded that he wanted an opportunity to present mitigating evidence and does not want a trial.

Following Applicant's testimony, Plea Counsel was called to testify. Plea Counsel stated that he has been practicing law for twenty three years. Plea Counsel stated that he was appointed to represent Applicant due to a conflict of interest within the Public Defender's office. Plea Counsel stated that he met with Applicant more than once, but could not recall the specific number of meetings. Plea Counsel stated he filed for and reviewed with Applicant all Rule 5 and Brady material. Plea Counsel stated he discussed the various elements of the charges and the State's burden of proof.

Plea Counsel stated the evidence against Applicant was "overwhelming." Plea Counsel stated Applicant gave a detailed confession. Specifically, Applicant went to victim's house to rob him because he was under the impression that victim was a drug dealer. Plea Counsel stated victim answered the door with his infant child in his arms. Plea Counsel stated Applicant shot both victim and infant child. Plea Counsel stated the infant child died and the victim suffered serious injuries as a result of multiple gunshot wounds. Plea Counsel recalled the child's mother stating that she left to go do laundry, came back to her house and her child was dead. Plea Counsel stated it was a very sad situation.

Plea Counsel stated Applicant did not provide any witnesses or leads to investigate. Plea Counsel stated Brandon Wright was the person who dropped Applicant off at victim's house prior to the shooting. Plea Counsel stated that Brandon Wright testimony would not have helped Applicant. Plea Counsel stated that there was no need to hire experts to conduct a crime scene investigation because Applicant confessed to the crime. Plea Counsel stated that there was no real mitigation evidence to present outside of Applicant's personal life history.

Plea Counsel stated it was Applicant's decision to plead guilty. Plea Counsel stated he advised Applicant that it was probable that he was be sentenced to life without parole if he

proceeded to a jury trial and was found guilty. Plea Counsel stated that he recommended that he plead guilty in an attempt to avoid life without parole. Plea Counsel stated that the solicitor was not going to recommend life without parole if Applicant pled guilty. Plea Counsel stated that he had no basis to object to the fifty year murder sentence given by the plea judge. Plea Counsel further stated that he could not object to the plea judge running the sentences consecutively. Plea Counsel concluded that Applicant did not receive the sentence that he was hoping to get but it was lawful sentence. Plea Counsel stated that any objection made to the sentencing would not have changed the plea judge's decision. Plea Counsel stated that he discussed the possibility of filing a motion for reconsideration with Applicant. However, Plea Counsel stated Applicant never requested he file the motion.

#### **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. Specifically, this Court finds Counsel's testimony credible while Applicant's testimony is not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

#### **INEFFECTIVE ASSISTANCE OF COUNSEL**

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial

cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (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, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

*Plea Counsel was ineffective for failing to object to the plea judge sentence.*

This Court finds Applicant's allegation that Plea Counsel was ineffective for failing to object the plea judge's sentence to be without merit. Specifically, Applicant alleges that Plea Counsel should have objected to the fifty year sentence for murder and should have objected to the plea judge running the twelve year sentence for assault and battery with intent to kill consecutively. However, Applicant recalled and the plea transcript reflects, the plea judge advised Applicant that he was facing thirty years to life without parole for the murder charge and up to twenty years for the

assault and battery with intent to kill charge. (Pl t. p. 4). Furthermore, Plea Counsel stated he discussed the possibility of filing a motion for reconsideration with Applicant. However, Applicant never requested that he file the motion. This Court notes Applicant received a lawful sentence and Applicant is merely displeased by the decision of the plea court to give him consecutive sentences. Cf. Holden v. State, 713 S.E.2d 611, 617, 393 S.C. 565, 575-76 (2011) (citing Roddy v. State, 339 S.C. 29, 36, 528 S.E.2d 418, 422 (2000)) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made."). This Court finds Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, this Court finds Applicant has failed to allege sufficient evidence to meet his burden of proving that he was prejudiced by Counsel's alleged ineffectiveness as Applicant received a lawful sentence.

#### *Involuntary Guilty Plea*

This Court finds that the Applicant's guilty plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea

is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving that his guilty plea was involuntarily made. This Court finds that the Applicant's testimony was entered freely and voluntarily. The Applicant testified at the evidentiary hearing that he was pleading guilty freely and voluntarily. This Court finds further that the record reflects the Applicant was thoroughly advised of the waiver of his constitutional rights by both Plea Counsel and the plea judge. The record reflects the Applicant at his plea proceeding told the court that he wished to plead guilty. (Pl. p. 3). The record also reflects that the Applicant told the court that he had not been promised or threatened by anyone to get him to plead guilty. (Pl. p. 4). This Court finds that the Applicant had a full understanding of the consequences of his plea and the charges against him. This Court finds that the plea judge correctly found that the Applicant's plea was freely, voluntarily, and intelligently made. (Pl. p. 10).

#### ALL OTHER ALLEGATIONS

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

**CONCLUSION**

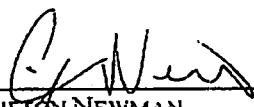
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 12<sup>th</sup> day of November, 2014.

  
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 CLIFTON NEWMAN  
 Presiding Judge  
 Third Judicial Circuit

Columbia, South Carolina