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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. Supreme Court

Appeal from Barnwell County

D. Craig Brown, Circuit Court Judge

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ANTWON BYARS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001008

---

A P P E N D I X

---

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State of South Carolina )  
County of Barnwell ) Court of General Sessions  
2011-GS-06-00014

State of South Carolina )  
Plaintiff )  
vs. ) Transcript of Record  
Antwon Byars )  
Defendant )

July 9, 2012  
Barnwell, South Carolina

**B E F O R E:**

The Honorable Doyet A. Early, III, JUDGE.

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

Susanna M. Ringler, Asst. Solicitor  
Attorney for the Plaintiff

Michael W. Chesser, Esq.  
Attorney for the Defendant

Lisa H. Davenport, RPR  
Official Court Reporter

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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(None offered)

1 (Whereupon, on July 9, 2012 the following proceedings  
2 were held:)

3 ANTWON BYARS, after being duly sworn, testified  
4 as follows:

5 MS.. RINGLER: Thank you, Your Honor. We have state  
6 versus Antwon Byars. He was originally charged with  
7 assault and battery with intent to kill, indictment  
8 2011-GS-06-14. He'll be pleading ~~to that~~ today, Your  
9 Honor, and the state is recommending ~~a cap of 15~~ years.

10 THE COURT: All right. Does Mr. Byars have a record?

11 MS. RINGLER: He does, Your Honor. He's got a 2006  
12 possession of 28 grams or less of marijuana, a 2007  
13 possession of 28 grams or less of marijuana, a 2007  
14 possession with intent to distribute marijuana and  
15 possession of cocaine.

16 THE COURT: This is another shooting case?

17 MS. RINGLER: Yes. This is one where the defendant  
18 -- Excuse me, the victim was shot in the chest.

19 THE COURT: Shot in the chest?

20 MS. RINGLER: Yes, Your Honor.

21 THE COURT: How is the victim doing?

22 MS. RINGLER: He said that he is actually applying  
23 for disability. He has a hard time sitting. He has some  
24 pain from that. SOVA was able to cover his medical bills.  
25 The bullet is still in him. I think it's towards his back

1 and so that causes him some pain still.

2 THE COURT: How much were the medical bills that  
3 and have had to pay?

4 MS. GATLING: Yes, sir, and there are still bills  
5 coming in. That's why SOVA was not able to give me an  
6 exact amount this morning.

7 THE COURT: What was the closest amount?

8 MS. GATLING: The last amount given was 27 --  
9 \$28,000.

10 THE COURT: All right. Mr. Chesser, you represent  
11 Antwon Byars. He is charged with assault and battery with  
12 intent to kill.

13 MR. CHESSER: Yes, Your Honor.

14 THE COURT: I assume you've advised him this carries  
15 up to 20 years in the Department of Corrections?

16 MR. CHESSER: Yes, sir.

17 THE COURT: Have you advised him that it's classified  
18 as violent and that will have some effect on how he is  
19 housed in the Department of Corrections?

20 MR. CHESSER: Yes, sir.

21 THE COURT: Have you advised him it's classified as  
22 most serious and that means if he gets another most  
23 serious that is two strikes?

24 MR. CHESSER: Yes, Your Honor.

25 THE COURT: Or two serious -- that would be three

1 strikes and he would be subjecting himself to life in  
2 prison without the possibility of parole?

3 MR. CHESSER: Yes, Your Honor.

4 THE COURT: Have you advised him this is a no-parole  
5 sentence that he'll do 85 percent of whatever sentence I  
6 give to him?

7 MR. CHESSER: Yes, sir.

8 THE COURT: And I understand the recommendation is a  
9 cap of 15 years?

10 MR. CHESSER: Correct.

11 THE COURT: Have you advised him of his right to  
12 trial by jury?

13 THE WITNESS: Yes.

14 THE COURT: How does he indicate to you he wishes to  
15 plead, not guilty or guilty?

16 MR. CHESSER: Guilty.

17 THE COURT: After having reviewed all the information  
18 in this file and speaking with your client, are you in  
19 agreement with his decision?

20 MR. CHESSER: Yes, sir.

21 THE COURT: Mr. Byars, good afternoon.

22 THE DEFENDANT: Good afternoon.

23 THE COURT: You stand before me charged with assault  
24 and battery with intent to kill. That carries up to 20  
25 years in the State Department of Corrections. Do you

1 understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You further understand that it is  
4 classified as violent and that will have some effect on  
5 where you're housed in the Department of Corrections?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: It is also classified as most serious  
8 which means that once you get out and you become involved  
9 in another crime which is classified as most serious  
10 that's two strikes or if you become involved in criminal  
11 activity classified as serious two times and this most  
12 serious, that's three strikes. Under either of those  
13 circumstances you would be subjecting yourself to the  
14 possibility of life in prison without parole. Do you  
15 understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You further understand that this offense  
18 is what we call a no-parole sentence and you do 85 percent  
19 of whatever sentence I impose upon you?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you have any questions about any of  
22 that?

23 THE DEFENDANT: No, sir.

24 THE COURT: When you're released from prison you'll  
25 be released to a community supervision program. Do you

1 understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Understanding all of that how do you wish  
4 to plead, not guilty or guilty?

5 THE DEFENDANT: Guilty.

6 THE COURT: Mr. Byars, if you plead guilty you  
7 further give up your right to remain silent. You'll have  
8 to admit to me your shooting in this incident and you'll  
9 further give up your right to a jury trial. Obviously, if  
10 you ask for a jury trial the state would give you one at  
11 which time you would have the right through Mr. Chesser to  
12 cross examine everyone who testified against you. Excuse  
13 me.

14 You would have the right to present your own case.  
15 You could call your own witnesses, introduce relevant  
16 exhibits and testify in your own defense. If you  
17 exercised your constitutional right to remain silent, then  
18 I would tell the jury you cannot hold the fact that he  
19 didn't testify against him in any manner whatsoever and I  
20 would further instruct them that they couldn't even  
21 consider the fact that you didn't testify while they  
22 deliberated your guilt or innocence. Under the  
23 constitution you would be presumed innocent throughout the  
24 trial and the State of South Carolina would have the  
25 burden of proving your guilt beyond a reasonable doubt to

1 a jury of 12 people. In order for that jury to convict  
2 you all 12 would have to unanimously agree that you were,  
3 in fact, guilty and even if you were found guilty you  
4 would still have the right to an appeal. Do you  
5 understand your right to trial by jury?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Understanding those rights, do you still  
8 wish to plead guilty?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Other than the recommendation that we  
11 discussed of the cap of 15 years, has anyone promised you  
12 anything, held out any hope of reward, or threatened you  
13 in any manner in order to make you plead guilty?

14 THE DEFENDANT: No, sir.

15 THE COURT: Mr. Chesser has been your lawyer. Are  
16 you satisfied with his legal representation?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: In your opinion has he had enough time to  
19 spend with you, enough time to research the law, and  
20 enough time to investigate the facts so that he can  
21 properly defend you here today?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Anything else you want him to do for you  
24 today before we move forward other than speak up on your  
25 behalf?

1 THE DEFENDANT: No, sir.

2 THE COURT: And I ask you again, Mr. Byars, are you  
3 totally and completely satisfied with his services  
4 provided to you as your lawyer?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Are you today under the influence of  
7 alcohol, drugs, or prescription medication?

8 THE DEFENDANT: No, sir.

9 THE COURT: Are you pleading guilty of your own free  
10 will?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Did you in Barnwell County on or about  
13 September 5 of the year of 2009 commit a violent injury  
14 upon one Dwayne Smith when you shot him?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Did you shoot Dwayne Smith on that date  
17 September 5, 2009?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. I find your decision to plead  
20 guilty to be freely, voluntarily, and intelligently made.  
21 You've had the representation of an excellent lawyer  
22 Mr. Michael Chesser with whom you say you're satisfied and  
23 I will accept your plea. If you disagree with these  
24 proceedings or my sentence you have 10 days from today's  
25 date to file a notice of intent to appeal. Do you

1 understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Ma'am?

4 MS. RINGLER: Thank you, Your Honor. On September 5,  
5 2009 out in front of the club Lucky Spot in Williston,  
6 South Carolina---

7 THE COURT: Lucky Spot?

8 MS. RINGLER: Lucky Spot; yes, Your Honor. There  
9 were several groups of people gathered around outside, the  
10 victim being one of those being with a group of people.  
11 The defendant at that point felt as though the victim was  
12 being disrespectful, giving him dirty looks. He came over  
13 and confronted the victim and there was a brief verbal  
14 altercation. They then parted ways and the defendant then  
15 came back about 10 or 15 minutes later armed with a gun.

16 He shot the victim once in the chest and when the  
17 victim was on the ground he stood over him and the gun  
18 misfired. A witness reported hearing a click -- clicking  
19 noise. At that point the defendant's friend CJ Chandler  
20 who has also been charged in the case -- he's been charged  
21 with accessory after the fact -- he was a short distance  
22 away. He said he heard the gunshot, came running, grabbed  
23 the defendant, and they both got into the car that they  
24 had arrived in together and left the scene.

25 They were both stopped by law enforcement a short

1 time later and the gun was recovered from the car. It was  
2 a revolver and Mr. Chandler was prepared to testify at  
3 trial and Jerry Screen represents him. Mr. Screen  
4 informed me his wife is having some health issues; so  
5 we're going to wait and deal with Mr. Chandler's charges  
6 during the September term, but he was prepared to be a  
7 state's witness and as was the man who witnessed the event  
8 and the victim who did have some difficulty being here  
9 today but was ready to testify tomorrow in trial, Your  
10 Honor.

11 THE COURT: Mr. Chesser?

12 MR. CHESSER: May it please the court. I'm going to  
13 tell you about this case, obviously, from our point of  
14 view. There is going to be some details that might be  
15 different from the prosecution's point of view, but they  
16 don't go to the gist of this case. The first point that I  
17 want to make, Your Honor, is that the victim Dwayne  
18 Smith -- he was -- he had a reputation for violence. I'm  
19 not here to run him down.

20 THE COURT: I understand.

21 MR. CHESSER: He is the victim in this case, but I do  
22 want to make that clear. This, of course, was conveyed to  
23 me by Mr. Byars. I noticed on Mr. Smith's rap sheet that  
24 when he was about 18 years of age he was charged --  
25 arrested for murder. He ended up pleading out to

1 involuntary manslaughter. That was in 1995 when he went  
2 to court on that, but he had this reputation. I assume  
3 that arose out of this.

4 He did kill somebody back in '95 when he was -- he  
5 was born in ' . The actual charge arose in '94; so I  
6 believe that's more like a 22 years old or 23, right  
7 there, and, again, there is no way that I would seek to  
8 justify this by running down the victim, but I do want to  
9 make the court aware and that is not to say that he is  
10 worth less or anything, but with regard to his reputation  
11 in terms of what Mr. Byars did and my point to you being  
12 where I am going is Mr. Byars was scared. I have talked  
13 with Mr. Byars about if we went to trial the possibility  
14 of a self-defense which I don't think would be availing.

15 I have talked to him about the details about the law  
16 on it, but I do want to tell you that in truth he was  
17 scared. What happened was they had this disagreement at  
18 this party and Mr. Smith told Mr. Byars if he didn't get  
19 out of his face he would kill him. Now, Mr. Byars left  
20 and came back. Actually, the gun was in his car the whole  
21 time, but he came back and he saw Mr. Smith at that point.  
22 He felt like Mr. Smith was approaching him and he shot  
23 him. The detail about pulling the trigger, again,  
24 Mr. Byars denies. That's -- I say it is a detail. It is  
25 significant, but yet I'll just tell you that part of it

1 Mr. Byars denies.

2 Mr. Smith has a lengthy and continuous record.

3 There's not a lot of extremely serious convictions. There  
4 are some drug crimes, but ABHAN, fleeing from law, and so  
5 forth. I say that again with the idea that Mr. Byars was  
6 scared and I want to point out the age difference. At the  
7 time this happened Mr. Smith was about 37. Mr. Byars was  
8 25. You had a 37-year-old with a reputation as being a  
9 very tough individual and he told Mr. Byars if he didn't  
10 get out of his face he would kill him.

11 THE COURT: All Mr. Byars had to do once he got in  
12 the car is kept on going.

13 MR. CHESSER: And I have explained that to him. I  
14 think that's a correct observation. Your Honor, this  
15 case, in fact, it somehow got -- overlooked is the wrong  
16 word, but it didn't get addressed for years. That's why  
17 we're here in 2012. It happened in September of '09.  
18 It's been almost three years. There is no reason that it  
19 didn't get brought here. I don't know why it didn't get  
20 brought here, but it's here today, but I've had three  
21 years almost of dealing with Mr. Byars since he hired me  
22 to represent him.

23 I will just tell you that he is a cut above the  
24 people that I deal with on a day-to-day basis in this type  
25 of situation. Your Honor---

1 THE COURT: Then what is his rhyme or reason for  
2 using the guns just indiscriminately? This is the second  
3 one in a row. We see it day in and day out up here. I  
4 don't understand it.

5 MR. CHESSER: I would agree and what I want to do at  
6 the end of this is I want Antwon to -- he can't explain  
7 that to you, but to try. Your Honor, I would ask -- we've  
8 got some of Antwon's -- not really his family, but his  
9 supporters and -- three of them. We've got Theodore  
10 Bellinger -- Mr. Bellinger, Bernard Milligan, and Shannon  
11 Premus, and if it please the court I'd like for you to  
12 hear from them in that order. First, Theodore Bellinger.

13 THE COURT: Mr. Bellinger, stand right there and you  
14 tell me what you want to tell me. Good afternoon.

15 MR. BELLINGER: Good afternoon, Your Honor. My name  
16 is Ted Bellinger. I am a retired Savannah River Plant  
17 employee and businessman in Barnwell County and I do not  
18 stand before you, Your Honor, to embellish this situation  
19 that has transgressed the law, but I stand before you,  
20 Your Honor, as a God-fearing person to allow every one in  
21 this courtroom to understand that there is a word in the  
22 Bible called forgiveness and I do not condone the violence  
23 of any nature toward anyone, but I do ask that this court  
24 have some leniency on this person that's standing before  
25 you Mr. Byars.

1           Now, if Jesus Christ, the Son of God, who was nailed  
2 to a cross and God looked down from Heaven and looked upon  
3 the people that killed him who nailed him to that cross  
4 and said I forgive you and even Jesus himself said forgive  
5 them for they know not what they're doing, surely this  
6 court and the people in this community and the one -- the  
7 victim -- He looked for forgiveness and I stand before you  
8 to ask for mercy, not to embellish what had happened --  
9 the transgression of the law -- but to ask for forgiveness  
10 on behalf of Mr. Byars.

11           I know him. I know his family and I know the victim  
12 and I also know that he has a child, a one-year-old, and I  
13 know that this country -- a one-parent, a single-parent  
14 home has caused a whole lot of trouble in this country; so  
15 he has a one-year-old child and I am asking that the court  
16 allow him to, you know, not to spend too much time away  
17 from that child; that he have some part in raising that  
18 child, not to transgress against the law but to bring him  
19 -- to rear that child up in the God-fearing manner. I  
20 thank you.

21           MR. MILLIGAN: Your Honor, my name is Bernard  
22 Milligan. I am a 17-year educator in the Richmond County  
23 school system. I am friends of the family. As he said, I  
24 am not here to embellish crime. As a teacher I see it  
25 every day and I see what will happen and I try to talk for

1 his kids, but in this situation I speak for his oldest  
2 stepson. I have seen his relationship to him. He's taken  
3 him to games. He's helped him. When he got in trouble in  
4 school he's come to support. That little boy does not act  
5 up in school because of this young man. That's why I come  
6 here.

7 Also, I think the both of them -- when I have kids  
8 that don't have something, I have about five to six  
9 families in Williston that I can come to and ask them for  
10 help with field trips and things of that sort. Now, she  
11 is a little stingy, but he will help, and that's what I  
12 appreciate out of them, but now the thing is for the last  
13 three years I have known him very well after that last  
14 incident. He has really helped his stepson and I beg for  
15 leniency from this court. Thank you.

16 THE COURT: Yes, ma'am?

17 MS. PRIMUS: My name is Shannon Primus. I am  
18 Antwon's girlfriend. When Antwon did this three years ago  
19 he didn't have kids. He have two kids now. He is a  
20 wonderful father. I just ask for mercy for him.

21 THE COURT: Thank you. Mr. Byars, anything you want  
22 to tell me?

23 THE DEFENDANT: Yea, I just want to say that I'm  
24 very, very sorry to the victim and his family for the pain  
25 that I probably caused them from the bad decision I made

1 that night. I mean, I'm honestly sorry.

2 THE COURT: You're intelligent. You're a  
3 good-looking young man. You got good people supporting  
4 you. What makes young people grab guns and shoot people?  
5 Where are we learning this?

6 THE DEFENDANT: Alcohol, hard drugs. I mean, dumb  
7 decisions. It's not one thing. It is probably a  
8 collection of a lot of things -- in my case, anyway, but  
9 I'm really sorry and, you know, at the time I really was  
10 living for myself. I didn't have no kids. I didn't have  
11 a girl. Now I got two kids. I met the woman that I want  
12 to marry. Things just kind of different right now for me.

13 THE COURT: Well, it sounds like you're making an  
14 improvement.

15 MR. CHESSER: Your Honor, I'd like to tell you a  
16 little more about Mr. Byars. He is going to be 28 in  
17 November. He has an 11th grade education. He went in  
18 2008 and got his GED. He did that. After that he went --  
19 he got 30 credits at Denmark Tech. He was studying  
20 general business or business. He had -- and still is --  
21 he's got a 2.7 grade point average.

22 There is one thing I haven't told you yet that I need  
23 to tell you and I am fixing to, but he's disabled now.  
24 When he worked he worked at Dixie Narco, Kronotex  
25 Flooring, Mid-am Metal Formers, and a couple of other

1 places.

2 Now, Your Honor, what I am going to tell you now, you  
3 know, I would ask you just to take into account however  
4 you deem it appropriate. In August of last year Antwon  
5 was shot four times. His---

6 THE COURT: How was he shot?

7 MR. CHESSER: Sir?

8 THE COURT: I mean, where and how? What kind of  
9 circumstances?

10 MR. CHESSER: Well, I'll tell you how it was.

11 THE COURT: In the clubs, in the bars, in the joints?

12 MR. CHESSER: He was in a house and somebody came in  
13 and they robbed him. It's my understanding, Your Honor,  
14 there was drugs involved and they robbed him and shot him  
15 four times. This -- his injuries from that -- I'd like to  
16 hand up this paper. It is a short paper from the  
17 hospital.

18 Your Honor, you've heard of a hernia and that's where  
19 a section of the abdomen is weakened and allows part of  
20 the intestines to bulge out. What Mr. Myers [sic] has as  
21 a result of this is -- you could call it a hernia. It is  
22 actually -- the fact is his muscles over his stomach are  
23 very far from closing and what that paper indicates that I  
24 handed up is that it will never close. It's probably  
25 somewhat smaller, I guess -- Your Honor, he's got this

1 very serious medical condition and I know that you -- I  
2 don't think there is any doubt that you're fixing to send  
3 him to prison.

4 It's not 100 percent pleasant, but I would ask you to  
5 see his wound. You're fixing to send him to prison and I  
6 think it's relevant; so I would ask that he be able to get  
7 to maybe this point over here and show it to you.

8 THE COURT: Well, I mean, I can read that. I know  
9 what he is going through.

10 MR. CHESSER: Well, in addition to that particular  
11 wound which I've seen it and it is about the size I would  
12 say of a volley ball and it's sort of a window into his  
13 interior and it's not going to heal and in addition to  
14 that he's got some areas where there is some scar tissue  
15 that affects his lungs the way they expand on one side.

16 I talked to him and for some reason just today  
17 Mr. Byars informed me that he is scheduled for an  
18 operation to sort of push back in -- not to close the  
19 wound because it's not anticipated it can be closed, but  
20 to actually push back in his intestines I assume for some  
21 medical benefit to push it back in. Whether it will be  
22 temporary or not, I don't know. I would ask him to  
23 explain that to you because I don't have enough knowledge  
24 of that.

25 Mr. Byars?

1 THE DEFENDANT: Yea, I got a hernia, but my whole  
2 fascia is open. It is pulled back; so my intestines is  
3 basically covered by a skin graft off my legs, but they're  
4 going to push my intestines back in, put a net or whatever  
5 they use---

6 THE COURT: And try to close it?

7 THE DEFENDANT: I don't think they're going to be  
8 able to close it. It is just that big. They say they  
9 won't be able to close it, but they're gonna fix the  
10 hernia but they won't be able to close my fascia.

11 THE COURT: This is as a result of you being shot?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Anything else?

14 THE DEFENDANT: I thank you, Your Honor, for  
15 listening to my case.

16 THE COURT: You were in here just a second ago. The  
17 other young man that shot at the guy indiscriminately, he  
18 got a 10-year sentence. You got a recommendation of a cap  
19 of 15 years and you're looking at 20 years or you could  
20 have been charged with attempted murder and you could have  
21 been looking at 30.

22 All right. I am going to take into consideration  
23 everything that your lawyer said, that you had three  
24 people to speak on your behalf, your medical condition and  
25 I am going to go below the cap of 15. The sentence of the

1 court is that you be committed to the State Department of  
2 Corrections for 10 years. Good luck to you.

3 (End of Transcript of Record.)

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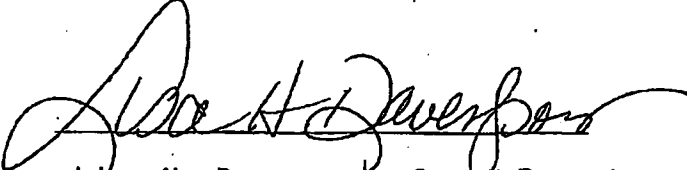
CERTIFICATE OF REPORTER

State of South Carolina     }  
County of Aiken               }

I, Lisa H. Davenport, Official Court Reporter for the  
Second Judicial Circuit of the State of South Carolina, do  
hereby certify that the foregoing is a true, accurate and  
complete Transcript of Record of the proceedings had and  
evidence introduced in the trial of the captioned case,  
relative to appeal, in the Court of General Sessions for  
Barnwell County, South Carolina, on the 9th day of July,  
2012.

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

January 2, 2013

  
Lisa H. Davenport, Court Reporter

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BARNWELL )  
 )

INDICTMENT FOR  
ASSAULT AND BATTERY WITH INTENT TO  
KILL

§ 16-03-0620

At a Court of General Sessions, convened on January 2011, the Grand Jurors of Barnwell County present upon their oath:

That **ANTWON BYARS** did in Barnwell County, South Carolina on or about September 5, 2009, with malice aforethought, willfully and unlawfully commit a violent injury to the person of another, Dwyane Smith in that the defendant, **ANTWON BYARS**, did shoot the victim, in violation of the 16-3-620 of the South Carolina Code of Laws, 1976, as amended.

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

  
J. STROM THURMOND, SOLICITOR

DOCKET NO. 2011GS0600014

The State of South Carolina

County of Barnwell

COURT OF GENERAL SESSIONS

JANUARY TERM 2011

THE STATE  
vs.

ANTWON BYARS

ACTION OF GRAND JURY

Ernie Bell

CDR #: 0014

Indictment for

ASSAULT AND BATTERY WITH INTENT  
TO KILL

§ 16-03-0620

J. STROM THURMOND, SOLICITOR

WITNESSES

Williston Police Department

Craig Martin

Law Enforcement Case #: 09-09-1018

LM

ARREST WARRANT NUMBER

K338348

Mark E. Williams 1/6/2011  
Foreperson of Grand Jury  
Date:

VERDICT

Foreperson of Petit Jury

Date:

FORM 5

FILED FOR RECORD

STATE OF SOUTH CAROLINA )  
2013 APR 10 PM 2:58 IN THE COURT OF COMMON PLEAS

COUNTY OF Barnwell )  
RHONDA D. MOEL/CEH

Antwon Lamar Byars SCDC # 851782 )  
Full name and prison number (if any) of Applicant. )

2013-CP-06-121

v. ) APPLICATION FOR  
)  
State of South Carolina ) POST-CONVICTION RELIEF  
)

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 Trenton Correctional Institution
2. Name and location of Court which imposed sentence Barnwell County Courthouse
3. Name(s) of co-defendant(s) (if any) Charles Chaddler Jr
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2011GSO600014 Assault and Battery with Intent to Kill
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) July 9<sup>th</sup> 2012 sentenced to ten years
  - (b) \_\_\_\_\_

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

6. Check whether a finding of guilty was made:

(a) after a plea of guilty  \_\_\_\_\_

(b) after a plea of not guilty \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

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

Yes \_\_\_\_\_

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

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

i. Barnwell County General Sessions \_\_\_\_\_

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

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

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

i. Currently pending \_\_\_\_\_

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

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

(c) the date of each such result:

i. Currently pending \_\_\_\_\_

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

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

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

i. pending appeal is currently processing \_\_\_\_\_

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

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

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

(a) N/A \_\_\_\_\_

(b) N/A \_\_\_\_\_

(c) N/A \_\_\_\_\_

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) Violation of Rule 6 of South Carolina Rules of Criminal Procedure
- (c) Brady Rule was violated/avoided (Rule 6 SCRPC)

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

- (a) misaided and erroneous advice
- (b) No type of investigatory actions
- (c) Avoided Procedural Rules of Due Process clause "Brady Rule"

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

- iv. N/A
- (d) the date of each such disposition:
  - i. N/A
  - ii. N/A
  - iii. N/A
  - iv. N/A

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

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

No

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

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

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) N/A
- (b) N/A
- (c) N/A

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? No trial
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (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. Mr. Michael Chesser P.O. Box 1018, 104 Park Avenue, SW Aiken, SC 29802
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. guilty plea
  - ii. sentencing
  - iii. appeal

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

Reduce sentence to lesser included offense which would be ABHIAN or withdrawal of plea due to chain of custody not being reported - Rule 6 - finger print analysis, see record evidence for details.

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

No

STATE OF SOUTH CAROLINA )  
County of Barnwell )

VERIFICATION

I, \_\_\_\_\_, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Leta Byrs Leta Byrs

SWORN to and subscribed before me this 18<sup>th</sup>  
day of March, 2013.

Brenda L. Williams (L.S.)  
Notary Public

My Commission Expires: 3/3/2014

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

I, \_\_\_\_\_, 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.

Cota Byers  
Applicant

SWORN or affirmed to and subscribed before me this  
8<sup>th</sup> day of April, 2013.

Brenda L. Williams  
Notary Public

My Commission Expires: 3/3/2014

I was charged with ABWLK on September 5<sup>th</sup>, 2009, I hired a lawyer, Mr. Micheal Chesser, shortly thereafter. From day one, we never really communicated. He never hired an investigator to investigate my alleged crime. He never informed me of any of the work he was doing. If the courts will view my motion, you'll see that Rule 6 of the South Carolina Criminal Procedural Rule is never acknowledged, gun was not fingerprinted and no results were ever shown or proven positive (see supplementary report). If the statements they say are valid, that I took responsibility, then where is the written statements claiming these allegations. However, everytime we spoke, I had to call him and he always told me that there is nothing new to speak about and he would call me if anything came up. He never even called me to notify me that I had roll call. I heard from others and called him to confirm it and he would say, "Oh yea, be to the courthouse Monday at 9:00am." Over the course of 3 years, we probably spoke 15 times and it was never about any detailed content. It was me asking him what was the update of the case and him saying there is nothing new to talk about or me asking him do I have to report to roll call. He never discussed with me any plea agreement. I was ready to go to trial. Seven days before General Sessions started, I heard it was about to start so I called my lawyer to see if we had to report. He said yes and arranged a meeting at Hardee's in Williston, SC. When me and my girlfriend arrived, he said "Mr. Byars, they are trying to give you 15 years, I advise you to take it." He said "There is no way out of this Mr. Byars so bring your toothbrush so to speak. I said I want to pursue trial and he said "We could Mr. Byars, but I would advise you not to."

He based that decision on a police incident report and what a intoxicated person said. I advised him that these people didn't know what they were talking about and I can't be convicted based on a police incident report and he still advised me to plea to a 15 year cap. All of this a week before court. He didn't try to negotiate the sentence, so I was charged as indicted, no lesser offense, with no type of recommendation or no negotiated sentence. First, let's look to view *Strickland v. Washington* 466 US 668, 104 S. CT. 2052; *Missouri v. Frye* 132 S. CT. 1399 (2012), *Strickler v. Greene* 119 S. CT. 1936, 1948 (1999), *Hayes v. Alabama* 85 F. 3d 1492, 1498 (11<sup>th</sup> Cir 1997) undisclosed evidence requires new trial). In *Strickland v. Washington* 466 US 668 (1984) counsel's performance fell below expectation and performance was prejudice. The 6<sup>th</sup> Amendment requires counsel at its criminal proceeding. Citing from *Missouri v. Frye* 132 S. CT. 1399 (2012) the right to have counsel present at all critical stages of the criminal proceedings, which includes arraignments, post indictments, interrogations, post indictment lineups and the entry of guilty plea, defense counsel has duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused (2) counsel was deficient in failing to communicate to defendant prosecutor's written plea offer before it expire. See *Missouri v. Frye* 132 S. CT. at 1400 (defendant complains that ineffective assistance of counsel lead him to accept a plea offer as opposed to proceeding to trial, the defendant must show a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. Citing *North Carolina v. Pearce*, 395 US 711, 725 resentencing required before different judge because sentencing judge's

pretrial remarks threatened imposition of maximum sentence if defendant lacked "good defense" created risk that defendant's sentence was impermissibly enhanced to penalize defendant for exercising constitutional right to trial. Rule 6 as it will be noticed within the initial Brady v. Maryland 373 US 83 (1963) and Giglio v. US 405 US 150 (1972) item 6. All evidence of the following which has been found, including photographs of said evidence and the results of any comparison test or other test performed on said evidence: A. Footprints B. Fingerprints C. Tire Tracks D. Hair E. Skin F. Blood G. Sperm H. DNA testable material. This is in fact under South Carolina Criminal Procedure Rules, yet there is no confirmation in the motion. Currently awaiting SLED analysis of my own pursuant to SC Code Ann. 30-3-10. Enclosed you will find a "breach" in the chain of custody 9. Criminal Law 1920 As a general rule, defense counsel has the duty to communicate formal offers from prosecution to accept a plea on terms and conditions that may be favorable to the accused. Mr. Chesser not only displayed lack of enthusiasm and deficient performance, but he also prejudiced the case. Further view Kyles v. Whitley 514 US 419, 437 (1995) this dealing in a trial but the argument goes in reference to the Rule 6 Chain of Custody. In closing, please in respect of North Carolina v. Pearce, 395 US 711. Another issue of this would be found in Santobello v. New York 404 US 257, 262, 92 S.Ct. 495.

Under the Bill S. 1154 assault is now by degrees. My charge took place September 5, 2009. My attorney didn't bother to get the charge reduced to an assault and battery in a high and aggravated nature which is S.C. Code Ann. 16-3-620 which should have really been S.C. Code Ann. 17-25-0030. He didn't even negotiate it to a lesser offense, that alone shows his ineffectiveness. Pay attention to the alleged drugs found, yet there was no type of charge. Again, no Rule 6 for the testing if what the police report said was true. This violates South Carolina Rules of Criminal Procedure. *Lanzetta v. NJ* 306 US 451, 242, 57 S.Ct 732 (state meaning must be literal). It is the law duty to prevent wrong before it happens *Hale v. Henkel* 201 US 43, 76 S.Ct 370 (1906). At the most critical stages of the 6<sup>th</sup> Amendment, counsel is needed. For a lawyer to just sit and wait and do nothing, not even try to get it dropped to a lesser offense or any type of plea negotiation is not only pathetic, but absurd. As long as the law can be advocated for persecution and prosecution, it's fine. All in the name to intently yet openly violate state and federal constitution? With respect to the Brady Rule (*Brady v. Maryland* 397 US 742, 758 (1973) and *Tollet v. Henderson* 411 US 258, 263 (1973) it covers the requirement for guilty pleas and effective assistance of counsel. If the court would view *Bousley v. US* 523 US 614, 618-620 (1998) sentence was vacated because defendant, defense counsel and court misunderstood essential elements of crime charged in plea agreement: defendant entitled to attempt to make showing of actual innocence).

US v. Ruiz 241 F. 3d 1157, 1164 (9<sup>th</sup> Cir. 1971) any waiver of Brady rights contained in plea agreement cannot be deemed intelligent and voluntary if entered without knowledge of material information withheld by the prosecution. As in Boykin v. Alabama 395 US 238, 243 (1969) respects and uphold the 6<sup>th</sup> Amendment to effective assistance of counsel at, during and all proceedings once the right has been attached. If the infringement and the avoidance of Rule 6 go unanswered. US v. Bagley 473 US 667, 676-677 (1985) and US v. Giglio 450 US 150, 154 (1972) strictly mentions the discovery rules on evidence is not only a state rule (Rule 6) but Constitution. In arguing the constitutionality, citing Douglas v. California 372 US 353, 83 S. CT 814 (1963) when a state opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution. Williams v. Taylor 529 US 362, 405, 120 S. CT 1495 (2000). Also see Panetti v. Quarterman 551 US 930, 948, 127 S. CT 2842 (2007). US v. Wade 388 US 218, 87 S. CT 1926 (1967). Finally, Padilla v. Kentucky 559 US 130 S. CT 1473. Woodford v. Viscioiti 537 US 19, 24, 123 S. CT 357 (2002). Lafler v. Cooper 132 S. CT 1376 (2012) ineffective assistance of counsel during sentencing hearing can result in prejudice under the prejudice prong of Strickland v. Washington 466 US 668, 104 S. CT 2052 because any amount of additional jail time has 6<sup>th</sup> Amendment significance. Citing Johnson v. Avery 393 US 483, 89 S. CT 744 (1969) due to petitioner's knowledge of the law. by North Carolina v. Pearce 395 US 711, 717 (1969) should not be punished for arguing his constitutional rights nor Court Rules (Rule 6) of the South Carolina Criminal Procedure.

In closing, at no time was counsel of great assistance. I feel like I was misguided due to my minimal knowledge of the law at that time.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BARNWELL	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
Antwon Byars, #351482	)	2013-CP-06-121
	)	
Applicant,	)	
	)	
v.	)	<b>RETURN</b>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____		

The Respondent, making its Return to the application for post-conviction relief filed April 10, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Barnwell County Clerk of Court. The Applicant was true bill indicted at the January 2011 term of the Barnwell County Grand Jury for Assault and Battery with Intent to Kill (2011-GS-06-0014). Michael Chesser, Esquire, represented the Applicant. On July 9, 2012, Applicant pled guilty as indicted before the Honorable Doyet A. Early, III. Judge Early sentenced Applicant to ten years imprisonment for Assault and Battery with Intent to Kill.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by David Alexander, Esquire. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Antwon Byars, Op. No. 2013- UP- 439 (Ct. App. filed November 27, 2013). The Remittitur was issued on December 23, 2013.

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

## II.

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

1. Ineffective Assistance of Counsel
  - a. "Violation of Rule 6 of South Carolina Rules of Criminal Procedure"
  - b. "Brady Rule was violated/avoided (Rule 6 SCRP)"
  - c. "Misguided and erroneous advice"
  - d. "No type of investigatory actions"
  - e. "Avoided Procedural Rules of Due Process Clause 'Brady Rule'"

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, SCRPC.

## III.

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

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

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

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

IV.

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

V.

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

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Deputy Attorney General

DANIEL GOURLEY  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3737


February 20, 2014.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BARNWELL	)	
	)	2013-CP-06-121
	)	
ANTWON BYARS, #351482	)	
	)	
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 20<sup>th</sup> day of February, 2014.

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

1 STATE OF SOUTH CAROLINA

CIRCUIT COURT  
2013-CP-06-00121

2 COUNTY OF BARNWELL

3

4 ANTWON BYARS,  
Applicant,

5

-vs-

TRANSCRIPT OF RECORD

6

7 STATE OF SOUTH CAROLINA,  
Respondent.

8

9

Post Conviction Relief Hearing

10

Heard on Friday, January 16, 2015

11

Aiken, South Carolina

12

13

BEFORE:

14

THE HONORABLE D. CRAIG BROWN

15

16

APPEARANCES:

17

Counsel on Behalf of the Applicant:  
Lance S. Boozer, Esq.

18

19

Counsel on Behalf of the Respondent, State of SC:  
Daniel F. Gourley, Esq.

20

21

22

Cheri L. Young, RPR  
Circuit Court Reporter  
P O Box 5232  
Aiken, SC 29803-5232

23

24

25

EXHIBIT INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

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EXAMINATION INDEX

ANTWON BYARS

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1 ON FRIDAY, JANUARY 16, 2015 AT 10:21 A.M.:

2 THE COURT: Yes, sir.

3 MR. GOURLEY: Yes, Your Honor.

4 This is Antwon Byars versus the State of South  
5 Carolina, Docket Number 2013-CP-06-121. He's presently  
6 confined in the South Carolina Department of Corrections  
7 pursuant to orders of commitment of the Barnwell County  
8 Clerk of Court.

9 He was true bill indicted at the January 2011 term  
10 of the Barnwell County Grand Jury for assault and battery  
11 with intent to kill. Mr. Chesser represented him. On  
12 July 9th, 2012, he pled guilty as indicted before the  
13 Honorable Doyet A. Early the Third. Judge Early  
14 sentenced the Applicant to 10 years imprisonment for  
15 assault and battery with intent to kill. A timely notice  
16 of appeal was filed on Applicant's behalf and an appeal  
17 was perfected.

18 The South Carolina Court of Appeals affirmed the  
19 Applicant's conviction and sentence and the remittitur was  
20 issued on December 23rd, 2013. He subsequently filed a  
21 timely application for PCR on April 10th, 2013, alleging  
22 ineffective assistance of counsel. The State made its  
23 return on February 20th, 2014, and he is represented in  
24 this matter by Mr. Boozer.

25 THE COURT: All right. Mr. Boozer?

ANTWON BYARS - DIRECT BY BOOZER

1 MR. BOOZER: Thank you, Your Honor. If it please  
2 the Court. Judge, I'll go ahead and call Mr. Byars to the  
3 stand.

4 THE COURT: All right. Sir, if you'll come around  
5 and be sworn.

6 ANTWON BYARS, having been duly sworn, was examined  
7 and testified as follows:

8 THE CLERK: Please have a seat in the witness box.  
9 State your full name for the Court.

10 DIRECT EXAMINATION

11 BY MR. BOOZER:

12 Q. Mr. Byars, how are you doing today?

13 A. All right.

14 Q. Okay. You're going to have to speak up a little  
15 bit so she can take down everything that you're saying.  
16 Okay?

17 A. Okay.

18 Q. Now, do you know why you're here today?

19 A. Yes, sir.

20 Q. And why is that?

21 A. PCR.

22 Q. All right. And what is it that you're asking the  
23 PCR Court to do for you?

24 A. Either drop it to a lesser-included offense or just  
25 re-open the case.

ANTWON BYARS - DIRECT BY BOOZER

1 Q. Okay. And we've talked about this -- today this  
2 Judge, that all that His Honor can do is grant you --  
3 basically find for you in a PCR hearing and then grant you  
4 a new trial. And you understand that; right?

5 A. Yes, sir.

6 Q. Okay. Tell the Court -- you were convicted of  
7 assault and battery with intent to kill; is that right?

8 A. Yes, sir.

9 Q. And what sentence did you receive for that?

10 A. A 10-year sentence.

11 Q. Okay. When is your max-out date?

12 A. 2021.

13 Q. All right. And, just for the record, knowing that  
14 your max-out date is 2021 and if you're successful there  
15 is a possibility that you could get more time than what  
16 you got on the 10-year sentence, do you still want to go  
17 forward?

18 A. Yes, sir.

19 Q. Okay. All right. Tell the Court how you came to  
20 have Mr. Chesser -- or who represented you for your plea?

21 A. Mr. Michael Chesser.

22 Q. Okay. How did you come to get Michael Chesser as  
23 your lawyer?

24 A. I really just looked through the yellow pages, seen  
25 Michael Chesser and called him and just kind of, basically

ANTWON BYARS - DIRECT BY BOOZER

1 just did it like that.

2 Q. So you retained Mr. Chesser?

3 A. Yes, sir.

4 Q. All right. When did you first retain Mr. Chesser?

5 A. It was, it was in 2011, a little bit after I got  
6 out off of the charge.

7 Q. Okay. And when say got out, you were on bond?

8 A. Yes, sir.

9 Q. Meaning you made bond, you were out on bond?

10 A. Yes, sir.

11 Q. Tell me about your meetings with Mr. Chesser and  
12 what you discussed and how many times you met prior to  
13 your plea.

14 A. I mean, it's -- face-to-face meetings, we probably  
15 met about four or five times. Phone conversations, we  
16 talked about 15, maybe 20 times. And it was always me  
17 asking him: Is there anything new in the case that I need  
18 to know; or do I have to go to roll call. And he would  
19 always let me know if I had to go to roll call or -- and  
20 he always told me if -- he always said that it was nothing  
21 new at this moment, but if something new came up he would  
22 notify me.

23 Q. Tell the Court, because I don't think we've done  
24 this yet, what are your allegations against Mr. Chesser.

25 A. Ineffective assistance of counsel. I feel like he

ANTWON BYARS - DIRECT BY BOOZER

1 didn't do enough investigative work. And that's really  
2 the main thing. I feel like he just didn't investigate  
3 the case enough.

4 Q. What to your knowledge did he do to investigate  
5 your case?

6 A. He maybe spoke to one, one of the -- one of the  
7 guys who wrote a statement, but other than that I don't  
8 know too much more that he did besides question me.

9 Q. Well, let me ask you this: Were you -- did you  
10 feel that he was ever prepared to take your case to a  
11 trial?

12 A. At first I kind of felt like he was. But the day  
13 we met at Hardee's and I realized that he wasn't confident  
14 in himself, I knew that we wasn't ready to go to trial.

15 Q. Tell the Court a little bit more about what you  
16 mean by when you all met at Hardee's. Walk the Court  
17 through your meeting at Hardee's and what happened at that  
18 meeting.

19 A. Okay. Well, I had a conversation with one of my  
20 friends. And he told me that he had to go to roll call.  
21 So I was like, wow, I wonder if I have to go. And I  
22 called Mr. Chesser. He said, yeah, you do have roll  
23 call.

24 So I showed up Monday. And we planned on meeting  
25 Friday at Hardee's. So we went in -- when me and my

ANTWON BYARS - DIRECT BY BOOZER

1 fiancée went in he said -- this is the first time that he  
2 actually brought a plea offer to me. He told me, he  
3 said, Mr. Byars, the State is trying to give you 15 years  
4 so you might as well bring your toothbrush, so to speak,  
5 because I know you're going to have to do time.

6 And this was the first time that he ever, he ever  
7 brought a plea offer to me. So I was kind of shocked, you  
8 know. At that time I told him that I didn't want to plea  
9 and I was prepared to go to trial because I felt like  
10 pleading to 15 years was -- I just couldn't do it, knowing  
11 that the evidence wasn't that strong on me besides a  
12 couple statements. He kept insisting that, you know, he  
13 felt like we shouldn't go to trial because, because  
14 Mr. Marvin Dickson or Mr. Charles Chandler or Dwayn Smith  
15 might come to Court and testify on me.

16 Q. Did you end up entering a plea soon after that  
17 Friday meeting at Hardee's?

18 A. Yeah, it might have been that Monday.

19 Q. The Monday after that meeting?

20 A. (Nods head.)

21 Q. Okay. Why did you ultimately end up -- because  
22 obviously there is a transcript that's part of the record  
23 in the Judge's packet. Why did you ultimately end up  
24 entering a guilty plea?

25 A. Because my lawyer wasn't confident that he could

ANTWON BYARS - DIRECT BY BOOZER

1 win the trial. And I didn't have the money to find -- to  
2 hire another lawyer. I couldn't represent myself. So I  
3 just felt like I had to, you know, plea and just fight it  
4 from prison.

5 Q. What was -- what would have been your defense at  
6 trial?

7 A. Self-defense.

8 Q. Okay. Did you discuss that with Mr. Chesser?

9 A. Yeah.

10 Q. Do you feel that he was ready to put forth that  
11 argument for you at a trial or not?

12 A. I don't feel like he was.

13 Q. Why not?

14 A. Because he kept trying to push me to plead.

15 Q. Did he review discovery with you in this case?

16 A. He didn't review it with me. He gave me discovery  
17 for me to review it on my own.

18 Q. And we've talked about a few things in your  
19 allegations. Is there anything else with regard to  
20 Mr. Chesser's representation or your plea that you want to  
21 bring to this Court's attention today?

22 A. Not that I can think of at this moment.

23 Q. Okay. This is your one shot. So is there anything  
24 else that you can think of that you filed in your  
25 application or that you and I have discussed in our

ANTWON BYARS - CROSS BY GOURLEY

1 meetings that you want to tell the Court?

2 A. Besides him not doing investigative work and really  
3 not questioning none of the witnesses or questioning none  
4 of the people that I insisted he question, that's pretty  
5 much it.

6 Q. And you want a new trial?

7 A. Yeah, I want a new trial.

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

10 THE COURT: Cross-examination?

11 MR. GOURLEY: Yes, Your Honor. Thank you.

12 CROSS-EXAMINATION

13 BY MR. GOURLEY:

14 Q. Mr. Byars, you had just ended by saying that  
15 Mr. Chesser didn't ask you or didn't investigate witnesses  
16 on your behalf. Who were those witnesses?

17 A. Basically all the people that he thought would show  
18 up and testify on me, I could -- I wanted him to actually  
19 interview them because I knew that they wouldn't testify  
20 on me because they just wouldn't.

21 Q. But they gave statements against you to the police?

22 A. One person did, two people did.

23 Q. Two people?

24 A. The victim didn't. Marvin Dicks did it, but the  
25 police kind of intimidated him. They said that they would

MICHAEL CHESSER - DIRECT BY GOURLEY

1 shut his club down if he didn't tell them something.

2 Q. Do you recall telling the plea judge during your  
3 colloquy that you were satisfied with Mr. Chesser's  
4 services?

5 A. Yeah.

6 Q. And that no one had promised you or threatened you  
7 to plead guilty?

8 A. (Nods head.)

9 Q. And that you were -- sorry, Your Honor. And you  
10 said that Mr. Chesser had given you discovery?

11 A. Yes, sir.

12 MR. GOURLEY: Your Honor, that's all the questions  
13 I have. Thank you, Mr. Byars.

14 MR. BOOZER: No redirect, Your Honor.

15 THE COURT: Sir, you may step down. Thank you.

16 THE APPLICANT: Thank you.

17 THE COURT: Mr. Boozer, anybody else?

18 MR. BOOZER: No further witnesses on behalf of the  
19 Applicant.

20 THE COURT: All right. Mr. Gourley?

21 MR. GOURLEY: Your Honor, we call Mr. Chesser to  
22 the stand, please.

23 MICHAEL CHESSER, having been duly sworn, was  
24 examined and testified as follows:

25 THE CLERK: Please have a seat. State your full

MICHAEL CHESSER - DIRECT BY GOURLEY

1 name for the Court.

2 THE WITNESS: I'm Michael Chesser, C-H-E-S-S-E-R.

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

4 THE COURT: Yes.

5 DIRECT EXAMINATION

6 BY MR. GOURLEY:

7 Q. Mr. Chesser, how long have you been practicing law?

8 A. Twenty-five years.

9 Q. And you were retained in this case?

10 A. Yes.

11 Q. Did you file for Rule Five and Brady material in  
12 this case?

13 A. Yes.

14 Q. And did you review that with Mr. Byars?

15 A. Yes.

16 Q. How many meetings did you have with Mr. Byars,  
17 approximately?

18 A. I would say five or six. I would like to elaborate  
19 a little bit.

20 Q. Yes, sir. Please.

21 A. This case, it lasted awhile. And there was a point  
22 where Mr. Byars -- and let me just say this. We got along  
23 pretty good throughout this period of time but he got shot  
24 and the circumstances of that -- well, it's unclear. I  
25 mean, it's possible there was some drug activity.

MICHAEL CHESSER - DIRECT BY GOURLEY

1 Somebody came in his house and shot him which was a very  
2 tragic incident, but some of the meetings we had were over  
3 in Augusta when he was in the hospital. We went over  
4 there and law enforcement was wanting to find the person  
5 that had shot Mr. Byars. And we were trying to get --  
6 sort of getting help with that in the sense that whatever  
7 he helped law enforcement with may eventually help him.

8 But -- so we had meetings. I would just make a  
9 point. You know, we had regular meetings. I met  
10 Mr. Byars, he was talking about meeting at Hardee's. I  
11 met him at least one time at Hardee's. He had  
12 transportation problems in general. I don't think he had  
13 a license through most of this. He picked up a failure-  
14 to-stop charge as I recall during the pendency of this and  
15 I don't think he had a license. And so we would sort of  
16 meet like that.

17 And then his girlfriend or wife actually, she was  
18 active. And we would speak on the phone. A lot of times  
19 she would call me instead of Mr. Byars.

20 But, like I said, probably five or six meetings.

21 Q. And during the course of those meetings did  
22 Mr. Byars ever tell you his version of events?

23 A. My recollection is that there was never any real  
24 issue with the version of events. What happened from the  
25 beginning it was, it was clear that, what happened.

MICHAEL CHESSER - DIRECT BY GOURLEY

1 Q. Okay. And can you elaborate on that? What  
2 exactly happened according to --

3 A. Well, what the, sort of, briefest version would be  
4 that this, the victim in this case, the fellow who got  
5 shot, he was a little older. My recollection he was about  
6 43 or thereabouts. And he was a -- in his past he had  
7 killed somebody but he had resolved it through a fairly  
8 lenient type of sentence, involuntary manslaughter or  
9 something like that. So he was a feared individual. And  
10 at this club they got into an argument and Mr. Byars felt  
11 threatened and so Mr. Byars left.

12 It would appear based on the incident report that  
13 he left and he was -- either left with or met this Charles  
14 Chandler. And he got a gun and then he went back and  
15 then he shot Dwayn Smith. Then he jumped in the vehicle  
16 he drove and he and Mr. Chandler drove off.

17 They were -- according to the incident report they  
18 were observed, according to the incident report it  
19 actually says 15 minutes prior to this. It was an  
20 unconnected type of license check or stop and the officer  
21 there noted that Mr. Byars -- Mr. Byars had dreads. He  
22 had a very distinctive look. He noticed that he -- there  
23 was a vehicle there. Mr. Byars got out and some 10 or 15  
24 minutes later returned to the vehicle. And I believe that  
25 he observed Mr. Chandler also.

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1           And then they drove back and then some five minutes  
2 later he heard the shots. This officer who was at a sort  
3 of unconnected license check or traffic point heard the  
4 shots and then that same officer ended up actually  
5 stopping the vehicle that Mr. Byars was driving.

6           So, just to elaborate a little more. Marvin Dicks  
7 was a club manager and he saw everything. It's quite  
8 possible, as Mr. Byars said, that there was some pressure  
9 put on him to make a statement but his statement was that  
10 he saw it all.

11           And I did talk to him on the phone to confirm that  
12 he had the same story not too long prior to trial -- prior  
13 to the resolution of this case.

14           So, in terms of, to answer your question, that  
15 version of the facts there was never any -- there was no  
16 other alternative version that Mr. Byars gave me.

17 Q.       In your opinion does that version of facts lead to  
18 a viable self-defense claim at trial?

19 A.       Obviously for us in the law business we know that  
20 when you leave and then you go back that you have -- you  
21 can't claim this heat of passion. You don't have a real  
22 defense. There's a -- this, of course, is a pattern that  
23 happens over and over. And if you were given time to cool  
24 off or leave or what have you, you just don't have any  
25 legal excuse to go back and take your revenge, so to

## MICHAEL CHESSER - CROSS BY BOOZER

1 speak.

2 Q. Did you advise Mr. Byars of this?

3 A. I did.

4 Q. Did he seem to understand it?

5 A. He understood it. Like I said, we had a good  
6 relationship. And it's just that Mr. Byars, like a lot of  
7 people, just -- ultimately, you just do not want to pay  
8 the price. And I can certainly understand that.

9 Q. Absolutely. Mr. Chesser, if Mr. Byars had wanted  
10 to go to trial, would you have been prepared for trial?

11 A. I would have. The -- yes.

12 Q. Okay. And, Mr. Chesser, whose ultimate decision  
13 was it to plead guilty?

14 A. Mr. Byars.

15 MR. GOURLEY: I have no further questions. Thank  
16 you, Mr. Chesser.

17 THE COURT: Cross-examination?

18 MR. BOOZER: Thank you, Your Honor. May it please  
19 the Court.

20 THE COURT: Yes.

21 CROSS-EXAMINATION

22 BY MR. BOOZER:

23 Q. Mr. Chesser, do you recall a meeting with Mr. Byars  
24 in a Hardee's parking lot in Williston?

25 A. Well, we met inside a Hardee's. And it may have

MICHAEL CHESSER - CROSS BY BOOZER

1 been more than once. I don't -- as I recall, the meeting  
2 that we had at Hardee's was well prior to any sort of  
3 court date or at least one of meetings we had at Hardee's,  
4 so, but it wasn't in terms of the parking lot. We met  
5 inside the Hardee's.

6 Q. Okay. I beg mischaracterizing that but at the  
7 Hardee's in Williston is where y'all met; correct?

8 A. Yes, sir.

9 Q. And do you know how long it was before you brought  
10 this plea offer to him that he actually entered a plea?

11 A. Let me take a look and see if I can find some notes  
12 here.

13 Q. Absolutely.

14 A. (Reviewing file.) Well, I don't. I would say  
15 this. Originally the -- law enforcement actually  
16 recommended no plea offer. The -- that was the actual  
17 Town of Williston or the people there. Obviously that  
18 decision ultimately is made by the lawyers, by the  
19 prosecutor in this case, Suzanne Ringler.

20 And the answer to your question is I really don't  
21 remember. My thinking is that for the longest time it was  
22 actually, there was no -- for -- the prosecution did not  
23 pursue this case. And I would just tell you that in my  
24 experience usually that means they're having victim  
25 problems. They just can't really, you know, they're not

MICHAEL CHESSER - CROSS BY BOOZER

1 getting great cooperation from their victim.

2 But nevertheless eventually it came around and the  
3 offer was, of course, a cap of 15. But in terms of to  
4 answer your question, I do not remember precisely how long  
5 that was before he actually did.

6 Q. Do you recall ever any discussion and you heard  
7 Mr. Byars' testimony about quote-unquote pack your  
8 toothbrush. Did you recall any sort of discussion?

9 A. I may well. It's probably an unfortunate term. I  
10 heard it a long time ago and it stuck in my mind. But the  
11 point there is that is if somebody's going to go to prison  
12 I believe that you need to tell them. I mean, you can't  
13 sit there and have somebody who's going to do a plea and  
14 then you say, well, you know, you might get probation. I  
15 don't think that's proper. So, I -- what I hopefully --  
16 I did tell him, if you do this plea you are going to  
17 prison because that is, there was no question.

18 Q. Did y'all have the discussion about having a trial?

19 A. In my opinion this case, there was just -- there  
20 was -- it was just one of those cases where you have -- it  
21 wasn't just one eyewitness. The other person in the  
22 vehicle, Charles Chandler, now he is not, you know -- he  
23 is what might be referred to as a bad actor too. But  
24 nevertheless, he gave a statement at the time that  
25 essentially was that he was an eyewitness to it. I think

MICHAEL CHESSER - CROSS BY BOOZER

1 he said he heard the shot and then he saw Mr. Byars  
2 standing over the victim. Then they both get in the  
3 vehicle and it goes to what Mr. Byars says, I'm going to  
4 take the rap for it. Then they're stopped by the officer  
5 and Mr. Byars tells the officer, what you're looking for  
6 is under the seat.

7 In other words, I would venture to say that not all  
8 cases can be tried. I did not see -- and from the  
9 beginning I think the idea was that I would get Mr. Byars  
10 the best deal because you have these people who saw what  
11 happened. And of course there was really many people  
12 there. But these were the ones who to some extent  
13 cooperated with law enforcement.

14 And, so it was a case that -- I mean, you can  
15 exercise your rights to a trial and have the State prove  
16 their case beyond a reasonable doubt. But in terms of a  
17 theory of a defense, I would not have one.

18 MR. BOOZER: Court's indulgence, Your Honor.

19 THE COURT: All right.

20 MR. BOOZER: (Conferring with client.)

21 Q. Mr. Chesser, what did you do to actually prepare  
22 the case for trial?

23 A. I talked with Marvin Dicks, the club manager. And  
24 I went out to the scene just to see the -- my recollection  
25 is there was a road directly in front of the club and then

MICHAEL CHESSER - CROSS BY BOOZER

1 the other side there was some 10 or 15 feet and then there  
2 was a wire fence.

3 And, so, I -- the idea was, it's always helpful to  
4 see the scene and to try to see, given that scene, what  
5 would people have seen and so forth. So I visited the  
6 scene. I confirmed that Mr. Dicks would be a witness for  
7 the prosecution, an eyewitness. And other than that I  
8 familiarized myself with what the State's case would be.

9 Q. Do you know if there were any other statements  
10 other than the one from the club owner?

11 A. The -- I'm going to cite you to a couple of things  
12 from the incident reports. Again, I made reference  
13 earlier to the fact there was an officer conducting some  
14 type of a license check or law enforcement activity prior  
15 to this happening. That was the same officer who ended  
16 up stopping Mr. Byars who was driving.

17 And according to this report it says: As the  
18 subject, Mr. Byars, was placed in wrist restraints,  
19 subject made an excited utterance -- of course that's the  
20 officer's idea, but -- that the gun was under the seat and  
21 his passenger had nothing to do with it. So, the officer  
22 says he asked him if he had shot at somebody and Mr. Byars  
23 stated he shot up in the air.

24 And then they located a .38 special pistol. It had  
25 three live rounds and one cartridge which would be a round

MICHAEL CHESSER - CROSS BY BOOZER

1 that was fired. And then Mr. Chandler was the passenger,  
2 and let me just get his statement here.

3 Mr. Chandler stated that he had been, he had seen  
4 Antwon -- no, excuse me. He was at the club with somebody  
5 else. He had seen Antwon and they had spoken. He said  
6 Antwon and Poo Poo, that was the nickname or street name  
7 of the victim, got into it at the club. He didn't know  
8 what about. He said he was outside the car by the pub  
9 when he heard the gun go off. He said he went and grabbed  
10 Antwon because he thought he was going to kill Poo Poo.  
11 They got in the black Cadillac and drove off. He said  
12 Squiggie, that was Mr. Byars' street name, had the gun on  
13 the floor in the car. He said the gun was black. He had  
14 seen Squiggie with the gun before. Said Squiggie just  
15 turned the radio up and didn't talk. He said Squiggie  
16 said not to worry, he was taking the rap because he knew  
17 that CJ, that would be Chandler, didn't have anything to  
18 do with it.

19 I would just say this. That statement really,  
20 there's -- an element of that is probably not true because  
21 the officer who is conducting this unrelated law  
22 enforcement license check or whatever prior to the  
23 shooting said he saw both Chandler and Byars. Byars  
24 exited the vehicle, was gone for about 10 or 15 minutes.  
25 Came back and got in the vehicle when he saw both of them

1 in that vehicle. So it would appear that Chandler was  
2 actually with Mr. Byars both prior to and at the club.  
3 But nevertheless, that's the statement that Chandler gave.

4 Q. Did -- at any time did you interview Mr. Chandler?

5 A. No.

6 Q. Why not?

7 A. I don't have a reason for that. I just, I was  
8 consistent that the evidence was, was very strong.

9 Q. Could that have been beneficial to have interviewed  
10 Chandler for --

11 A. It would.

12 Q. And how would that have assisted?

13 A. Well, it -- it's a good idea to interview all the  
14 witnesses if you can.

15 MR. BOOZER: Your Honor, at this time I don't have  
16 any more questions for Mr. Chesser.

17 THE COURT: All right.

18 MR. GOURLEY: No, Your Honor.

19 THE COURT: Sir, you may step down. Thank you.

20 THE WITNESS: Thank you.

21 THE COURT: Anything further in this case?

22 MR. GOURLEY: Not from the State, Your Honor.

23 MR. BOOZER: Nothing further from the Applicant,  
24 Your Honor.

25 THE COURT: All right. I will take it under

1 advisement and let you know.

2 MR. BOOZER: Thank you, Your Honor.

3 MR. GOURLEY: Thank you, Your Honor.

4 END OF CASE: 10:50 A.M.

5 CERTIFICATE OF REPORTER

6 STATE OF SOUTH CAROLINA )

7 COUNTY OF AIKEN )

8 I, Cheri L. Young, Registered Professional Reporter  
9 and Official Court Reporter for the State of South  
10 Carolina, Second Circuit-At Large, do hereby certify that  
11 the foregoing proceedings were written stenographically by  
12 me using computer-aided translation; further, that the  
13 foregoing is a true, accurate and complete record, to the  
14 best of my skill and ability, of all the proceedings had  
15 and evidence introduced in the hearing of the captioned  
16 case, relative to appeal, in the Court of Common Pleas for  
17 Aiken County, on the 31st day of July, 2013.

18 I do further certify that I am neither of kin,  
19 counsel, nor interest to any party hereto. I have  
20 hereunder set my hand this 17th day of July, 2015.

21  
22 \_\_\_\_\_  
23 Cheri L. Young, RPR  
24 Official Court Reporter  
25

1 STATE OF SOUTH CAROLINA

CIRCUIT COURT  
2013-CP-06-00121

2 COUNTY OF BARNWELL

3

4 ANTWON BYARS,  
Applicant,

5

-vs-

TRANSCRIPT OF RECORD

6

7 STATE OF SOUTH CAROLINA,  
Respondent.

8

9 Post Conviction Relief Hearing

10 Heard on Friday, January 16, 2015

11 Aiken, South Carolina

12

13 BEFORE:

14 THE HONORABLE D. CRAIG BROWN

15

16

APPEARANCES:

17 Counsel on Behalf of the Applicant:  
Lance S. Boozer, Esq.

18

19 Counsel on Behalf of the Respondent, State of SC:  
Daniel F. Gourley, Esq.

20

21

22

Cheri L. Young, RPR  
Circuit Court Reporter  
P O Box 5232  
Aiken, SC 29803-5232

23

24

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1 ON FRIDAY, JANUARY 16, 2015 AT 10:21 A.M.:

2 THE COURT: Yes, sir.

3 MR. GOURLEY: Yes, Your Honor.

4 This is Antwon Byars versus the State of South  
5 Carolina, Docket Number 2013-CP-06-121. He's presently  
6 confined in the South Carolina Department of Corrections  
7 pursuant to orders of commitment of the Barnwell County  
8 Clerk of Court.

9 He was true bill indicted at the January 2011 term  
10 of the Barnwell County Grand Jury for assault and battery  
11 with intent to kill. Mr. Chesser represented him. On  
12 July 9th, 2012, he pled guilty as indicted before the  
13 Honorable Doyet A. Early the Third. Judge Early  
14 sentenced the Applicant to 10 years imprisonment for  
15 assault and battery with intent to kill. A timely notice  
16 of appeal was filed on Applicant's behalf and an appeal  
17 was perfected.

18 The South Carolina Court of Appeals affirmed the  
19 Applicant's conviction and sentence and the remittitur was  
20 issued on December 23rd, 2013. He subsequently filed a  
21 timely application for PCR on April 10th, 2013, alleging  
22 ineffective assistance of counsel. The State made its  
23 return on February 20th, 2014, and he is represented in  
24 this matter by Mr. Boozer.

25 THE COURT: All right. Mr. Boozer?

ANTWON BYARS - DIRECT BY BOOZER

1 MR. BOOZER: Thank you, Your Honor. If it please  
2 the Court. Judge, I'll go ahead and call Mr. Byars to the  
3 stand.

4 THE COURT: All right. Sir, if you'll come around  
5 and be sworn.

6 ANTWON BYARS, having been duly sworn, was examined  
7 and testified as follows:

8 THE CLERK: Please have a seat in the witness box.  
9 State your full name for the Court.

10 DIRECT EXAMINATION

11 BY MR. BOOZER:

12 Q. Mr. Byars, how are you doing today?

13 A. All right.

14 Q. Okay. You're going to have to speak up a little  
15 bit so she can take down everything that you're saying.  
16 Okay?

17 A. Okay.

18 Q. Now, do you know why you're here today?

19 A. Yes, sir.

20 Q. And why is that?

21 A. PCR.

22 Q. All right. And what is it that you're asking the  
23 PCR Court to do for you?

24 A. Either drop it to a lesser-included offense or just  
25 re-open the case.

ANTWON BYARS - DIRECT BY BOOZER

1 Q. Okay. And we've talked about this -- today this  
2 Judge, that all that His Honor can do is grant you --  
3 basically find for you in a PCR hearing and then grant you  
4 a new trial. And you understand that; right?

5 A. Yes, sir.

6 Q. Okay. Tell the Court -- you were convicted of  
7 assault and battery with intent to kill; is that right?

8 A. Yes, sir.

9 Q. And what sentence did you receive for that?

10 A. A 10-year sentence.

11 Q. Okay. When is your max-out date?

12 A. 2021.

13 Q. All right. And, just for the record, knowing that  
14 your max-out date is 2021 and if you're successful there  
15 is a possibility that you could get more time than what  
16 you got on the 10-year sentence, do you still want to go  
17 forward?

18 A. Yes, sir.

19 Q. Okay. All right. Tell the Court how you came to  
20 have Mr. Chesser -- or who represented you for your plea?

21 A. Mr. Michael Chesser.

22 Q. Okay. How did you come to get Michael Chesser as  
23 your lawyer?

24 A. I really just looked through the yellow pages, seen  
25 Michael Chesser and called him and just kind of, basically

ANTWON BYARS - DIRECT BY BOOZER

1 just did it like that.

2 Q. So you retained Mr. Chesser?

3 A. Yes, sir.

4 Q. All right. When did you first retain Mr. Chesser?

5 A. It was, it was in 2011, a little bit after I got  
6 out off of the charge.

7 Q. Okay. And when say got out, you were on bond?

8 A. Yes, sir.

9 Q. Meaning you made bond, you were out on bond?

10 A. Yes, sir.

11 Q. Tell me about your meetings with Mr. Chesser and  
12 what you discussed and how many times you met prior to  
13 your plea.

14 A. I mean, it's -- face-to-face meetings, we probably  
15 met about four or five times. Phone conversations, we  
16 talked about 15, maybe 20 times. And it was always me  
17 asking him: Is there anything new in the case that I need  
18 to know; or do I have to go to roll call. And he would  
19 always let me know if I had to go to roll call or -- and  
20 he always told me if -- he always said that it was nothing  
21 new at this moment, but if something new came up he would  
22 notify me.

23 Q. Tell the Court, because I don't think we've done  
24 this yet, what are your allegations against Mr. Chesser.

25 A. Ineffective assistance of counsel. I feel like he

ANTWON BYARS - DIRECT BY BOOZER

1 didn't do enough investigative work. And that's really  
2 the main thing. I feel like he just didn't investigate  
3 the case enough.

4 Q. What to your knowledge did he do to investigate  
5 your case?

6 A. He maybe spoke to one, one of the -- one of the  
7 guys who wrote a statement, but other than that I don't  
8 know too much more that he did besides question me.

9 Q. Well, let me ask you this: Were you -- did you  
10 feel that he was ever prepared to take your case to a  
11 trial?

12 A. At first I kind of felt like he was. But the day  
13 we met at Hardee's and I realized that he wasn't confident  
14 in himself, I knew that we wasn't ready to go to trial.

15 Q. Tell the Court a little bit more about what you  
16 mean by when you all met at Hardee's. Walk the Court  
17 through your meeting at Hardee's and what happened at that  
18 meeting.

19 A. Okay. Well, I had a conversation with one of my  
20 friends. And he told me that he had to go to roll call.  
21 So I was like, wow, I wonder if I have to go. And I  
22 called Mr. Chesser. He said, yeah, you do have roll  
23 call.

24 So I showed up Monday. And we planned on meeting  
25 Friday at Hardee's. So we went in -- when me and my

ANTWON BYARS - DIRECT BY BOOZER

1 fiancée went in he said -- this is the first time that he  
2 actually brought a plea offer to me. He told me, he  
3 said, Mr. Byars, the State is trying to give you 15 years  
4 so you might as well bring your toothbrush, so to speak,  
5 because I know you're going to have to do time.

6 And this was the first time that he ever, he ever  
7 brought a plea offer to me. So I was kind of shocked, you  
8 know. At that time I told him that I didn't want to plea  
9 and I was prepared to go to trial because I felt like  
10 pleading to 15 years was -- I just couldn't do it, knowing  
11 that the evidence wasn't that strong on me besides a  
12 couple statements. He kept insisting that, you know, he  
13 felt like we shouldn't go to trial because, because  
14 Mr. Marvin Dickson or Mr. Charles Chandler or Dwayn Smith  
15 might come to Court and testify on me.

16 Q. Did you end up entering a plea soon after that  
17 Friday meeting at Hardee's?

18 A. Yeah, it might have been that Monday.

19 Q. The Monday after that meeting?

20 A. (Nods head.)

21 Q. Okay. Why did you ultimately end up -- because  
22 obviously there is a transcript that's part of the record  
23 in the Judge's packet. Why did you ultimately end up  
24 entering a guilty plea?

25 A. Because my lawyer wasn't confident that he could

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1 win the trial. And I didn't have the money to find -- to  
2 hire another lawyer. I couldn't represent myself. So I  
3 just felt like I had to, you know, plea and just fight it  
4 from prison.

5 Q. What was -- what would have been your defense at  
6 trial?

7 A. Self-defense.

8 Q. Okay. Did you discuss that with Mr. Chesser?

9 A. Yeah.

10 Q. Do you feel that he was ready to put forth that  
11 argument for you at a trial or not?

12 A. I don't feel like he was.

13 Q. Why not?

14 A. Because he kept trying to push me to plead.

15 Q. Did he review discovery with you in this case?

16 A. He didn't review it with me. He gave me discovery  
17 for me to review it on my own.

18 Q. And we've talked about a few things in your  
19 allegations. Is there anything else with regard to  
20 Mr. Chesser's representation or your plea that you want to  
21 bring to this Court's attention today?

22 A. Not that I can think of at this moment.

23 Q. Okay. This is your one shot. So is there anything  
24 else that you can think of that you filed in your  
25 application or that you and I have discussed in our

ANTWON BYARS - CROSS BY GOURLEY

1 meetings that you want to tell the Court?

2 A. Besides him not doing investigative work and really  
3 not questioning none of the witnesses or questioning none  
4 of the people that I insisted he question, that's pretty  
5 much it.

6 Q. And you want a new trial?

7 A. Yeah, I want a new trial.

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

10 THE COURT: Cross-examination?

11 MR. GOURLEY: Yes, Your Honor. Thank you.

12 CROSS-EXAMINATION

13 BY MR. GOURLEY:

14 Q. Mr. Byars, you had just ended by saying that  
15 Mr. Chesser didn't ask you or didn't investigate witnesses  
16 on your behalf. Who were those witnesses?

17 A. Basically all the people that he thought would show  
18 up and testify on me, I could -- I wanted him to actually  
19 interview them because I knew that they wouldn't testify  
20 on me because they just wouldn't.

21 Q. But they gave statements against you to the police?

22 A. One person did, two people did.

23 Q. Two people?

24 A. The victim didn't. Marvin Dicks did it, but the  
25 police kind of intimidated him. They said that they would

MICHAEL CHESSER - DIRECT BY GOURLEY

1 shut his club down if he didn't tell them something.

2 Q. Do you recall telling the plea judge during your  
3 colloquy that you were satisfied with Mr. Chesser's  
4 services?

5 A. Yeah.

6 Q. And that no one had promised you or threatened you  
7 to plead guilty?

8 A. (Nods head.)

9 Q. And that you were -- sorry, Your Honor. And you  
10 said that Mr. Chesser had given you discovery?

11 A. Yes, sir.

12 MR. GOURLEY: Your Honor, that's all the questions  
13 I have. Thank you, Mr. Byars.

14 MR. BOOZER: No redirect, Your Honor.

15 THE COURT: Sir, you may step down. Thank you.

16 THE APPLICANT: Thank you.

17 THE COURT: Mr. Boozer, anybody else?

18 MR. BOOZER: No further witnesses on behalf of the  
19 Applicant.

20 THE COURT: All right. Mr. Gourley?

21 MR. GOURLEY: Your Honor, we call Mr. Chesser to  
22 the stand, please.

23 MICHAEL CHESSER, having been duly sworn, was  
24 examined and testified as follows:

25 THE CLERK: Please have a seat. State your full

MICHAEL CHESSER - DIRECT BY GOURLEY

1 name for the Court.

2 THE WITNESS: I'm Michael Chesser, C-H-E-S-S-E-R.

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

4 THE COURT: Yes.

5 DIRECT EXAMINATION

6 BY MR. GOURLEY:

7 Q. Mr. Chesser, how long have you been practicing law?

8 A. Twenty-five years.

9 Q. And you were retained in this case?

10 A. Yes.

11 Q. Did you file for Rule Five and Brady material in  
12 this case?

13 A. Yes.

14 Q. And did you review that with Mr. Byars?

15 A. Yes.

16 Q. How many meetings did you have with Mr. Byars,  
17 approximately?

18 A. I would say five or six. I would like to elaborate  
19 a little bit.

20 Q. Yes, sir. Please.

21 A. This case, it lasted awhile. And there was a point  
22 where Mr. Byars -- and let me just say this. We got along  
23 pretty good throughout this period of time but he got shot  
24 and the circumstances of that -- well, it's unclear. I  
25 mean, it's possible there was some drug activity.

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1 Somebody came in his house and shot him which was a very  
2 tragic incident, but some of the meetings we had were over  
3 in Augusta when he was in the hospital. We went over  
4 there and law enforcement was wanting to find the person  
5 that had shot Mr. Byars. And we were trying to get --  
6 sort of getting help with that in the sense that whatever  
7 he helped law enforcement with may eventually help him.

8 But -- so we had meetings. I would just make a  
9 point. You know, we had regular meetings. I met  
10 Mr. Byars, he was talking about meeting at Hardee's. I  
11 met him at least one time at Hardee's. He had  
12 transportation problems in general. I don't think he had  
13 a license through most of this. He picked up a failure-  
14 to-stop charge as I recall during the pendency of this and  
15 I don't think he had a license. And so we would sort of  
16 meet like that.

17 And then his girlfriend or wife actually, she was  
18 active. And we would speak on the phone. A lot of times  
19 she would call me instead of Mr. Byars.

20 But, like I said, probably five or six meetings.

21 Q. And during the course of those meetings did  
22 Mr. Byars ever tell you his version of events?

23 A. My recollection is that there was never any real  
24 issue with the version of events. What happened from the  
25 beginning it was, it was clear that, what happened.

MICHAEL CHESSER - DIRECT BY GOURLEY

1 Q. Okay. And can you elaborate on that? What  
2 exactly happened according to --

3 A. Well, what the, sort of, briefest version would be  
4 that this, the victim in this case, the fellow who got  
5 shot, he was a little older. My recollection he was about  
6 43 or thereabouts. And he was a -- in his past he had  
7 killed somebody but he had resolved it through a fairly  
8 lenient type of sentence, involuntary manslaughter or  
9 something like that. So he was a feared individual. And  
10 at this club they got into an argument and Mr. Byars felt  
11 threatened and so Mr. Byars left.

12 It would appear based on the incident report that  
13 he left and he was -- either left with or met this Charles  
14 Chandler. And he got a gun and then he went back and  
15 then he shot Dwayn Smith. Then he jumped in the vehicle  
16 he drove and he and Mr. Chandler drove off.

17 They were -- according to the incident report they  
18 were observed, according to the incident report it  
19 actually says 15 minutes prior to this. It was an  
20 unconnected type of license check or stop and the officer  
21 there noted that Mr. Byars -- Mr. Byars had dreads. He  
22 had a very distinctive look. He noticed that he -- there  
23 was a vehicle there. Mr. Byars got out and some 10 or 15  
24 minutes later returned to the vehicle. And I believe that  
25 he observed Mr. Chandler also.

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1           And then they drove back and then some five minutes  
2 later he heard the shots. This officer who was at a sort  
3 of unconnected license check or traffic point heard the  
4 shots and then that same officer ended up actually  
5 stopping the vehicle that Mr. Byars was driving.

6           So, just to elaborate a little more. Marvin Dicks  
7 was a club manager and he saw everything. It's quite  
8 possible, as Mr. Byars said, that there was some pressure  
9 put on him to make a statement but his statement was that  
10 he saw it all.

11           And I did talk to him on the phone to confirm that  
12 he had the same story not too long prior to trial -- prior  
13 to the resolution of this case.

14           So, in terms of, to answer your question, that  
15 version of the facts there was never any -- there was no  
16 other alternative version that Mr. Byars gave me.

17 Q.       In your opinion does that version of facts lead to  
18 a viable self-defense claim at trial?

19 A.       Obviously for us in the law business we know that  
20 when you leave and then you go back that you have -- you  
21 can't claim this heat of passion. You don't have a real  
22 defense. There's a -- this, of course, is a pattern that  
23 happens over and over. And if you were given time to cool  
24 off or leave or what have you, you just don't have any  
25 legal excuse to go back and take your revenge, so to

## MICHAEL CHESSER - CROSS BY BOOZER

1 speak.

2 Q. Did you advise Mr. Byars of this?

3 A. I did.

4 Q. Did he seem to understand it?

5 A. He understood it. Like I said, we had a good  
6 relationship. And it's just that Mr. Byars, like a lot of  
7 people, just -- ultimately, you just do not want to pay  
8 the price. And I can certainly understand that.

9 Q. Absolutely. Mr. Chesser, if Mr. Byars had wanted  
10 to go to trial, would you have been prepared for trial?

11 A. I would have. The -- yes.

12 Q. Okay. And, Mr. Chesser, whose ultimate decision  
13 was it to plead guilty?

14 A. Mr. Byars.

15 MR. GOURLEY: I have no further questions. Thank  
16 you, Mr. Chesser.

17 THE COURT: Cross-examination?

18 MR. BOOZER: Thank you, Your Honor. May it please  
19 the Court.

20 THE COURT: Yes.

21 CROSS-EXAMINATION

22 BY MR. BOOZER:

23 Q. Mr. Chesser, do you recall a meeting with Mr. Byars  
24 in a Hardee's parking lot in Williston?

25 A. Well, we met inside a Hardee's. And it may have

MICHAEL CHESSER - CROSS BY BOOZER

1 been more than once. I don't -- as I recall, the meeting  
2 that we had at Hardee's was well prior to any sort of  
3 court date or at least one of meetings we had at Hardee's,  
4 so, but it wasn't in terms of the parking lot. We met  
5 inside the Hardee's.

6 Q. Okay. I beg mischaracterizing that but at the  
7 Hardee's in Williston is where y'all met; correct?

8 A. Yes, sir.

9 Q. And do you know how long it was before you brought  
10 this plea offer to him that he actually entered a plea?

11 A. Let me take a look and see if I can find some notes  
12 here.

13 Q. Absolutely.

14 A. (Reviewing file.) Well, I don't. I would say  
15 this. Originally the -- law enforcement actually  
16 recommended no plea offer. The -- that was the actual  
17 Town of Williston or the people there. Obviously that  
18 decision ultimately is made by the lawyers, by the  
19 prosecutor in this case, Suzanne Ringler.

20 And the answer to your question is I really don't  
21 remember. My thinking is that for the longest time it was  
22 actually, there was no -- for -- the prosecution did not  
23 pursue this case. And I would just tell you that in my  
24 experience usually that means they're having victim  
25 problems. They just can't really, you know, they're not

MICHAEL CHESSER - CROSS BY BOOZER

1 getting great cooperation from their victim.

2 But nevertheless eventually it came around and the  
3 offer was, of course, a cap of 15. But in terms of to  
4 answer your question, I do not remember precisely how long  
5 that was before he actually did.

6 Q. Do you recall ever any discussion and you heard  
7 Mr. Byars' testimony about quote-unquote pack your  
8 toothbrush. Did you recall any sort of discussion?

9 A. I may well. It's probably an unfortunate term. I  
10 heard it a long time ago and it stuck in my mind. But the  
11 point there is that is if somebody's going to go to prison  
12 I believe that you need to tell them. I mean, you can't  
13 sit there and have somebody who's going to do a plea and  
14 then you say, well, you know, you might get probation. I  
15 don't think that's proper. So, I -- what I hopefully --  
16 I did tell him, if you do this plea you are going to  
17 prison because that is, there was no question.

18 Q. Did y'all have the discussion about having a trial?

19 A. In my opinion this case, there was just -- there  
20 was -- it was just one of those cases where you have -- it  
21 wasn't just one eyewitness. The other person in the  
22 vehicle, Charles Chandler, now he is not, you know -- he  
23 is what might be referred to as a bad actor too. But  
24 nevertheless, he gave a statement at the time that  
25 essentially was that he was an eyewitness to it. I think

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1 he said he heard the shot and then he saw Mr. Byars  
2 standing over the victim. Then they both get in the  
3 vehicle and it goes to what Mr. Byars says, I'm going to  
4 take the rap for it. Then they're stopped by the officer  
5 and Mr. Byars tells the officer, what you're looking for  
6 is under the seat.

7 In other words, I would venture to say that not all  
8 cases can be tried. I did not see -- and from the  
9 beginning I think the idea was that I would get Mr. Byars  
10 the best deal because you have these people who saw what  
11 happened. And of course there was really many people  
12 there. But these were the ones who to some extent  
13 cooperated with law enforcement.

14 And, so it was a case that -- I mean, you can  
15 exercise your rights to a trial and have the State prove  
16 their case beyond a reasonable doubt. But in terms of a  
17 theory of a defense, I would not have one.

18 MR. BOOZER: Court's indulgence, Your Honor.

19 THE COURT: All right.

20 MR. BOOZER: (Conferring with client.)

21 Q. Mr. Chesser, what did you do to actually prepare  
22 the case for trial?

23 A. I talked with Marvin Dicks, the club manager. And  
24 I went out to the scene just to see the -- my recollection  
25 is there was a road directly in front of the club and then

MICHAEL CHESSER - CROSS BY BOOZER

1 the other side there was some 10 or 15 feet and then there  
2 was a wire fence.

3 And, so, I -- the idea was, it's always helpful to  
4 see the scene and to try to see, given that scene, what  
5 would people have seen and so forth. So I visited the  
6 scene. I confirmed that Mr. Dicks would be a witness for  
7 the prosecution, an eyewitness. And other than that I  
8 familiarized myself with what the State's case would be.

9 Q. Do you know if there were any other statements  
10 other than the one from the club owner?

11 A. The -- I'm going to cite you to a couple of things  
12 from the incident reports. Again, I made reference  
13 earlier to the fact there was an officer conducting some  
14 type of a license check or law enforcement activity prior  
15 to this happening. That was the same officer who ended  
16 up stopping Mr. Byars who was driving.

17 And according to this report it says: As the  
18 subject, Mr. Byars, was placed in wrist restraints,  
19 subject made an excited utterance -- of course that's the  
20 officer's idea, but -- that the gun was under the seat and  
21 his passenger had nothing to do with it. So, the officer  
22 says he asked him if he had shot at somebody and Mr. Byars  
23 stated he shot up in the air.

24 And then they located a .38 special pistol. It had  
25 three live rounds and one cartridge which would be a round

MICHAEL CHESSER - CROSS BY BOOZER

1 that was fired. And then Mr. Chandler was the passenger,  
2 and let me just get his statement here.

3 Mr. Chandler stated that he had been, he had seen  
4 Antwon -- no, excuse me. He was at the club with somebody  
5 else. He had seen Antwon and they had spoken. He said  
6 Antwon and Poo Poo, that was the nickname or street name  
7 of the victim, got into it at the club. He didn't know  
8 what about. He said he was outside the car by the pub  
9 when he heard the gun go off. He said he went and grabbed  
10 Antwon because he thought he was going to kill Poo Poo.  
11 They got in the black Cadillac and drove off. He said  
12 Squiggie, that was Mr. Byars' street name, had the gun on  
13 the floor in the car. He said the gun was black. He had  
14 seen Squiggie with the gun before. Said Squiggie just  
15 turned the radio up and didn't talk. He said Squiggie  
16 said not to worry, he was taking the rap because he knew  
17 that CJ, that would be Chandler, didn't have anything to  
18 do with it.

19 I would just say this. That statement really,  
20 there's -- an element of that is probably not true because  
21 the officer who is conducting this unrelated law  
22 enforcement license check or whatever prior to the  
23 shooting said he saw both Chandler and Byars. Byars  
24 exited the vehicle, was gone for about 10 or 15 minutes.  
25 Came back and got in the vehicle when he saw both of them

1 in that vehicle. So it would appear that Chandler was  
2 actually with Mr. Byars both prior to and at the club.  
3 But nevertheless, that's the statement that Chandler gave.

4 Q. Did -- at any time did you interview Mr. Chandler?

5 A. No.

6 Q. Why not?

7 A. I don't have a reason for that. I just, I was  
8 consistent that the evidence was, was very strong.

9 Q. Could that have been beneficial to have interviewed  
10 Chandler for --

11 A. It would.

12 Q. And how would that have assisted?

13 A. Well, it -- it's a good idea to interview all the  
14 witnesses if you can.

15 MR. BOOZER: Your Honor, at this time I don't have  
16 any more questions for Mr. Chesser.

17 THE COURT: All right.

18 MR. GOURLEY: No, Your Honor.

19 THE COURT: Sir, you may step down. Thank you.

20 THE WITNESS: Thank you.

21 THE COURT: Anything further in this case?

22 MR. GOURLEY: Not from the State, Your Honor.

23 MR. BOOZER: Nothing further from the Applicant,  
24 Your Honor.

25 THE COURT: All right. I will take it under

1 advisement and let you know.

2 MR. BOOZER: Thank you, Your Honor.

3 MR. GOURLEY: Thank you, Your Honor.

4 END OF CASE: 10:50 A.M.

5 CERTIFICATE OF REPORTER

6 STATE OF SOUTH CAROLINA )

7 COUNTY OF AIKEN )

8 I, Cheri L. Young, Registered Professional Reporter  
9 and Official Court Reporter for the State of South  
10 Carolina, Second Circuit-At Large, do hereby certify that  
11 the foregoing proceedings were written stenographically by  
12 me using computer-aided translation; further, that the  
13 foregoing is a true, accurate and complete record, to the  
14 best of my skill and ability, of all the proceedings had  
15 and evidence introduced in the hearing of the captioned  
16 case, relative to appeal, in the Court of Common Pleas for  
17 Aiken County, on the 31st day of July, 2013.

18 I do further certify that I am neither of kin,  
19 counsel, nor interest to any party hereto. I have  
20 hereunder set my hand this 17th day of July, 2015.

21  
22 \_\_\_\_\_  
23 Cheri L. Young, RPR  
24 Official Court Reporter  
25

STATE OF SOUTH CAROLINA )  
 COUNTY OF BARNWELL )  
 )  
 Antwon Byars, #351482, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE SECOND JUDICIAL CIRCUIT

Case No. 2013-CP-06-121

**ORDER OF DISMISSAL**

FILED FOR RECORD  
 2015 MAR 30 PM 2:03  
 RICHARD D. FOGELWEH  
 CLERK OF COURT  
 BARNWELL COUNTY, S.C.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on April 10, 2013. Respondent made its return on February 20, 2014. An evidentiary hearing into the matter was convened on January 16, 2015, at the Aiken 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 Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Barnwell County Clerk of Court. The Applicant was true bill indicted at the January 2011 term of the Barnwell County Grand Jury for Assault and Battery with Intent to Kill (2011-GS-06-0014). Michael Chesser, Esquire, represented the Applicant. On July 9, 2012, Applicant pled guilty as indicted before the Honorable Doyet A. Early, III. Judge Early sentenced Applicant to ten years imprisonment for Assault and Battery with Intent to Kill.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by David Alexander, Esquire. The South Carolina Court of Appeals affirmed the Applicant's

*DUB*  
*1-11-15*

conviction and sentence. State v. Antwon Byars, Op. No. 2013- UP- 439 (Ct. App. filed November 27, 2013). The Remittitur was issued on December 23, 2013.

### 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. "Violation of Rule 6 of South Carolina Rules of Criminal Procedure"
  - b. "Brady Rule was violated/avoided (Rule 6 SCRP)"
  - c. "Misguided and erroneous advice"
  - d. "No type of investigatory actions"
  - e. "Avoided Procedural Rules of Due Process Clause 'Brady Rule'"

### SUMMARY OF TESTIMONY PRESENTED

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

During the evidentiary hearing, Applicant testified he pled guilty to assault and battery with intent to kill. Applicant stated that he will be maxing out in 2021. Applicant stated that he still wanted to proceed with his post-conviction relief hearing. Applicant stated Michael Chesser was his attorney. Applicant stated that got out on bond in 2011. Applicant stated that he met with Plea Counsel four or five times. Applicant stated they have approximately five to twenty phone conversations.

Applicant stated that he called Plea Counsel and they met at Hardees restaurant. Applicant stated that Plea Counsel presented a fifteen year plea offer, however Applicant did not accept the offer because he did not want to plead guilty. Applicant stated that he could not plead to fifteen years.

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Applicant stated the only evidence was various statements. Applicant stated that a couple of witnesses were prepared to testify had Applicant proceeded to trial. However, Applicant stated that he never reviewed or received discovery from Plea Counsel. Applicant stated that had he proceeded to trial he would have argued a self defense claim. Applicant stated Plea Counsel was not prepared to present an adequate self-defense claim at trial because he was pushing Applicant to plead guilty.

Applicant stated that he knew he needed to be present at all roll calls. Applicant stated he had ineffective assistance of counsel because Plea Counsel failed to investigate. Specifically, Applicant stated Plea Counsel failed to speak to various witnesses on his behalf. Applicant stated Plea Counsel maybe spoke to one witness. Applicant stated that he was prepared to go to trial. Applicant stated the day of trial, he realized Plea Counsel had no confidence in himself and therefore Applicant was forced to plead guilty.

Following Applicant's testimony, Plea Counsel was called to testify. Plea Counsel stated that he has been practicing law for twenty five years and was retained to represent Applicant. Plea Counsel stated that he filed for all Discovery and Rule 5 material. Plea Counsel stated he met with Applicant five or six times prior to his plea. Plea Counsel stated those meetings lasted a while. Plea Counsel stated they met at Hardees at least one time.

Plea Counsel stated the version of events never really changed. Plea Counsel stated the victim was older than Applicant, approximately forty three years of age. Plea Counsel stated Victim had a reputation of being a tough individual and had previously pled guilty to involuntary manslaughter. Plea Counsel stated victim and Applicant were at the club and got into an argument. Plea Counsel stated Applicant felt threatened and left the club. However, Plea Counsel stated Applicant met up with Charles Chandler, got a gun, and went back to the club.

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Plea Counsel stated Applicant shot victim and fled the scene with Charles Chandler. Plea Counsel stated Applicant and Charles Chandler were stopped approximately five minutes later. Plea Counsel stated the gun was found underneath the seat and Applicant claimed he was the owner of the gun. Plea Counsel stated Charles Chandler was a bad actor as well. Plea Counsel stated Charles Chandler gave a statement at the time. Plea Counsel stated Charles Chandler was an eye witness to it all. Specifically, Plea Counsel stated Charles Chandler heard the shot and saw Applicant standing over victim. Plea Counsel stated Applicant took the rap and told the officers where the gun was located. Plea Counsel stated there were three live rounds and one empty cartridge.

Plea Counsel stated Marion Dickson was prepared to testify against Applicant. Plea Counsel stated that Marion Dickson had seen everything take place. Plea Counsel stated that he did interview Marion Dickson prior to Applicant's plea. Plea Counsel stated that he went out to the scene of the crime. Plea Counsel stated that he rode in front of the club. Plea Counsel recalled that there was a ten to fifteen foot wire fence. Plea Counsel stated that he wanted to see the scene and get a better understanding of what took place. Plea Counsel stated he familiarized himself with the State's case. Plea Counsel stated that he never interviewed Charles Chandler, but his statement was consistent with the evidence. Plea Counsel stated it would be a good idea to interview all witnesses if possible.

Plea Counsel stated that law enforcement did not want the solicitor to make a plea offer. However, Plea Counsel stated Susanna Ringler made the decision to make an offer. Plea Counsel speculated that it was due to the lack of cooperation with the victim. Plea Counsel stated the offer was for a cap of fifteen years. Plea Counsel stated that he told Applicant he

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would be going to prison. Plea Counsel stated that it is his opinion that "if someone is going to prison you need to tell them" that they are going to prison.

Plea Counsel stated Applicant had no self-defense claim because he left the club and returned with a gun. Plea Counsel explained this to Applicant and Applicant understood. Plea Counsel stated had Applicant wanted to proceed to trial he would have been prepared to try the case. However, Plea Counsel stated it was ultimately Applicant's decision to plead guilty.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. 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

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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 failed to investigate.*

This Court finds Applicant's allegation that Plea Counsel failed to investigate during his case to be without merit. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

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In the instant case, Plea Counsel stated that he met with Applicant five or six times. Plea Counsel further stated that interviewed Marion Dickson, a key eye witness in Applicant's case. Plea Counsel stated that he went out the scene of the crime and viewed the area. Plea Counsel stated that he familiarized himself with the State's case. Based on the foregoing, this Court finds Plea 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).

Additionally, this Court finds Applicant failed to present sufficient evidence as to what additional investigation would have revealed. Applicant failed to present any documents or witnesses on his behalf to support his allegation that Plea Counsel failed to conduct a sufficient investigation. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

Furthermore, this Court finds Applicant can show no prejudice as a result of overwhelming guilt. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001), cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt); cf. Ford v. State, 314 S.C. 245, 248, 442 S.E.2d 604, 606 (1994) (holding respondent failed to prove prejudice from trial counsel's failure to request an alibi charge where there was overwhelming evidence of guilt).

The evidence presented reveals that the Applicant was identified as standing over the victim with a gun. Several eye witnesses were prepared to testify on the State's behalf.

Additionally, Applicant does not dispute his guilt, but merely asserts that he has a viable self defense claim. To the contrary, Applicant left the scene after getting into a heated argument, returned with a gun, and shot the victim. Nothing about this factual context leads to a viable self defense claim. As a result, this Court finds Applicant can show no prejudice as a result of Plea Counsel's alleged deficiencies.

### BRADY VIOLATIONS

*Brady rules were violated.<sup>1</sup>*

This Court finds Applicant's allegation that there were various Brady violations to be meritless. Applicant failed to present any documentation or evidence to support his claim that there was information that was not turned over. See *Palacio v. State*, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense). As a result, this Court finds Applicant's allegation that there were various Brady violations committed to be meritless.

### 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

<sup>1</sup> This Court notes allegations a, b, and e were of similar nature and therefore are addressed as one claim.


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 23 day of March, 2015.

  
 D. CRAIG BROWN  
 Presiding Judge  
 Second Judicial Circuit

Florence, South Carolina

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