

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Sumter County
Clifton Newman, Circuit Court Judge

RECEIVED

SEP - 8 2015

S.C. Supreme Court

TROY PEARSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000026

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

DANIEL GOURLEY
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....	i
GUILTY PLEA TRANSCRIPT	1
INDICTMENT	23
SENTENCING SHEET	25
APPLICATION FOR POST-CONVICTION RELIEF	26
RETURN	32
POST-CONVICTION RELIEF HEARING TRANSCRIPT	37
ORDER OF DISMISSAL	72
APPLICATION FOR POST-CONVICTION RELIEF	80
RETURN AND MOTION TO DISMISS ALL CLAIMS BEYOND <u>AUSTIN</u> REVIEW.....	91
POST-CONVICTION RELIEF HEARING TRANSCRIPT	97
APPLICANT'S EXHIBIT #1 (Letter)	109
ORDER GRANTING BELATED APPEAL PURSUANT TO <u>AUSTIN</u>	110

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF SUMTER)

State of SC,)
) PLAINTIFF)
 vs.) TRANSCRIPT OF RECORD)
)
Troy L Pearson,)
)
) DEFENDANT)

May 29, 2008
Sumter, South Carolina

B E F O R E:

THE HONORABLE R FERRELL COTHRAN, JR., PRESIDING
JUDGE.

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

HARRY CONNER, ASSISTANT SOLICITOR
Attorney for the Plaintiff

JACK HOWLE, CHIEF PUBLIC DEFENDER
Attorney for the Defendant

Kathleen Richardson, RPR, CRR
Official Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

(no exhibits were marked.)

1 MR. CONNER: May it please the Court. This is
2 Troy Lavern Pearson. He's here on indictment
3 2007-849 charged with murder and possession of a
4 firearm during the commission of a violent crime.
5 He's represented by Mr. Jack Howle who stands with
6 him at this time.

7 Your Honor, he's indicated to us that he would
8 plead guilty to voluntary manslaughter for a
9 negotiated 30 year sentence.

10 We're willing to accept that plea in settlement
11 of this case, and I hand up the plea sheet. We are
12 dismissing the firearms charge on his plea to this
13 manslaughter charge.

14 TROY L PEARSON, after being duly
15 sworn, testified as follows:

16 THE COURT: Mr. Howle, you represent
17 Mr. Pearson?

18 MR. HOWLE: Yes, Your Honor.

19 THE COURT: Have you explained the nature of the
20 charges against him, the possible punishment he can
21 receive, and his constitutional rights?

22 MR. HOWLE: I have, Your Honor.

23 THE COURT: He understand them?

24 MR. HOWLE: He does, Your Honor.

25 THE COURT: He tells you he wants to plead

1 guilty to voluntary manslaughter?

2 MR. HOWLE: Yes, sir.

3 THE COURT: Based on your investigation of this
4 case, do you agree with his decision?

5 MR. HOWLE: I do, Your Honor.

6 THE COURT: Mr. Pearson, your lawyer tells me
7 you want to plead guilty to manslaughter. Is that
8 right, sir?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You had enough time to talk to your
11 lawyer about this decision?

12 THE DEFENDANT: Yes, sir. He -- he said it the
13 best he could give me, yes, sir.

14 THE COURT: Are you satisfied with his
15 representation?

16 THE DEFENDANT: I guess.

17 THE COURT: Sir?

18 THE DEFENDANT: Guess so.

19 THE COURT: Well, if you've got any complaints
20 against him, I need you to tell me now; okay?

21 THE DEFENDANT: I'm okay. Yeah, I'm good.

22 THE COURT: Okay. You got any complaints
23 against your lawyer?

24 THE DEFENDANT: No, sir.

25 THE COURT: You got any complaints against the

1 Solicitor's office or law enforcement?

2 THE DEFENDANT: No, sir.

3 THE COURT: Has anybody promised you anything or
4 threatened you in any way, other than negotiations
5 that your attorney and the State have entered into,
6 to get you to do this?

7 THE DEFENDANT: No, sir.

8 THE COURT: So you're doing this freely and
9 voluntarily?

10 THE DEFENDANT: Yeah.

11 THE COURT: You understand that if I do not
12 follow the negotiations that your lawyer and the
13 State have entered into, I will allow you to withdraw
14 your plea. You understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right, sir. Are you today under
17 the influence of any alcohol or drugs?

18 THE DEFENDANT: No, sir.

19 THE COURT: You have any mental or physical
20 diseases that would keep you from understanding what
21 you're doing today?

22 THE DEFENDANT: No, sir.

23 THE COURT: How far did you go in school?

24 THE DEFENDANT: I'm graduate -- diploma from
25 high school.

1 THE COURT: Okay. You have never been diagnosed
2 with a mental illness; have you?

3 THE DEFENDANT: No, sir.

4 THE COURT: All right, sir. By pleading guilty
5 today, you are giving up certain constitutional
6 rights. You have the right to remain silent and not
7 incriminate yourself under the Fifth Amendment of our
8 Constitution.

9 But when you plead guilty, you give that right
10 up because you're going to tell me you're guilty. Do
11 you understand that, sir?

12 You also have a right a jury trial on these
13 charges. And in that trial, you would be presumed
14 innocent, and I would tell the jury that, and the
15 State would have the burden of proving you guilty
16 beyond a reasonable doubt to all 12 jurors.

17 You'd be able to sit there with your attorney
18 and confront the witnesses that testified against you
19 from this witness stand, he could cross-examine the
20 State's witnesses, he could subpoena witnesses to
21 testify in your own behalf.

22 But when you plead guilty, you give that right
23 up. Do you understand that, sir?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You are also giving up any appeal

1 that may come out of that trial by this guilty plea.

2 Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now, if you want to appeal this
5 guilty plea and sentence, you must do so within 10
6 days. Either you or your attorney must file that
7 with the Clerk's office or you will lose that right.
8 Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You understand that this is a
11 violent offense and it's a most serious offense. If
12 you get caught again in the future for another most
13 serious offense, you will be looking at life without
14 the possibility of parole. Do you understand that,
15 sir?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You understand that this is a
18 no-paroleable offense and that you will have to serve
19 at least 85 percent of the sentence. You understand
20 that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right, sir. How about listen --
23 well, let me ask you this. Have you understood
24 everything I have asked you?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You have any questions you want to
2 ask me about your rights or anything we have covered
3 so far?

4 THE DEFENDANT: No, sir.

5 MR. CONNER: I'm going to let you speak --

6 THE DEFENDANT: No.

7 THE COURT: -- to me later, but I just need to
8 know, be sure you understand what your rights are.

9 THE DEFENDANT: Yes, sir. I understand.

10 THE COURT: Okay. So you knowingly and
11 intelligently enter this plea today, right?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right, sir. How about listen to
14 the facts the Solicitor's going to tell me about, and
15 I'm going to come back and ask you about them.

16 MR. CONNER: May it please the Court. This
17 happened on December the 24th, 2006. The Sumter
18 Police Department was called to a home on South Main
19 Street here in Sumter.

20 When they got there they discovered the body of
21 Kadesha Shannon lying on the ground at the end of the
22 trailer home. She had been shot several times.
23 The -- she was dead there at the scene, Your Honor.

24 She was subsequently taken to -- to Newberry for
25 an autopsy where they found several wounds in the

1 body. She had been shot in the -- in the --

2 (whereupon there was a pause as there was
3 commotion) .

4 MR. CONNER: -- she had been shot, Your Honor,
5 once in the leg in the middle of the -- the left
6 thigh, and it came out on the back side of the thigh.

7 The report indicates that that was not a -- not
8 the fatal wound. I have some pictures, Your Honor,
9 just showing some of the blood. Apparently she did
10 bleed in the house.

11 And these are just three pictures that show some
12 of the blood in the house, and it kind of
13 corroborates the statement that this defendant gave
14 also.

15 The other wounds -- there was one in the back
16 which was -- I have pictures of those, too, and I'm
17 going to hand them up. Mr. Howle has had copies of
18 these pictures.

19 The top one there is the leg and then the others
20 that show the wound in the back and also to the head.
21 The report indicates that either -- any of the other
22 wounds, the head wounds or the back wound could have
23 been fatal.

24 The -- the one of the wounds, the one in the top
25 of the head -- I call it the top of the head, it may

1 be slightly in the -- in the back top part of the
2 head -- this report indicates that there was muzzle
3 impression around it indicating that the gun was
4 against the -- the head when it was fired.

5 Your Honor, based upon people in the
6 neighborhood, they were able to develop this
7 defendant as a suspect, and they went there and
8 proceeded to -- went to his home and found him and
9 proceeded to talk with him.

10 He gave them a statement. He indicated that he
11 had picked this woman up walking on what's called
12 Manning Avenue and that she had ridden around with
13 him and that he had taken her to her home and that he
14 had a .38 caliber pistol in his pocket.

15 And after he left her, he discovered that the
16 .38 caliber pistol was missing, and he got a
17 9-millimeter pistol and armed himself with it, went
18 back over to her home later in the day, and that
19 there was some other guy there when he got there.

20 They had some conversation. The other fellow
21 left. And then he and Kadesha had some words. He
22 indicated that she had an attitude.

23 He was asking her about the pistol. She denied
24 that she had taken the pistol or knew anything about
25 the pistol.

1 The -- then he said that she threatened him with
2 a razor, and he shot at her, hit her in -- this was
3 the -- a wound to the leg apparently, that it, that
4 he shot at her legs. And of course, you can see
5 there's considerable blood as a result of that wound.

6 And then he said she went outside and he thought
7 she was going to get the gun and apparently -- and he
8 shot her again. He doesn't know exactly where he
9 shot her, but he shot her.

10 And it got three choices there. Either one of
11 these shots to the head, and all -- both of those
12 were kind of to the back of the head, and the other
13 one was square in the back and went through her lung.

14 The -- one of those shots apparently knocked her
15 down. She kind of reached over, grabbed him around
16 the leg, and he put the gun against her head or --
17 and shot her two more times.

18 And he's admitted to that in his statement to
19 the police, that's -- when he was arrested. The --
20 he has very little prior record, Your Honor. I do
21 notice that he had an unlawful weapon possession case
22 back in 2002 and he -- he got a 60 days or \$300 fine
23 on that. The -- and that's all we show.

24 The victim did have a cocaine problem, and her
25 toxicology results indicate that she had either been

1 using cocaine or crack at some time prior to this.
2 It said -- the report indicates that there was a
3 positive for cocaine metabolite and -- that her blood
4 was.

5 Your Honor, I have here with me Captain Holston,
6 Detective Culick from the Sumter Police Department
7 right to my left, if you have any questions for them,
8 and Sebra Shannon, the victim's mother also, and then
9 the Vickie Barwick, our victim witness advocate.

10 If you have any questions of these folks, I'm
11 sure they'd be glad to address them. And
12 Mrs. Shannon might want to say something.

13 *MOTHER OF VICTIM:* My granddaughter, daughter
14 want to speak... could I say one thing, Your Honor?

15 *THE COURT:* Yes, ma'am.

16 *MOTHER OF VICTIM:* Whatever she did, right, she
17 didn't deserve that, okay. You don't shoot a person
18 down, down like he did, right, like a dog. Okay. If
19 she look -- shot one time or either call the cops,
20 okay, but this man shot my daughter down, my only
21 daughter, daughter down like a dog.

22 *THE COURT:* I understand that. Thank you,
23 ma'am.

24 *MOTHER OF VICTIM:* Okay.

25 *DAUGHTER OF VICTIM:* I miss my mother. And I

1 can't take it, but he had to shoot her like that. I
2 don't appreciate that. And that wasn't right, like
3 he left her there like a dog like she wasn't nothing.

4 THE COURT: Anything else from the State?

5 MR. CONNER: Nothing else, Your Honor.

6 THE COURT: Mr. Pearson, are those facts the
7 Solicitor gave me, are they correct, sir? Sir?

8 THE DEFENDANT: Excuse me, Judge?

9 THE COURT: Are the facts correct that the
10 Solicitor told me about?

11 THE DEFENDANT: Yes.

12 THE COURT: That's what you did?

13 THE DEFENDANT: Yes, about me doing it in the
14 way as my defense, you know, to mean because--

15 THE COURT: I can't hear you.

16 THE DEFENDANT: I wasn't doing it in defense
17 of -- you know, to the offense of me because, you
18 know, I could have lost my life that -- now that day.
19 And like I say, you know, this is not a type of
20 person I am, from my background. And you know...

21 THE COURT: But you shot this woman, is that
22 correct?

23 THE DEFENDANT: Ma'am? I mean, sir?

24 THE COURT: You shot this woman?

25 THE DEFENDANT: Yes.

1 THE COURT: Which caused her death.

2 THE DEFENDANT: Yes.

3 THE COURT: Okay. I find a substantial factual
4 basis for your plea. I find it's freely and
5 voluntarily entered into, that you have had advice of
6 competent counsel whom you tell me you're satisfied,
7 and I will accept your plea. Yes, sir.

8 MR. HOWLE: Your Honor, Troy, as he's told you,
9 completed Sumter High School. He's worked at Bosch
10 and Gold Kist, forklift operator. Always been
11 gainfully employed.

12 His girlfriend is with him here today. They
13 have been together nine years. They have a son who
14 is five years old. Has no General Sessions record.
15 You heard the extent of his record that he had, and
16 that is a Magistrate Court offense, Your Honor.

17 The statement he gave that night when the police
18 came is -- is the statement, and he really has not
19 varied from that in regard to anything other than
20 some matters that I'll cover that may have presented
21 some defense of self-defense initially, but as we
22 went through the facts and I discussed it with him, I
23 think that defense was -- was totally lost at that
24 point, Your Honor.

25 One thing I would say, and I -- I bring this up

1 because it's part of what happened here and for no
2 other reason, and it is contained within the police
3 report.

4 This lady was a known prostitute to the police
5 and had a reputation for stealing from men who would
6 pick her up. And I'm reading directly from the
7 police report when I say that, Your Honor.

8 He had picked her up. And he was -- it was
9 wintertime. He had a big, heavy coat on. And he
10 said when he -- after he dropped her off, that he
11 noticed this gun that was in his pocket, was in a
12 Crown Royal bag, had been taken.

13 He went back around there. And he says he had
14 this other gun he picked up because he knew that he
15 was going to try to recover the gun from her.

16 When he went there, there was another male that
17 was there who I think lived in the same trailer with
18 her. I'm not sure. But he left before there was
19 really any kind of confrontation.

20 Then he had this discussion with her in regard
21 to it. She denied it. And he saw the Royal Crown
22 bag lying over one of the chairs, so he knew that the
23 gun was there.

24 And he said, I know the gun is here, and I --
25 all I want to do is just pick it up. And that's when

1 she had a razor and came to him, and he says he shot
2 her in the leg.

3 He said she told him that the gun was in the
4 next room. And he walked through there and didn't
5 see anything. So he went out one door, and said when
6 he went to get on his bike, she had gone out the
7 other door and was at the front of the trailer where
8 there was some boxes and things or something
9 underneath it, and felt that she was trying to get
10 the gun, and he shot her.

11 Now Your Honor, there are two more shots after
12 that. He stated to me that he was fairly close to
13 her, and he walked over, and that's when she grabbed
14 his leg or reached up, and he -- he did shoot her
15 twice more, and I think that was almost compulsive
16 action or impulsive action and not anything more than
17 that.

18 I mean, because I told him in regard to a
19 self-defense, I understand the knife, I understand
20 maybe thinking she had a gun, but the final two
21 shots -- and he -- he acknowledges that.

22 But it was I think just in the heat of the
23 moment with everything happening, and -- and that's
24 what he did. He has a substantial amount of family
25 here.

1 I have talked with them before and I talked with
2 his girlfriend again this morning in regard to what
3 we were doing and what the offer had been from the
4 Solicitor's Office in regard to it, and that I
5 thought the facts would substantiate that if we went
6 to trial.

7 And if we went to trial, it would be on a murder
8 charge, and that if he were found guilty -- which I
9 think this evidence would have done -- that he would
10 have exposed himself to a full 30 year sentence and
11 possibly a life sentence. And he acknowledged that
12 as well in regard to tendering the plea that's before
13 the Court.

14 Now, I had not discussed that with all the
15 family members, so some of them probably did not know
16 that until we stood up here, and I -- not trying to
17 throw something on them at the last minute.

18 I was talking to his girlfriend first rather
19 than just having a whole group of people and talking
20 about something of that nature.

21 But Your Honor, it's one of these things that,
22 you know, I have an individual here who has nothing
23 but a good record. He's been no trouble really with
24 the law at all.

25 And something happened that initially caused him

1 to lose his temper. And I think once that thing
2 happened, it was just -- it was all over before he
3 really realized what had happened.

4 But Your Honor, as soon as the police did come
5 and talk with him, he told them exactly what he's
6 telling you today. That has not varied one bit.

7 So he has not tried to make up something or
8 change something or blame it on someone else. He was
9 very forthright and indicating exactly what had
10 happened in that statement.

11 Your Honor, he has been incarcerated since that
12 time. In regard to the negotiated sentence, we would
13 certainly ask that that time be applied toward the
14 sentence the Court would impose.

15 *THE COURT:* Okay.

16 *MR. HOWLE:* I don't know if any of the family
17 members would like to specifically talk about him.

18 *MOTHER OF DEFENDANT:* Yes. I'd like to say
19 something on behalf of my -- I'd like to say
20 something behalf of my son. I'm his mother. And my
21 son -- I'm a diabetic and my son needs to be home
22 with his mother and things. I sick and things, and I
23 can't hardly do for myself and thing.

24 And my son, he -- he's a good fellow. And my
25 son -- my -- my son, he never did get in no trouble

1 or nothing. He never did give nobody no problem
2 nothing. And my son, my son, my son...

3 THE COURT: Thank you, ma'am. Anybody else?

4 GIRLFRIEND OF DEFENDANT: Your Honor.

5 THE COURT: Hang on just a minute. Yes, ma'am.

6 MOTHER OF DEFENDANT: I'm Teresa. I'm his
7 girlfriend. We do have like a son, five years old,
8 and he's going to first grade. And it's like every
9 day I have to like let him know that his dad come
10 home because every day he ask me about his dad, and
11 he's like -- I have to like tell him that his dad
12 come home.

13 And I can't just, you know, let him know that
14 he's not there for him. And I'm just saying that
15 Troy -- we been together nine years. And the nine
16 years that we been together, he's not a violent
17 person, and he's a sweet person.

18 And just that, you know, I -- I'm just saying
19 that it just -- it's kind of like hard right now
20 because this was our first child. And like I was
21 telling Jane, that the night -- ever been together,
22 we have our ups and downs, and we -- we been through
23 a lot.

24 And it's like my son, he need him there because
25 he's also sick, and he was diagnosed with ADHD. And

1 his school work -- he goes to Millwood, and his
2 teacher was telling me that by his dad not being
3 there with him, that's affecting his school work and,
4 you know, things like that.

5 THE COURT: Thank you.

6 THOMAS PEARSON: Thomas Pearson. I'm Troy
7 father. I done my best with Troy as he come up as a
8 baby. And I never had no trouble out of Troy. And I
9 had -- I got two boys and two girls. I never had no
10 trouble out of them.

11 But this came up, I -- I don't know what to say.
12 God bless you.

13 THE COURT: Thank you, Reverend. Anybody else?
14 Anything else from the State?

15 MR. CONNER: Nothing further, Your Honor.

16 THE COURT: Mr. Pearson, you made some bad
17 decisions that day and you affected a lot of people's
18 lives as a result of it. Got two children living
19 without a parent.

20 I'm going to follow the negotiations the
21 attorney and the State have entered into.

22 The Sentence of the Court is you're committed
23 the State Department of Corrections for a term of 30
24 years.

25 MR. HOWLE: Thank you, Your Honor.

1 THE COURT: I'm giving you credit for whatever
2 time you served so far.

3 MOTHER OF VICTIM: Thank you, Your Honor. Thank
4 you, Your Honor. Thank you. Thank you. Thank you.

5 (End of requested transcript of record.)
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

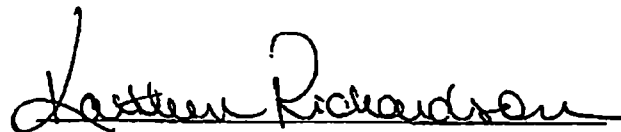
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

I, KATHLEEN RICHARDSON, RPR, CRR, Official Court Reporter for the third 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 Sumter County, South Carolina, on the twenty-ninth day of May, 2008.

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

June 30, 2008



KATHLEEN RICHARDSON, RPR, CRR

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER) MURDER, POSSESSION OF A FIREARM
DURING COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on October 25, 2007, the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE – MURDER

That TROY LEVERN PEARSON, JR. did in Sumter County on or about December 24, 2006, feloniously, wilfully and with malice aforethought, either expressed or implied, kill one Khadisha Shannon by means of shooting her with a 9mm pistol, and that the said Khadisha Shannon did die as a proximate result thereof.

COUNT TWO – POSSESSION OF A FIREARM DURING COMMISSION OF A VIOLENT CRIME

That TROY LAVERN PEARSON, JR. in Sumter County on or about December 24, 2006, was in possession of and did visibly display a firearm during the commission of a violent crime as defined in Section 16-1-60, to-wit: 9mm pistol, in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

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


SOLICITOR

WITNESSES

SPD

Irene Culick

ARREST WARRANT NUMBER

J301443

D/A: 12/28/06

ACTION OF GRAND JURY

True Bill

Larry Holloman

Foreperson of Grand Jury

Date: *10/25/07*

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-43- *849*
The State of South Carolina
County of SUMTER

COURT OF GENERAL SESSIONS

OCTOBER TERM 2007

THE STATE

vs.

TROY LAVERN PEARSON, JR.

Indictment for

MURDER, POSSESSION OF A
FIREARM DURING COMMISSION OF A
VIOLENT CRIME

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS **25**

COUNTY OF SUMTER

INDICTMENT/CASE#: 2007-GS-43-0849

STATE VS.

TROY LAVERN PEARSON

AW#: J301443

AKA:

Race: Black

Sex: Male

Age:

Date of Offense: December 24, 2006

S.C. Code §: 16-03-0010, 0020

DOB: [REDACTED]

SS#: [REDACTED]

CDR Code #: 0116

Address: [REDACTED]

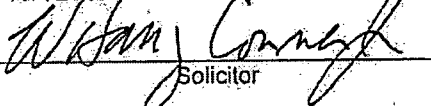
SENTENCE SHEET

DL#

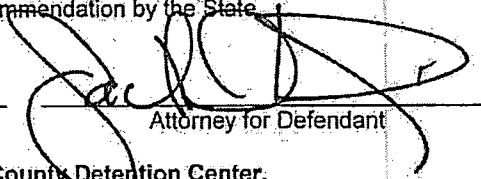
SID#

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: VOLUNTARY MANSLAUGHTERin violation of § 16-3-050 of the S.C. Code of Laws, bearing CDR Code # 0121117
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State

ATTEST:


 Solicitor


 Defendant


 Attorney for Defendant
WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

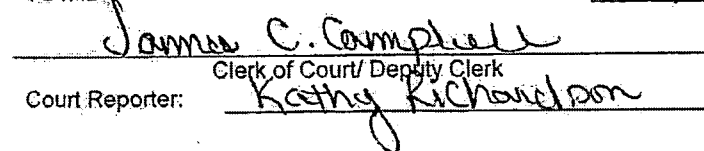
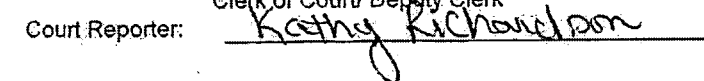
Payment Terms:

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

Recipient:

*Fine:	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$ 3.15
TOTAL	\$ 128.15

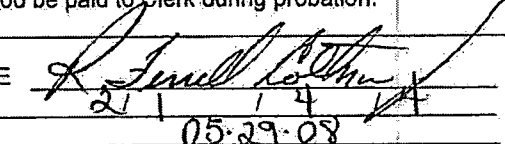
☐ Appointed PD or appointed other counsel, \$35.13 TP
 Requires \$500 be paid to Clerk during probation.


 Clerk of Court/ Deputy Clerk
 Court Reporter: 

PRESIDING JUDGE

Judge Code:

Sentence Date:


 2114
 05-29-08

STATE OF SOUTH CAROLINA)

County of Sumter)Troy D. Pearson #328627
Full name and prison number, if any, of applicant.)

v.)

The State
Name of Respondent)

In the Court of Common Pleas

RECORDED
2010 JUL -9 PM 12:10JAMES L. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

APPLICATION FOR

POST-CONVICTION RELIEF 2010-CP-43-1449

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 it clear to which question any such continued answer refers.

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

If the applicant 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 applicant was convicted.

1. Place of detention Lee Correctional Institution - Kershaw North-rm.# 2245 (990 Wisacky Hwy., Bishopville, S.C. 29010)
2. Name and location of Court which imposed sentence Court of General Sessions Sumter County Court House, Sumter, S.C. 29150
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) Voluntary Manslaughter - 2008
 - (b) N/A
 - (c) N/A
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 29, 2008 - 25 years
 - (b) N/A
 - (c) N/A

S.C. Attorney General
RECEIVED

JUL 14 2010

Referred to

PCR ds

Answered

5. Check whether a finding of guilty was made
- (a) after a plea of guilty yes
 - (b) after a plea of not guilty N/A
 - (c) after a plea of nolo contendere N/A
6. Did you appeal from the judgment of conviction or the imposition of sentence? yes
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals
 - ii. N/A
 - iii. N/A
 - (b) the result in each such Court to which you appealed:
 - i. Appeal Dismissed
 - ii. N/A
 - iii. N/A
 - (c) the date of each such result:
 - i. January 28, 2010
 - ii. N/A
 - iii. N/A
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. Anders v. California 386 U.S. 738 (1967)
 - ii. State v. Williams 305 S.C. 116, 406 S.E. 2d 357 (1991)
 - iii. N/A
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) _____
 - (b) _____
 - (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
 - (b) Inadequate/Misrepresentation of Counsel
 - (c) Prosecutorial Misconduct

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) Did not preserve through Pre-trial motions a fair opportunity to litigate 6th Amendment.

(b) Did not preserve the applicants "Due Process" rights Pursant to 5th Amendment.

(c) The withholding of motion of Brady Discovery through an act of Collusion Brady V. Maryland rolation.

11. 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 petitions in State or Federal Courts for habeas corpus or post-conviction relief? No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) No

(d) any other petitions, motions or applications in this or any other Court? No

12. If you answered "yes" to any part of (11), 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

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No

14. If you answered "yes" to (13), 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

15. If any ground set forth in (9) 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) The lack of effective / adequate representation
- (b) Ineffective assistance of counsel
- (c) N/A

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? N/A
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? No

17. If you answered "yes" to one or more parts of (16), list:

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

- i. Jack Howle, (Chief Public Defender) 141 N. Main St. Rm#104
- ii. Joseph Z. Savitz, III, (Senior Appellate Defender) 1330 Lady St. Suite 4
- iii. N/A

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

- i. At arraignment and plea
- ii. At sentencing
- iii. At Appeal

18. State clearly the relief you seek in filing this application.

Petitioner request that my sentence be reversed and remand or that my conviction be vacated due to the aforementioned claim.

19. Are you now under sentence from any other court that you have not challenged? No

RECORDED

STATE OF SOUTH CAROLINA)
COUNTY OF Sumter)

VERIFICATION 2010 JUL -9 PM 12: 10

I, Troy Pearson JAMES J. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C. 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.

Troy Pearson

Sworn to and subscribed before me

This 8 day of July, 2010

[Signature] L.S.
Notary Public for South Carolina

My Commission Expires 5-16-11

2010-CP-43- 1449

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

I, Troy Pearson, 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 or 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 proceeding or give security therefor.

Troy Pearson
Applicant

Sworn to and subscribed before me

This 8 day of July, 2010

[Signature] L.S.
Notary Public for South Carolina

My Commission Expires: 5-16-11

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2010-CP-43-1449
	)	
Troy L. Pearson, #328627,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(Appointment of Counsel Requested)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed July 9, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted for (1) Murder and (2) Possession of a Firearm During Commission of a Violent Crime (2007-GS-43-0849). Jack Howle, Esquire, represented him. On May 29, 2008, the Applicant pled guilty to the lesser offense of Voluntary Manslaughter before the Honorable R. Ferrell Cothran, Jr. Applicant was sentenced to thirty (30) years imprisonment.

A notice of appeal was filed and an appeal perfected. The appeal was dismissed following submission of an Anders brief. State v. Pearson, Op. No. 2010-UP-042 (S.C. Ct. App. filed January 26, 2010). The Remittitur was sent on February 12, 2010.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina

Department of Corrections, the 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. "Did not preserve through pre-trial motions a fair opportunity to litigate 6th Amendment."
2. "Inadequate/misrepresentation of counsel."
 - a. "Did not preserve the applicant's 'due process' rights pursuant to 5th Amendment."
3. "Prosecutorial misconduct."
 - a. "The withholding of motion of Brady Discovery through an act of collusion Brady v. Maryland violation."

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

III.

For purposes of this return, Respondent interprets Applicant's allegations to be allegations of ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result."

Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

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

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

IV.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: Mary S. Williams
ATTORNEYS FOR RESPONDENT

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

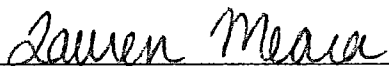
Feb. 17, 2011.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2010-CP-43-1449
	)	
TROY L. PEARSON, 328627,	)	
	)	
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:

J. David Weeks, Esquire
Weeks Law Office, LLC
Post Office Box 370
Sumter, SC 29151

DATED this 17th day of February, 2011.



 Lauren Meara, Legal Assistant
 For Respondent

1 THE STATE OF SOUTH CAROLINA

2 COUNTY OF SUMTER

3

4 Troy L. Pearson,
Plaintiff

PCR HEARING
2010-CP-43-1449

5

6 vs.

7 State of South Carolina,
Defendants

September 17, 2012
Sumter, S.C.

8

9

10

11

12 BEFORE THE HONORABLE W. Jeffery Young, Judge.

13

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

15 Mr. J. David Weeks,
Attorney for Plaintiff

16

17 Ms. Megan E. Harrigan,
Attorney for Defendants

18

19

20 Margaret T. Sullivan,
Court Reporter

21

22

23

24

25

	<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
1	Troy Pearson				
2	by Mr. Weeks	5			
	by Mr. Howle		16		
3	Jack Howle				
	by Ms. Harrigan	21			
4	by Mr. Weeks		27		
	by the Court		33		
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					

1 THE COURT: Ms. Harrigan, do you want to give me
2 a brief synopsis of what we have here?

3 MS. HARRIGAN: Certainly, Your Honor.
4 Docket No. 2010-CP-43-1449. Applicant was true
5 billed indicted in Sumter County in October of
6 2007, for murder and possession of a firearm
7 during the commission of a violent crime.
8 Applicant was represented by Jack D. Howle, Jr.
9 He pled guilty on May 29th 2008, to the lesser
10 included offense of voluntary manslaughter. And
11 pursuant to negotiations, he was sentenced by
12 R. Ferrell -- the Honorable R. Ferrell Cothran,
13 Jr. to 30 years in prison pursuant to
14 negotiations.

15 A direct appeal was filed and his
16 convictions were affirmed on January 26th 2010,
17 following an commission of a Anders Brief on
18 applicant's behalf. A PCR were filed on
19 July 9th 2010. The State made its return on
20 February 17th 2011. And the applicant is
21 represented in this action here today by J. David
22 Weeks, Esquire.

23 THE COURT: Mr. Weeks, are you ready to
24 proceed?

25 MR. WEEKS: Your Honor, we are. I would

1 like to put one matter on the record. Judge, we,
2 Mr. Pearson had a conference at Lee Correctional
3 this past weekend, that we were not able to have
4 because of some unfortunate circumstances that
5 have put him on lock down. We did speak this
6 morning for an extended period of time. He feels
7 that he has not had sufficient time, but I would
8 like the court to make inquiry for the record,
9 because of the unusual circumstances in this
10 particular situation.

11 THE COURT: But he says that he has
12 sufficient time for this?

13 MR. WEEKS: He told me he did, Your Honor.
14 But I would like the court to make an inquiry for
15 purposes of the record.

16 THE COURT: Mr. Pearson, please stand.

17 (Whereupon, the defendant is sworn.).

18 THE COURT: Mr. Pearson, your attorney
19 Mr. Weeks, basically had some concern that he
20 hadn't had enough time to speak with you on this,
21 but you think he has, is that correct?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You've been able to ask him
24 all the questions that you wanted to?

25 THE APPLICANT: Yes, sir.

Troy Pearson-Direct by Weeks

1 THE COURT: So you're ready to proceed
2 today.

3 THE APPLICANT: Yes, sir.

4 THE COURT: Very well. Thank you. You
5 may call your first witness.

6 MR. WEEKS: We would call Mr. Troy
7 Pearson.

8 THE COURT: Mr. Pearson, you are under
9 oath.

10 (Whereupon, the Applicant is sworn.)

11 THE BAILIFF: Please state your full name
12 and spell your last name for the record.

13 A Troy Pearson. Last name is P-E-A-R-S-O-N.

14 Direct Examination by Mr. Weeks:

15 Q Mr. Pearson, you were represented by
16 attorney Jack Howle in the underlying proceeding
17 in this case, weren't you?

18 A Yes, sir.

19 Q And he was your court appointed attorney.

20 A Yes, sir.

21 Q And you entered a guilty plea in this
22 particular case, didn't you?

23 A Yes, sir.

24 Q And was it your understanding that the
25 guilty plea that you were entering was a

Troy Pearson-Direct by Weeks

1 negotiated plea?

2 A Yes, sir.

3 Q And what was your understanding of what a
4 negotiated plea was?

5 A It's a common plea that if I took it,
6 that, you know, I would have a chance to maybe go
7 back to maybe go back and reconsider it.

8 Q Did he explain to you anything about
9 having any communications with the solicitor's
10 office about your plea?

11 A Yes, he told me about the plea from the
12 solicitor's office.

13 Q And you stood before the bench here, and
14 weren't you asked a series of questions?

15 A Yes, sir.

16 Q And those questions pertain to the guilty
17 plea that you made on that particular day.

18 A Yes, sir.

19 Q And as a result, you've got the sentence
20 that you are appealing from today. Now you, are
21 you thinking that Mr. Howle didn't do something
22 right or for you, or didn't do well by you in his
23 representation of you in this case?

24 A Yes.

25 Q And is that why you filed this PCR?

Troy Pearson-Direct by Weeks

1 A Yes, sir.

2 Q All right, sir, in your PCR application
3 you allege that one of the grounds was ineffective
4 assistance of counsel. Would you explain to the
5 court what you meant when you put that down,
6 ineffective assistance of counsel?

7 A Well I mean that he didn't state his
8 stated ground of supporting me. And having a
9 client/lawyer relationship, meaning that he didn't
10 give enough time to really to talk or to the jail
11 house to talk to me about, you know, what evidence
12 he got. What kind of -- what do we got. You
13 know, keep me up to date on my case but like that.
14 He didn't give, because he was my lawyer two
15 years. So he didn't -- I didn't see him but two
16 times in two years. And he didn't give enough
17 time to really keep me up to date on what's going
18 on.

19 Q Well now the day that you did your guilty
20 plea in court, you -- the court asked -- the judge
21 asked you some questions, didn't he?

22 A Yes, sir.

23 Q What's your explanation to the court as to
24 why you agreed to plead guilty after the court
25 advised you of all your rights?

Troy Pearson-Direct by Weeks

1 A Well because my lawyer, he said that you
2 know he felt like if I didn't that, you know, I
3 had a chance of getting like more. And, you know,
4 I've got a family out there, so I didn't want to
5 face that time. Even though I didn't had no -- I
6 didn't know what they had on me. So I didn't
7 never had that evidence of time, because I always
8 end up calling law -- I mean I call his office,
9 I'm sorry about that, and ask him, you know, for
10 my Motion of Discovery, and keep me up to date on
11 everything what he's doing. But he never did.
12 He's always busy or even to my mother. You know,
13 like my mother used to always call, and busy.

14 And to me if my lawyer was is supposed to
15 have enough time to talk to your client, you know,
16 to make sure that he up to date, he understand
17 everything. And the evidence that they got, I
18 should know anything about it. I saw my
19 investigator when I see my lawyer. I see my him
20 five times. I see my lawyer twice.

21 Q Do you think that would have had had some
22 impact on the outcome of the case?

23 A Yes, sir.

24 Q Well then why did you go ahead plead
25 guilty anyway? Which is central issue here. You

Troy Pearson-Direct by Weeks

1 understand that.

2 A I can't sit here and lie. I didn't know
3 what I know now on my case, because I didn't have
4 enough -- he didn't bring my case down to me. You
5 know, and I know I was smart in a lot of other
6 stuff, but I wasn't smart in the law state of
7 mind. So I just, you know, thought he was going
8 to take care of it. Because He told me that
9 being my lawyer, the first time I talked to him up
10 in court, he say I could get self defense. So
11 that's why I kept him. Because he told me that,
12 he even told my mother that. And the evidence,
13 when he had came to me, he found a weapon on that
14 person, I thought they he could get it. And then
15 when he came back and changed it, a week before I
16 came, before I came to court, he changed it. And
17 that's about.

18 Q So are you saying that you were under
19 duress, or that you were under some -- felt that
20 you were under some pressure when you accepted the
21 guilty plea?

22 A I just didn't know what I do now. If I
23 knew what I knew now before I took it, that they
24 had that on me, I wouldn't have never took it. I
25 would take it straight to trial.

Troy Pearson-Direct by Weeks

1 Q So now you also indicate as a second
2 ground that was it was inadequate
3 misrepresentation of counsel. What did you mean
4 by that when you put it in the application? Will
5 you explain to the court why you put that there?

6 A Why I put it there because on the grounds
7 of it that when he became my lawyer, you know,
8 when he talked to me, when he supported my case,
9 he didn't really carry me in a state of mind of
10 taking care of my case like my lawyer is supposed
11 to. Meaning that, he didn't never come up to
12 visit me. You know, he didn't never explain my
13 case down to me like a lawyer supposed to. He
14 didn't never take it to the best of his ability to
15 get what I need on me out of my case.

16 Q And you also place as a third ground,
17 prosecutorial misconduct. What did you mean by
18 that?

19 A What I meant by that is that he just, you
20 know, similar to mis, you know, misrepresented
21 counsel. But what I mean by that meaning that he
22 didn't never kept in mind of my judgment, you
23 know, of my -- whether my family of mine. You
24 know, ability. You know my thing is he know that
25 I'm a good person. You know, that just this was

Troy Pearson-Direct by Weeks

1 like an accident, you know. It was in the way of,
2 you know, my life with the other person. So it's
3 to me it was just more of a, try to, you know,
4 protect my life.

5 Q Mr. Pearson, in Item No. 10 on your PCR
6 application, it states that state concisely and in
7 the same order of facts that support each of the
8 grounds set out in No. 9. You listed three
9 things. A., you put, did not preserve through
10 pretrial motions a fair opportunity to litigate
11 the 6th amendment. What did you mean by that?

12 A Well I didn't had a chance to know who my
13 witness was. You know what -- who the people was.
14 Who the witness as. What was my background. What
15 did they had on me. And that was new, because I
16 never had my Motion of Discovery. So I never knew
17 what they had.

18 Q You also put did not preserve the
19 applicate's due process rights pursuant to the
20 5th amendment. And what did you mean by that?

21 A I meant by that meaning that, you know,
22 the due process of it, meaning that the process of
23 my life being that, you know, I didn't even -- he
24 never gave me the due process of knowing of my
25 evidence of the, you know, back to the, you know,

Troy Pearson-Direct by Weeks

1 he never give me that right, you know, to know.
2 Because, you know, I was to tell you the truth, I
3 was like in the blue. You know, I didn't really
4 know what was going on. Because he never kept me
5 updated on what was going on with it.

6 So, you know, he never gave me enough
7 process to know. When he made the county two
8 years, it wasn't that much time to at least have a
9 relationship with your lawyer, get to know him.
10 You know even if you are a State lawyer, you are
11 supposed to still care about your client, about
12 your the person you are representing.

13 Q So and Item No. C says that you listed as
14 your grounds, as the withholding of Motion of
15 Brady Discovery through an act of collusion.
16 Brady vs. Maryland. I guess you mean a relation.
17 What did you mean by that?

18 A What I mean by that was my Motion of
19 Discovery, never have I seen it before time, that
20 I could have, you know, I wouldn't have plead. I
21 would have taken it to trial. And meaning that if
22 I knew the evidence of my case, you know, I would
23 be home. I would have a better chance to go home,
24 you know. And by that, when I -- if I did came
25 from the judge, I found my client -- well not my

Troy Pearson-Direct by Weeks

1 client, my victim, you know, whatsoever, being a
2 prostitute. I didn't know. The police told me
3 that she had AIDS. I didn't know that.

4 Q And do you think that if you had known
5 those things that that would had some influence on
6 whether or not you wanted to plead guilty?

7 A No, I'm just saying---

8 Q Or not guilty to the charge?

9 A ---I didn't known, you know, about it, you
10 know. I didn't have no grounds for why he took
11 my plea on that. That's just like me, you know,
12 you've got to know something about a person to
13 really, you know, really know your case on a
14 person. I didn't know none of it.

15 Q And are you alleging to the court today
16 that your knowledge of these things would have had
17 an impact on the guilty plea that you offered at
18 that time?

19 A Yes, sir.

20 Q And that that may have had some impact on
21 the outcome of the trial if you had gone along
22 with a trial on this thing?

23 A Yes, sir.

24 Q Mr. Pearson, is there anything else that
25 you would like to say to the court in support of

Troy Pearson-Direct by Weeks

1 your motion for PCR?

2 A Well, I would like that say, when I don't
3 know when it was that my mother came to see my
4 lawyer. And I don't if he got mad or what, and my
5 mother told me that he told her that I am
6 murderer. And---

7 MS. HARRIGAN: Your Honor, objection.
8 Hearsay.

9 THE COURT: Hearsay.

10 Q You can't to into what he told your
11 mother.

12 A I'm just saying that you should, if you're
13 my lawyer, you shouldn't be upset and don't you
14 want to come see, because that puts like, you
15 know, judgment on me. You know, because what
16 another person thinks about me, don't mean that's
17 me. Because you need to talk to me to really
18 know what's -- who I am, that relationship back to
19 that point.

20 Q Mr. Pearson, you and I have discussed this
21 application.

22 A Yes, sir.

23 Q At great length, haven't we?

24 A Yes, sir.

25 Q And I have explained to you that hindsight

Troy Pearson-Direct by Weeks

1 is always the best vision? And that you would
2 have probably done some things differently if you
3 knew then what you know now, is that correct?

4 A Yes, sir.

5 Q And I've also explained to you this is a
6 high burden.

7 A Yes.

8 Q That you have to overcome all this. Did I
9 explain that adequately to you?

10 A Yes, sir.

11 Q And you still want to go forward with the
12 understanding from your attorney, this is a very
13 high standard that you've got to overcome. The
14 Strickland Standard, is that correct?

15 A Yes, sir.

16 Q Is there anything else, Mr. Pearson that
17 you like to say to the court during this time, in
18 support of your application for PCR that we may
19 have not have covered during this line of
20 questioning?

21 A No, sir, I think that's it.

22 MR. WEEKS: Answer any questions as
23 directed by the court.

24 THE COURT: Ms. Harrigan.

25 MS. HARRIGAN: Thank you. May it please

Troy Pearson-Cross by Harrigan

1 the court.

2 Cross Examination by Ms. Harrigan:

3 Q Mr. Pearson, you were originally charged
4 with murder in this case, correct?

5 A Yes, ma'am.

6 Q And did your attorney explain to you that
7 murder, the potential sentence is 30 years to
8 life?

9 A Yes.

10 Q And you understand if you're successful in
11 this action here today, you will be facing a
12 murder charge again.

13 A Yes, ma'am.

14 Q And you pled guilty to the lesser included
15 offense of voluntary manslaughter.

16 A Yes.

17 Q And this is a negotiated plea between
18 yourself and the State, correct?

19 A Yes.

20 Q And before you took the plea, you knew
21 that you get 30 years if Judge Cothran accepted
22 the plea, correct?

23 A Well I pled to 25. And when I came, he
24 said 30. But, you know, when I came, I didn't,
25 you know, I was, because I knew that I was you

Troy Pearson-Cross by Harrigan

1 know I still innocent. I was taking something
2 that he told me that put it like, he told me that
3 if I took it, I would facing life. And, you know,
4 I got a family out there. And I can see myself
5 doing life. That's the reason why after I came
6 out of here, I went back. In fact I told him, I
7 want to take a -- I want to appeal my case. He
8 told me why am I doing that. Like I wasn't
9 surprised. But if I knew before I came here, he
10 wouldn't -- you know, I wouldn't have plead.

11 Q So your attorney explained to you -- your
12 testimony today is your attorney explained to you
13 that if you went to trial on these charges, you
14 would be facing an exposure of life in prison,
15 correct?

16 A Yes, ma'am.

17 Q And so you plead guilty, because you
18 didn't want life in prison.

19 A Yes.

20 Q And you told Judge Cothran during your
21 plea that you had enough time to talk to your
22 lawyer, correct?

23 A Yes.

24 Q And that you had no complaints against
25 him?

Troy Pearson-Cross by Harrigan

1 A Yes.

2 Q And that you agreed with solicitor's facts
3 of the case after the solicitor read them into the
4 record, correct?

5 A Yes.

6 Q And you gave a confession to the police in
7 this case, correct?

8 A Are you talking about me giving a
9 statement of myself?

10 Q Yes.

11 A No, I didn't, you know, my lawyer told me
12 that I could -- you know the reason I didn't talk
13 that much, I didn't because he said I could put
14 more time on myself by bringing more time to
15 myself by talking. You know, incriminating
16 myself.

17 Q And your testimony here today is that
18 Mr. Howle represented you for two years before you
19 plead guilty, correct?

20 A Yes.

21 Q And that he -- you only saw him twice in
22 his entire two years?

23 A Yes, ma'am.

24 Q Did you correspond with him any other
25 ways, via telephone or letters?

Troy Pearson-Cross by Harrigan

1 A Yes, I called but he never was in his
2 office. My mother came to his -- you know, went
3 and called. Even came up and see him. And he
4 always was in court or wasn't up here or, you
5 know, whatever.

6 Q Okay. So your testimony here today is
7 that he never answered or returned any of your
8 phone calls.

9 A Well he returned -- the only one he really
10 returned was to my, what do you call, he followed
11 me to court on my bond. He told me that when I
12 went for my preliminary, he told me that didn't
13 really return most of the letters that I wrote to
14 him.

15 Q And one of your other grounds for why
16 Mr. Howle was ineffective was that you didn't get
17 enough chance to go over your case with him, and
18 advise him of the potential witnesses that would
19 help you, correct?

20 A Yes, ma'am.

21 Q But you testified that you did met with
22 the investigator at least five times, correct?

23 A Yes.

24 Q And did you give the investigator the
25 names of the potential witnesses that he could go

Troy Pearson-Cross by Harrigan

1 and try to gather evidence to try to help you?

2 A Well I didn't even know I even had a
3 witness out there because, I didn't because I was
4 myself so I couldn't say it, that you know, that I
5 had witness.

6 Q And did you discuss with you attorney,
7 Mr. Howle, why was self defense wasn't filed for
8 you in this case?

9 A Yes.

10 Q So you knew that before entering in your
11 guilty plea?

12 A Yes.

13 Q Did you ever want a trial in this matter?

14 A Yes, at the beginning I did before you
15 know. Well I would say, when I find out the
16 evidence on me they had -- I didn't really had no
17 evidence on me. That's when I want to take the
18 trial. When I went into the bull pen back there,
19 I told I was going to come back with an appeal,
20 because I didn't know. Because if I knew now what
21 I knew then, sorry my points change. But if I
22 knew now when I knew then, I would stick with a
23 trial.

24 Q But at the time you plead guilty, because
25 you didn't want to risk the exposure of life

Jack Howle-Direct by Harrigan

1 imprisonment.

2 A Yes.

3 MS. HARRIGAN: No further questions, Your
4 Honor.

5 THE COURT: Any redirect?

6 MR. WEEKS: No redirect, Your Honor.

7 THE COURT: Thank you. You may step down.
8 That's all we have, Your Honor.

9 MS. HARRIGAN: At this time, the State
10 would call Jack D. Howle to the stand.

11 Jack D. Howle, being first duly
12 sworn, testified as follows:

13 THE BAILIFF: Please state your full name
14 and spell your last name for the record.

15 A Jack D. Howle. H-O-W-L-E.

16 Direct Examination by Ms. Harrigan:

17 Q Good morning, Mr. Howle. How long have
18 you been practicing law?

19 A Since 1974.

20 Q And how much of that time has been
21 criminal law?

22 A Almost all of it.

23 Q And have you had experience with trial
24 pleas related to murder or voluntary manslaughter
25 charges?

Jack Howle-Direct by Harrigan

1 A I've tried many murder cases.

2 Q And you were appointed in this case,
3 correct?

4 A That is correct.

5 Q How many times do you recall meeting with
6 the applicant?

7 A This case, we started this process of
8 shredding documents several years ago. So we
9 don't have all these things to pull back up to
10 see. Most of the things are now scanned so we
11 will have records of them. We looked for the
12 files specifically on this case to see. And I did
13 not have some of the defendant data on the system
14 where we store things on. It did not go back that
15 far. I definitely met with him several times, and
16 went over anything that I had in regard to the
17 case.

18 Q Did you discuss the elements of the
19 charges he was facing and what the State was
20 required to prove?

21 A I did.

22 Q And you discussed his version of the
23 facts, correct?

24 A Yes. And I will say this. When we first
25 began talking, he told me that he picked this lady

Jack Howle-Direct by Harrigan

1 up. And that he had a gun on him at the time.
2 And when he got back home, he saw the gun was not
3 there. I don't know it got off of him. He didn't
4 know where it was. But he assumed she had taken.
5 And he went back; had another gun. I think a
6 9 millimeter the second time. He went to where
7 she was, and had this confrontation about the gun
8 being taken. And he indicated to me that he saw
9 her reach for a knife and that's when he shot her.

10 And I told him up to that point, even
11 though it was her house and you had gone back and
12 confronted her, and you thought she had stolen
13 something from you, we may have had a defense of
14 some kind there regarding self defense. But the
15 problem was she then went outside, and he followed
16 her out there, and he said -- he told me, he then
17 gave a statement that he thought she might be
18 looking for that gun that she had taken from him.
19 And he shot her again. Then he walked over to her
20 and she kind of reached her hand out and touched
21 his leg, and he shot her twice more in the head.

22 And I told him I said, you know, self
23 defense just, you can't extend it through that.
24 I mean you've got a situation where you shot her
25 three separate times. And the last two were right

Jack Howle-Direct by Harrigan

1 close up into her head. And I said, I just don't
2 see a defense in regard to that. And that's when
3 we had some negotiations with the solicitor's
4 office. And they indicated that they would plea
5 to manslaughter, but it would be 30 years.

6 And I when I went back and talked with
7 him, I said, you know, we can avoid the exposure
8 to life, because I didn't know how a jury would
9 feel hearing someone shot someone three separate
10 times in that manner. He never indicated -- I did
11 not get an indication that he certainly did not
12 understand fully what we were talking about. And
13 that he was pleading freely and voluntarily. And
14 knew what the negotiated sentence was, that it was
15 a 30 year sentence.

16 Q And did you explain to him that under
17 South Carolina law murder is day for day?

18 A Yes, ma'am.

19 Q Did you file any Rule 5 or Brady Motions
20 in this case?

21 A We did.

22 Q And did you receive material from the
23 State?

24 A We did. But the one thing I knew from his
25 statement, was I already knew what his statement

Jack Howle-Direct by Harrigan

1 said. The other kind of information that you see
2 provided is what is the record. In his situation
3 there was no record. I think maybe the autopsy
4 report was in there. Some things of that nature.
5 But nothing that provided the defense that would
6 have been something that would even have mitigated
7 what the charge was.

8 Q Did you review the materials with the
9 applicant?

10 A Well again like I say, you know, I had the
11 file in review. But when we get discovery and
12 sometimes it's the last one. We definitely tell
13 the defendant what we have seen it in. And it
14 would certainly be my normal case to review the
15 discovery with the client; especially, if there
16 was anything in there that indicated some further
17 mitigation or something of that nature.

18 Q And you employed an investigator in this
19 case?

20 A I am not sure whether we had a
21 investigator or not. Because there were no other
22 witnesses. This was a one on one scenario. And
23 his own statement specifically stated what he had
24 done, which was shot the woman three separate
25 times in that short period of time. And the last

Jack Howle-Direct by Harrigan

1 two were up against her head while she's lying on
2 the ground. Two more shots to her head. It just
3 did -- and I totally and extensively talk about
4 this, that the self defense was gone at that
5 point. It just was not there.

6 And like I say, I had discussed it with
7 him. There was no hesitation on his part
8 whatsoever in pleading to the negotiated sentence.

9 Q And did you inform him of the consequences
10 of entering a guilty plea?

11 A Yes, ma'am.

12 Q And you fully advised him of his
13 constitutional rights?

14 A Yes, ma'am.

15 Q Did you explain to him that this was a
16 negotiated plea so if the judge accepted it, he
17 would be getting the 30 years?

18 A He fully understood it was a negotiated
19 sentence; that he judge could either take it or
20 not take it. He could not modify it.

21 Q And did he ever indicate to you that he
22 wanted to pursue a trial on these charges?

23 A The only time we talked about something
24 like that was initially when we first began
25 talking, and he told me that, you know, he thought

Jack Howle-Cross by Weeks

1 she had stolen his gun. Of course, I asked him,
2 well why did you get another gun and go back. And
3 even when we talked to him about her having a
4 knife in her hand, we discussed it. You know that
5 initially could have well been a self defense
6 argument. But then as he told me further things
7 that happened and what he did, and which is also
8 included in his statement. That pretty much
9 precluded anything that we could have actually
10 gone to trial on I thought.

11 MS. HARRIGAN: No further questions.

12 THE COURT: Mr. Weeks.

13 Cross Examination by Mr. Weeks:

14 Q Mr. Howle, you understand that one of my
15 client's concerns here is that he feels the
16 discovery materials were not shared with him and
17 at the adequate time for him to review it. Are
18 you stating to the court that you didn't get --
19 you did file Brady Motions and any other motions
20 to obtain whatever evidence was available to you
21 to defend my client in this case?

22 A We always file Brady Motions and Rule 5's.

23 Q I understand. And to the best of your
24 knowledge, you did get a response and the
25 discovery packet from State?

Jack Howle-Cross by Weeks

1 A Well like I say sometimes it's late in the
2 game when we get it, but I have no reason to think
3 that I would not gotten it. Now like I say, I
4 already knew what his statement said. The only
5 other thing that would have been in that report
6 they gave me was his record, which was virtually
7 none. Possibly the autopsy report itself. But
8 like I say, there were no other witness statements
9 that I was concerned with. There was no other
10 information or evidence that I was aware of, that
11 I really could go negotiate with him. There was
12 nothing in there that was well what about this.
13 Can you explain this or this could give us a
14 different option. Whatever I received, I did not
15 trigger that way.

16 Q Did he ever make any request of you to see
17 the entire discovery packet?

18 A Mr. Weeks, I can't say that I recall him
19 asking specifically to see anything else that I
20 might have, to be honest.

21 Q Do you feel that you shared with him the
22 pertinent documents that would support a
23 negotiated plea?

24 A I definitely do, yes, sir.

25 Q And was it your understanding that he

Jack Howle-Cross by Weeks

1 understood at that time what a negotiated plea
2 was, and what he was agreeing to?

3 A Yes, sir. In my opinion he clearly
4 understood what we were talking about with the
5 negotiated plea.

6 Q Was there ever any conversation with him
7 about 25 years as opposed to 30 years?

8 A The only thing I could think of in regard
9 to that was when we first began a negotiated plea,
10 if I told him I would try to get 25. I don't know
11 if that's part of the conversation or not. But
12 when I went back with him and told him what the
13 negotiated plea was, it was clearly the 30 years.
14 We did stand and think it was 25. And the last
15 second it was 30.

16 Q Was there ever discussion about him
17 serving 85 percent of that time?

18 A Well you serve day to day on that.

19 Q I understand. Did y'all have that
20 discussion?

21 A Yes, sir.

22 Q And did he seem to understand that?

23 A Mr. Weeks, I did not feel at any time that
24 there was something. I mean, he asked questions
25 about things that he did not understand.

Jack Howle-Cross by Weeks

1 Q Yes, sir. Sir, you have a wealth of
2 experience and long years serving as a prosecutor,
3 I mean as a defendant, not as a prosecutor. I
4 don't want to blaspheme. Do you feel that you
5 followed your general protocols for dealing with
6 these kind of situations in this particular case?

7 A Mr. Weeks, I do. Normally and to be fair
8 with you, normally I would have probably have
9 talked to a client more often than we talked.
10 But when I go talk with a client and he basically
11 admits what he did, and I look at the statement
12 and see nothing whatsoever that points that
13 someone else did it, or any other mitigation
14 beyond that, for me to keep going to see him, it
15 might make him feel better. Or maybe as an
16 attorney we should do that just to let them know
17 that we're still representation. But there was
18 nothing as far as additional information or more
19 knowledge that I felt I needed to get to proceed
20 with this case.

21 Q And what was your understanding about how
22 it's listed in the record about the victim having
23 a knife?

24 A I think when he indicated when he first
25 confronted her about whether she had taken this

Jack Howle-Cross by Weeks

1 other pistol; that she had reached for a knife
2 that was on the counter or had a knife. And
3 that's when he shot her. And that time he shot
4 her in the leg.

5 And like I say, she got out of the house
6 and went down, indicating to me, that she seemed
7 to be reaching for something under the house and
8 thought maybe that's where she hid the gun. So he
9 shot her again. And I think the final results,
10 there was a shot through the lung, one in the leg
11 and something like three in the head. But the
12 last two he said he walked up to her, and she kind
13 of reached her hand out, and just kind touched his
14 leg. And he put the gun right up to her head, and
15 shot her twice more. Mr. Weeks, I don't know how
16 you defend that. And we thought a negotiated
17 sentence was the best way to approach it.

18 Q Did you explain to him that you thought
19 that based upon those circumstances, his desire to
20 offer a defense of self-defense probably would not
21 have not panned out too well?

22 A There's no question I told him that self
23 defense was not going to get anywhere.

24 Q Court's indulgence. Mr. Howle, in the
25 discovery material, was there anything in the

Jack Howle-Cross by Weeks

1 material about the victim having cocaine or
2 illegal drugs in her system?

3 A I am not sure, but other than when the
4 plea was being made, I think there were some
5 comments made in regard to whether or not she had
6 any cocaine in her system. Or had been using
7 cocaine.

8 Q If you had prior knowledge of that, would
9 that have had any impact on your decision to do or
10 participate in a negotiated plea arrangement?

11 A On the one hand, it might have made her a
12 little more aggressive. In the other hand,
13 certainly by the time she had been shot the second
14 time, she didn't need to be shot the third and
15 fourth time. And that's kind where we got that
16 point. And I felt in understanding when I was
17 talking to him, that yes, she may have had access
18 to this knife and maybe actually pulled it too.
19 And even if there was some merit to the fact that
20 she may have had some cocaine, if anything, that
21 might have made it more his responsibility to
22 leave without continuing to confront her.

23 He certainly could have walked away the
24 second time when she was laying on the ground and
25 he shot her. Because that next shot was either

Jack Howle-by the Court

1 one that went through the lung or one that was in
2 her head. So she was certainly no threat of any
3 kind at that point.

4 MR. WEEKS: Thank you, very much
5 Mr. Howle.

6 A Thank you, sir.

7 THE COURT: Mr. Howle, Mr. Weeks asked you
8 as to whether or not your client knew that he
9 would have to serve 85 percent. Do you remember
10 anything like that?

11 A I would not have talked to him about 85
12 percent in regard to that, because it's a day for
13 day.

14 THE COURT: Well the court says you
15 understand this is a non-parolable offense and you
16 will have to serve at least 85 percent of the
17 sentence. Do you understand that. The defendant
18 says, yes, sir.

19 A That may where he felt that there's a
20 possibility of 85 percent rather than full time.

21 THE COURT: Thank you. Any other
22 questions?

23 MS. HARRIGAN: No redirect.

24 THE COURT: Thank you. Any other
25 witnesses? MS. HARRIGAN: That's it.

1 THE COURT: I am going to look at the
2 transcript again. And I am going to take this
3 matter under advisement. Mr. Weeks, we will give
4 you a ruling before too long.

5 MR. WEEKS: Thank you, Your Honor.

6 THE COURT: Thank you.

7 MS. HARRIGAN: Thank you, Your Honor.

8 -----End of Requested Transcript of Record----

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the
Third 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 on September 17, 2012, in the
Common Pleas Nonjury, Sumter County, Sumter,
South Carolina.

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

4.8.15

DATE



COURT REPORTER

My Commission expires: 9/7/2021

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED
2012 OCT 23 PM 5:08
IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Troy Pearson, #328627,

JANET M. WHEELER
CLERK OF COURT
SUMTER COUNTY, S.C.

Case No. 2010-CP-43-1449

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Sandra C. Dickinson
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 9, 2010. The Respondent made its Return on February 17, 2011. An evidentiary hearing into the matter was convened on September 17, 2012, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by J. David Weeks, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted during the October 2007 term of the Sumter County Grand Jury for Murder and Possession of a Firearm during Commission of a Violent Crime (2007-GS-43-0849). Applicant was represented by Jack D. Howle, Jr., Esquire. On May 29, 2008, the Applicant pled guilty to the lesser included offense of Voluntary Manslaughter before the Honorable R. Ferrell Cothran, Jr. Pursuant to negotiations between the

Applicant and the State, Judge Cothran sentenced the applicant to thirty years imprisonment; the weapons charge was dismissed pursuant to this plea agreement.

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals dismissed the appeal following submission of an Anders brief on Applicant's behalf. State v. Pearson, Op. No. 2010-UP-042 (S.C. Ct. App. filed January 26, 2010). The Remittitur was sent on February 12, 2010.

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

1. Ineffective assistance of counsel.
 - a. "Did not preserve through pre-trial motions a fair opportunity to litigate 6th Amendment."
2. "Inadequate/misrepresentation of counsel."
 - a. "Did not preserve the applicant's 'due process' rights pursuant to 5th Amendment."
3. "Prosecutorial misconduct."
 - a. "The withholding of motion of Brady Discovery through an act of collusion Brady v. Maryland violation."

In its Return, Respondent interpreted Applicant's grounds as ineffective assistance of counsel; Applicant's claims were framed at the evidentiary hearing as ineffective assistance of counsel.

TESTIMONY PRESENTED

At the evidentiary hearing, the Applicant testified on his own behalf. The State presented testimony from plea counsel, Jack D. Howle, Jr., Esquire ("Counsel"). This Court also had before it a copy of the Applicant's guilty plea transcript, Applicant's appellate records, the records of the Sumter County Clerk of Court, and the Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified that he entered his plea knowing that it was pursuant to a negotiation with the State for a determinate sentence of thirty years of incarceration. Applicant further stated that now and at the time of his plea, he was aware that based on South Carolina law, he would be required to serve his full thirty year sentence in full. Applicant acknowledged that he admitted his guilt under oath to the plea court and stated that he was satisfied with his attorney. Applicant testified that ultimately, he pled guilty because he did not want to proceed to trial and risk exposure to a life sentence.

Applicant testified that he now feels that Counsel was ineffective for numerous reasons. Specifically, Applicant testified that he didn't feel that Counsel supported him enough or gave Applicant and his case enough time and attention. He stated that Counsel only visited him twice during his two year representation of Applicant; however, Applicant did acknowledge that he corresponded with Counsel in various other ways. Applicant testified that he wanted to pursue a self-defense defense and is upset because since his incarceration, he now understands the law better than at the time of his plea.

Applicant also testified that Counsel did not thoroughly go over his discovery with him. Specifically, Applicant stated that he did not know prior to his plea that the victim was a known prostitute and had AIDS, and that this information might have made a difference in his decision to pled guilty. Applicant acknowledged that he did meet with Counsel's investigator at least twice to review his case. Applicant elaborated that he is a good person and this was an accident that occurred while he was trying to protect his life. Applicant did acknowledge that he did discuss the possibility of self-defense with Counsel and that Counsel advised him why such a defense would not be successful.

Following Applicant's testimony, Counsel testified. Counsel testified that he has been practicing law since 1974 and almost all of his practice has been devoted to criminal defense; he stated that he is the Chief Public Defender for the Third Judicial Circuit. Counsel stated that he was appointed on this matter roughly two years prior to Applicant's guilty plea. Counsel stated that during his meetings with the Applicant, he had thoroughly discussed all elements of the crimes in which Applicant was charged and what the State was required to prove for each crime.

Counsel testified that he discussed Applicant's version of the facts with Applicant many times, and he fully explained to Applicant why a theory of self-defense would prove unsuccessful. Specifically, Counsel testified that the final two or three shots to the victim were with the muzzle of the gun directly placed on the victim's head after she had already been shot several times and was seriously injured. Counsel testified that following this discussion with Applicant, Applicant understood why a defense of self would not be legally sufficient and indicated to Counsel that he wanted to plead guilty.

Thereafter, Counsel entered into plea negotiations with the State. Counsel testified that plea negotiations resulted in an offer from the State for Applicant to plead guilty to the lesser included offense of voluntary manslaughter for a determinate term of thirty years imprisonment and the dismissal of the related weapons charge. Counsel testified that he fully informed Applicant of all aspects of the plea offer, including that Applicant would be required to serve the full thirty years without the possibility of early release. When questioned by the Applicant regarding the possibility of a twenty-five year sentence, Counsel stated that he may have told Applicant prior to plea negotiations that he would try to secure him a twenty-five year plea deal, but that Applicant was fully aware that the negotiations were for a thirty year sentence when he entered his guilty plea.

Counsel testified that he filed motions for discovery pursuant to Rule 5, SCRCrimP, and Brady, as is his standard practice in every case. He did not feel that the State withheld any information or did not fully provide discovery to him. Counsel testified that within the discovery was Applicant's statement to police and an autopsy of the victim, which further negated any possibility of a defense of self. Counsel testified that he thoroughly reviewed this material with Applicant and Applicant did not indicate that he did not understand any of their discussions. When questioned by Applicant regarding the information that the victim had cocaine in her system at the time of the incident, Counsel testified that he did not think this made any difference in Applicant's case, and in fact, may have been more damaging to Applicant, as he would have had more of a duty to walk away from the situation without using lethal force.

Based on all of the above, Counsel indicated that in his professional opinion a plea was in the best interest of Applicant and that it was Applicant's decision alone 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. 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).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCRP; 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The 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, 88 L.Ed. 2d 203 (1985).

After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is credible while Applicant's testimony is not credible. The Applicant has failed to prove that Counsel was ineffective in his representation of the Applicant. Counsel met with his client on at least two separate occasions and fully discussed the charges against the Applicant, the State's evidence,

and Applicant's version of the facts. Based on these consultations, Counsel performed a thorough investigation and at the request of his client, entered into negotiations with the State to secure a favorable plea deal for his client. This Court finds that Counsel's performance was reasonable and effective.

Additionally, this Court finds that the Applicant has failed to establish any prejudice resulting from plea counsel's alleged ineffective assistance of counsel, as the Applicant was sentenced according to the negotiation between himself and State. Additionally, Applicant indicated to plea counsel and testified at the evidentiary hearing that he wished to pursue a plea in lieu of a trial on these charges, where he risked exposure of life imprisonment if convicted. Therefore, this Court finds that the application must be denied and dismissed.

CONCLUSION

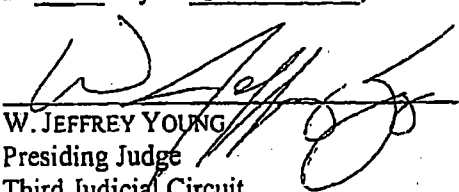
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he 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), SCRCP, 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. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 16 day of Oct, 2012.


W. JEFFREY YOUNG
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina.

FORM 5

JTH CAROLINA

Sumter

RECORDED

2014 FEB - 3 IN THE COURT OF COMMON PLEAS

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

2014-CP-43-212

Roy L. Pearson #328627

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

v.

State of South Carolina

CERTIFIED TRUE COPY
APPLICATION FOR

POST-CONVICTION RELIEF

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINAINSTRUCTIONS - 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 Lee Correctional Institution - Richland
2. Name and location of Court which imposed sentence Dorm room - B186 (990 W. Sackville Hwy. Bishopville S.C. 29010)
3. Name(s) of co-defendant(s) (if any) Sumter County Court House, Sumter S.C. 29150 Court of General Sessions
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Voluntary Manslaughter - 2008
 - (b) N/A
 - (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 29, 2008 - 25 years
 - (b) N/A

Revised 3/2003

- (c) N/A
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty yes
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. January 28, 2010
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Anders v. California 386 U.S. 738 (1967)
- ii. State v. Williams 305 S.C. 116, 406 S.E. 2d 367 (1991)
- iii. N/A
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: Ineffective Assistance of P.C.R. Counselor

- (a) Ineffective Assistance of P.C.R. Counselor
 (b) N/A
 (c) N/A
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 (a) P.C.R. counselor for failing to file 59(E) motion
 (b) and Appeal Austin vs State
 (c) N/A
12. Prior to this application have you filed with respect to this conviction:
 (a) any petition in a State Court under South Carolina Law? yes
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? yes
 (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? yes
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. P.C.R. Court of South Carolina
 ii. U.S. District Court of S.C.
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. Court of General Session Sumter County Court
House, Sumter, S.C. 29150
 ii. United States District Court P.O. Box 2317 Florence, S.C. 2950.
 iii. N/A
 iv. N/A
 (c) the disposition thereof:
 i. Denied
 ii. Dismissed without prejudice
 iii. N/A

iv. N/A

(d) the date of each such disposition:

i. September 19, 2012

ii. November 25, 2013

iii. _____

iv. _____

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

i. N/A

ii. U.S. vs Schronce

iii. _____

iv. _____

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

N/A

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) Yes: Ineffective Assistance of P.C.R. Counselor

(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? _____
- (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? yes

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. Jack Howle, (Chief Public Defender) 141 N. Main St. Rm #16
 - ii. Joseph D. Savitz, III (Senior Appellate Defender) 1330 2nd St.
 - iii. J. David Weeks 35 South Sumter St. Sumter, S.C. 29150
Suite 4
- (b) the proceedings at which each such attorney represented you:
 - i. At Arraignment and Plea
 - ii. At Sentencing
 - iii. At Appeal

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

To get a Appeal from last P.C.R. and 59(E) motion

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

No

STATE OF SOUTH CAROLINA)

County of)

Sumter)

Troy Pearson)

VERIFICATION

I, Troy Pearson, 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.

Troy Pearson

SWORN to and subscribed before me this 28
day of Jan, 2014.

Dana Series (L.S.)
Notary Public

My Commission Expires: 11-4-2015

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

I, Troy Pearson, 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.

Troy Pearson
Applicant

SWORN or affirmed to and subscribed before me this
28 day of Jan., 2014.

Debra Siles
Notary Public

My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SUMTER

INDICTMENT/CASE#: 2007-GS-43-0849

STATE VS.

TROY LAVERN PEARSON

AW#: J301443

AKA:

Date of Offense: December 24, 2006

Race: Black

Sex: Male

Age:

S.C. Code §: 16-03-0010, 0020

DOB: [REDACTED]

SS#: [REDACTED]

CDR Code #: 0116

Address: [REDACTED] 29150

CERTIFIED TRUE COPY
OF ORIGINAL FILEBarbara Shaper
DEPUTY CLERK OF COURT

SENTENCE SHEET

DL#

SID#

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: VOLUNTARY MANSLAUGHTERin violation of § 16-3-050 of the S.C. Code of Laws, bearing CDR Code # 012117☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State

ATTEST:

William Conner
SolicitorTroy Pearson
Defendant[Signature]
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS _____

Recipient:

*Fine: \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§35.13 (Public Def/Prob) \$500 \$ _____

§73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25

§33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§50-21-114(BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75

PTUP

_____ days/hours Public Service Employment:

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2114Sentence Date: 05-29-08

Court Reporter:

ARREST WARRANT

J-301443

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Sumter Municipal

2007 JAN -3 PM 8:22

06133179

against

Troy Lavern Pearson, CAMPBELL

Address:

Sumter, SC 29150-5155

Phone:

SSN: 2

Sex: M Race: B Height: 5 8 Weight: 170

DL State: SC DL #:

DOB: Agency ORI #: SC0430100

Prosecuting Agency: Sumter Police Department

Prosecuting Officer: Irene Culick - 1468

Offense: Murder / Murder

Offense Code: 0116

Code/Ordinance Sec: 16-03-0010, 0020

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Troy Pearson
12-28-06

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Sumter County General Sessions
141 N. Main St, Rm 308
Sumter, SC 29150

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Sumter Municipal

Personally appeared before me the affiant Irene Culick

being duly sworn deposes and says that defendant Troy Lavern Pearson

did within this county and state on or about 12/24/2006

State of South Carolina (or ordinance of ☐ County/

in the following particulars:

DESCRIPTION OF OFFENSE: Murder / Murder

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on December 24, 2006 one Troy Lavern Pearson did, with malice and aforethought, cause the death of one Khadeesha
Shannon by shooting her several times while at 832 S Main St (deceased residence), in the city of Sumter. Autopsy revealed the
cause of death to be from multiple gunshot wounds. The defendant has given law enforcement a statement implicating himself. Law
enforcement will attest to the same.

Signature of Affiant

Det. L. I. Culick

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Sumter Municipal

Affiant's Address 107 East Hampton Ave

Sumter, SC 29150-

Affiant's Telephone (803)436-2790

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/24/2006 defendant Troy Lavern Pearson

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of Sumter Municipal

) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable.

Sworn to and subscribed before me

on 12/28/2006

Signature of Issuing Judge
Jce Anna Tindal

Judge Code: 5769

Judge's Address 115 N. Harvin St.

Sumter, SC 29151-1428

Judge's Telephone (803)436-2280

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

who.

CERTIFIED TRUE COPY
OF ORIGINAL FILE
B. J. TINDAL
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
) MURDER, POSSESSION OF A FIREARM
 COUNTY OF SUMTER) DURING COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on October 25, 2007, the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE – MURDER

That TROY LEVERN PEARSON, JR. did in Sumter County on or about December 24, 2006, feloniously, wilfully and with malice aforethought, either expressed or implied, kill one Khadisha Shannon by means of shooting her with a 9mm pistol, and that the said Khadisha Shannon did die as a proximate result thereof.

COUNT TWO – POSSESSION OF A FIREARM DURING COMMISSION OF A VIOLENT CRIME

That TROY LAVERN PEARSON, JR. in Sumter County on or about December 24, 2006, was in possession of and did visibly display a firearm during the commission of a violent crime as defined in Section 16-1-60, to-wit: 9mm pistol, in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

CERTIFIED TRUE COPY
 OF ORIGINAL FILE
Barbara Shaper
 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

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

P. Kelly Jackson
 SOLICITOR

WITNESSES

SPD

Irene Culick

ARREST WARRANT NUMBER

J301443

D/A: 12/28/06

ACTION OF GRAND JURY

True Bill

Larry Holloman

Foreperson of Grand Jury

Date: *10/25/07*

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-43- *849*

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

OCTOBER TERM 2007

THE STATE

vs.

TROY LAVERN PEARSON, JR.

Indictment for

MURDER, POSSESSION OF A
FIREARM DURING COMMISSION OF A
VIOLENT CRIME

C. KELLY JACKSON, SOLICITOR

RECORDED

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

2014 MAY 14 PM 12:32

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Troy L. Pearson, #328627,

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

2014-CP-43-212

Applicant,

v.

State of South Carolina,

Respondent.

RETURN AND MOTION TO DISMISS
ALL CLAIMS BEYOND AUSTIN
REVIEW

In response to the post-conviction relief application filed February 3, 2014, Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted for (1) Murder and (2) Possession of a Firearm During Commission of a Violent Crime (2007-GS-43-0849). Jack Howle, Esquire, represented him. On May 29, 2008, the Applicant pled guilty to the lesser offense of Voluntary Manslaughter before the Honorable R. Ferrell Cothran, Jr. Applicant was sentenced to thirty (30) years imprisonment.

A notice of appeal was filed and an appeal perfected. The appeal was dismissed following submission of an Anders brief. State v. Pearson, Op. No. 2010-UP-042 (S.C. Ct. App. filed January 26, 2010). The Remittitur was sent on February 12, 2010.

Applicant subsequently filed for post-conviction relief on July 9, 2010 (2010-CP-43-1449). In his application, Applicant asserted claims of ineffective assistance of counsel and prosecutorial misconduct. An evidentiary hearing was convened on September 7, 2012, at the Sumter County Courthouse before the Honorable w. Jeffrey Young. Applicant was present at the

hearing and was represented by J. David Weeks, Esquire. By written Order filed October 23, 2012, Judge Young denied and dismissed Applicant's post-conviction relief action.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the prior post-conviction relief records, and appellate records. 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 PCR Counsel
 - a. PCR Counsel failed to file 59(e) motion and appeal.

III.

There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under §17-27-90." Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual situation" Aice, 305 S.C. at 452, 409 S.E.2d at 394. Pursuant to Austin, a post-conviction relief

applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Respondent requests an evidentiary hearing solely on the matter of the Applicant's entitlement to an Austin Review.

IV.

Except for Applicant's claim that he was denied an appeal from his first PCR application, the Court should summarily dismiss any additional allegations raised because the application is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant could have raised all grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised any additional allegations in his previous post-conviction relief application. Accordingly, Respondent will move for a summary dismissal of any additional allegations other than Applicant's claim for relief pursuant to Austin v. State, *supra*.

V.

Except for Applicant's claim that he was denied an appeal from the denial of his first PCR application, the Respondent submits that any additional allegations which may be raised should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on May 29, 2008. The Applicant was therefore required to file his application on or before May 30, 2009.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to

judgment as a matter of law." Therefore, the Respondent will request that this Court summarily dismiss any additional allegations which may be raised for failure to file within the time mandated by the Post Conviction Procedure Act.

VI.

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

VII.

WHEREFORE, with the exception of Applicant's allegation that he is entitled to a review of his first PCR application pursuant to Austin v. State, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired. Respondent requests an evidentiary hearing solely on the matter of the Applicant's entitlement to an Austin Review.

Respectfully submitted,

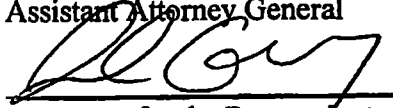
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By:


Attorneys for the Respondents
Post Office Box 11549
Columbia, South Carolina 29211

may 13, 2014.

RECORDED

STATE OF SOUTH CAROLINA 2014 MAY 14 PM 12:30

COUNTY OF SUMTER

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

IN THE COURT OF COMMON PLEAS

2014-CP-43-212

TROY L. PEARSON, #328627,

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 and Motion to Dismiss all Claims Beyond Austin Review** 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 12th day of May, 2014.


Caroline Kaiser, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

COURT OF COMMON PLEAS

TROY L. PEARSON)
 328627)
 PETITIONER,)

v.)

TRANSCRIPT OF RECORD
 14-CP-43-212

STATE OF SOUTH CAROLINA,)
 _____)
 RESPONDENT.)

October 2, 2014
 Sumter, South Carolina

B E F O R E :

THE HONORABLE CLIFTON B. NEWMAN, JUDGE

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

LANCE S. BOOZER, ESQ.
 Attorney for the Petitioner

DANIEL GOURLEY, ESQ.
 Attorney for Respondent

FRANCES BAKIS-RAY, RPR
 Circuit Court Reporter

INDEX

	Page
History of the case	3
Troy Pearson:	
Direct examination by Mr. Boozer	4
Cross-examination by Mr. Gourley	7

EXHIBITS

PETITIONER'S:

No.	Description	I.D./EVD.
1	Letter	7/7

1 MR. GOURLEY: This is Troy Pearson versus
2 the State of South Carolina, docket number
3 2014-CP-43-212. He is presently confined to the
4 South Carolina Department of Corrections pursuant to
5 orders of commitment of the Sumter County Clerk of
6 Court. He was indicted for murder and possession of
7 a firearm during the commission of a violent crime.
8 Mr. Howell represented him. May 29th, 2008, he pled
9 guilty to the lesser offense of voluntary
10 manslaughter before the Honorable R. Ferrell
11 Cothran, Jr., and Judge Cothran sentenced him to 30
12 years imprisonment. He filed a notice of appeal and
13 appeal was perfected. The appeal was dismissed
14 following submission of Anders brief. The
15 remittitur was sent February 12th, 2010. He
16 subsequently filed post conviction relief action on
17 July 9th, 2010. In his application he asserted
18 claims of ineffective assistance of counsel and
19 prosecutorial misconduct.

20 An evidentiary hearing was convened on
21 September 7th, 2012, at the Sumter County courthouse
22 before the Honorable W. Jeffrey Young. Applicant
23 was present at the hearing represented by Mr. J.
24 David Weeks. By order filed October 23rd, 2012,
25 Judge Young denied and dismissed the applicant's

1 application for post conviction relief.

2 The applicant filed a second PCR application
3 on February 3rd, 2014, alleging that he did not
4 knowingly, intelligently waive his right to file an
5 appeal after denial of his first PCR action. The
6 State filed its return, motion to dismiss all the
7 claims except the Austin on May 3rd, 2014. And he
8 is represented in this matter by Mr. Lance Boozer.

9 THE COURT: All right. Mr. Boozer.

10 MR. BOOZER: Thank you, Your Honor, may it
11 please the Court, we would first call the applicant
12 to the stand.

13 THE CLERK: Put your left hand on the
14 Bible, raise your right hand. State your name
15 please.

16 THE WITNESS: Troy Pearson.

17 WHEREUPON,

18 **TROY PEARSON,**
19 having been duly sworn by the Clerk, testified as
20 follows:

21 THE CLERK: Thank you. Have a seat up
22 there please. Please state your full name, spell
23 your last name for the record.

24 THE PETITIONER: Troy Pearson, last name
25 P-E-A-R-S-O-N.

1 THE COURT: Yes, sir.

2 **DIRECT EXAMINATION**

3 BY MR. BOOZER:

4 Q All right, Mr. Pearson, you know why you're here
5 today?

6 A Yes, sir.

7 Q What are you asking the Court to do for you
8 today?

9 A So I can appeal my PCR.

10 Q All right. You previously had a PCR that had
11 been denied?

12 A Yes, sir.

13 Q Okay. And you want a belated appeal of that
14 prior PCR?

15 A Yes, sir.

16 Q And that's your only issue, right?

17 A Yes.

18 Q All right. Who represented you on that PCR?

19 A J. David Weeks.

20 Q And when was that PCR denied?

21 A September the 19th, 2012.

22 Q Okay. Did you ask him to file an appeal or a
23 motion to reconsider?

24 A Yes, I wrote him a letter.

25 Q When did you write him a letter?

PW - T. PEARSON - DIRECT

1 A September the 23rd, 2012.

2 Q Okay. And what did you ask him for?

3 A To appeal my PCR and for my Rule 59(e).

4 Q Do you have a letter with you today stating that?

5 A Yes, sir.

6 MR. BOOZER: Your Honor, may I approach
7 the witness.

8 THE COURT: Yes, sir.

9 BY MR. BOOZER:

10 Q All right, Mr. Pearson, you've got in front of
11 you what appears to be a letter, and who is that
12 letter to?

13 A J. David Weeks.

14 Q Is that a letter from you?

15 A Yes, sir.

16 Q What's the date of the letter?

17 A 9/23/2012.

18 Q And this is a letter that you wrote?

19 A Yes, sir.

20 Q Did you write it on 9/23/2012?

21 A Yes, sir.

22 Q Did you put -- is this a copy of the letter?

23 A Yes, copy of it.

24 Q And it's an accurate copy of what you sent to
25 Mr. Weeks?

PW - T. PEARSON - DIRECT

1 A Yes, sir.

2 Q When did you send it to Mr. Weeks?

3 A The same day, on the 23rd.

4 Q Okay.

5 MR. BOOZER: Your Honor, I've shown this
6 to the attorney general, and I move to make this
7 exhibit Applicant's Exhibit 1.

8 MR. GOURLEY: No objection, Your Honor.

9 THE COURT: All right, so admitted.

10 (Petitioner's Exhibit No. 1 was marked for
11 identification and admitted into evidence.)

12 BY MR. BOOZER:

13 Q When you sent this to Mr. Weeks did you get a
14 response?

15 A No, sir.

16 Q Okay. Was an appeal ever filed that you know of?

17 A No, sir.

18 Q Was a Rule 59(e) motion ever filed that you know
19 of?

20 A No, sir.

21 Q Okay. And today you want to go back so that you
22 can have — you want this Court to grant your
23 belated appeal request?

24 A Yes.

25 Q Okay.

PW - T. PEARSON - CROSS

1 MR. BOOZER: Your Honor, I don't have any
2 further questions of the applicant.

3 THE COURT: All right. Yes, sir.

4 MR. GOURLEY: Yes, Your Honor, very
5 briefly.

6 **CROSS-EXAMINATION**

7 BY MR. GOURLEY:

8 Q Mr. Pearson, do you have any documentation
9 showing that you mailed the letter?

10 A No, I didn't get no response from Weeks so —

11 Q Do you have a receipt for like postage or any
12 kind of documentation showing when you mailed the
13 letter from SCDC?

14 A No, no, sir.

15 Q Okay.

16 A I didn't have — when it happened I didn't got
17 nothing back so, you know, I told my people about it
18 on the streets that — they know I sent the letter
19 but never got a response to it.

20 Q Did you send any other followup letters or
21 anything to Mr. Weeks?

22 A Yes.

23 Q Okay.

24 A In two thousand — January of 2013 I sent him one
25 saying that he got it, but I guess he maybe never

1 did respond to that one either.

2 Q Okay, you sent this letter September 23rd, 2012?

3 A Yes.

4 Q And you waited approximately five months -- no,
5 two years to file your PCR?

6 A Yes, because I been -- from my probation I
7 appealed my conviction.

8 Q You did what?

9 A I appealed my guilty plea.

10 Q You appealed your guilty plea?

11 A Yeah.

12 Q Okay.

13 MR. GOURLEY: I have no further questions,
14 Your Honor. Thank you, Mr. Pearson.

15 THE COURT: All right, you may step down.

16 Any further witnesses?

17 MR. GOURLEY: Yes, Your Honor. Mr. Week's
18 paralegal has gone to grab him right now. He just
19 stepped out in the hall.

20 THE COURT: All right.

21 (Pause.)

22 MR. GOURLEY: Your Honor, may we approach.

23 THE COURT: Yes.

24 (WHEREUPON, counsel and witness, Mr. Weeks,
25 approached the Bench for an

1 off-the-record discussion.)

2 THE COURT: All right, counsel.

3 MR. GOURLEY: Your Honor, I think we've
4 agreed we can do an affidavit. Mr. Boozer will not
5 object to an affidavit regarding this limited issue
6 on whether or not Mr. Weeks received that letter.
7 If we can just leave the record open for that, and
8 I'll be in contact with Mr. Weeks' office and we'll
9 do it that way if that's suitable for Your Honor.

10 THE COURT: Mr. Boozer, is that right?

11 MR. BOOZER: That's correct, Your Honor.

12 THE COURT: Okay, we'll do it that way.

13 MR. GOURLEY: Thank you, Judge.

14 (End of hearing.)

15 THE COURT: With regard to the last case
16 in the issue of belated appeal, does it matter
17 whether or not Mr. Weeks got the letter? Or does it
18 matter whether or not he says he got it?

19 MR. GOURLEY: I think it's up for argument
20 Judge. I mean, counsel has a duty to file appeal if
21 he's notified that Mr. Pearson wanted an appeal. If
22 he didn't receive the letter, then he had no way to
23 know that Mr. Pearson wanted an appeal would be my
24 argument.

25 THE COURT: Okay.

1 MR. BOOZER: And of course, mine, Judge,
2 would be it doesn't matter. He sent the letter
3 asking for it. Once he puts it in the mail, that's
4 all he can do. It was never done. That would be
5 our argument.

6 THE COURT: All right. So if he asked for
7 a belated appeal he's entitled to a belated appeal.
8 That's the essence of it?

9 MR. GOURLEY: I would say so, Your Honor,
10 yes.

11 THE COURT: Okay.

12
13 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E O F R E P O R T E R

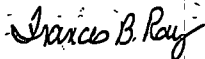
STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 24th day of February, 2015.



FRANCES B. RAY, RPR

Date: 9-23-12

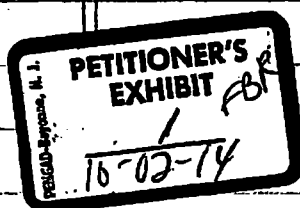
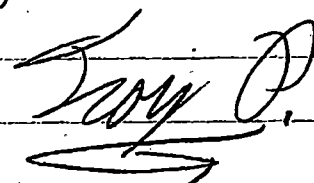
Time: 7:00 p.m.

Reason: To continue
my P.C.R. case.

Dear: J. David Weeks

How are you doing? For me I'm okay with God help and strength keeping me going everyday and night. I got my ruling for my petition for relief has been denied from the Judge Young September 21, 2012. Can you please put a motion to alter or amend the judgment, under Rule 59(E) of the South Carolina Rules of Civil Procedure for me. I have ten days to file it so please put it in immediately and please understand quitting or giving up on my case for me is not a option. I have a son and family who need me so please do your best work on my case thank you and have a bless day.

Sincerely,



STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Troy L. Pearson # 328627,

Applicant.

vs.

State of South Carolina,

Respondent.

RECORDED
IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
2014 DEC 31

JAMES C. CAMPBELL
CLERK OF COURT 2014-CP-43-212
SUMTER COUNTY, S.C.

**CONSENT ORDER GRANTING AN
APPEAL PURSUANT TO AUSTIN V. STATE**

This matter comes before the Court by way of an application for post-conviction relief (PCR) dated February 3, 2014. The Respondent made its return on May 13, 2014. An evidentiary hearing on the matter was convened on October 2, 2014 at the Sumter County Courthouse. The Applicant was present at the hearing and represented by Lance Boozer, Esquire. Daniel Gourley, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

Applicant testified during the hearing. The Court had before it the guilty plea transcript, the Sumter County Clerk of Court records, and the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, the Respondent's return, and South Carolina Court of Appeals records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted for (1) Murder and (2) Possession of a Firearm During Commission of a Violent Crime (2007-GS-43-0849). Jack Howle, Esquire, represented him. On May 29, 2008, the Applicant pled guilty to the lesser offense of Voluntary Manslaughter before the Honorable R. Ferrell Cothran, Jr. Applicant was sentenced to thirty (30) years imprisonment.

en
1 ?

A notice of appeal was filed and an appeal perfected. The appeal was dismissed following submission of an Anders brief. State v. Pearson, Op. No. 2010-UP-042 (S.C. Ct. App. filed January 26, 2010). The Remittitur was sent on February 12, 2010.

Applicant subsequently filed for post-conviction relief on July 9, 2010 (2010-CP-43-1449). In his application, Applicant asserted claims of ineffective assistance of counsel and prosecutorial misconduct. An evidentiary hearing was convened on September 7, 2012, at the Sumter County Courthouse before the Honorable w. Jeffrey Young. Applicant was present at the hearing and was represented by J. David Weeks, Esquire. By written Order filed October 23, 2012, Judge Young denied and dismissed Applicant's post-conviction relief action.

ALLEGATIONS

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

1. Ineffective Assistance of PCR Counsel
 - a. PCR Counsel failed to file 59(e) motion and appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application.

After review of the facts and circumstances surrounding the waiver of the Applicant's right to appeal the denial of allegations in the Applicant's post-conviction relief application, the parties below have consented to the granting of an appeal pursuant to Austin v. State of the Applicant's first post-conviction relief application (2010-CP-43-1449). The parties agree that the Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial

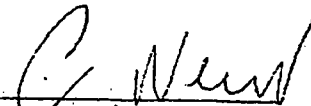
and dismissal of the Applicant's application for post-conviction relief. Counsel for the Applicant has indicated the Applicant did not freely and voluntarily waive the right to appeal his first application for post-conviction relief and that he failed to file a timely Notice of Appeal of the application.

Based upon the foregoing, this Court finds that the granting of an appeal of the Applicant's first PCR (2010-CP-43-1449) pursuant to Austin v. State is warranted. It is appearing the below listed individuals all consent to the granting of a PCR appeal in this matter.

IT IS THEREFORE ORDERED:

1. That the Applicant remain in the custody of the South Carolina Department of Corrections and/or the South Carolina Parole and Community Corrections Department if under the supervision of either agency; and
2. That the Applicant be granted an appeal of case 2010-CP-43-1449 pursuant to Austin v. State.

AND IT IS SO ORDERED this 10th day of December, 2014.


The Honorable Clifton Newman
Presiding Judge
Third Judicial Circuit

Columbia, South Carolina.

I CONSENT:


Lance Boozer, Esquire
Attorney for Applicant

Troy Pearson 11/20/2014
Troy Pearson, Applicant

Daniel Gourley
Daniel Gourley,
Assistant Attorney General
Attorney for Respondent