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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Aiken County

D. Craig Brown, Circuit Court Judge

TYRONE WADE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000260

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 DATED MARCH 28, 2011	1
INDICTMENTS AND SENTENCING SHEETS.....	29
PCR APPLICATION 2011-CP-02-2045	38
RETURN	45
PCR TRANSCRIPT DATED JULY 11, 2012.....	51
ORDER OF DISMISSAL	80
PCR APPLICATION 2013-CP-02-1623	87
AMENDMENT TO PCR APPLICATION	94
RETURN	97
PCR TRANSCRIPT DATED JANUARY 16, 2015.....	103
PLAINTIFF'S EXHIBIT #1 LETTER	111
CONSENT ORDER GRANTING BELATED APPEAL PURSUANT TO <u>AUSTIN V. STATE</u>	112

State of South Carolina)
County of Aiken) Court of General Sessions
2009-GS-02-1582,1584,1589

State of South Carolina)
Plaintiff)
vs.) Transcript of Record
Tyrone Wade)
Defendant)

March 28, 2011
Aiken, South Carolina

B E F O R E:

The Honorable Edgar W. Dickson, Judge.

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

Elizabeth B. Young, Assistant Solicitor
Attorney for the Plaintiff

Wallis A. Alves, Esq.
Attorney for the Defendant

Lisa H. Davenport, RPR
Official Court Reporter

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I N D E X O F W I T N E S S E S

Tyrone Wade,

Questions by the Court.....	3
Statement by Mrs. Young.....	8
Statement by Miss Alves.....	3,20
Statement by Mrs. Deering.....	18
Statement by Ms. Laquinta Williams.....	19
Sentence of the Court.....	27

E X H I B I T S

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

1 (Whereupon, on March 28, 2011 the following
2 proceedings were held:)

3 TYRONE WADE, after being duly sworn, testified
4 as follows:

5 THE COURT: Good morning, Miss Alves.

6 MISS ALVES: Good morning. How are you?

7 THE COURT: I'm doing good. Miss Alves, you are
8 representing Mr. Wade?

9 MISS ALVES: Yes, sir.

10 THE COURT: You have gone over these charges with
11 him, the possible sentence, advised him of his
12 constitutional rights?

13 MISS ALVES: Yes, sir.

14 THE COURT: Has he understood everything that you've
15 told him?

16 MISS ALVES: Yes, sir.

17 THE COURT: Okay. After talking with him he's
18 indicated that he wishes to plead guilty to this charge of
19 murder?

20 MISS ALVES: Yes, sir.

21 THE COURT: You believe it's in his best interest to
22 do so?

23 MISS ALVES: Yes, sir.

24 THE COURT: All right. Good morning, Mr. Wade.

25 THE DEFENDANT: Good morning.

1 THE COURT: According to the sentencing sheet,
2 Mr. Wade, you are 25 years old; is that correct?

3 THE DEFENDANT: (Witness nods head.)

4 THE COURT: Mr. Wade, I need for you to either say
5 yes or no, please, sir.

6 THE DEFENDANT: Yea.

7 THE COURT: Okay. And, Mr. Wade, how far did you go
8 in school?

9 THE DEFENDANT: I graduated.

10 THE COURT: From what high school?

11 THE DEFENDANT: Twelfth.

12 THE COURT: Okay. What high school did you go to?

13 THE DEFENDANT: North Augusta High.

14 THE COURT: Sir?

15 THE DEFENDANT: North Augusta High.

16 THE COURT: Okay. And did you get any education past
17 high school?

18 THE DEFENDANT: Yea.

19 THE COURT: Okay. Any job skills or training?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: What kind?

22 THE DEFENDANT: I was going for computer engineering.

23 THE COURT: All right. And, Mr. Wade, are you under
24 the influence any medication, drugs, or alcohol here this
25 morning?

1 THE DEFENDANT: Huh-uh.

2 THE COURT: So you're thinking clearly?

3 THE DEFENDANT: Uh-huh.

4 THE COURT: You understand what you're doing?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. My understanding is that you're
7 here to plead guilty to the charge of murder; is that
8 correct?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. Miss Alves has been representing
11 you on this?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. She's gone over the evidence with
14 you in this case, advised you of the law, and advised you
15 of your constitutional rights?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Have you understood everything she's told
18 you?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are you satisfied with her services as
21 your attorney?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you want a jury trial on this charge?

24 THE DEFENDANT: No.

25 THE COURT: Okay. All right. Mr. Alves -- I mean,

1 Mr. Wade. Excuse me. Mr. Wade, the indictment that I
2 have is indictment number 2009-GS-20-1582 [sic]. It is
3 true billed by the grand jury on September 10, 2009. The
4 allegations are that you did in Aiken County on or about
5 February 28, 2009 feloniously, willfully, and with malice
6 aforethought kill and murder Julius Walker by means of
7 shooting him with a gun in North Augusta and that he died
8 as a result of those shots -- of that shot or shots in
9 violation of the laws of this state. Do you understand
10 the allegations contained in this indictment?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay. All right. How do you plead to
13 the charge of murder? Guilty or not guilty?

14 THE DEFENDANT: Guilty.

15 THE COURT: Thank you, sir. All right. Mrs. Young?

16 MRS. YOUNG: Your Honor, he is also pleading guilty
17 to burglary first and possession of a weapon.

18 THE COURT: Oh, I'm sorry. I didn't see those.
19 Excuse me.

20 MRS. YOUNG: With all sentences to run concurrently
21 to the 30 years of murder.

22 THE COURT: Okay. All right. Mr. Wade, I'm sorry.
23 These other two got put on my -- up here on the desk and I
24 wasn't paying attention. Mr. Wade, I've got two other
25 charges. The next one is 2009-GS-20-1584 [sic] for

1 burglary in the first degree. It is true billed by the
2 grand jury on September 10, 2009. Allegations are that
3 you did in Aiken County on or about February 28, 2009
4 willfully and unlawfully enter the dwelling of Julius
5 Walker on Samuel Street in North Augusta without consent
6 and with the intent to commit a crime therein and you were
7 armed with a deadly weapon in violation of the laws of
8 this state. Do you understand the allegations contained
9 in this indictment?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. How do you plead to this
12 charge of burglary in the first degree?

13 THE DEFENDANT: Guilty.

14 THE COURT: The final indictment I have, Mr. Wade, is
15 indictment number 2009-GS-20-1589 [sic] true billed by the
16 grand jury on September 10, 2009. It is an indictment for
17 possession of a weapon during the commission of a violent
18 crime. Allegations are that you did in Aiken County on or
19 about February 28, 2009 possess or visibly display a
20 firearm during the commission or attempted commission of a
21 violent crime; that being murder. Do you understand the
22 allegations contained in this indictment?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. How do you plead to this
25 charge of possession of a weapon during a violent crime?

1 THE DEFENDANT: Guilty.

2 THE COURT: Sir?

3 THE DEFENDANT: Guilty.

4 THE COURT: All right. Thank you, sir. Mrs. Young?

5 MRS. YOUNG: Thank you, Your Honor. May it please
6 the Court. On February 28 of 2009 Aiken County Sheriff's
7 Office received a 9-1-1 call from Avis Simpkins about 10
8 after 11 in the evening. Mr. Simpkins reported to the
9 dispatchers that his roommate had been shot at 535 Samuel
10 Street in North Augusta which is in Aiken County.

11 Mr. Simpkins was actually making the phonecall from a
12 neighboring residence because he did not have a phone at
13 the time.

14 When deputies arrived at the scene they did find the
15 victim Mr. Julius Walker also known as Butch deceased in
16 the doorway of his bedroom. It appeared that he had
17 suffered two gunshot wounds; one to the chest and one to
18 the right side of his torso. The officers interviewed
19 Mr. Simpkins who was present in the home at the time of
20 the shooting. He stated that he was in his bedroom and
21 that Mr. Walker was in his bedroom -- two separate rooms.
22 He heard some sort of scuffling, but it didn't alarm him.
23 Then he heard his roommate, say, Oh, no, stop, or
24 something to that effect, and then he heard two gunshots.
25 He stated that after he heard the screen door close he

1 went out to look and saw three black males dressed in
2 black running away from the residence.

3 The officers processed the crime scene for forensics
4 and they did find a 9 millimeter shell casing as well as a
5 spent .410 shotgun casing at the scene. There was no
6 other evidence such as the home being ransacked -- just
7 the deceased found in his bedroom.

8 The next morning the body was sent to Newberry for an
9 autopsy and the cause of death was exsanguination due to
10 two gunshot wounds -- one penetrating shotgun wound to the
11 left chest which, basically, destroyed the heart and
12 another potentially fatal gunshot wound to the right side
13 that was -- perforated the liver and was a
14 through-and-through shot.

15 Upon finding that it was a through-and-through shot
16 the sheriff's office got consent from the homeowner
17 Ms. Laquinta Williams to go back inside and lift up the
18 carpet underneath where the victim's body was found and
19 they did actually find a 9 millimeter projectile which
20 they removed and collected as evidence along with the
21 shell casings from the previous evening.

22 Officers had, you know, started to investigate this
23 and try to figure out who it was and the defendant's name
24 Tyrone Wade came up as a possible suspect in the case.
25 Apparently, he and the victim had had a previous

1 disagreement and Investigator Chuck Cane who was not the
2 responding officer to the scene, however -- Stacey Prince
3 was the responding officer, but when they gathered
4 together within their agency to staff this case
5 Investigator Cane related that on February 23 there had
6 been a report made that Ty Wade was up in that same
7 location shooting shots in the air and that the victim
8 Butch Walker had given a statement to Investigator Cane
9 indicating and naming Ty Wade as the person and further
10 stating that he had been threatened by Mr. Wade and was
11 fearful of him.

12 Based on this information the officers went and
13 reinterviewed Mr. Simpkins, the roommate, to see if they
14 could get any more information. At that point in time
15 without being prompted he volunteered that one of the men
16 was Ty Wade and that he knew that because he has a
17 distinct haircut. At the time he did have a distinct
18 haircut. Your Honor, I'll pass this picture up for you to
19 look at. Basically, his hair was kind of in a ball on the
20 top of his head and he had long dreadlocks hanging down.

21 Based on that information the officers began to find
22 out who he associated with and they got the name of
23 Demetria Pixley who was supposed to be his girlfriend and
24 whose car he was often seen in as well as the name of
25 Carlos Hazel as an associate.

1 Based on some information that they received that
2 Carlos Hazel's mother lived in Augusta Investigator Cane
3 went over to Augusta to see if he could find anything out
4 and when he arrived at the scene he did find a green car
5 that had matched the description of the vehicle that
6 Mr. Wade was known to travel in that belonged to his
7 girlfriend. Mr. Cane got out and had the tag run. It did
8 come back to the defendant's girlfriend's mother.

9 Based on this and the reports that Ty Wade was
10 involved Officer Cane requested the Richmond County come
11 to the scene and back him up since he was in the state of
12 Georgia and while he was waiting on them to respond --
13 this was during the afternoon hours in the daytime --
14 Mr. Cane came outside of the residence. Excuse me --
15 Mr. Wade came outside of the residence. Investigator Cane
16 had a chance to look at him and observe that it was, in
17 fact, Tyrone Wade and when the Richmond County Sheriff's
18 Office got there he shouted out, Tyrone. Mr. Wade looked
19 at him and began to run. There was a foot chase that
20 lasted approximately 10 minutes before they were able to
21 get him in custody. He was actually arrested on some
22 outstanding warrants.

23 When they searched his person he had a live
24 9-millimeter round in his pocket that was the same brand
25 as the one that was found at the crime scene. Because of

1 the fact that they thought that he might have thrown the
2 gun while he was running from the officers they requested
3 a black powder sniffing dog respond to the home of
4 Ms. Hazel and she did give them permission to search. The
5 dog went around and struck on the back side of the home
6 underneath the open crawl space area. There was a black
7 and silver jacket. Inside of the jacket was a
8 9-millimeter handgun.

9 They spoke to Ms. Pixley, the defendant's girlfriend,
10 who was at the residence and she stated that that was
11 Tyrone's jacket; that she had seen him wearing it before.
12 She gave them some other statements about what he had been
13 doing, but she didn't say anything that further was
14 exculpatory to him at that point in time. So, based on
15 that information they went to the Richmond County
16 Sheriff's Office and Investigator Prince and Investigator
17 Curt Bardman proceeded to interview Mr. Wade.

18 He gave them a lengthy statement during which time he
19 admitted that he was at the crime scene but denied being
20 the one who had done anything and he stated two other
21 names -- Joseph Kemp, also known as pig, and Anthony
22 Perry, also known as Killa -- and he implicated them as
23 being the gun man. He stated he didn't know anything
24 about it.

25 He was crying throughout this interview and when they

1 asked about the handgun he stated that he had been told or
2 paid by Mr. Kemp -- the one also known as pig -- to bring
3 it over to Augusta and to get rid of it for him. He
4 said -- he acknowledged the jacket was his at that point
5 in time and indicated that he did have knowledge of the
6 gun in the pocket.

7 Officers concluded their statement. They took
8 another brief statement from him. Both of these were
9 audio recorded and they collected his clothing to send off
10 for evidence and based on his statements of those two
11 other people being involved arrest warrants were issued
12 for Mr. Kemp and Mr. Perry. They were apprehended several
13 days later and denied any involvement in this crime.

14 Upon extraditing Mr. Wade and bringing him over he
15 made some statements to Investigator Prince in the car
16 that he might not have been truthful and so Investigator
17 Prince stopped him and said, We're not going to hear
18 anything else until you're under oath. He came back and
19 gave Investigator Prince another statement stating that he
20 had been angry at Mr. Kemp; so he falsely implicated him;
21 that it was not Mr. Kemp and Mr. Perry but it was two
22 other individuals that were involved -- Cordarrell Jamal
23 Miller and Ian Martin.

24 He gave that information and after searching for
25 witnesses who were able to give alibis for Mr. Perry and

1 Mr. Kemp they were released and then officers began
2 looking for Mr. Martin and Mr. Miller. Mr. Martin had
3 actually gone to North Carolina where he was from and his
4 mother contacted the sheriff's office stating he wanted to
5 give a statement about involvement in this and he did, in
6 fact, give a statement to a Wilson, North Carolina Police
7 Department as well as Investigator Prince and Lieutenant
8 Billy Fleurry in which he stated that Tyrone Wade had
9 picked him up in a green car -- small green car -- and he
10 and Jamal Miller were present; that they made a trip to
11 Walmart and that .410 shotgun shells had been purchased
12 and that when they got ready to go they didn't return home
13 and he said, Where are we going, and that, basically, they
14 had proceeded to the location, parked a few doors down,
15 and that Mr. Jamal Miller was armed with the .410 shotgun
16 and Mr. Wade was armed with a 9-millimeter handgun and he
17 stated they went inside the house and he stayed in the car
18 and he heard the gunshots but denied any further
19 involvement.

20 They were able to go to Walmart and pull video that
21 did show Mr. Miller and Mr. Wade at the counter in the
22 sports department. Furthermore, the Walmart employee
23 remembered them because they had brought the clip to the
24 .410 and didn't know how to load it and he had to show
25 them how to load it in the store. He actually ended up

1 getting written up for a policy violation for showing them
2 that at that point in time. That was basically the extent
3 of the interview of Mr. Martin. They tried to interview
4 Mr. Miller. He did not give a statement.

5 The next thing that happened was a long wait for
6 forensic evidence in this case. Over a period of time it
7 did come back. Various things came back from SLED
8 including the fact that the clothing that Mr. Wade was
9 arrested in contained gunshot powder residue.
10 Furthermore, the 9-millimeter handgun that was found in
11 his jacket was taken to SLED and analyzed and it was found
12 to be the gun that fired the cartridge case found at the
13 scene next to Mr. Walker's body. Furthermore, the bullet
14 was tested and they could not make a conclusive finding,
15 but they stated it could have been fired by the
16 9-millimeter that they had tested previously. Based on
17 the general characteristics it was most likely fired by a
18 high point firearm which this 9-millimeter gun was.

19 Additionally, Your Honor, the state sent numerous
20 items away to SLED to be analyzed for potential DNA
21 evidence and eventually that was concluded earlier this
22 year and the most damning items came from testing the
23 coat. When SLED got the coat in their possession they
24 found in the pocket a glove that actually had blood on it
25 and the blood on the glove was a match to the victim in

1 this case Mr. Julius Walker.

2 Furthermore, there was a cutting from inside of the
3 glove that matched or basically said the victim and
4 Mr. Tyrone Wade could not be excluded as being
5 contributors to that. Additionally, there were cuttings
6 and testing done from the coat itself. That came back to
7 matching Mr. Wade with the probability of selecting an
8 unrelated person being one in 190 quadrillion.

9 The two other co-defendants' DNA was not found on any
10 of the items, Your Honor. I do have a couple more
11 pictures I'd like to show you -- basically, a picture of
12 the crime scene and a picture of the handgun as it was
13 found in Augusta. We were preparing this case for trial
14 this week and Miss Alves called me about a potential offer
15 and made an offer to Mr. Wade that we would allow him to
16 plead to 30 years on the murder charge if he would give
17 information against the co-defendants -- particularly
18 Mr. Miller. Mr. Wade was interviewed by law enforcement
19 on Friday and gave a statement that, basically, implicated
20 himself further by admitting that he had been in the home
21 and had shot the 9-millimeter, although he would not admit
22 that he shot the victim while he was lying in the prone
23 position which is what the evidence indicated that he was
24 shot first with the .410 and then shot with the
25 9-millimeter while he was prone on the ground.

1 There is no evidence that this was anything other
2 than retaliation from Mr. Wade's own mouth because his
3 brother had been living with the victim as his roommate
4 for a period of time and was kicked out shortly before
5 this happened. His brother had been attacked physically
6 and beaten up by several individuals. Mr. Wade alleges
7 that Mr. Butch Walker, the victim, was involved in that
8 attack and he stated that based on that he was going to go
9 in with a gun and scare him and things progressed from
10 there and that was based on his own statement from Friday.

11 He does have a prior record, Your Honor. He has a
12 2002 assault and battery of a high and aggravated nature.
13 He has a 2006 giving false information, possession of a
14 stolen vehicle, and receiving stolen goods; a 2007 two
15 counts of contributing to the delinquency of a minor.

16 Your Honor, the family is present. I would like to
17 name the ones who are here and I believe that several of
18 them would like to speak to you. First of all,
19 Ms. Laquinta Williams who is the fiance of the victim.
20 Just raise your hand. She is present as well as his
21 sister Elizabeth Ross; an aunt, Ms. Borum; his grandfather
22 Leroy Ross. He is on the end there -- an uncle, Charles
23 Ross, and an aunt, Karen Bennett, and they would like to
24 address the court at the appropriate time.

25 THE COURT: How about now?

1 MRS. YOUNG: All right.

2 THE COURT: Good morning. You're the victim's
3 sister?

4 MS. ELIZABETH ROSS: Uh-huh.

5 THE COURT: Do you mind stating your full name,
6 please, ma'am?

7 MS. ELIZABETH ROSS: Elizabeth Ross.

8 THE COURT: Miss Ross? Okay, Ms. Ross. Let me hear
9 from you, please, ma'am.

10 VICTIM'S ADVOCATE MRS. DEERING: Your Honor, I am
11 just going to read this brief note.

12 THE COURT: Okay. And your name?

13 VICTIM'S ADVOCATE MRS. DEERING: Carla Deering,
14 Victim Services in the Solicitor's Office.

15 THE COURT: Mrs. Deering, appreciate it. Okay.

16 VICTIM'S ADVOCATE MRS. DEERING: Elizabeth is kind of
17 the last one in her family. Her mother died from breast
18 cancer when she was 29; right? Your father has passed and
19 now her only sibling has passed and she just wanted Your
20 Honor to know that she's the sister to Julius Walker.
21 She'd like to say that they didn't have to take her
22 brother's life for nothing and that she would like to see
23 justice served. You don't go around taking a human
24 being's life for no cause and she's been extremely
25 affected by her brother's loss along with the rest of

1 their family, yes, sir.

2 THE COURT: Ms. Ross, I appreciate your coming here.
3 I am sorry for your loss. I really am. Anything you want
4 to tell me? Thank you, ma'am.

5 MRS. YOUNG: The victim's fiance would like to speak,
6 also, Your Honor, Ms. Laquinta Williams.

7 THE COURT: Ms. Williams?

8 MRS. YOUNG: The family was made aware of what the
9 plea was going to be today, Your Honor, and the reasons
10 for it. They had been involved and they've been present
11 at all the court hearings, remained interested even for
12 just hearings and motions.

13 THE COURT: Ms. Williams, good morning.

14 MS. LAQUINTA WILLIAMS: Laquinta Williams.

15 THE COURT: Yes, ma'am, Ms. Williams?

16 MS. LAQUINTA WILLIAMS: Well, me and Butch had been
17 together for about a year. We had our ups and downs like
18 any other couple, but we was planning on getting married.
19 We wanted kids and they took that away from us. I'll
20 never get to see him again and this was just senseless.
21 That's all.

22 THE COURT: Ms. Williams, thank you for coming
23 forward. All right. Mrs. Young?

24 MRS. YOUNG: That would be all from the state at this
25 time, Your Honor.

1 THE COURT: All right. Mr. Wade, you've heard what
2 the solicitor has told me about the circumstances that led
3 to your arrest on these charges?

4 THE DEFENDANT: (Witness nods head.)

5 THE COURT: Is that a yes?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Sir? Okay. And you've heard what she's
8 told me about your prior record and you've heard from the
9 victim's family?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right, sir. Now, understanding all
12 of that do you still want me to accept your guilty plea
13 here today?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. And my understanding from the
16 solicitor's office is it is a negotiated plea. Is that
17 your understanding?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. All right, sir. Do you understand
20 that if you're aggrieved by my decision you have 10 days
21 from today's date in which to file a notice of intent to
22 appeal? Do you understand that, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right.

25 MISS ALVES: Your Honor, if I may. I'm sorry.

1 Mr. Wade disputed some of the facts that the solicitor
2 said. They're nothing that changed the ultimate outcome
3 of his case.

4 THE COURT: Yes, sir.

5 MISS ALVES: He wanted me to put his dispute with
6 some of those facts on the record.

7 THE COURT: I'll be happy to let you do it. You want
8 to do it now?

9 MISS ALVES: Yes, sir.

10 THE COURT: Okay.

11 MISS ALVES: Your Honor, Mr. Wade takes issue with
12 the statements that she made regarding the hair and
13 Mr. Avis Simpkins' statement. Your Honor, Mr. Simpkins
14 gave several different statements. Initially he said
15 there were two people, then three people. His description
16 of the suspects -- they were inconsistent with the actual
17 descriptions of the people who were actually involved.
18 The hair is inconsistent. In fact, he said two people had
19 braided hairstyles when, in fact -- I mean, one person has
20 a braided hairstyle and two people had a braided hairstyle
21 and the way Mr. Wade's hair looked in the pictures in
22 Augusta is slightly inconsistent with how it looked on the
23 video at Walmart, but, I mean, Mr. Simpkins -- he give his
24 statement saying he recognized Mr. Wade, but Mr. Wade
25 takes issue with that.

1 Also, Your Honor, this is a small detail, but in his
2 first statement which is admittedly a lie to the police
3 where he told about the other two people -- Mr. Perry and
4 Mr. Kemp -- being involved, he told the police that he got
5 the gun from Mr. Perry. He later in admitting that's the
6 gun that he took that they found in Georgia -- That's what
7 he told them. Later in last week's statement where he was
8 giving a lot more details about his own involvement in
9 this crime he stated that he had actually gotten the gun
10 originally from Mr. Perry, but Mr. Perry wasn't the person
11 who was involved in the murder of Mr. Walker.

12 Also, Your Honor, Mr. Miller had a .410 clip.
13 Mr. Williams has been adamant that he had nothing to do
14 with Mr. Miller's conversation with the man at Walmart
15 until later in the conversation Mr. Wade is seen on the
16 Walmart video talking on the phone while Mr. Miller is at
17 the counter talking to the Walmart clerk.

18 Also, Your Honor, he's very -- He's adamant that when
19 he told the police the situation he was very adamant that
20 the situation happened so fast that originally Mr. Walker
21 was standing up and was reaching -- he says was reaching
22 for a gun of his own and Mr. Miller shot first. It
23 happened very fast and Mr. -- and Mr. Wade shot second.
24 Mr. Miller had the .410 shotgun, and those are the
25 clarifications that he wanted me to make regarding the

1 facts. I know that is nothing that changes what he's
2 pleading to, but that is something that Mr. Wade was very
3 concerned about me making clear to Your Honor.

4 THE COURT: Miss Alves, I appreciate you putting
5 those statements on the record on his behalf.

6 MISS ALVES: Thank you.

7 THE COURT: All right. Mr. Wade, I find that your
8 decision to plead guilty to all three of these charges is
9 freely, voluntarily, and intelligently made. I find that
10 you've had the advice and counsel of a competent lawyer.
11 I find that you're satisfied with the services of your
12 lawyer. I find that there is a factual basis for you to
13 plead guilty to all three of these charges; so I will
14 accept your guilty plea to all three of them.

15 All right. Miss Alves, anything else to you'd like
16 to tell me?

17 MISS ALVES: Yes, sir, Your Honor. I would just say
18 this is a sad situation. Mr. Wade does -- There is no
19 question that in his first statement he was not -- he was
20 truthful to a point saying he was there, but he was not
21 truthful about who was involved, but as the solicitor
22 stated he did later admit the truth of -- Well, at least
23 the truth of who was involved in the case and he gave the
24 names of Mr. Martin and Mr. Miller.

25 The police wouldn't have had that information without

1 him. They wouldn't also have known about him being at
2 Walmart with Mr. Miller without Mr. -- and giving the .410
3 bullets without Mr. Wade is my understanding.

4 Your Honor, there is no question from what both
5 Mr. Wade told the police and what Mr. Martin told the
6 police Mr. Miller is the one who had the .410 shotgun and
7 Mr. Wade is the person who had the 9-millimeter gun.
8 Mr. Wade told -- has given -- when he talked to the police
9 last weekend he gave his admissions of exactly what he did
10 in this.

11 He said it was just an intent to scare him; that he
12 was upset about -- he was upset about the situation with
13 his brother. It wasn't a plan upfront from what he says,
14 but there was -- it seemed to be a spur of the moment plan
15 between the three of them when they were meeting on
16 another matter to go to Mr. Walker's house to confront
17 him. From what Mr. Wade says Mr. Miller also had an issue
18 with Mr. Walker and they were just going in there to scare
19 him and from what Mr. Wade says when Mr. Walker reached
20 for his gun Mr. Miller shot first and then he shot after
21 in what he says is reflex, but he understands -- and, Your
22 Honor, the autopsy reflects that the .410 shotgun shot is
23 what caused the death of Mr. Walker; however, the
24 9-millimeter was potentially fatal, but that wasn't the
25 actual shot that was fatal.

1 However, Mr. Wade understands that the hand of one is
2 the hand of all here. He did have an angry reason for
3 going into the house and I know he didn't intend for it to
4 go this far, but it did and now he's having to face the
5 consequences. He is 25 years old. He has two children.
6 His oldest child is eight years old and from what he tells
7 me she's doing exceptionally well in school and is a
8 bright active child and his younger child is a year and a
9 half. She was born while he was incarcerated and he's had
10 some involvement with her talking on the phone and seeing
11 her at the jail but not very much.

12 He knows that by doing this plea he will have to face
13 30 years and that is a charge which is there is no good
14 time given and he'll have to do every second of those 30
15 years according to how the law is written and he's
16 prepared to do that. The only thing I ask is that --
17 well, I would ask -- and he has been in jail for 754 days
18 as of today for this plea. Your Honor, the only other
19 thing I can say is that Mr. Wade did have -- he did have
20 other charges that were pending -- that are pending -- the
21 one that the solicitor talked about for the discharging
22 the firearm as well as some other unrelated charges that
23 are being dismissed as a part of this plea. I don't
24 believe that the solicitor mentioned that, but it was part
25 of our negotiation.

1 THE COURT: And, Miss Alves, two of the charges are
2 violent and most serious offenses. Have you gone over
3 that?

4 MISS ALVES: Yes, sir. I have gone over them. He
5 does understand that if he gets another most serious
6 charge or a strike as he might call it then that would be
7 life without parole, but from what Mr. Wade tells me and
8 from what I've seen -- I've known Mr. Wade for a long time
9 now dealing with these cases and he is a creative person
10 and he is somebody who can learn from his situation and he
11 and I have had many discussions about him taking the
12 situation to heart. He's had a long time to reflect on
13 the error of his ways and how he's gotten to this point
14 and hopefully he can make this next period of time that
15 he's going to be incarcerated a productive one for himself
16 and stay out of trouble when he gets out of jail because
17 if not he knows that he would face a potential life
18 sentence if he got another most serious strike. He
19 doesn't have any strikes on his record as of now.

20 THE COURT: Thank you, ma'am.

21 MISS ALVES: He just wants to make sure, Your Honor,
22 that it is marked on the sentence sheet that he gets
23 credit for the time he's done.

24 THE COURT: 754 days; is that correct?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You want me to make sure I do that; is
2 that correct?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Anything else, Miss Alves?

5 MISS ALVES: No, sir.

6 THE COURT: All right. Mr. Wade, I am going to go
7 along with the negotiated sentence. The sentence of this
8 court on the murder charge is you're committed to the
9 State Department of Corrections for a period of 30 years.
10 On the burglary charge the sentence is you're committed to
11 the State Department of Corrections for a period of 15
12 years and on the possession of weapon during the
13 commission of a violent crime the sentence of the court is
14 that you're committed to the State Department of
15 Corrections for a period of five years. These sentences
16 are concurrent, and I will give you credit for the 754
17 days that you have served in jail. Thank you, sir.

18 (End of transcript of record.)

19

20

21

22

23

24

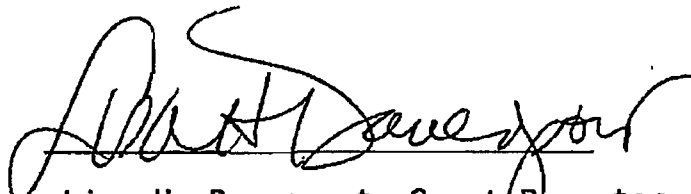
25

CERTIFICATE OF REPORTER1
2
3
4 State of South Carolina)5 County of Aiken)
6
7

8 I, Lisa H. Davenport, Official Court Reporter for the
9 Second Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete Transcript of Record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the Court of General Sessions for
14 Aiken County, South Carolina, on the 28th day of March,
15 2011.

16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18
19

20 November 21, 2011

21 
22
23 Lisa H. Davenport, Court Reporter
24
25

WITNESSES

Aiken County Sheriff

Stacey Prince

Law Enforcement Case #: 09-010989

RAO

ARREST WARRANT NUMBER

 M040097 FILED September 10 2009

Lisa H. G. S.
Shannon D. Rosenkrantz
 Deputy Clerk

ACTION OF GRAND JURY

True Bill

[Signature]
 Foreperson of Grand Jury
 Date: September 10, 2009

VERDICT

 Foreperson of Petit Jury
 Date:
DOCKET NO. 2009GS0201582**The State of South Carolina****County of Aiken**

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2009

THE STATE
vs.
TYRONE SERBELER WADE

CDR #: 0116

Indictment for**MURDER****§ 16-03-0010; 16-03-0020**

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
MURDER
§ 16-03-0010

At a Court of General Sessions, convened on September 14, 2009, the Grand Jurors of Aiken County present upon their oath:

That TYRONE SERBELER WADE along with others, did in Aiken County on or about February 28, 2009, feloniously, wilfully and with malice aforethought, then and there kill and murder [REDACTED] by means of shooting [REDACTED] with a gun and that the victim did die at [REDACTED] North Augusta, South Carolina as a proximate result thereof on the February 28, 2009. All in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

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


J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

Stacey Prince

Law Enforcement Case #: 09-010989

RAO

ARREST WARRANT NUMBER
FILED *September 10, 2009*

MD40099

L. J. Godard
J.C.C.P. & G.S.
Shannon W. Rosenkrantz
Deputy Clerk**ACTION OF GRAND JURY***True Bill**Seal Woot*
Foreperson of Grand Jury
Date: September 10, 2009**VERDICT**Foreperson of Petit Jury
Date:**DOCKET NO. 2009GS0201584****The State of South Carolina****County of Aiken****COURT OF GENERAL SESSIONS****SEPTEMBER TERM 2009****THE STATE
vs.****TYRONE SERBELER WADE****CDR #: 0079****Indictment for****BURGLARY IN THE FIRST DEGREE****§ 16-11-0311****J. STROM THURMOND, SOLICITOR**

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

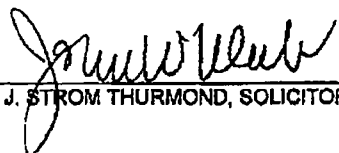
INDICTMENT FOR
BURGLARY IN THE FIRST DEGREE

§ 16-11-0311

At a Court of General Sessions, convened on September 14, 2009, the Grand Jurors of Aiken County present upon their oath:

That TYRONE SERBELER WADE, along with others, did in Aiken County, South Carolina on or about February 28, 2009 wilfully and unlawfully enter the dwelling of [REDACTED] located at [REDACTED] North Augusta, South Carolina, without consent and with the intent to commit a crime therein and the defendant was armed with a deadly weapon, all in violation of §16-11-311, 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.


J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

Stacey Prince

Law Enforcement Case #: 09-010989

RAO

ARREST WARRANT NUMBER
FILED September 10, 2009

M040098

Shannon W. Rosenkrantz
Deputy ClerkACTION OF GRAND JURY

True Bill

Shannon W. Rosenkrantz
Foreperson of Grand Jury
Date: September 10, 2009VERDICTForeperson of Petit Jury
Date:

DOCKET NO. 2009GS0201589

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2009

THE STATE
vs.

TYRONE SERBELER WADE

CDR #: 0549

Indictment for

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT
CRIME

§ 16-23-0490

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

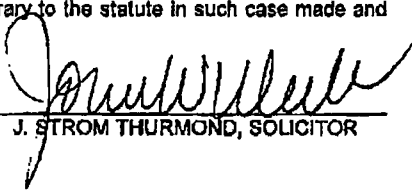
)
) INDICTMENT FOR
) POSSESSION OF A WEAPON DURING THE
) COMMISSION OF A VIOLENT CRIME
)

§ 16-23-0490

At a Court of General Sessions, convened on September 14, 2009, the Grand Jurors of Aiken County present upon their oath:

That TYRONE SERBELER WADE, along with others, did in Aiken County, South Carolina on or about February 28, 2009, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: Murder, all 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.


J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Aiken
 STATE VS.
Tyrone Serbeler Wade
 AKA: Ty
 Race: 2 Sex: M Age: 25
 DOB: 1-10-1984
 Address:
 City, State, Zip: NORTH AUGUSTA, SC 29841
 DL#: SID#:

INDICTMENT/CASE#: 2009GS0201582
 A/W#: M040097
 Date of Offense: 2/28/2009
 S.C. Code § : 16-03-0010; 16-03-0020
 CDR Code #: 0116

SENTENCE SHEET

30 - Life

*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒
 In disposition of the said indictment comes now the Defendant who was
 TO: Murder / Murder

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State. 30 years
Elizabeth B. Young 73947 James Wade 65401
Young, Elizabeth B. SC Bar# Wade, James SC Bar#

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: 3/28/11
☒ 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. 754 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

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:

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(1) (Vehicle Assessment)	\$40/vea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 138.90

☐ Condition Discharge, § 44-53-450(C) requires
 \$350 be paid to the Clerk prior to case disposition
☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk Thermon D. Rosenberry

Court Reporter: Risa A. Davenport

SCCA/217 (06/2010)

Presiding Judge

Judge Code: 2153

Sentence Date: March 28, 2011

STATE OF SOUTH CAROLINA

COUNTY OF Alcon
 STATE VS.
Tyrone Serbeler Wade
 AKA: Ty
 Race: 2 Sex: M Age: 25
 DOB: [REDACTED]
 Address:
 City, State, Zip: NORTH AUGUSTA, SC 29841
 DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒
 In disposition of the said indictment comes now the Defendant who was
 TO: Burglary / Burglary (After June 20, 1985) - First degree

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/tutor 1st or Lewd Act)

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

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State. 20 years
Elizabeth B. Young 73947 [Signature] Wally Alvis 65401 cc
 Young, Elizabeth B. SC Bar# Defendant Attorney for Defendant SC Bar#

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

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 3/28/11
☒ 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. 754 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
 Total: \$ plus 20% fee: \$ days/hours Public Service Employment
 Payment Terms:
☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ <u> </u>
§ 56-5-2995 (DUI Assessment)	\$12	\$ <u> </u>
§ 56-1-286 (DUI Breath Test)	\$25	\$ <u> </u>
Proviso 47.9 (Public Def/Prob)	\$500	\$ <u> </u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u> </u>
§ 50-21-114(BUI Breath Test Fee)	\$50	\$ <u> </u>
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ <u> </u>
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
§ 44-53-450(C) (Conditional Discharge)	\$350	\$ <u> </u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk Sharon Skippa

Court Reporter Lisa Davenport

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS0201584
 A/W#: M040099
 Date of Offense: 2/28/2009
 S.C. Code § : 16-11-0311
 CDR Code #: 0079

SENTENCE SHEET

15 - Life

☐ CONVICTED OF or ☒ PLEADS

Presiding Judge [Signature]
 Judge Code: 2153
 Sentence Date: March 28, 2011

☐ Condition Discharge, § 44-53-450(C) requires
 \$350 be paid to the Clerk prior to case disposition
☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Alcon
 STATE VS.
Tyrone Serbeler Wade
 AKA: Ty
 Race: M Sex: M Age: 25
 DOB: SS#
 Address:
 City, State, Zip: NORTH AUGUSTA, SC 29841
 DL#: SID#

INDICTMENT/CASE#: 2009GS0201589A/W#: M040098Date of Offense: 2/28/2009S.C. Code § : 16-23-0490CDR Code #: 0549

SENTENCE SHEET

Up to 5 years

*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒
 In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADS

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490

of the S.C. Code of Laws, bearing CDR Code #

0549

☒ 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's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State. 5 years

Elizabeth B. Young 73947 Tyrone Serbeler Wade 65401
 Young, Elizabeth B. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed 5 years
 and/or to pay a fine of \$ 100.00; provided that upon the service of 754 days/months/years and/or payment
 of \$ 100.00; plus costs and assessments as applicable; the balance is suspended with probation for 3/28/11

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: 3/28/11☒ 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. 754 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-23-20 or 16-23-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ 100.00 plus 20% fee: \$ 20.005 days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPSAttend 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 \$ 100.00 beginning 3/28/11\$ 100.00 paid to Public Defender FundOther: 3/28/11

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ <u>100.00</u>
§ 56-3-2995 (DUI Assessment)	\$12	\$ <u>12.00</u>
§ 56-1-286 (DUI Breath Test)	\$25	\$ <u>25.00</u>
Proviso 47.9 (Public Def/Prob)	\$500	\$ <u>500.00</u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150.00</u>
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$ <u>50.00</u>
§ 56-3-2942(J) (Vehicle Assessment)	\$40/ea	\$ <u>40.00</u>
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
§ 44-53-450(C) (Conditional Discharge)	\$350	\$ <u>350.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

Presiding Judge

Judge Code: 2153Sentence Date: March 28, 2011

M04097 040098
040099
FORM 5

2011 case 02045
2009 case 1582, 1584, 1589
Filed 9-11-2011
Jesse A. G. Adams County Clerk
Deputy Clerk: Edgar Dickson
Trial Judge: JAMES ALVES
Trial Atty: JAMES ALVES
Court Reporter: LEE FAVENHOLM
Sec. PCR Petitioner: Solicitor
General Sessions: Atty. Gen.
Appointed Atty.

STATE OF SOUTH CAROLINA

County of Aiken
284384
Tyrone Wade
Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of Detention 4460 Broad River Road,
Columbia, South Carolina 29210
2. Name and location of Court which imposed sentence Aiken County
Courthouse
3. Name(s) of co-defendant(s) (if any) Tamal Miller, Tam Martin & Denise Pickett
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) #2009-GS-02-1582; #2009-GS-02-1584;
 - (b) #2009-GS-02-1589. Three Counts.

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) MARCH 28, 2011, 30 YEARS CONCURRENT FOR MURDER;
- (b) 20 YEARS CONCURRENT FOR BURGLARY FIRST DEGREE;
- (c) 5 YEARS CONCURRENT FOR POSSESSION OF A WEAPON.
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 THIRTEENTH COURT OF APPEALS.
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. SOUTH CAROLINA THE COURT OF APPEALS, HAD
- ii. DISMISSED APPELLANT'S APPEAL CAUSE HAD FAILED
- iii. TO SHOW HOW ANY ISSUE WAS PRESERVE FOR THEY REVIEW.
- (c) the date of each such result:
- i. JUNE 6, 2011, ORDET APPEAL DISMISSED BY THE
- ii. HONORABLE LIZ GODARD, AT SOUTH CAROLINA THE
- iii. COURT OF APPEALS.
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. UNDER RULE 203 (d)(1)(B)(iv), SCACB, SAY
- ii. APPELLANT COULD NOT SHOW THERE IS AN ISSUE(S)
- iii. WHICH CAN BE REVIEWED ON APPEAL.
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody, unlawfully:
- (c) _____
- (a) Subject Matter Jurisdiction.
- (b) Involuntary Guilty Plea, Negotiated
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) The court really did not have grounds because
- (b) lack of evidence and I would not have taken
- (c) plea if I knew this.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof: Not applicable
- (i) _____
- (ii) _____
- (iii) _____
- (iv) _____
- (b) the name and location of the Court in which each was filed: Not applicable
- (i) _____
- (ii) _____
- (iii) _____
- (iv) _____
- (v) _____

(c) the disposition thereof:

- i. Not Applicable
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. Not Applicable
- ii. _____
- iii. _____
- iv. _____

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

- i. Not Applicable
- ii. _____
- iii. _____
- iv. _____

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

No

15. If you answered "yes" to (14) identify: None Not Applicable

(a) which grounds have been presented: None Not Applicable

- i. _____
- ii. _____
- iii. _____

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

- i. None Not Applicable
- ii. _____
- iii. _____

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

- (a) BECAUSE SOUTH CAROLINA COURT OF APPEALS, had
 (b) DISMISSED appellant's appeal.
 (c) _____

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

- (a) your arraignment and plea? yes
 (b) your trial, if any? yes
 (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?
NOTICE OF INTENT TO APPEAL.

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. WILLIS APRI ALVES, SECOND JUDICIAL CIRCUIT
PUBLIC DEFENDER, P.O. DRAWER 2247, Aiken, S.C. 29802.
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. SAME ATTORNEY REPRESENTED APPELLANT AT PLEA,
SENTENCING, AND APPEAL FROM JUDGMENT OF CONVICTION.
 ii. _____
 iii. _____

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

Reverse guilty plea, conviction and sentence
vacated the sentence

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

NO

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, Tyrone Wade, 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.

Tyrone Wade

SWORN to and subscribed before me this

day of

Sept

2011

Eugene Beatty Jr.
 Notary Public

My Commission Expires:

2016

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

I, Tyrone Wade, 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.

Tyrone Wade
Applicant

SWORN or affirmed to and subscribed before me this

14 day of Sept
Eugene Keitt
Notary Public

My Commission Expires:

2016

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Tyrone Wade, #284384,

2011-CP-02-2045

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post conviction relief (PCR) filed September 19, 2011, 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 Aiken County Clerk of Court. The Applicant was true bill indicted at the September 2009 term of the Aiken County Grand Jury for Murder, Burglary in the First Degree and Possession of a Weapon During the Commission of a Violent Crime (2009-GS-02-1582/1584/1589). He was represented by Wallis Alves, Esquire. On March 28, 2011, the Applicant pled guilty as indicted before the Honorable Edgar W. Dickson. Pursuant to negotiations, he was sentenced to thirty (30) years imprisonment for Murder, five (5) years imprisonment for the Weapon charge, and fifteen (15) years imprisonment for Burglary, sentences to be served concurrently. The Applicant filed a timely Notice of Appeal, which was dismissed by the Court of Appeals under Rule 302(d)(1)(B)(iv). The Remittitur was sent June 6, 2011.

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

Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Subject Matter Jurisdiction
2. Involuntary Guilty Plea; Negotiated
 - a. "The court did not have grounds because lack of evidence and I would have have taken plea if know this."

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.

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.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by

showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

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

VI.

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

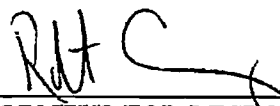
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ROBERT D. CORNEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

December 6, 2011.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

2011-CP-02-2045

TYRONE WADE, 284384,

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:

Andrea Hippely, Esquire
518 Highland Park Terrace
Aiken, SC 29801

DATED this 6th day of December, 2011.

Lauren Meara
Lauren Meara, Legal Assistant
For Respondent

1 State of South Carolina)

In the Court
Of Common Pleas

2 County of Aiken)

3 Docket No. 2011-CP-02-2045
4

5
6 Tyrone Wade,)
Applicant)

7
8 vs.)

Transcript of Record

9
10 State of South Carolina,)
Respondent)

11
12 July 11, 2012
13 Aiken, South Carolina
14

15 B E F O R E:

16 The Honorable Paul M. Burch, Judge.
17

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

19 Courtney C. Pope, Esquire
20 Attorney for the Applicant

21 Megan Harrington, Assistant Attorney General
22 Attorney for the Respondent
23

24 Brenda J. Sigwald, Circuit Court Reporter
To the Honorable R. Knox McMahon
25 P.O. Box 206, Jackson, South Carolina 29831

I N D E XPage

POST CONVICTION RELIEF HEARING

Tyrone Wade

Direct Examination by Ms. Pope..... 4

Cross-Examination by Ms. Harrington..... 9

Wallis Alves

Direct Examination by Ms. Harrington..... 13

Cross-Examination by Ms. Pope..... 21

Certificate of Reporter..... 25

Keyword Index..... 26

E X H I B I T SNO.DESCRIPTIONPAGE

(REPORTER'S NOTE: There were no exhibits
entered during this hearing.)

1 MS. HARRINGTON: May it please the Court? The next
2 case the State would call is Tyrone Wade vs. The State of
3 South Carolina, Docket No. 2011-CP-02-2045. Applicant was
4 true-bill indicted by the Aiken County Grand Jury in
5 September of 2010 for murder, burglary in the first degree,
6 and possession of a weapon during the commission of a
7 violent crime. He pled guilty on March 28th, 2011 before
8 Judge Dixon as indicted.

9 Pursuant to a recommended -- pursuant to a 30 year
10 concurrent sentence negotiation; and Judge Dixon did
11 sentence the applicant to the negotiated 30 years for
12 murder, 15 years for burglary, and 5 years for the weapons
13 charge, all three sentences to run concurrently.

14 No direct appeal was filed, but a PCR was timely
15 filed on September 19th, 2011, alleging that his guilty
16 plea was involuntary. The State made it's return on
17 December 6th, 2011. The applicant is represented here
18 today by Courtney Pope.

19 THE COURT: Ms. Pope, have you discussed with Mr.
20 Wade the possible pitfalls and that he received a sentence
21 of less than the maximum possible?

22 MS. POPE: Yes, Your Honor.

23 THE COURT: Okay. And you believe that he
24 understands the dangers that he could face if here were to
25 prevail here and go back to ground zero as we say?

Tyrone Wade - Direct Examination by Ms. Pope

1 MS. POPE: Yes, Your Honor. I believe he does
2 understand.

3 THE COURT: Okay. And he wants to go forward?

4 MS. POPE: Yes, Your Honor. He does.

5 THE COURT: All right. You may proceed.

6 MS. POPE: I would call my first witness, Mr. Wade.

7 TYRONE WADE,

8 having been duly sworn, testified as follows:

9 **DIRECT EXAMINATION**

10 BY MS. POPE:

11 Q Good morning, Mr. Wade.

12 A Good morning.

13 Q I'm going to ask you a series of questions. I just
14 ask that you say yes, no, all verbal answers so the court
15 reporter can get it. Okay?

16 A Yes, ma'am.

17 Q All right. You were charged with murder,
18 possession of a weapon during a violent crime, and
19 burglary; is that correct?

20 A Yes, ma'am.

21 Q And Ms. Wallis Alves was your attorney representing
22 you on those charges; is that correct?

23 A Yes, ma'am.

24 Q Okay. Now, you pled guilty to those charges; is
25 that correct?

Tyrone Wade - Direct Examination by Ms. Pope

1 A Yes, ma'am.

2 Q All right. But before that guilty plea, are you
3 alleging that you were not provided with sufficient
4 evidence?

5 A Yes, ma'am.

6 Q Okay. Can you kind of tell me why you think Ms.
7 Alves was an ineffective counsel for you?

8 A Due to the fact that -- due to the fact that -- I
9 mean, as far as my charge, I felt like there could have
10 been more done on my case.

11 Q Okay. Tell me specifically something that could
12 have been done in order for you to not take this guilty
13 plea?

14 A A more thorough investigation.

15 Q Okay. Do you feel as though Ms. Alves did not
16 conduct a thorough investigation?

17 A Yes, ma'am.

18 Q Okay. Tell me how you feel that she did not
19 conduct a thorough investigation?

20 A When I later read over my motion of discovery, I
21 seen things in there that if I would've knew, I would have
22 went ahead and took a trial, but I didn't.

23 Q Okay. I'd like for you to just explain some of
24 those things that you read in your motion for discovery
25 that would have changed your mind about pleading guilty.

Tyrone Wade - Direct Examination by Ms. Pope

1 A That no DNA was taken on the firearm; that my
2 clothing was illegally taken; and just things of that
3 nature, I reckon.

4 Q Okay. And I'm asking you to be specific because
5 I'm going to ask her specifically. Okay?

6 A Yes, ma'am.

7 Q In terms of the fingerprint analysis, can you kind
8 of tell me what your issue was with that fingerprint
9 analysis?

10 A One never was done.

11 Q Okay. And what you're referring to, Mr. Wade, is
12 that there was a gun involved in this murder; is that
13 correct?

14 A Yes, ma'am. Two of them.

15 Q Okay. And the gun you're referring to is a 9mm; is
16 that correct?

17 A Yes, ma'am.

18 Q Okay. And it's your testimony today that the
19 fingerprint -- that there was no fingerprint analysis done
20 on the 9mm; is that correct?

21 A Yes, ma'am.

22 Q And what you're saying to us today is that if there
23 had been a fingerprint analysis done, that may have changed
24 your mind as to whether or not to take a guilty plea; is
25 that correct?

Tyrone Wade - Direct Examination by Ms. Pope

1 A Somewhat. Yes, ma'am.

2 Q Okay. Now what was the other piece of evidence
3 that you mentioned besides the gun?

4 A The shell -- the shell casing and the bullet that
5 they said was found in my pocket.

6 Q Can you speak up a little bit?

7 A The shell casing and bullet that they said that was
8 found in my pocket.

9 Q Okay. What specifically about that?

10 A No fingerprints on that as well.

11 Q Okay. So what you're saying is that if there had
12 been a fingerprint analysis, that would have changed your
13 decision to plead guilty; is that correct?

14 A Yes, ma'am.

15 Q Did you at any time ask Ms. Alves to do a
16 fingerprint analysis?

17 A Yes, ma'am. On the firearm. Yes, ma'am.

18 Q Okay. Is it -- what happened when you asked her to
19 do a fingerprint analysis on the firearm?

20 A I wasn't -- I can't remember her answer today,
21 though. I'm not quite sure what her answer was, what her
22 response was to that.

23 Q Okay. You just know that there was not one done;
24 is that right?

25 A Yes, ma'am.

Tyrone Wade - Direct Examination by Ms. Pope

1 Q Okay. Is there anything else that may have changed
2 your mind about taking a guilty plea?

3 A That's it at the moment.

4 Q Again, Mr. Wade, if there had -- do you know
5 whether or not Ms. Alves sent an investigator out on your
6 behalf?

7 A She said she did, but the investigator, he claimed
8 that he could never get in touch with some of the people
9 that I had asked for him to speak to. And I was still in
10 contact with some of those people. I had my mother as well
11 as my brother get several statements from different people,
12 and she, Ms. Alves, she was like, they couldn't interfere
13 with the investigation. But the investigator, he would
14 make up times he said he was going to go out there and get
15 them and never received them, due to the fact that my
16 mother, she was unable to have transportation, so she
17 couldn't bring them to the office.

18 Q Okay. Are you saying that Investigator Jones spoke
19 with your mother?

20 A He claimed that he had, but she said that she don't
21 remember speaking with him and that she had statements from
22 him that other people that had statements for my-- on my
23 behalf that he need to go talk to.

24 Q What sort of statements would you have with those
25 people?

Tyrone Wade - Cross-Examination by Ms. Harrington

1 A To the location where I was at the night of the
2 murder - -

3 Q Okay. So you're talking about alibi witnesses; is
4 that correct?

5 A Yes, ma'am. Yes, ma'am.

6 MS. HARRINGTON: Your Honor, the State would
7 object. This is speculation that these witnesses might
8 have testified if this had gone to trial.

9 THE COURT: All right. She's got a point there.

10 MS. POPE: Your Honor, I'll move on.

11 THE COURT: That's fine, just go ahead.

12 BY MS. POPE:

13 Q All right. Is there anything else that you'd like
14 to tell the judge in regards to your view on Ms. Wallis
15 Alves being ineffective counsel?

16 A That's it for the moment.

17 MS. POPE: Thank you, Your Honor. That's all the
18 questions that I have.

19 THE COURT: All right. Your witness.

20 **CROSS EXAMINATION**

21 BY MS. HARRINGTON:

22 Q Mr. Wade, do you remember telling Judge Dixon
23 during your plea that you were completely satisfied with
24 your attorney, Ms. Alves?

25 A Yes, ma'am.

Tyrone Wade - Cross-Examination by Ms. Harrington

1 Q And that you told Judge Dixon that she'd gone over
2 all of the evidence the State had provided to her with you?

3 A Yes, ma'am.

4 Q And that she'd advised you of all of the relevant
5 law to your case?

6 A Yes, ma'am.

7 Q And all of your constitutional rights?

8 A Yes, ma'am.

9 Q Do you remember telling Judge Dixon that you did
10 not want a jury trial on these charges?

11 A Yes, ma'am.

12 Q And you told Judge Dixon that you understood that
13 this was a negotiated plea. Correct?

14 A Yes, ma'am.

15 Q You knew walking into court that day that you were
16 going to get 30 years for this?

17 A By the advisement of my attorney. Yes, ma'am.

18 Q And did you, in fact, receive a 30 year sentence
19 from Judge Dixon?

20 A 35 year, 85 percent. Yes, ma'am.

21 Q And do you recall your attorney telling Judge Dixon
22 that he'll have to do every second of those 30 years
23 according to how the law is written, and he is prepared to
24 do that?

25 A Yes, ma'am. With credit to my 754 days, yes,

Tyrone Wade - Cross-Examination by Ms. Harrington

1 ma'am.

2 MS. HARRINGTON: And, Your Honor, for the record,
3 that is page 25 lines 12 through 16 of the transcript.

4 BY MS. HARRINGTON:

5 Q And so you understood going into it you would have
6 to do every second of those thirty years. Correct.

7 A Yes, ma'am.

8 Q And you were -- you still pled guilty knowing that?

9 A Yes, ma'am.

10 Q One of your allegations against Ms. Alves is that
11 you wanted her to do a more thorough investigation in this
12 case, correct?

13 A Yes, ma'am.

14 Q And that you wished a fingerprint analysis had been
15 done on the 9mm gun, correct?

16 A Yes, ma'am.

17 Q Since your plea, have you had a fingerprint
18 analysis done on the 9, mm gun?

19 A No, ma'am. SLED's got that.

20 Q You don't really know -- you don't really know what
21 the yielding of that fingerprint analysis would have been,
22 correct?

23 A Yes, ma'am.

24 Q And the other issue you had in regards to
25 fingerprints was that the shell casings that were found in

Tyrone Wade - Cross-Examination by Ms. Harrington

1 your pocket were not fingerprint analyzed, correct?

2 A Yes, ma'am.

3 Q But those were found in your pocket, correct?

4 A The live bullet wasn't in my pocket.

5 Q But the shell casings that were found in your
6 pocket, those came from your person, correct?

7 A The shell casings was at the scene.

8 Q And you haven't had those fingerprint tested
9 either, have you?

10 A No, ma'am.

11 Q So we really don't know what that would yield if
12 they had been tested, correct?

13 A Yes, ma'am.

14 Q Do you normally carry around bullets and shell
15 casings on your person?

16 A No, ma'am.

17 Q And you do realize that if you are successful in
18 your post conviction relief action, you'll be facing these
19 same charges all over again?

20 A Yes, ma'am.

21 Q And that murder carries 30 to life?

22 A Yes, ma'am.

23 Q And that burglary in the first degree carries 15
24 years to life?

25 A Yes, ma'am.

Wallis Alves - Direct Examination by Ms. Harrington

1 Q Okay. And that your possession of a weapon during
2 the commission of a violent crime, that charge would also
3 be brought back if you are successful in this action today?

4 A Yes, ma'am.

5 Q Did you ever want a trial on these three charges?

6 A Yes, ma'am.

7 Q No further questions.

8 THE COURT: Anything further?

9 MS. POPE: No, sir, Your Honor.

10 THE COURT: You may step down and go back to your
11 seat.

12 THE WITNESS: Yes, sir.

13 MS. HARRINGTON: At this time, the State would call
14 lead counsel Wallis Alves to the stand.

15 THE COURT: We're going to have your sworn, please.

16 WALLIS ALVES,

17 having been duly sworn, testified as follows:

18 **DIRECT EXAMINATION**

19 **BY MS. HARRINGTON:**

20 Q Good morning, Ms. Alves?

21 A Good morning.

22 Q How long have you been practicing law?

23 A 20 years in November.

24 Q Okay. And how much of your practice is devoted to
25 criminal law?

Wallis Alves - Direct Examination by Ms. Harrington

1 A 100 percent.

2 Q Do you recall when you were appointed in this case?

3 A I'd have to look for the exact date. I have it in
4 here somewhere --

5 Q Approximately?

6 A -- but it would've been probably within a week
7 after he -- after Mr. Wade was charged with murder and then
8 he requested an attorney. I already represented him on a
9 prior charge, so I got this case right away. But I don't
10 have the exact date unless I can find the appointment
11 sheet.

12 Q And you've had a chance to review your file,
13 correct?

14 A I have.

15 Q How many times did you meet with your client?

16 A I counted notes of 17 times. It might be more than
17 that, but I've got at least 17 meetings.

18 Q Is it your standard practice to write down and file
19 every time you meet with your client?

20 A Yes.

21 Q What other ways did you communicate with your
22 client?

23 A I talked with him on the phone.

24 Q Do you have any idea how many times you spoke with
25 him by phone?

Wallis Alves - Direct Examination by Ms. Harrington

- 1 A At least 15. It's probably more than that. Mr.
2 Wade called a lot. A lot of times, I talked to him and
3 then he'd call right back, so -- or he might call back
4 within an hour of me talking to him, so I didn't always put
5 a separate entry into the computer for those. But I did
6 talk to him more.
- 7 Q Have you had experience with any clients facing
8 murder charges before?
- 9 A Yes.
- 10 Q How many times, roughly?
- 11 A A lot. I don't know how many times.
- 12 Q And did you discuss the elements of the charges he
13 was facing with your client?
- 14 A Yes.
- 15 Q And what the State was required to prove?
- 16 A Yes.
- 17 Q Did you discuss your client's version of the facts?
- 18 A Yes.
- 19 Q Did you see any possible defenses based on these
20 discussions?
- 21 A He had numerous versions, different versions of the
22 facts, and depending on which version it was, we might've
23 had defenses. Sometimes he would have an alibi defense.
24 Another time, he just said didn't do it. Sometimes he
25 admitted to doing it. It just depended on the day, and it

Wallis Alves - Direct Examination by Ms. Harrington

1 just depended on which story I was getting.

2 Q Do you know if these changing stories were also
3 told to officers or investigators? Or if they were just
4 told to you?

5 A He changed -- originally he gave a statement to the
6 investigators saying that he did it with two people, Joseph
7 Kemp and Anthony Perry. Then he changed his story and told
8 them that he did it with two other people, to the
9 investigators. Then the investigators had no further --
10 after I was appointed, they didn't talk to him again. And
11 during the times that I visited him is when he changed his
12 story to me repeatedly.

13 And then, sometime shortly before he pled guilty,
14 we met with the police officers, and he told them basically
15 that he had done it, that he gave them details about Mr.
16 Miller and Mr. Martin, the two codefendants. Well, he had
17 named them originally after he recanted about Mr. Kemp and
18 Mr. Perry. He talked to them about what everybody had done
19 and gave details to the police that were consistent with
20 what he had told me in, I guess, some of the last
21 interviews that he and I had together.

22 Q With the numerous versions that you were told by
23 your client, did it make it more difficult to prepare a
24 defense or a trial strategy?

25 A Very, because with every different version, there

Wallis Alves - Direct Examination by Ms. Harrington

1 was different witnesses we needed to talk to, or we had a
2 different, you know, different defenses to explore. So it
3 did make it difficult, but you know I was going to do the
4 best I could for him.

5 Q Do you feel that you did a thorough investigation
6 despite all these numerous stories?

7 A We did. We followed up on everybody he told us.
8 Some of the people we could not reach, we did not get in
9 touch with. Some of the people -- well, I would say a lot
10 of the people that he gave me the names of, were people who
11 were in jail or who had pending criminal charges, and their
12 attorneys would not agree to have me talk to them. Some of
13 them just -- they just refused to talk to us, so we had a
14 lot of problems with some of the witnesses that we were
15 able to contact. And some of them we just didn't have good
16 enough information to get in touch with.

17 Q Did you explain to your client of his
18 constitutional rights?

19 A You mean his right to a trial? Yes.

20 Q Did he ever tell you that he did not understand
21 something you were going over and/or what rights he had?

22 A We never really had a whole lot of discussion about
23 rights that he didn't understand. He pretty much
24 understood his rights. I mean, I got that impression from
25 him. He did a lot of time, so -- we had a lot of

Wallis Alves - Direct Examination by Ms. Harrington

1 discussion because he didn't, either didn't agree with
2 evidence; or he didn't understand how the police could do
3 something or they could, you know, present certain pieces
4 of evidence; or that he didn't understand what was going
5 on. A lot of times, he would say that we discussed his
6 case, when we just discussed it. I mean, a lot of things
7 he didn't agree with, but unfortunately, you know, for him
8 I would hope that they wouldn't be able to put some of the
9 negative things into evidence, but I mean, we just
10 discussed them.

11 Q And there's been discussion today of fingerprint
12 analysis, and that was not done. Did you feel that that
13 would have been a viable defense for your client?

14 A No. Number one, he told the police repeatedly he
15 was there. I mean, also, the last statement that he --
16 when he and I actually met with the officers, he told them
17 that he did it, so I don't see how a fingerprint
18 would've -- analysis would've helped when he admitted he
19 had the 9mm and told them he's the one who shot the victim
20 with the 9mm gun which we're talking about.

21 Also, the 9mm gun was found under a house in
22 Augusta wrapped in a jacket. And the jacket was identified
23 as belonging to Mr. Wade. His girlfriend, who was supposed
24 to be a witness for him but ultimately refused to talk to
25 me after she got an attorney, that jacket was identified as

Wallis Alves - Direct Examination by Ms. Harrington

1 being Mr. Wade's.

2 I don't remember if anybody else in the house
3 identified it as being his, but I think that his friend's
4 mother did. And the victim's -- there was a glove found
5 inside the pocket of the jacket that had blood on the
6 glove, and the blood came back to being the victim's. So
7 the gun was pretty much put into Mr. Wade's possession by
8 the location where it was found and by the other witnesses.

9 Q And I believe Mr. Wade testified that one of the
10 ways he thought you were ineffective was that you didn't
11 try to suppress the illegal taking of his clothing. Did
12 you see any viable reason to do so?

13 A Yes, I did. He and I discussed that, and I don't
14 remember exactly -- I need to look at an order. Because
15 when he was testifying about that, I started to look at an
16 order. I want to say -- we had some hearings on some legal
17 matters in this case with Judge Early, and I don't
18 remember, but I thought I might have brought that up that I
19 was objecting to securing his clothes because they had --
20 the sheriff's department had just taken the clothes.

21 I can't remember -- we had a lot of motions and a
22 lot of fighting going back and forth with the solicitors
23 and some things that, you know, I was objecting on his
24 behalf about. But I don't remember if I actually did that
25 hearing, and I just don't see anything in here. Or if he

Wallis Alves - Direct Examination by Ms. Harrington

1 and I talked about it so much that, that would've been a
2 pretrial matter that I would've brought up, the fact that
3 they did take his clothes when they arrested him in
4 Georgia, and they brought him to South Carolina, and they
5 didn't get any kind of search warrant, subpoena, or
6 anything to get them. So he and I were -- we were in
7 agreement that, that was going to be an issue.

8 Q Did you enter into plea negotiations on your
9 client's behalf with the State?

10 A When it was getting close to trial, before -- and I
11 don't remember exactly when, and I'd have to look at all of
12 my notes to say exactly when he told me he was interested
13 in entering a plea. And then I talked to the solicitor,
14 and she offered me the 30 years.

15 Q And your client decided to take that 30 year offer?

16 A Yes. That was the minimum he could get.

17 Q Did you feel it was in his best interest to take
18 the plea offer?

19 A Yes.

20 Q Did you inform him of the consequences of the plea?

21 A Yes.

22 Q Did you explain to him that it was a negotiated
23 plea, so he would understand going in that he was going to
24 get the 30 years from Judge Dixon?

25 A Yes.

Wallis Alves - Cross-Examination by Ms. Pope

1 Q Ultimately, whose decision was it for him to plea
2 guilty?

3 A His. We were actually preparing for trial before
4 he decided that he wanted to.

5 Q And you felt prepared to move forward with the
6 trial?

7 A I would've been.

8 Q Thank you. No more questions.

9 THE COURT: Your witness.

10 **CROSS EXAMINATION**

11 **BY MS. POPE:**

12 Q Ms. Wallis, you testified that Mr. Wade had told
13 the police that he had committed this murder?

14 A He did.

15 Q Did he -- did he not tell the police that he was
16 the owner of the gun and not that he had actually shot the
17 gun?

18 A No. He told them that he shot the gun.

19 Q Okay. So he did admit to shooting the victim is
20 your testimony?

21 A Yes. The victim was shot with two separate guns,
22 and one of them was a .410 shotgun, I think, and the other
23 one was a 9mm. Mr. Wade admitted to shooting him with the
24 9mm, and one of the other codefendants shot him with the
25 .410 shotgun. The third codefendant stayed back at the

Wallis Alves - Cross-Examination by Ms. Pope

1 Lookout.

2 Q Thank you. Do you have any notes from the
3 investigator in terms of alibi witnesses?

4 A Which witnesses? I have the notes from my
5 investigator. Yes. But which witnesses are we referring
6 to?

7 Q You know if your investigator spoke to Cedric Fred
8 Walker?

9 A That would be Mr. Wade's brother.

10 Q Yes.

11 A We were told that Mr. Wade's -- we tried to get in
12 touch with Mr. Walker. We talked with Mr. Walker early on
13 in the case, and I'm trying to remember -- and I think I
14 might have talked to him about the other case. We tried to
15 talk to him about his first original case when he was
16 accused of assault with intent to kill on someone else, and
17 if I remember correctly, we talked to Mr. Walker early on.

18 Let me find the notes. Later on in the case, I
19 know I specifically was looking for Mr. Walker, and I was
20 told that he no longer lived in South Carolina, and he
21 never would get in touch with us. But I can look and find
22 exactly where, when we did talk to him. But Tyrone himself
23 told me that his brother lived out of -- out of state. You
24 need to know when I talked to him?

25 Q Yes. I'd like to know the date.

Wallis Alves - Cross-Examination by Ms. Pope

1 A Okay. One moment.

2 (WHEREUPON there was a pause in the proceedings.)

3 THE WITNESS: I can't find any notes right here. I
4 mean, I have all this to go through, about whether or not,
5 when I would have talked to Mr. Walker. I do recall
6 talking to him. I don't remember talking to him about
7 anything specific, and I know it wasn't about alibi.
8 Actually, I don't remember his name being given as one of
9 the alibi witnesses, actually.

10 BY MS. POPE:

11 Q Do you remember Mr. Cordeen?

12 A Who?

13 Q -- White? Corvenia Wright? Excuse me.

14 A Corvenia Wright. Yes. That name was given to us,
15 along with several different phone numbers for her.

16 Q Has she ever spoken to you?

17 A All right. I don't see any notes about Corvenia
18 Wright, but I mean, I have a lot to look through. But I
19 don't remember speaking to her. I know that was one of the
20 witnesses we were trying to find. I don't know what she
21 was going to testify to, though.

22 Q You do not remember speaking with her?

23 A I know I did not. I don't know if my investigator
24 did. I'd have to look through all of this to see if he did
25 or not. I know that -- I have several references to her in

Wallis Alves - Cross-Examination by Ms. Pope

1 here that we were trying to locate this girl. But I can't
2 say that she was talked to.

3 Q Okay. Ms. Alves, to your knowledge was Mr. Wade on
4 any medication during his plea?

5 A I don't know.

6 Q Did you ever ask for an evaluation? An evaluation
7 for Mr. Wade?

8 A I don't think I did. I'd have to refer to the
9 clerk of court's files to see if I did or not, but I don't
10 recall doing so. And I don't see anything in here to say
11 that I did.

12 MS. POPE: Those are all the questions that I have,
13 Your Honor.

14 MS. HARRINGTON: No additional questions from the
15 State. The State will rest.

16 THE COURT: All right. Thank you. All right.
17 Give me a chance to read this file. I'm going to take a
18 look at the transcripts. I'll get an order out as soon as
19 possible.

20 MS. HARRINGTON: Thank you, Your Honor.

21 THE COURT: Thank y'all for your presentations.

22

23 * * * * * END OF TRANSCRIPT * * * * *

24

25

1 State of South Carolina)

2 County of Aiken)

Certificate of Reporter

3
4
5
6 I, THE UNDERSIGNED, Brenda J. Sigwald,
7 Official Court Reporter for the Eleventh Judicial Circuit
8 of the State of South Carolina, do hereby certify that I
9 reported the proceedings in the captioned case in the Court
10 of Common Pleas in and for the State of South Carolina on
11 the 11th day of July, 2012.

12 I FURTHER CERTIFY that the foregoing pages
13 constitute a true, accurate and complete transcript of said
14 hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this the 28th day of April 2015.

19
20
21
22 *Brenda J. Sigwald*

23 Brenda J. Sigwald,
24 Court Reporter and Notary Public
25 For the State of South Carolina
My commission expires
January 4, 2020

1	9mm [8] - 6:15, 6:20, 11:15, 18:19, 18:20, 18:21, 21:23, 21:24	Assistant [1] - 1:21 attorney [6] - 4:21, 9:24, 10:17, 10:21, 14:8, 18:25 Attorney [3] - 1:20, 1:21, 1:21 attorneys [1] - 17:12 Augusta [1] - 18:22	CERTIFY [2] - 25:12, 25:15 chance [2] - 14:12, 24:17 changed [7] - 5:25, 6:23, 7:12, 8:1, 16:5, 16:7, 16:11 changing [1] - 16:2 charge [4] - 3:13, 5:9, 13:2, 14:9 charged [2] - 4:17, 14:7 charges [8] - 4:22, 4:24, 10:10, 12:19, 13:5, 15:8, 15:12, 17:11 Circuit [2] - 1:24, 25:7 claimed [2] - 8:7, 8:20 clerk [1] - 24:9 client [8] - 14:15, 14:19, 14:22, 15:13, 16:23, 17:17, 18:13, 20:15 client's [2] - 15:17, 20:9 clients [1] - 15:7 close [1] - 20:10 clothes [3] - 19:19, 19:20, 20:3 clothing [2] - 6:2, 19:11 codefendant [1] - 21:25 codefendants [2] - 16:16, 21:24 commission [3] - 3:6, 13:2, 25:24 committed [1] - 21:13 Common [2] - 1:1, 25:10 communicate [1] - 14:21 complete [1] - 25:13 completely [1] - 9:23 computer [1] - 15:5 concurrent [1] - 3:10 concurrently [1] - 3:13 conduct [2] - 5:16, 5:19 consequences [1] - 20:20 consistent [1] - 16:19 constitute [1] - 25:13 constitutional [2] - 10:7, 17:18	contact [2] - 8:10, 17:15 CONVICTION [1] - 2:3 conviction [1] - 12:18 Cordeen [1] - 23:11 Correct [2] - 10:13, 11:6 correct [17] - 4:19, 4:22, 4:25, 6:13, 6:16, 6:20, 6:25, 7:13, 9:4, 11:12, 11:15, 11:22, 12:1, 12:3, 12:6, 12:12, 14:13 correctly [1] - 22:17 Corvenia [3] - 23:13, 23:14, 23:17 counsel [4] - 5:7, 9:15, 13:14, 25:15 counted [1] - 14:16 County [4] - 1:2, 3:4, 25:2, 25:18 COURT [13] - 3:19, 3:23, 4:3, 4:5, 9:9, 9:11, 9:19, 13:8, 13:10, 13:15, 21:9, 24:16, 24:21 Court [6] - 1:1, 1:24, 3:1, 25:7, 25:9, 25:23 court [2] - 4:14, 10:15 court's [1] - 24:9 Courtney [2] - 1:19, 3:18 credit [1] - 10:25 crime [3] - 3:7, 4:18, 13:2 criminal [2] - 13:25, 17:11 CROSS [2] - 9:20, 21:10 Cross [2] - 2:6, 2:9 Cross-Examination [2] - 2:6, 2:9
2	20 [1] - 13:23 2010 [1] - 3:5 2011 [3] - 3:7, 3:15, 3:17 2011-CP-02-2045 [2] - 1:3, 3:3 2012 [2] - 1:12, 25:11 2015 [1] - 25:18 2020 [1] - 25:24 206 [1] - 1:25 21 [1] - 2:9 25 [2] - 2:10, 11:3 26 [1] - 2:11 28th [2] - 3:7, 25:18 29831 [1] - 1:25	A able [2] - 17:15, 18:8 according [1] - 10:23 accurate [1] - 25:13 accused [1] - 22:16 action [2] - 12:18, 13:3 additional [1] - 24:14 admit [1] - 21:19 admitted [3] - 15:25, 18:18, 21:23 advised [1] - 10:4 advisement [1] - 10:17 agree [3] - 17:12, 18:1, 18:7 agreement [1] - 20:7 ahead [2] - 5:22, 9:11 Aiken [5] - 1:2, 1:13, 3:4, 25:2, 25:18 alibi [5] - 9:3, 15:23, 22:3, 23:7, 23:9 allegations [1] - 11:10 alleging [2] - 3:15, 5:3 Alves [13] - 2:7, 4:21, 5:7, 5:15, 7:15, 8:5, 8:12, 9:15, 9:24, 11:10, 13:14, 13:20, 24:3 ALVES [1] - 13:16 analysis [12] - 6:7, 6:9, 6:19, 6:23, 7:12, 7:16, 7:19, 11:14, 11:18, 11:21, 18:12, 18:18 analyzed [1] - 12:1 answer [2] - 7:20, 7:21 answers [1] - 4:14 Anthony [1] - 16:7 appeal [1] - 3:14 Applicant [3] - 1:6, 1:20, 3:3 applicant [2] - 3:11, 3:17 appointed [2] - 14:2, 16:10 appointment [1] - 14:10 April [1] - 25:18 arrested [1] - 20:3 assault [1] - 22:16	B based [1] - 15:19 behalf [4] - 8:6, 8:23, 19:24, 20:9 belonging [1] - 18:23 best [2] - 17:4, 20:17 bill [1] - 3:4 bit [1] - 7:6 blood [2] - 19:5, 19:6 Box [1] - 1:25 Brenda [3] - 1:24, 25:6, 25:22 bring [1] - 8:17 brother [3] - 8:11, 22:9, 22:23 brought [4] - 13:3, 19:18, 20:2, 20:4 bullet [3] - 7:4, 7:7, 12:4 bullets [1] - 12:14 Burch [1] - 1:16 burglary [4] - 3:5, 3:12, 4:19, 12:23 BY [7] - 4:10, 9:12, 9:21, 11:4, 13:19, 21:11, 23:10	
3	30 [9] - 3:9, 3:11, 10:16, 10:18, 10:22, 12:21, 20:14, 20:15, 20:24 35 [1] - 10:20	C captioned [1] - 25:9 Carolina [1] - 1:1, 1:9, 1:13, 1:25, 3:3, 20:4, 22:20, 25:1, 25:8, 25:10, 25:23 carries [2] - 12:21, 12:23 carry [1] - 12:14 case [13] - 3:2, 5:10, 10:5, 11:12, 14:2, 14:9, 18:6, 19:17, 22:13, 22:14, 22:15, 22:18, 25:9 casing [2] - 7:4, 7:7 casings [4] - 11:25, 12:5, 12:7, 12:15 Cedric [1] - 22:7 certain [1] - 18:3 Certificate [2] - 2:10, 25:1 certify [1] - 25:8	D dangers [1] - 3:24 date [3] - 14:3, 14:10, 22:25 days [1] - 10:25 December [1] - 3:17 decided [2] - 20:15, 21:4 decision [2] - 7:13, 21:1 defense [3] - 15:23,	
4	4 [2] - 2:5, 25:24 410 [2] - 21:22, 21:25			
5	5 [1] - 3:12			
6	6th [1] - 3:17			
7	754 [1] - 10:25			
8	85 [1] - 10:20			
9	9 [2] - 2:6, 11:18			

16:24, 18:13 defenses [3] - 15:19, 15:23, 17:2 degree [2] - 3:5, 12:23 department [1] - 19:20 depended [2] - 15:25, 16:1 DESCRIPTION [1] - 2:17 despite [1] - 17:6 details [2] - 16:15, 16:19 devoted [1] - 13:24 different [7] - 8:11, 15:21, 16:25, 17:1, 17:2, 23:15 difficult [2] - 16:23, 17:3 DIRECT [2] - 4:9, 13:18 direct [1] - 3:14 Direct [2] - 2:5, 2:8 discovery [2] - 5:20, 5:24 discuss [2] - 15:12, 15:17 discussed [5] - 3:19, 18:5, 18:6, 18:10, 19:13 discussion [3] - 17:22, 18:1, 18:11 discussions [1] - 15:20 Dixon [3] - 3:8, 3:10, 9:22, 10:1, 10:9, 10:12, 10:19, 10:21, 20:24 DNA [1] - 6:1 Docket [2] - 1:3, 3:3 done [11] - 5:10, 5:12, 6:10, 6:19, 6:23, 7:23, 11:15, 11:18, 16:15, 16:18, 18:12 down [2] - 13:10, 14:18 Due [1] - 5:8 due [2] - 5:8, 8:15 duly [2] - 4:8, 13:17 during [7] - 2:20, 3:6, 4:18, 9:23, 13:1, 16:11, 24:4	either [2] - 12:9, 18:1 elements [1] - 15:12 Eleventh [1] - 25:7 END [1] - 24:23 enter [1] - 20:8 entered [1] - 2:20 entering [1] - 20:13 entry [1] - 15:5 Esquire [1] - 1:19 evaluation [2] - 24:6 evidence [5] - 5:4, 7:2, 10:2, 18:2, 18:4, 18:9 exact [2] - 14:3, 14:10 exactly [4] - 19:14, 20:11, 20:12, 22:22 Examination [4] - 2:5, 2:6, 2:8, 2:9 EXAMINATION [4] - 4:9, 9:20, 13:18, 21:10 Excuse [1] - 23:13 exhibits [1] - 2:19 experience [1] - 15:7 expires [1] - 25:24 explain [3] - 5:23, 17:17, 20:22 explore [1] - 17:2	follows [2] - 4:8, 13:17 foregoing [1] - 25:12 forth [1] - 19:22 forward [2] - 4:3, 21:5 Fred [1] - 22:7 friend's [1] - 19:3 FURTHER [2] - 25:12, 25:15	1:24 hope [1] - 18:8 hour [1] - 15:4 house [2] - 18:21, 19:2	judge [1] - 9:14 Judicial [1] - 25:7 July [2] - 1:12, 25:11 jury [2] - 3:4, 10:10
K				
Kemp [2] - 16:7, 16:17 Keyword [1] - 2:11 kill [1] - 22:16 kin [1] - 25:15 kind [3] - 5:6, 6:7, 20:5 knowing [1] - 11:8 knowledge [1] - 24:3 Knox [1] - 1:24				
L				
last [2] - 16:20, 18:15 law [4] - 10:5, 10:23, 13:22, 13:25 lead [1] - 13:14 least [2] - 14:17, 15:1 legal [1] - 19:16 less [1] - 3:21 life [2] - 12:21, 12:24 lines [1] - 11:3 live [1] - 12:4 lived [2] - 22:20, 22:23 locate [1] - 24:1 location [2] - 9:1, 19:8 look [8] - 14:3, 19:14, 19:15, 20:11, 22:21, 23:18, 23:24, 24:18 looking [1] - 22:19 lookout [1] - 22:1				
M				
ma'am [42] - 4:16, 4:20, 4:23, 5:1, 5:5, 5:17, 6:6, 6:14, 6:17, 6:21, 7:1, 7:14, 7:17, 7:25, 9:5, 9:25, 10:3, 10:6, 10:8, 10:11, 10:14, 10:17, 10:20, 10:25, 11:1, 11:7, 11:9, 11:13, 11:16, 11:19, 11:23, 12:2, 12:10, 12:13, 12:16, 12:20, 12:22, 12:25, 13:4, 13:6 March [1] - 3:7 Martin [1] - 16:16				

matter [1] - 20:2 matters [1] - 19:17 maximum [1] - 3:21 McMahon [1] - 1:24 mean [8] - 5:9, 17:19, 17:24, 18:6, 18:9, 18:15, 23:4, 23:18 medication [1] - 24:4 meet [2] - 14:15, 14:19 meetings [1] - 14:17 Megan [1] - 1:21 mentioned [1] - 7:3 met [2] - 16:14, 18:16 might [5] - 9:7, 14:16, 15:3, 19:18, 22:14 might've [1] - 15:22 Miller [1] - 16:16 mind [3] - 5:25, 6:24, 8:2 minimum [1] - 20:16 moment [3] - 8:3, 9:16, 23:1 morning [4] - 4:11, 4:12, 13:20, 13:21 mother [4] - 8:10, 8:16, 8:19, 19:4 motion [2] - 5:20, 5:24 motions [1] - 19:21 move [2] - 9:10, 21:5 MS [20] - 3:22, 4:1, 4:4, 4:6, 4:10, 9:6, 9:10, 9:12, 9:17, 9:21, 11:2, 11:4, 13:9, 13:13, 13:19, 21:11, 23:10, 24:12, 24:14, 24:20 murder [9] - 3:5, 3:12, 4:17, 6:12, 9:2, 12:21, 14:7, 15:8, 21:13	8:15, 17:22, 22:21 next [1] - 3:1 night [1] - 9:1 NO [1] - 2:17 normally [1] - 12:14 Notary [1] - 25:23 NOTE [1] - 2:19 notes [7] - 14:16, 20:12, 22:2, 22:4, 22:18, 23:3, 23:17 November [1] - 13:23 Number [1] - 18:14 numbers [1] - 23:15 numerous [3] - 15:21, 16:22, 17:6	Perry [2] - 16:7, 16:18 person [2] - 12:6, 12:15 phone [3] - 14:23, 14:25, 23:15 piece [1] - 7:2 pieces [1] - 18:3 pitfalls [1] - 3:20 plea [15] - 3:16, 5:2, 5:13, 6:24, 8:2, 9:23, 10:13, 11:17, 20:8, 20:13, 20:18, 20:20, 20:23, 21:1, 24:4 plead [1] - 7:13 pleading [1] - 5:25 Pleas [2] - 1:1, 25:10 pled [4] - 3:7, 4:24, 11:8, 16:13 pocket [7] - 7:5, 7:8, 12:1, 12:3, 12:4, 12:6, 19:5 point [1] - 9:9 police [6] - 16:14, 16:19, 18:2, 18:14, 21:13, 21:15 Pope [3] - 1:19, 3:18, 3:19 POPE [12] - 3:22, 4:1, 4:4, 4:6, 4:10, 9:10, 9:12, 9:17, 13:9, 21:11, 23:10, 24:12 Pope..... [1] - 2:5 Pope..... [1] - 2:9 possession [4] - 3:6, 4:18, 13:1, 19:7 possible [4] - 3:20, 3:21, 15:19, 24:19 post [1] - 12:18 POST [1] - 2:3 practice [2] - 13:24, 14:18 practicing [1] - 13:22 prepare [1] - 16:23 prepared [2] - 10:23, 21:5 preparing [1] - 21:3 present [1] - 18:3 presentations [1] - 24:21 pretrial [1] - 20:2 pretty [2] - 17:23, 19:7 prevail [1] - 3:25 problems [1] - 17:14 proceed [1] - 4:5 proceedings [2] -	23:2, 25:9 prove [1] - 15:15 provided [2] - 5:3, 10:2 Public [1] - 25:23 Pursuant [1] - 3:9 pursuant [1] - 3:9 put [3] - 15:4, 18:8, 19:7	REPORTER'S [1] - 2:19 Reporter..... [1] - 2:10 represented [2] - 3:17, 14:8 representing [1] - 4:21 requested [1] - 14:8 required [1] - 15:15 Respondent [2] - 1:10, 1:21 response [1] - 7:22 rest [1] - 24:15 return [1] - 3:16 review [1] - 14:12 rights [5] - 10:7, 17:18, 17:21, 17:23, 17:24 roughly [1] - 15:10 run [1] - 3:13
Q				
questions [6] - 4:13, 9:18, 13:7, 21:8, 24:12, 24:14 quite [1] - 7:21				
R				
reach [1] - 17:8 read [3] - 5:20, 5:24, 24:17 realize [1] - 12:17 really [4] - 11:20, 12:11, 17:22 reason [1] - 19:12 recanted [1] - 16:17 receive [1] - 10:18 received [2] - 3:20, 8:15 reckon [1] - 6:3 recommended [1] - 3:9 record [1] - 11:2 Record [1] - 1:8 refer [1] - 24:8 references [1] - 23:25 referring [3] - 6:11, 6:15, 22:5 refused [2] - 17:13, 18:24 regards [2] - 9:14, 11:24 relevant [1] - 10:4 relief [1] - 12:18 RELIEF [1] - 2:3 remember [17] - 7:20, 8:21, 9:22, 10:9, 19:2, 19:14, 19:18, 19:21, 19:24, 20:11, 22:13, 22:17, 23:6, 23:8, 23:11, 23:19, 23:22 repeatedly [2] - 16:12, 18:14 reported [1] - 25:9 reporter [1] - 4:15 Reporter [4] - 1:24, 25:1, 25:7, 25:23				
S				
satisfied [1] - 9:23 scene [1] - 12:7 seal [1] - 25:18 search [1] - 20:5 seat [1] - 13:11 second [2] - 10:22, 11:6 securing [1] - 19:19 see [8] - 15:19, 18:17, 19:12, 19:25, 23:17, 23:24, 24:9, 24:10 sent [1] - 8:5 sentence [4] - 3:10, 3:11, 3:20, 10:18 sentences [1] - 3:13 separate [2] - 15:5, 21:21 September [2] - 3:5, 3:15 series [1] - 4:13 set [1] - 25:17 several [3] - 8:11, 23:15, 23:25 sheet [1] - 14:11 shell [7] - 7:4, 7:7, 11:25, 12:5, 12:7, 12:14 sheriff's [1] - 19:20 shooting [2] - 21:19, 21:23 shortly [1] - 16:13 shot [6] - 18:19, 21:16, 21:18, 21:21, 21:24 shotgun [2] - 21:22,				
N				
name [2] - 23:8, 23:14 named [1] - 16:17 names [1] - 17:10 nature [1] - 6:3 need [3] - 8:23, 19:14, 22:24 needed [1] - 17:1 negative [1] - 18:9 negotiated [3] - 3:11, 10:13, 20:22 negotiation [1] - 3:10 negotiations [1] - 20:8 never [5] - 6:10, 8:8,				
O				
object [1] - 9:7 objecting [2] - 19:19, 19:23 OF [1] - 24:23 offer [2] - 20:15, 20:18 offered [1] - 20:14 office [1] - 8:17 officers [3] - 16:3, 16:14, 18:16 Official [1] - 25:7 One [3] - 6:10, 11:10, 23:1 one [9] - 7:23, 18:14, 18:19, 19:9, 21:22, 21:23, 21:24, 23:8, 23:19 order [4] - 5:12, 19:14, 19:16, 24:18 original [1] - 22:15 originally [2] - 16:5, 16:17 owner [1] - 21:16				
P				
P.O [1] - 1:25 page [1] - 11:3 Page [1] - 2:2 PAGE [1] - 2:17 pages [1] - 25:12 party [1] - 25:16 Paul [1] - 1:16 pause [1] - 23:2 PCR [1] - 3:14 pending [1] - 17:11 people [11] - 8:8, 8:10, 8:11, 8:22, 8:25, 16:6, 16:8, 17:8, 17:9, 17:10 percent [2] - 10:20, 14:1				

21:25 Sigwald [3] - 1:24, 25:6, 25:22 SLED's [1] - 11:19 solicitor [1] - 20:13 solicitors [1] - 19:22 someone [1] - 22:16 sometime [1] - 16:13 Sometimes [2] - 15:23, 15:24 Somewhat [1] - 7:1 somewhere [1] - 14:4 soon [1] - 24:18 sort [1] - 8:24 South [1] - 1:1, 1:9, 1:13, 1:25, 3:3, 20:4, 22:20, 25:1, 25:8, 25:10, 25:23 speaking [3] - 8:21, 23:19, 23:22 specific [2] - 6:4, 23:7 specifically [4] - 5:11, 6:5, 7:9, 22:19 speculation [1] - 9:7 spoken [1] - 23:16 stand [1] - 13:14 standard [1] - 14:18 started [1] - 19:15 State [16] - 1:1, 1:9, 3:2, 3:16, 9:6, 10:2, 13:13, 15:15, 20:9, 24:15, 25:1, 25:8, 25:10, 25:23 state [1] - 22:23 statement [2] - 16:5, 18:15 statements [4] - 8:11, 8:21, 8:22, 8:24 stayed [1] - 21:25 step [1] - 13:10 still [2] - 8:9, 11:8 stories [2] - 16:2, 17:6 story [3] - 16:1, 16:7, 16:12 strategy [1] - 16:24 subpoena [1] - 20:5 successful [2] - 12:17, 13:3 sufficient [1] - 5:3 supposed [1] - 18:23 suppress [1] - 19:11 sworn [3] - 4:8, 13:15, 13:17	T terms [2] - 6:7, 22:3 tested [2] - 12:8, 12:12 testified [5] - 4:8, 9:8, 13:17, 19:9, 21:12 testify [1] - 23:21 testifying [1] - 19:15 testimony [2] - 6:18, 21:20 THE [16] - 3:19, 3:23, 4:3, 4:5, 9:9, 9:11, 9:19, 13:8, 13:10, 13:12, 13:15, 21:9, 23:3, 24:16, 24:21, 25:6 third [1] - 21:25 thirty [1] - 11:6 thorough [5] - 5:14, 5:16, 5:19, 11:11, 17:5 three [2] - 3:13, 13:5 timely [1] - 3:14 today [5] - 3:18, 6:18, 6:22, 7:20, 13:3, 18:11 together [1] - 16:21 took [1] - 5:22 taken [2] - 6:1, 6:2 touch [5] - 8:8, 17:9, 17:16, 22:12, 22:21 Transcript [1] - 1:8 TRANSCRIPT [1] - 24:23 transcript [2] - 11:3, 25:13 transcripts [1] - 24:18 transportation [1] - 8:16 trial [9] - 5:22, 9:8, 10:10, 13:5, 16:24, 17:19, 20:10, 21:3, 21:6 tried [2] - 22:11, 22:14 true [2] - 3:4, 25:13 true-bill [1] - 3:4 try [1] - 19:11 trying [3] - 22:13, 23:20, 24:1 two [4] - 16:6, 16:8, 16:16, 21:21 Two [1] - 6:14 TYRONE [1] - 4:7 Tyrone [4] - 1:6, 2:4, 3:2, 22:22	U Ultimately [1] - 21:1 ultimately [1] - 18:24 unable [1] - 8:16 under [1] - 18:21 UNDERSIGNED [1] - 25:6 understood [3] - 10:12, 11:5, 17:24 unfortunately [1] - 18:7 unless [1] - 14:10 up [5] - 7:6, 8:14, 17:7, 19:18, 20:2 V verbal [1] - 4:14 version [3] - 15:17, 15:22, 16:25 versions [3] - 15:21, 16:22 viable [2] - 18:13, 19:12 victim [3] - 18:19, 21:19, 21:21 victim's [2] - 19:4, 19:6 view [1] - 9:14 violent [3] - 3:7, 4:18, 13:2 visited [1] - 16:11 vs [2] - 1:8, 3:2 W wade [1] - 4:6 Wade [16] - 1:6, 2:4, 3:2, 3:20, 4:11, 6:11, 8:4, 9:22, 14:7, 15:2, 18:23, 19:9, 21:12, 21:23, 24:3, 24:7 WADE [1] - 4:7 Wade's [4] - 19:1, 19:7, 22:9, 22:11 Walker [8] - 22:8, 22:12, 22:17, 22:19, 23:5 walking [1] - 10:15 WALLIS [1] - 13:16 Wallis [4] - 2:7, 4:21, 13:14, 21:12 wallis [1] - 9:14 wants [1] - 4:3 warrant [1] - 20:5 ways [2] - 14:21, 19:10 weapon [3] - 3:6, 4:18, 13:1	weapons [1] - 3:12 week [1] - 14:6 WHEREOF [1] - 25:17 WHEREUPON [1] - 23:2 White [1] - 23:13 whole [1] - 17:22 wished [1] - 11:14 WITNESS [3] - 13:12, 23:3, 25:17 witness [4] - 4:6, 9:19, 18:24, 21:9 witnesses [10] - 9:3, 9:7, 17:1, 17:14, 19:8, 22:3, 22:4, 22:5, 23:9, 23:20 would've [7] - 5:21, 14:6, 18:18, 20:1, 20:2, 21:7 wrapped [1] - 18:22 Wright [3] - 23:13, 23:14, 23:18 write [1] - 14:18 written [1] - 10:23 Y y'all [1] - 24:21 year [4] - 3:9, 10:18, 10:20, 20:15 years [10] - 3:11, 3:12, 10:16, 10:22, 11:6, 12:24, 13:23, 20:14, 20:24 yield [1] - 12:11 yielding [1] - 11:21 Z zero [1] - 3:25
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STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Tryone Wade, #284384

Applicant,

v.

State of South Carolina,

Respondent.

2011-CP-02-2045

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and Circuit
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office.

JUL 25 2012

ORDER OF DISMISSAL

C.C.P. & C.S. Aiken County, S.C.

Deputy Clerk

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 19, 2011. The Respondent made its Return on December 6, 2011. An evidentiary hearing into the matter was convened on July 11, 2012, at the Aiken County Courthouse. The Applicant was present at the hearing and was represented by Courtney Pope, 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 Aiken County Clerk of Court. The Applicant was true bill indicted at the September 2009 term of the Aiken County Grand Jury for Murder, Burglary in the First Degree, and Possession of a Weapon during the Commission of a Violent Crime (2009-GS-02-1582/1584/1589). He was represented by Wallis Alves, Esquire. On March 28, 2011, the Applicant pled guilty as indicted before the Honorable Edgar W. Dickson. Pursuant to negotiations, he was sentenced to thirty years imprisonment for Murder, five years imprisonment for Possession of a Weapon during the

FILED 7-25-2012

Page 1 of 7

Liz Godard
C.C.P. & C.S.
Deputy Clerk 12:30pm

Commission of a Violent Crime, and fifteen years imprisonment for Burglary in the First Degree, with all sentences running concurrently. The Applicant filed a timely Notice of Appeal, which was dismissed by the Court of Appeals pursuant to Rule 302(d)(1)(B)(iv). The Remittitur was sent June 6, 2011.

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

- a. Subject Matter Jurisdiction; and
- b. "Involuntary Guilty plea; Negotiated"
 - i. "The court did not have grounds because lack of evidence and I would not have taken [sic] plea if know this."

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.

At the evidentiary hearing, the Applicant testified on his own behalf. Applicant also presented testimony from plea counsel, Wallis Alves, Esquire ("Counsel"). This Court also had before it a copy of the Applicant's guilty plea transcript, the records of the Aiken 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 "every second of the thirty years." Applicant acknowledged that he admitted his guilt under oath to the plea court and stated that he was satisfied with his attorney. Applicant further testified that he now feels that Counsel was ineffective for numerous reasons. Specifically, Applicant testified that he was never provided with sufficient evidence against him and that Counsel never reviewed discovery with him.

Additionally, Applicant testified that he wanted Counsel to conduct a more thorough investigation, including a fingerprint analysis of the 9 mm weapon and shell casings that were used during the crime. Applicant testified that he believes he informed Counsel of his desire to have a fingerprint analysis, but could not recall her response to such request. Applicant admitted that he has not performed a fingerprint analysis on either of these items and does not know what result such testing would yield. Applicant also testified that Counsel's Investigator never interviewed witnesses he requested; however, when asked to provide the names of such witnesses or their sworn statements, Applicant was unable to do either.

Following Applicant's testimony, Counsel testified. Counsel stated that she had been practicing law for more than twenty years, that her practice is entirely comprised of criminal law, and that she had represented clients charged with murder "a lot." She testified that she had been appointed within one week of Applicant being charged with murder and had previously represented Applicant on earlier charges. Counsel testified that she met with Applicant at least seventeen times and spoke with him at least fifteen times on the phone, but likely a lot more. Counsel stated that during her numerous meetings with the Applicant, she 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 she discussed the Applicant's version of the facts numerous times and that Applicant's story changed constantly, making it difficult to investigate or prepare a defense strategy. Counsel testified that despite this challenge, she interviewed or attempted to interview every person that Applicant told her could be useful, although many persons were incarcerated or had representation that prevented her from discussing the case.

In regards to Applicant's assertions regarding fingerprint analysis, Counsel testified that she did not recall Applicant asking her to perform such an analysis, but that she did not think it would have proven beneficial to the Applicant as the 9 mm gun was found wrapped in his jacket, hidden underneath a home, along with items that had the victims blood present. Additionally, Counsel testified that she did not think such an analysis was necessary, as Applicant confessed to the crime to her, as well as to law enforcement. However, Counsel did state that she more than likely would have pursued a motion to suppress this clothing closer to the Applicant's trial date, but as he pled guilty, such motions were not necessary.

Additionally, Counsel testified that Applicant told her was interested in a plea, so she negotiated with the State on his behalf to secure him a thirty year plea deal. Counsel testified that she 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.

Based on all of the above, Counsel indicated that in her professional opinion a plea was in the best interest of her client, 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), SCRCP; 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 her representation of the Applicant. Counsel met with her client on at least seventeen 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 her client, entered into negotiations with the State to secure a favorable plea deal for her 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 that he wished to pursue a plea in lieu of a trial on these charges. 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.

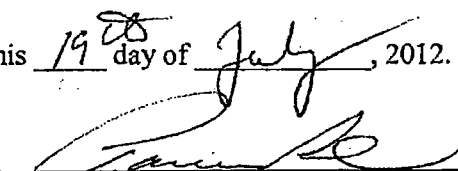
This Court advises Applicant that he must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right 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

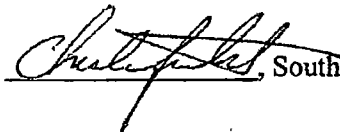
behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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 19th day of July, 2012.


PAUL M. BURCH
Presiding Judge
Second Judicial Circuit

, South Carolina.

M040097
FORM 5 040099
0400982013-cv-01123
2009-cv-02-1582, 1584, 1589
Filed 7-19-13
Clerk of Court
Deputy Clerk
Trial Judge
Trial Atty.
Court Reporter
Sec. PCR Petitioner
General Sessions
Appointed Atty.

STATE OF SOUTH CAROLINA)

County of Aiken)Yusef Wade #284384)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS)

APPLICATION FOR)

POST-CONVICTION RELIEF)

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Perry Corr Inst 430 Oaklawn Road
Peter, South Carolina 29669
2. Name and location of Court which imposed sentence Aiken County
Courthouse
3. Name(s) of co-defendant(s) (if any) Amal Miller, Ian Martin,
Denise Piche
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) #2009-CIS-02-1582, #2009-CIS-02-1581, #2009-CIS 02--1589.
 - (b) Three Counts.

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) March 28th, 2011 3yrs Concurrent for murder
- (b) 20 years Concurrent for Burglary First Degree,
- (c) 5 years Concurrent for Poss of A weapon
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty negotiated plea
- (b) after a plea of not guilty NA
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals,
- ii. post-conviction (first) PCP
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. South Carolina the Court of Appeals had dismissed
- ii. Appellant's appeal cause he'd failed to show how any
- iii. issue was preserved for their review. SCRS 470.480(2000)
The duty to consult, advise as the defendant about the advantage and disadvantage of an appeal, effect to defendant.
- (c) the date of each such result:
- i. June 4, 2011 post appeal dismissed by the honorable
- ii. South Carolina the Court of Appeals
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. under Rule 203(d)(1)(B)(iv), SCACR, say Appellant
- ii. Could not show there is a issue's which can
- iii. be reviewed on appeal.
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) NA
- (b) NA

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Smallest matter Jurisdiction
Counsel was ineffective for not filing a notice of appeal Based on the 14th Amendment
- (b) PCR was used for 2nd time, 1st time (Cir 2005)
- (c) ineffective assistance of PCR lawyer At PCR hearing failed to appeal PCR
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) PCR Counsel was ineffective At PCR hearing, failed to file
- (b) PCR Appeal on Applicant behalf, failed to seek mental health medical
- (c) Paper work on Applicant behalf for Florida PCR, didn't appeal conviction
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. NOT APPLICABLE
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. NOT APPLICABLE
- ii. _____
- iii. _____
- iv. N/A

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. N/A
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

NO

15. If you answered "yes" to (14) identify: NONE N/A

(a) which grounds have been presented: NONE N/A

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. NONE N/A
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- Because Aiken County Court of D.C.R. Appeals had
 - dismissed Appellant's D.C.R. Appeal from ~~the~~ with
 - first ~~PC.R.~~ Counsel for first PC.R. (failed to appeal PC.R. hearing, Appellant never
heard from the Division of Appellant defense about PC.R.
17. Were you represented by an attorney at any time during the course of:
- your arraignment and plea? Yes
 - your trial, if any? No
 - your sentencing? Yes
 - your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes with Counsel Courtney Pope for 1st PC.R. hearing
 - preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Notice of Intent to Appeal PC.R. Dismissal, verbally Requested to PC.R.
Lawyer who failed to consult with Appellant about proper Appeal
18. If you answered "yes" to one or more parts of (17), list:
- the name and address of each attorney who represented you:
 - Courtney Claburn Pope 31A Hampton Ave NW
PO Box 9 Aiken, SC 29802 #803-644-1110
 -
 -
 - the proceedings at which each such attorney represented you:
 - 1- Ms. Wallace Alton Represented me at plea hearing and 2nd
Counsel Ms. Courtney Pope Represented me at PC.R. hearing
 - that Appellant is appealing against her for ~~being~~
ineffective PC.R. Counsel. by not filing PC.R. Appeal as
Requested, and in violation of my 6th Amendment U.S. Constitution 231 F.3d 923, 926
(4th Cir 2000)
Also see Flores v. Ortega, 538 U.S. at 478
 -

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

That first PC R be overruled due to first PC R being cancelled failed to appeal
2011-CP-02-2045 POST-conviction appeal violation of 4th amend Counsel's failure to appeal, was
ineffective when she failed to file appeal u.s. v. Williams 281 F.3d 923, 924 and under Pines v. Ortega
2004-2017 Counsel failed to consult with Applicant about appealing D.C.R. Dismissal. . . .

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

None

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Aiken)

I, Lynne Dade, 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.

Mr. Lynne Dade

SWORN to and subscribed before me this 11th
 day of July, 2013.

Nancy E. Neubert (L.S.)
 Notary Public

My Commission Expires: 1-23-2023

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

I, Tyron G. Lewis, 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.

Tyron G. Lewis #284384
Applicant

SWORN or affirmed to and subscribed before me this
11th day of July, 2013.

Nancy C. Marshall
Notary Public

My Commission Expires: 1-28-2023

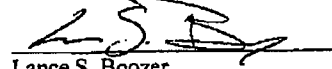
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	C/A NO: 2013-CP-02-1623
	)	
Tyrone Wade, #284384,	)	
	)	
Applicant,	)	
	)	AMENDMENT TO PRIOR
v.	)	APPLICATION FOR PCR
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Applicant, through appointed counsel below, makes the following additional claim and amendment to his prior application for post-conviction relief filed July 19, 2013:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) "Counsel was ineffective for not requesting mental health evaluation."
 - (b) "Counsel was ineffective for not requesting a competency hearing on defended behalf."
 - (c) "Counsel was ineffective for not fully investigating defendant's background for any mental health issues."
 - (d) "Counsel was ineffective for not getting defendant's medical, mental health records from Aiken County Detention Center and Department of Corrections to further help defended towards post-conviction... this is in violation of Defendant's Due Process Rights."

8-18-14
 [Signature]
 D.C.P. & G.S.
 Anita Knoke
 Deputy Clerk

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
Attorney for Applicant
807 Gervais Street, Suite 203
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

Columbia, South Carolina
August 15, 2014

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Tyrone Wade, #284384,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

SECOND JUDICIAL CIRCUIT

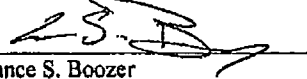
C/A NO: 2013-CP-02-1623

AFFIDAVIT OF SERVICE BY MAIL

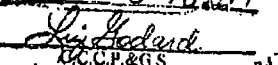
I, the undersigned, of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing Amendment to Prior Application for PCR upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Daniel Gourley
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

THE BOOZER LAW FIRM, LLC


Lance S. Boozer
Attorney for Applicant
807 Gervais Street, Suite 203
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

Columbia, South Carolina
August 15, 2014

8.18.14

Arita Knoche
Deputy Clerk

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
	)	2013-CP-02-01623
	)	
Tyron Wade, #284384,	)	
	)	
Applicant,	)	RETURN
	)	(And Motion to Dismiss all Claims
v.	)	Except for <u>Austin</u> Review)
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for post-conviction relief filed July 19, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was true bill indicted during the September 2009 term of the Aiken County Grand Jury for Murder (2009-GS-02-1582), Burglary in the First Degree (2009-GS-02-1584), and Possession of a Weapon during the Commission of a Violent Crime (2009-GS-02-1589). Wallis Alves, Esquire, represented Applicant. On March 28, 2011, Applicant appeared before the Honorable Edgar W. Dickson where he pled guilty as indicted. Judge Dickson sentenced Applicant to a negotiated sentence of thirty years imprisonment for Murder, five years imprisonment for Possession of a Weapon during the Commission of a Violent Crime, and fifteen years imprisonment for Burglary in the First Degree, with all three sentences to run concurrently.

Applicant filed a timely Notice of Appeal which was dismissed by the Court of Appeals pursuant to Rule 302(d)(1)(B)(iv). The Remittitur was sent June 6, 2011.

Applicant subsequently filed an initial application for post-conviction relief on September 19, 2011 (2011-CP-02-2045). In that application, Applicant alleged the following grounds for relief:

1. Subject Matter Jurisdiction.
2. "Involuntary Guilty plea; Negotiated."
 - a. "The court did not have grounds because lack of evidence and I would not have taken [sic] plea if I knew this."

Respondent filed a Return on December 6, 2011. An evidentiary hearing into the matter was convened at the Aiken County Courthouse on July 11, 2012 before the Honorable Paul M. Burch. Applicant was present at the hearing and represented by Courtney Pope, Esquire. Judge Burch denied and dismissed Applicant's post-conviction relief action by written Order on July 25, 2012.

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

II.

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

1. "Counsel was ineffective for not filing a notice of appeal."
2. "Ineffective assistance of PCR lawyer at PCR hearing failed to appeal PCR."
 - a. "Failed to seek mental health medical paper work on Applicant behalf for timely PCR, didn't appeal dismissal."

Any claims not specifically enumerated in the 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.

Except for Applicant's claim that he was denied an appeal from his first post-conviction relief application, the Court should summarily dismiss any additional allegations brought forth herein or at an evidentiary hearing because they would be 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 the 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). Accordingly, Respondent will move for a summary

dismissal of any additional grounds brought forth by Applicant at an evidentiary hearing because they would be successive in nature.

IV.

There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551 (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 post-conviction relief counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive post-conviction relief application under § 17-27-90." Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991).

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.

V.

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

VI.

WHEREFORE, Respondent requests an evidentiary hearing solely on the matter of the Applicant's entitlement to an Austin Review.

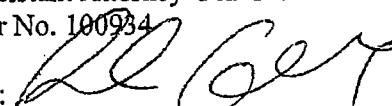
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General
Bar No. 100934

By: 
ATTORNEYS FOR RESPONDENT

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

September 5, 2013.

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

2013-CP-02-01623

TYRON WADE, #284384,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

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

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
602 Meeting Street, Suite A
West Columbia, SC 29169

DATED this the 5th day of September, 2013.



Caroline Kaiser, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA

2 COUNTY OF AIKEN

CIRCUIT COURT
2013-CP-02-01623

3
4 TYRONE WADE,
Applicant,

5 -vs-

TRANSCRIPT OF RECORD

6
7 STATE OF SOUTH CAROLINA,
Respondent.

8 Post-Conviction Relief Hearing

9 Heard on Friday, January 16, 2015

10 Aiken, South Carolina

11
12 BEFORE:

13 THE HONORABLE D. CRAIG BROWN

14
15
16 APPEARANCES:

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

18
19 Counsel on Behalf of the Respondent, State of SC:
Daniel F. Gourley, Esq.

20
21
22 Cheri L. Young, RPR
Circuit Court Reporter
23 P O Box 5232
Aiken, SC 29803-5232
24
25

EXAMINATION INDEX

TYRONE WADE

BY THE COURT

6

EXHIBIT INDEX

ADMITTED

Applicant's:

1 Letter

5

1 ON FRIDAY, JANUARY 16, 2015 AT 10:02 A.M.:

2 THE COURT: Yes, sir.

3 MR. GOURLEY: Your Honor, this is Styron Wade
4 versus the State of South Carolina. Docket Number
5 2013-CP-02-01623. Presently confined in the South
6 Carolina Department of Corrections pursuant to orders of
7 commitment of the Aiken County Clerk of Court.

8 He was true bill indicted during the September 2009
9 term of the Aiken County Grand Jury for murder, burglary
10 in the first degree, and possession of a weapon during the
11 commission of a violent crime. Ms. Alves represented him.

12 On March 28, 2011, he appeared before the Honorable
13 Edgar W. Dickson where he pled guilty as indicted. Judge
14 Dickson sentenced the Applicant to a negotiated sentence
15 of 30-years imprisonment for murder, five-years
16 imprisonment for possession of a weapon during the
17 commission of a violent crime, 15-years imprisonment for
18 burglary in the first degree. Those sentences were to run
19 concurrently.

20 A timely notice of appeal was dismissed by the
21 Court of Appeals pursuant to Rule 302 (d)(1)(b)(4) and a
22 remittitur was sent on June 6, 2011. He subsequently
23 filed an initial application for post-conviction relief on
24 September 19th, 2011. In that application he alleged
25 subject matter jurisdiction and an involuntary guilty

1 plea.

2 The Respondent filed a return on December 6, 2011.
3 An evidentiary hearing into the matter was convened at the
4 Aiken County Courthouse on July 11th, 2012, before the
5 Honorable Paul M. Burch. The Applicant was present at the
6 hearing and represented by Ms. Courtney Pope. Judge Burch
7 denied and dismissed the Applicant's post-conviction
8 relief action by written order on July 25th, 2012.

9 He subsequently filed a second application for
10 post-conviction relief on July 19th, 2013, alleging that
11 counsel was ineffective for not filing a notice of appeal
12 and ineffective assistance of PCR counsel. The State
13 filed its return and motion to dismiss all claims except
14 for the Austin claim, Your Honor, on September 5th, 2013.

15 He is represented in this matter by Mr. Boozer.

16 THE COURT: Mr. Boozer?

17 MR. BOOZER: Thank you, Your Honor. If it pleases
18 the Court.

19 THE COURT: Yes, sir.

20 MR. BOOZER: Lance Boozer, again, on behalf of the
21 Applicant, Mr. Wade.

22 Your Honor, Mr. Wade's application is basically --
23 it is a successive application to his prior PCR. He does
24 have a number of allegations with regard to the
25 effectiveness of his PCR counsel.

1 He and I, of course, have discussed the nature of
2 the successive application and that that's not something
3 that you can move forward on; however, he does have a
4 claim which is plausible or cognizable in a second PCR
5 which is a belated appeal.

6 Your Honor, I have a copy of a letter which I
7 believe is stipulated to by the Attorney General and by
8 Ms. Pope and of course by my client from Indigent Defense
9 whereby Mr. Wade sent an inquiry into the status of his
10 appeal from his prior PCR, to which Indigent Defense
11 basically had no record of an appeal and told him that the
12 proper course of action was to file another PCR alleging
13 he didn't get an appeal.

14 Judge, I would -- I don't believe this is part of
15 the record. I would ask that this be made part of the
16 record. I've shown this to Mr. Gourley and Ms. Pope.

17 THE COURT: Any objection?

18 MR. GOURLEY: No, Your Honor

19 (Applicant's Exhibit Number 1, letter, received
20 into evidence.)

21 THE COURT: All right.

22 MR. BOOZER: And, Your Honor, just further. In
23 discussions with Ms. Pope and with the Attorney General, I
24 believe it's their position that they would consent to
25 Mr. Wade being granted a belated appeal from his prior

TYRONE WADE - EXAMINATION BY THE COURT

1 PCR.

2 THE COURT: Is that correct?

3 MR. GOURLEY: Yes, Your Honor. I've spoken to
4 Ms. Pope. She's indicated to me that she's not sure one
5 way or the other whether Mr. Wade requested one. Based
6 off of that letter, I think it's fairly clear that
7 Mr. Wade certainly was requesting an appeal off the denial
8 of his PCR application.

9 And for those reasons, Your Honor, we would
10 certainly consent to the Austin appeal.

11 THE COURT: All right. Do you have an order,
12 Mr. Boozer?

13 MR. BOOZER: Your Honor, I can certainly prepare
14 one and submit that to the Court.

15 THE COURT: All right. Sir, if you would stand,
16 please. Raise your right hand to be sworn.

17 (TYRONE WADE, having been duly sworn, was examined
18 by the Court as follows:)

19 EXAMINATION

20 BY THE COURT:

21 Q. You are Tyrone Wade?

22 A. Yes, sir.

23 Q. And you've been in here and seated next to your
24 lawyer as he has explained to the Court why you're here
25 today; is that correct?

1 A. Yes, sir.

2 Q. Do you understand what's going on?

3 A. Yes, sir.

4 Q. All right. Do you have any questions of the Court
5 as to what's going on here today?

6 A. No, sir.

7 Q. All right. Well, I'm going to sign an order
8 authorizing and allowing you to proceed seeking appeal of
9 your prior PCR hearing as far as the effectiveness of that
10 counsel. And your lawyer's going to get me an order.
11 Mr. Boozer, I'm going to ask that you get to me within 10
12 days.

13 MR. BOOZER: Yes, sir.

14 THE COURT: Make sure you field it to Mr. Gourley
15 so that he can look at it before I sign it. Okay? Thank
16 you.

17 MR. GOURLEY: Thank you, Your Honor.

18 THE COURT: Thank you, Mr. Wade.

19 END OF PROCEEDINGS: 10:09 A.M.

20

21

22

23

24

25

CERTIFICATE OF REPORTER

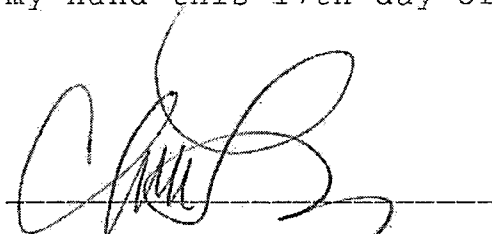
STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

I, Cheri L. Young, Registered Professional Reporter and Official Court Reporter for the State of South Carolina, Second Circuit-At Large, do hereby certify that the foregoing proceedings were written stenographically by me using computer-aided translation; further, that the foregoing is a true, accurate and complete record, to the best of my skill and ability, of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Aiken County, on the 16th day of January, 2015.

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

I have hereunder set my hand this 17th day of April, 2015.

A handwritten signature in dark ink, appearing to read 'Cheri L. Young', is written over a horizontal line.

Cheri L. Young, RPR
Official Court Reporter



Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1250
Facsimile: (803) 734-1387



1-16-2015
Hedland
rec'd 9:55am
Christy S. Knapp
are

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

August 9, 2013

Mr. Tyron Wade, # 284384
Perry Correctional Institution, D-X-15
430 Oaklawn Road
Pelzer, S.C. 29669

Dear Mr. Wade:

We are in receipt of your letter of July 13, 2013. Robert M. Dudek, the Chief Appellate Defender, asked me to respond.

Our state Supreme Court has recognized a prisoner's right to the assistance of appellate counsel in seeking review of the denial of post-conviction relief. Under Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), the appropriate action is to file a second PCR application alleging that PCR counsel was ineffective in failing to seek appellate review.

Sincerely,

A. Hadden Lucas
Law Clerk

AHL

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN)	FOR THE SECOND JUDICIAL CIRCUIT
Tyrone Wade # 284384,)	2013-CP-02-1623
Applicant,)	
vs.)	
State of South Carolina,)	CONSENT ORDER GRANTING AN
Respondent.)	APPEAL PURSUANT TO <u>AUSTIN V. STATE</u>
_____)	

This matter comes before the Court by way of an application for post-conviction relief (PCR) dated July 19, 2013. The Respondent made its return and motion to dismiss on September 15, 2013. An evidentiary hearing on the matter was convened on January 16, 2015, at the Aiken County Courthouse. The Applicant was present at the hearing and represented by Lance S. Boozer, Esquire. Daniel Gourley, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Court had before it the guilty plea transcript, the Aiken 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 Aiken County Clerk of Court. The Applicant was indicted for Murder (2009-GS-1582); Burglary, First Degree, (2009-GS-02-1584); and Possession of a Firearm During Commission of a Violent Crime (2009-GS-02-1589). Wallis Alves, Esquire, represented him. On March 28, 2011, the Applicant pled guilty as indicted before the Honorable Edgar W. Dickson. Applicant was sentenced to thirty (30) years imprisonment for Murder, five

DCB
8/10/14

(5) years imprisonment for Possession of a Weapon and fifteen (15) years for Burglary, First Degree, all sentences to run concurrently.

A notice of appeal was filed and an appeal perfected. The appeal was dismissed by the Court of Appeals pursuant to Rule 302(d)(1)(B)(iv). The Remittitur was sent on June 6, 2011.

Applicant subsequently filed for post-conviction relief on September 19, 2011 (2011-CP-02-2045). In his application, Applicant asserted claims of involuntary guilty plea and subject matter jurisdiction. An evidentiary hearing was convened on December 6, 2011, at the Aiken County Courthouse before the Honorable Paul M. Burch. Applicant was present at the hearing and was represented by Courtney Pope, Esquire. By written Order filed July 25, 2012, Judge Burch denied and dismissed Applicant's post-conviction relief action. No appeal was filed.

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. Counsel was ineffective for not filing a notice of appeal.
 - b. "Ineffective assistance of PCR lawyer at PCR hearing failed to appeal PCR."
 - i. "Failed to seek mental health medical paper work on Applicant's behalf for timely PCR, didn't appeal dismissal."

DCB
8-2014

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, all present at the hearing, have consented to the granting of an appeal pursuant to Austin v. State of the Applicant's first post-conviction relief application (2011-CP-02-2045). 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. Prior PCR counsel for the Applicant has indicated she could not recall whether she was asked by Applicant to appeal his prior application for post-conviction relief. Furthermore, the Applicant presented evidence in the form of a letter from the South Carolina Commission on Indigent Defense acknowledging Applicant's prior inquiry into the status of his appeal. The letter confirmed to the Applicant no appeal had been filed and his proper course of action was through a subsequent application for post-conviction relief.

Based upon the foregoing and with the consent of all parties present at Applicant's PCR hearing, this Court finds that the granting of an appeal of the Applicant's first PCR (2011-CP-02-2045) pursuant to Austin v. State is warranted.

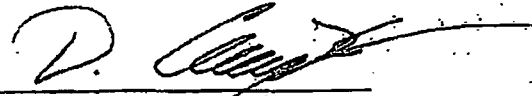
IT IS THEREFORE ORDERED:

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

DCB
P. 3019

2. That the Applicant be granted an appeal of case 2011-CP-02-2045 pursuant to Austin v. State.

AND IT IS SO ORDERED this 26 day of Jan, 20 15.


The Honorable D. Craig Brown
Presiding Judge
Third Judicial Circuit

Florence South Carolina.

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p. 4874