

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Berkeley County

William Jeffrey Young, Circuit Court Judge

RECEIVED

OCT 15 2015

S.C. Supreme Court

WOODROW J. BAKER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001320

APPENDIX

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ATTORNEYS FOR RESPONDENT

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1 (February 11, 2013.)

2 MS. WILLIAMS: Your Honor, this is a plea.
3 He is charged with felony driving under the influence.
4 This is a straight up plea. I haven't checked on any
5 boxes on the sentencing sheet. Mr. Schwacke and I had a
6 discussion about that. That's why I haven't checked
7 anything.

8 I could go ahead and go into the facts, if
9 you're inclined to go ahead and hear them.

10 THE COURT: Let me get started. I'll come
11 back and be happy to hear from you.

12 Mr. Schwacke, is this Mr. Woodrow Baker?

13 MR. SCHWACKE: It is, Your Honor.

14 THE COURT: I have here that he is here to
15 plead to felony driving under the influence causing great
16 bodily injury; is that correct?

17 MR. SCHWACKE: That's correct, Your Honor.

18 THE COURT: And do you agree with his
19 decision to enter that plea?

20 MR. SCHWACKE: I do, Your Honor.

21 THE COURT: And does he understand the rights
22 he waives by doing that?

23 MR. SCHWACKE: He does.

24 (Defendant duly sworn.)

25 THE COURT: Thank you, sir. I'll need to ask

1 you a few questions to make sure that any plea that you
2 choose to enter this morning is entered knowingly,
3 intelligently, and voluntarily, okay, sir?

4 And I know Mr. Schwacke has gone through a
5 lot of this with you already, but we have to ask you the
6 questions for the record, and I have to satisfy myself
7 that you understand the rights that you waive when you
8 enter the plea.

9 How old are you, sir?

10 THE DEFENDANT: Fifty-five.

11 THE COURT: And how far did you go in school?

12 THE DEFENDANT: One year in college.

13 THE COURT: Is there some time served on this
14 or --

15 MS. WILLIAMS: He's been in jail, Your Honor,
16 since the date of the incident.

17 MR. SCHWACKE: 443 days.

18 THE COURT: 443? Okay. And, sir, were you
19 working anywhere prior to that?

20 THE DEFENDANT: Myself.

21 THE COURT: Doing what?

22 THE DEFENDANT: I'm a contractor.

23 THE COURT: Let's keep it down out in the
24 audience, okay? Thank you. All right.

25 Have you ever been treated for any kind of

1 drug or alcohol problem?

2 THE DEFENDANT: No, ma'am.

3 THE COURT: Have you ever been treated for
4 any kind of mental issue or illness?

5 THE DEFENDANT: No.

6 THE COURT: Are you under the influence of
7 anything today, prescription medicine or anything, that
8 would interfere with your ability to understand what
9 we're doing here in court?

10 THE DEFENDANT: No, sir -- no, ma'am.

11 THE COURT: Thank you, sir. I have you here
12 on indictment 2012-1311 which charges you with felony
13 driving under the influence causing great bodily injury;
14 specifically, it alleges that Mr. Baker in Berkeley
15 County on or about November 26 of 2011 drove a motor
16 vehicle while under the influence of alcohol, drugs, or
17 both and did an act forbidden by law or neglected a duty
18 imposed by law in the driving of that vehicle and that
19 act or neglect of that act proximately caused great
20 bodily injury to Bailey Vinson in violation of South
21 Carolina law.

22 Sir, do you understand that to be the charge
23 that brings you here today?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: And, sir, do you understand that

1 carries a minimum penalty of 30 days up to 15 years in
2 prison, as well as a possible fine between 50, 100, and
3 \$10,100?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: You understand all that?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Understanding all that, how do
8 you wish to plead this morning?

9 THE DEFENDANT: Guilty.

10 THE COURT: Let me hear about the facts.

11 Yes, ma'am?

12 MS. WILLIAMS: May it please the Court, Your
13 Honor: This incident occurred in the late evening hours
14 of November 25th, 2011 into the early morning hours of
15 November 26, 2011.

16 The collision occurred approximately 10:30
17 p.m. on College Park Road in Berkeley County. The
18 victim, Bailey Vinson, who was 24 years old at the time,
19 was on her way home from work at the Cypress Garden
20 Assisted Living Center in Summerville.

21 She worked her regular 2:00 to 10 p.m. that
22 night as a certified nursing assistant. She dropped a
23 co-worker off and headed for home on [redacted] off
24 of College Park Road, right where this incident happened.

25 While Ms. Vinson was at work at the assisting

1 lived home, the defendant was at Two Keys Tavern on
2 College Park Road, less than a mile from ,
3 where he was drinking heavily. According to witnesses at
4 the bar and surveillance video from the bar, he arrived
5 shortly before 7 p.m. He drank heavily for several
6 hours.

7 According to one security guard, he appeared
8 to be, quote, a few sheets in, not long after he got
9 there, not long after he arrived at the bar. He
10 continued to drink what the bartenders recall to be some
11 Bud Light bottles, then pitchers, and he also had some
12 shots, some of which he shared with other people, some of
13 which he drank himself.

14 He got to the point where the bartender cut
15 him off from service, at which point he became angry and
16 decided to leave. At least one, if not several
17 individuals from the bar, including security guards and
18 the bartender, offered to call him a cab or tried to find
19 some way to prevent him of driving himself away from that
20 bar because of his level of intoxication.

21 He stumbled through the parking lot to his
22 dark red minivan. When backed out of the parking space,
23 he hit a parked car behind him, and when the parking lot
24 security guard tried to stop him for hitting the parked
25 car, Mr. Baker fled the parking lot, squealing tires and

1 drove away.

2 So the defendant as driving west on College
3 Park Road toward I-26. Bailey Vinson was driving east
4 coming from I-26 on College Park Road. She's traveling
5 in her left lane. He's traveling in his left lane.
6 There's two lanes on each side. Between the two there's
7 a median, flat median. It's about the width of a lane.
8 It's not one of those raised curb-type medians.

9 On his side there's a double yellow line. On
10 her side there's a double yellow line and several feet in
11 between. At some point near , it starts to
12 sort of merge and open up into a left turn lane, creating
13 five lanes. Well, as Ms. Vinson approached
14 where she was probably 200 yards from her house, as
15 she was going to, Mr. Baker crossed the double yellow
16 line, the median, and her double yellow line and hit her
17 offset head on.

18 Witnesses saw the collision, and they stopped
19 and tried to help. It took several rescue workers to cut
20 Bailey Vinson out of her car after which she had to be
21 airlifted to MUSC. She was in a medically induced coma
22 for four days. She suffered a C1-C2 fracture in her
23 neck, which is an injury that usually kills people. She
24 had compound fractures in both of her shoulders and her
25 arms. Both sides of her hip and pelvis were shattered.

1 Doctors performed surgery on her arms first because of
2 all the exposed bone for fear that she would actually
3 lose her arm because of infection that was set in pretty
4 shortly after if they didn't repair them immediately.

5 The photo that I have handed up to Your
6 Honor, if you look in the driver's seat, the white thing
7 right there, that is not an air bag. That's actually Ms.
8 Vinson. When rescue workers went to cut her out of the
9 car, they had to cover her with fireman's coats and tarps
10 and heavy material to protect her from all the glass and
11 things that may come off when they were cutting the front
12 of the car off.

13 I spoke with Dr. Vandergrift at length about
14 her injuries. He is the one that did the surgery on her
15 neck to repair that C2 fracture. He used the word nearly
16 decapitated in describing the injury that he came to her
17 with. Her head was nearly severed from her spine as a
18 result of this collision, and this is nothing short of a
19 miracle that she's still alive, and even the doctors
20 would have said that to Your Honor had they been here to
21 testify.

22 It's currently held in place by a large
23 screw. After more than six weeks in the hospital and
24 several additional surgeries, she transferred to Health
25 South for more therapy before being released to go home.

1 She had to use a hospital bed for several months because
2 she couldn't even raise herself out of bed on her own.

3 The defendant was also transported to MUSC,
4 and for whatever reason, in the ER at MUSC they decided
5 to put the two individuals next to each other, Ms. Vinson
6 and Ms. Baker, divided by nothing more than a curtain.

7 While ER doctors were telling Bailey Vinson's
8 parents they didn't know she was going to make it through
9 the night, they could hear Mr. Bicker on the other side
10 of curtain, still highly intoxicated, belligerent,
11 cursing at nurses, insisting he only hit a tree, he
12 hadn't hurt anyone, and demanding another shot of
13 whiskey. My trooper heard that as well.

14 ER doctors told Bailey's parents they didn't
15 know if she was going to make it through the night. The
16 defendant's blood alcohol was a .246, obviously more than
17 three times the legal limit. He was also driving under
18 suspension on the night of the collision.

19 Those are the facts we would have presented
20 at trial, witnesses, including bartenders, people at the
21 bar, people on the scene who witnessed the collision as
22 well as medical personnel.

23 As far as the defendant's prior record, Your
24 Honor, he does have a 2009 disorderly and conduct public
25 intoxication. I confirmed this position through the

1 North Charleston city court web site where he was found
2 guilty, trial in absentia bench trial, for whatever
3 that's worth to Your Honor.

4 The 2005 DUI second that was pled to a DUI
5 first. According to his DMV record which I provided in
6 discovery, that also involved a collision, it just wasn't
7 a felony level. DUI third in 1995, threatening life of a
8 public official, failure to stop for a blue light; 1994,
9 CDV and battery out of California; '91 and '92, two CDVs;
10 '89, DUS more than first; '86 DUI; '85, possession of
11 marijuana, disorderly; '83 DUI second, DUS second; '81
12 DUI, and in 1979, a burglary, and I don't know more
13 details about the burglary, Your Honor.

14 The victim and her family are here, and they
15 would like to address Your Honor at the appropriate time.

16 THE COURT: I'm happy to hear from them now.

17 MS. WILLIAMS: If you have something to tell
18 the Court, if you will just give us your name first.

19 We just have three, I believe, Your Honor,
20 her and her parents.

21 THE COURT: Happy to hear from them.

22 THE WITNESS: Bailey Vinson, V-i-n-s-o-n. On
23 November 25, 2011, my while life changed. I don't
24 remember much from that day other than working all day.

25 I remember coming home from work, seeing the

1 gas station. Before and after that it was all a blank.
2 I work up in the hospital in most excruciating pain all
3 over my body and my neck brace on with my family sitting
4 around me. I didn't know what happened or where I as.

5 My family looked so sad. They told me I had
6 been in an accident because of a well over-intoxicated
7 drunk driver. I never imagined that something like this
8 could happen to me.

9 My entire body was in pain. The nurses told
10 my that I broke my shoulder, left forearm, and know
11 serious of all was I broke C1 and C2 in my neck. I also
12 was in a coma for almost a week. I possibly could have
13 choked to death. I almost died that day. I had to stay
14 the hospital for almost two months. My body hurt every
15 single day. I was not able to clean myself. I was not
16 able to walk. I could barely do anything myself.

17 I was very miserable in the hospital I missed
18 being home with family.

19 THE COURT: I'm happy to read the note if you
20 would rather -- I don't mind. You could bring it up.
21 Thank you.

22 How old is Ms. Vinson?

23 MS. WILLIAMS: She is 25, 26? She is 26 now.
24 She was 24 when it happened.

25 THE COURT: Okay.

1 MS. WILLIAMS: Your Honor, this is Phillip
2 Vinson who would like to address Your Honor next.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Mr. Phillip Vinson? I'm happy to
5 hear from you, sir.

6 THE WITNESS: By your selfish actions, you
7 have put my daughter Bailey and my family through a
8 living nightmare. By your actions alone, Bailey's life
9 will forever be changed. She will never work again,
10 taking care of the elderly, something she enjoyed.
11 Because of what you did that night, Bailey can't even
12 pick up or hold her nephews, which is something else
13 you'll never experience.

14 I can only imagine the hell you've given your
15 parents. God knows what you've done to my wife and I,
16 and especially Bailey. To stand helpless as they cut
17 your daughter out of the car, hearing her moans and cries
18 will be burned into my mind. It was so surreal no father
19 should have to experience. You, sir, with callous and
20 unremorseful attitude you've displayed at all the
21 proceedings I've sat through only proves to me that if
22 you -- that upon your release, you would only celebrate
23 by getting drunk, drive around recklessly, possibly
24 killing your next victim.

25 At the same time, you never acknowledged that

1 you got a problem or that you would be a menace on the
2 road. With this in mind, I would ask the Court to give
3 you the maximum sentence allowed by law.

4 Thank you.

5 THE COURT: Thank you, sir.

6 MS. WILLIAMS: And Ms. Vinson, Gloria Vinson.

7 THE WITNESS: I'm Bailey Vinson's mother, and
8 I just want to say that it has been a very rough time.
9 Bailey always worked and was self supportive, and now she
10 has had to be dependent on us, and we struggle. We did
11 not believe she was going to make it. She is a strong
12 girl and she pulled through, and today I stand in front
13 of you and ask that you give him the maximum you can give
14 him because we feel he is a threat to society, he is a
15 threat to us, and we don't want nobody else to go through
16 this. I don't want to see any or child hurt the way my
17 child was hurt that night.

18 THE COURT: Thank you, ma'am. Anything
19 further?

20 MS. WILLIAMS: Just for the record,
21 Mr. Vinson, Bailey's dad, actually was on scene right
22 after it happened. Neighbors alerted him to a collision.
23 His daughter was supposed to be home. They ran down
24 there, so he actually saw her behind the wheel, getting
25 cut out, screaming for dear life, bloody bones exposed.

1 That is what he was referencing in his letter.

2 Your Honor, I understand that Ms. Vinson
3 appears to a general onlooker in the courtroom to be fine
4 today physically. She can't even put her own shirt on
5 without help from her mother. She can't even put her
6 hair in a ponytail, which I think as women we take for
7 granted.

8 I understand it's likely that the defense
9 will reference these prior DUIs as being old and probably
10 less relevant than I would argue that they are. I would
11 argue that this criminal history, but particularly with
12 five prior DUIs convictions spanning over 30 years, that
13 there -- I have never seen a case, and I've been doing
14 DUIs and felony DUIs for almost two years exclusively.
15 I've never seen a case more deserving of maximum than
16 this one, Your Honor, and that's all the State would like
17 to say.

18 THE COURT: All right. Thank you
19 Mr. Schwacke?

20 MR. SCHWACKE: Thank you, Your Honor.
21 Mr. Baker is 56 years of age. He's here today with his
22 mother and other family members and friends of Mr. Baker,
23 and his mother.

24 Your Honor, one of the things in the course
25 of the representation of Mr. Baker that I have stressed

1 with him is just how horribly lucky everyone is in this
2 incident. We're dealing with, really, a matter of
3 inches, or centimeters or meters, items that are small to
4 measure, in terms of the fact that the victim in this
5 case is here and able to be with her family and they're
6 able to be with her.

7 Mr. Baker realizes that this has been a
8 result of his conduct. It was at his suggestion that I
9 contacted the attorneys representing the victim's family
10 and their civil lawsuit to see if he could testify
11 against the bar. That settled before that could happen.
12 There was no contest on the insurance side. The policy
13 in place for Mr. Baker paid out the maximum of the
14 policy.

15 Now, that's not what we're here for. That is
16 a different court, different proceeding, but I did want
17 to say that Mr. Baker has shown remorse, that he has
18 shown great sorrow for what's happened and what he's
19 responsible for.

20 The fact that he hasn't said that to the
21 victims, that's really on the attorneys because we tell
22 our clients not to do that, but this is the appropriate
23 time and place to do that.

24 Since Mr. Baker was noticed when this case to
25 be placed on the docket, I told the solicitor that I

1 believed it would be a plea. He has done the things any
2 client wants to do in terms of seeing what the evidence
3 is because of his own choices that night. He has no
4 independent recollection of really what happened during
5 the course of that accident.

6 Nevertheless, he's here to accept his
7 responsibility for that and pay the price that the Court
8 is going to impose upon him as it sentenced. Mr. Baker
9 has the record that the State has told you. The odd
10 thing about it is from '79 to '95 it's pretty bad. It
11 has a number of things that happened, but in the past 16
12 years, he's tried to stay straight and narrow, but he's
13 still gotten into some trouble.

14 He's run into issues with a DUI and a public
15 intoxication, and a lot of that, Your Honor, has to do
16 with what was going on in Mr. Baker's own life.

17 He told you that he was a contractor. He had
18 his own businesses. They did steel and sheet metal work.
19 He built schools or warehouses, those types of commercial
20 buildings, and they ran into a bad economy. He ran into
21 a stretch of a number of relatives -- losing a number of
22 relatives, did he did not deal with it appropriately.

23 While he was in pretrial custody, he was in
24 the hospital himself, Your Honor, for about four days.
25 He suffered a broken sternum. He has some fractures of

1 his arms and legs, and he's probably going to be disabled
2 from work as a result of this himself, but while he was
3 in the Charleston County Detention Center, he
4 participated in the DAODAS program that they have for
5 drug and alcohol. It was a 36-week program. He got to
6 accomplish a lot of that because he was in the detention
7 center down there for almost six months.

8 Your Honor, his mother is present. I know
9 she wishes to address the Court.

10 THE COURT: Okay. Happy to hear from her.

11 MR. SCHWACKE: Your Honor, this is Kathryn
12 Williams.

13 THE COURT: Okay. Yes, ma'am?

14 THE WITNESS: I'm Kathryn Baker Williams.
15 I've come this morning to ask for leniency for my son
16 because I need him very badly at home with me. I'm a
17 victim of rheumatoid arthritis which is beginning to
18 affect me very bad, and there are so many things that I
19 can't do anymore that he's my only relative that can -- I
20 can have that would come live with me. And so therefore
21 I'm asking leniency for him. I love him very much. I
22 know he's done bad, that's all right, but I love him, and
23 I just begging for leniency for him.

24 THE COURT: Okay.

25 THE WITNESS: And I thank you very much.

1 THE COURT: Thank you, ma'am. I thank you
2 for being here.

3 MR. SCHWACKE: Your Honor, Mr. Baker does
4 wish to address the Court.

5 THE COURT: Yes, sir.

6 THE DEFENDANT: It's true. I destroyed my
7 life, and I had reached sobriety and held on to it for
8 like ten years, and I had a thriving company and was
9 buying my own home and everything was going for me, but I
10 lost of everything, and when that happened I pretty much
11 failed. And I drank, again, because I had lost
12 everything. Finally prided myself for finally doing
13 something right.

14 Then my pops died and about a dozen of my
15 friends died and my little brother died in my arms and my
16 stepdaughter died and my girlfriend her mama died, and it
17 just affected me. Something in me broke and I lost my
18 sobriety. And I know -- I'm so sorry. I never intended
19 to hurt that girl. I hurt everybody else too, my mother
20 and my children, grandchildren. Everybody paid for my
21 mistake, and I just don't know what to do to fix it all
22 right now.

23 And I am deeply sorry. Even before the
24 accident, I had failed and I just started -- I got a lot
25 of fences to mend because my troubles started before the

1 incident, and I will remember it for the of my life,
2 every day, and I just want to put my life back together
3 now. Thank you.

4 THE COURT: Okay. Thank you, sir. Anything
5 further, Mr. Schwacke?

6 MR. SCHWACKE: Your Honor, we just ask for
7 leniency and mercy of the Court.

8 THE COURT: Okay. Thank you, sir.

9 Mr. Baker, you understand when you enter this
10 plea this morning you give up very significant
11 constitutional rights. You give up your right to remain
12 silent and your right to a jury trial, and if you wanted
13 to demand your right to a jury trial, which is your
14 constitutional right, Ms. Williams would be required to
15 call your case to trial and prove you guilty beyond a
16 reasonable doubt.

17 Twelve jurors would have to unanimously agree
18 to find you guilty, and your attorney, Mr. Schwacke,
19 would have the opportunity to challenge her evidence and
20 to cross-examine and confront witnesses on your behalf.
21 You give all that up when you plead guilty.

22 Do you understand all that, sir?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: You also give up your absolute
25 constitutional right to remain silent. What that means

1 is if y'all did go to trial, you wouldn't have to put up
2 any case at all because, as I said, this burden rests
3 upon the State to prove you guilty, and you are presumed
4 innocent up and until the point if a jury of 12 people
5 were to find you guilty. You would have the opportunity
6 to work with Mr. Schwacke to decide whether or not you
7 wanted to testify in your own defense, and you would have
8 the absolute right to not testify, and whatever judge was
9 there would instruct the jury that they couldn't consider
10 that whatsoever, not only could they not hold it against
11 you, but they couldn't even talk about it in your jury
12 room. It absolutely could not be considered.

13 You give up that right to remain silent when
14 you plead guilty. You want to give up your right and
15 plead guilty today?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: You want me to take this plea
18 today?

19 THE DEFENDANT: Please.

20 THE COURT: Anybody promise you anything or
21 done anything to try to force you to plead guilty?

22 THE DEFENDANT: No.

23 THE COURT: Are you happy with Mr. Schwacke's
24 work for you?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Do you have any more questions
2 for him now?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: You will have ten days from today
5 to appeal if you wish to do so. I will accept the plea.
6 I do find that Mr. Baker is pleading knowingly,
7 intelligently, and voluntarily this morning. He's been
8 represented by an excellent attorney who has advocated
9 very strongly for him in a situation that is just tragic
10 and hard to even argue.

11 We know you didn't intend to hurt Ms. Vinson
12 here, but, you know, at age 24 years old, her life
13 changed forever, and it will never, ever be the same.
14 That, when taken in terms of the extreme intoxication of
15 this particular case, this wasn't just a situation of
16 weaving a little bit across a line but going across
17 several lanes of traffic after being cut off at a bar and
18 told not to drive and having a fender bender in the
19 parking lot, and in the face of the prior record which is
20 just atrocious, quite frankly, and I understand that not
21 intentional, you know. It's a struggle with alcoholism,
22 but it's one thing to struggle with alcoholism and there
23 is another thing to get behind the wheel of a car
24 repeatedly when you shouldn't.

25 In light of the prior record, and the

1 serious, serious nature of what has happened here, the
2 sentence is going to be 13 years with credit for time
3 served. I'm only not maxing this out because of your
4 cooperation with the civil suit and your expression of
5 sorrow today, and I believe you; otherwise, I would be
6 giving you 15 years today, but it's going to 13 years
7 with credit for time served. Is the fine mandatory?

8 MS. WILLIAMS: It is, Your Honor. At least
9 the minimum. I don't know if that can be suspended below
10 like the misdemeanors can, but it is --

11 THE COURT: I'm going to impose the \$5,100
12 fine but suspend it if I can. If we can't, y'all just
13 let me know, or somebody will let me know, and I will
14 write that in, but the 13 years will be a straight up 13
15 years, credit for time served. Thank you.

16 MS. WILLIAMS: Thank you.

17 - - -

18 (Whereupon, the proceedings were concluded.)

19 - - -

20

21

22

23

24

25

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Berkeley County, South Carolina, on the 11th of February 2013.

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

December 1, 2013



Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of Berkeley)

Woodrow J Baker #219004)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013-CP-08-1995

APPLICATION FOR

POST-CONVICTION RELIEF

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2013 SEP - 5 PM 12:55

FILED

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 Macclougall Correctional Institution

2. Name and location of Court which imposed sentence Moncks Corner Berkeley County

3. Name(s) of co-defendant(s) (if any) — NONE —

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2012 G50801311

(b) _____

5B

W

(c) _____

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

(a) February 11th 2013

~~(b)~~ 13 years

~~(c)~~ \$11,162.63 in fines (according to sentencing sheet)

6. Check whether a finding of guilty was made:

(a) after a plea of guilty 13 years \$11,162.63 in fines

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO

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

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

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

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

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

(c) the date of each such result:

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

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

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

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

(a) Public Defender did not want to.

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) INEFFECTIVE ASSISTANCE IN OBTAINING

(b) TRUTH IN SENTENCING

(c) PREJUDICE

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

(a) DID NOT REPRESENT ME TO THE FULLEST

(b) CARRIED 15 MAX - GOT 13 YRS - TOLD NO MORE THAN 12 Y.

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

- i. _____
- ii. _____
- 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:

(a) which grounds have been presented:

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

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

- i. _____
- 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) Public Defender said there was no use for.
- (b) uneducated have since learned that I could
- (c) UNINFORMED

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

- (a) your arraignment and plea? Public Defender
- (b) your trial, if any? _____
- (c) your sentencing? Public Defender
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Public Defender did not want to
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NONE

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. _____
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____

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

Reduction in sentence

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

- NO -

STATE OF SOUTH CAROLINA)
County of Berkeley)

VERIFICATION

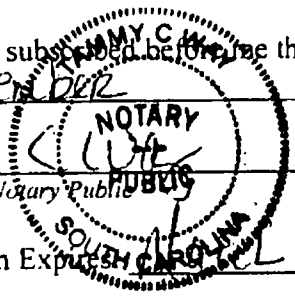
I, Woodrow J Baker, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that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

W J Baker

SWORN to and subscribed before me this 3rd day of September, 2013.

Jay C. [Signature] (L.S.)
Notary Public

My Commission Expires September 9, 2014



MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

2013 SEP -5 PM 12:55

FILED

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

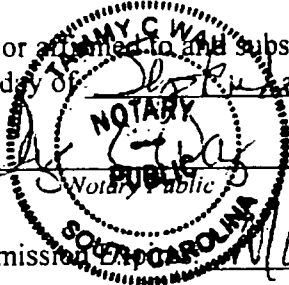
I. Woodrow J. Baker, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (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.

W J Baker
Applicant

SWORN or affirmed to and subscribed before me this
3rd day of September, 2013.

[Signature]
Notary Public
My Commission Expires March 9, 2014



2013 SEP -5 PM 12:55
MARY P. BROWN
CLERK OF COURT
BERKLEY COUNTY, S.C.

FILED

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY)	
)	
)	2013-CP-08-1995
)	
Woodrow J. Baker, #219004,)	
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
<hr/>		

The Respondent, making its Return to the application for post-conviction relief (PCR) filed September 5, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. The Applicant was indicted at the August 2012 term of the Berkeley County Grand Jury for felony driving under the influence resulting in great bodily injury (2012-GS-08-1311). The Applicant was represented by David Schwacke, Esquire.

On February 11, 2013, the Applicant pled guilty as indicted. The Applicant was sentenced by the Honorable Stephanie P. McDonald to confinement for a period of thirteen years and a fine of \$5100. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Berkeley County Clerk of Court regarding the subject conviction, 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 Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Counsel did not represent me to the fullest. Charge carried a fifteen year max. Counsel told me no more than twelve.

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its

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

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

IV.

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

V.

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

[Signature on the following page.]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

January 6, 2015.

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

WOODROW J. Baker, #219004

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

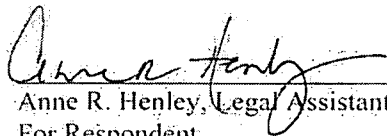
2013-CP-08-1995

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the abovecaptioned 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:

Mr. Rodney Duane Davis
 Lowcountry Law Office
 4000 Faber Place Drive
 Suite 300
 Charleston, SC 29405

DATED this 6th day of January 2015


 Anne R. Henley, Legal Assistant
 For Respondent

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No exhibits were introduced

Woodrow Baker v State of S.C.
Proceedings
April 22, 2015

1 PROCEEDINGS

2 THE COURT: All right this is case of Woodrow J.
3 Baker v State of South Carolina under docket number 2013-
4 CP-08-1995. Present and appearing is Ms. Elizabeth Neyle
5 is ---

6 MS. NEYLE: --- yes, sir ---

7 THE COURT: --- that correct?

8 MS. NEYLE: Yes, sir.

9 THE COURT: Representing the State and Mr. Davis --
10 I guess he's in the hallway ---

11 UNIDENTIFIED MALE: --- they're bringing the ---

12 THE COURT: --- bringing him in and he is present
13 representing the applicant; and is Mr. Schwacke is here.
14 Good morning.

15 [Whereupon, Mr. Davis enters the courtroom]

16 MR. DAVIS: Good morning, Your Honor.

17 THE COURT: How are you doing today?

18 MR. DAVIS: Doing all right.

19 THE COURT: You may have a seat.

20 MR. DAVIS: May we approach, Your Honor?

21 [Whereupon, an off the record bench conference is
22 held]

23 THE COURT: Mr. Baker?

24 MR. BAKER: Yes, sir.

25 THE COURT: It's my understanding that you have

Woodrow Baker v State of S.C.
Proceedings
April 22, 2015

1 filed this action for post conviction relief?

2 MR. BAKER: Yes, sir.

3 THE COURT: And what you're alleging is that your
4 attorney, who was Mr. Schwacke at the time apparently,
5 did something wrong and therefore your constitutional
6 rights were violated, you understand that?

7 MR. BAKER: Yes, sir.

8 THE COURT: This was a plea is that my
9 understanding?

10 MR. BAKER: Yes, sir.

11 THE COURT: That you went before Judge McDonald and
12 she asked you certain questions about this. Do you
13 understand that if you win today, that everything is back
14 on the table and we go back to ground zero?

15 MR. BAKER: Yes, sir.

16 THE COURT: And start all over again?

17 MR. BAKER: Yes, sir.

18 THE COURT: What was the original charge?

19 MR. BAKER: D-U-I.

20 THE COURT: D-U-I felony?

21 MR. BAKER: --- no, D-U-I then they changed it.

22 THE COURT: Okay.

23 APPLICANT: And then they upgraded it to felony
24 D-U-I with Great Bodily Injury.

25 THE COURT: Okay. And you understand that you

Woodrow Baker v State of S.C.
Proceedings
April 22, 2015

1 received a sentence of 13 years and what would felony
2 D-U-I violators, does that carry 20? I'll ask your
3 lawyer.

4 MS. NEYLE: Up to 15.

5 THE COURT: Okay, up to 15. So, if you go back you
6 could start all over?

7 MR. BAKER: Yes.

8 THE COURT: You want to take that -- I can't reduce
9 the sentence all I can do is grant you a new trial.

10 MR. BAKER: Yes, sir.

11 [Whereupon, Mr. Davis confers with his client]

12 MR. BAKER: Yes, sir. I'll move forward.

13 THE COURT: Okay. Very well, then call your first
14 witness.

15 MR. DAVIS: Thank you very much, Your Honor. We
16 would call Woodrow Baker to the stand.

17 THE COURT: All right. Mr. Baker, come forward to
18 be sworn.

19 [Whereupon, Mr. Baker comes forward]

20 [Whereupon, the witness is duly sworn by the Clerk
21 of Court]

22 CLERK OF COURT: Go ahead and take a seat. Just
23 state your name into the microphone and spell your last
24 name for the record.

25 THE WITNESS: Woodrow Baker, B-A-K-E-R.

Woodrow Baker v State of S.C.
Proceedings
April 22, 2015

1 THE COURT: Mr. Davis, you may proceed.

2 MR. DAVIS: Thank you very much, Your Honor.

3

4

5

Woodrow Baker v State of S.C.
Woodrow Baker-Direct Examination by Mr. Davis
April 22, 2015

1 last moment that after I was -- well, you see I had tried
2 to call my mother and she said she had talked to him and
3 talked like I was going home with probation.

4 So, we all got excited too and then that next time,
5 the very last time I saw him he had come in with new
6 evidence that where a bunch of statements he received --
7 from the investigation or something they had had at the
8 bar or a lawsuit.

9 And he had told me finally some light at the end of
10 the tunnel. And then I said this time just go ahead and
11 plead guilty because, you know, I knew he called the
12 house and said that we could probably come home with
13 probation.

14 But, in my mind I was thinking okay worst case
15 scenario five years and I had been sat in the county jail
16 for, you know, almost two years. So, I was thinking, you
17 know maybe a year more up the road and gone ahead and
18 pled guilty at that time.

19 Q. What did he tell you about this light at the end of
20 the tunnel? What did he mean by that?

21 A. He had some statements, about like 13 or 14
22 statements, which all of them sounded good in relation to
23 me.

24 Q. Did he review those with you?

25 A. A couple might have went over a few that sounded --

Woodrow Baker v State of S.C.
Woodrow Baker-Direct Examination by Mr. Davis
April 22, 2015

1 you know a couple that might have sounded good...

2 Q. What, if any, discussions did Mr. Schwacke have with
3 you directly about potential sentences.

4 A. Initially, well the first time was when I -- the
5 very first meeting we had basically I asked him, which I
6 feel like I'm floundering on this, because I said, you
7 know, it's nothing I told you to, but you know what's
8 going on with me.

9 And he said well, you know, I don't think you're
10 going to get more than 12. And that was the very first
11 visit. And then, like I said other than that nothing was
12 ever discussed.

13 Q. So, you're saying 12 years?

14 A. Yes, sir.

15 Q. Okay. Of active time?

16 A. Yes, sir.

17 Q. Okay. Did you and Mr. Schwacke ever discuss trial?

18 A. Well, it was just this assumption that that's what
19 we were doing, I reckon, because we never really talked
20 about it.

21 Q. You never talked about going to trial?

22 A. We never really discussed much about my case at all,
23 which was strange. Which one of the things that kind of
24 struck me was when, you know, we stepped up there
25 initially all it was to say, you know, there wasn't no

Woodrow Baker v State of S.C.
Woodrow Baker-Direct Examination by Mr. Davis
April 22, 2015

1 objections or nothing which I didn't like where they was
2 going back almost 30 years on me but the only thing that
3 he really knew to say was, you know, I have five kids and
4 lived here all my life.

5 And my mom was in the court room and -- asked about
6 said that we could get the toxicology report. But, there
7 wasn't really a whole lot to say because we really didn't
8 discuss it a whole lot. Nothing was really ever...

9 Q. Let me back you up for a second. I have been, while
10 you were testifying, I've been flipping through and I see
11 the toxicology report for you -- what do you mean about
12 the toxicology report?

13 A. That I was just curious -- the only thing I ever
14 really wanted to see was her toxicology report and that
15 was just something we never did receive.

16 Q. You mentioned a second ago though a bunch of paper
17 work, a bunch of medical papers. Did you review the
18 medical records pertaining to you with Mr. Schwacke?

19 A. No, sir.

20 Q. Did you review the medical records pertaining to the
21 driver of the other car with Mr. Schwacke?

22 A. Just briefly not really just looking and saying that
23 would be his main focus, like I say they just -- they
24 kept papers kept coming in like that from the Solicitor.

25 Q. Did you review or did Mr. Schwacke review with you

Woodrow Baker v State of S.C.
Woodrow Baker-Direct Examination by Mr. Davis
April 22, 2015

1 the police records, incident reports, witness statements,
2 those types of things?

3 A. No, sir not really.

4 Q. Did he ever give you a ---

5 A. --- not that I can ---

6 Q. --- I'm sorry?

7 A. Nothing I can really remember.

8 Q. Okay. Did you receive a copy of any or all of that
9 paperwork?

10 A. Yeah. I pretty much got a whole pile of the
11 paperwork.

12 Q. Do you recall whether Mr. Schwacke reviewed the
13 elements that the State would have to prove to convict
14 you for felony D-U-I?

15 A. Kind of like three things. I think he was saying,
16 like driving under suspension, if somebody was hurt in a
17 wreck, and driving under the influence.

18 Q. Okay.

19 A. Said it was something about a required three of five
20 or something -- something like that...

21 Q. What, if anything, did Mr. Schwacke convey to you
22 about his opinion of your chances of success after --

23 A. I just felt like he just didn't think it was any
24 chance at all. And, just I felt like he was just over
25 worked or over burdened with things and really wasn't

Woodrow Baker v State of S.C.
Woodrow Baker-Direct Examination by Mr. Davis
April 22, 2015

1 putting a whole lot into it. Just because he didn't -- I
2 don't think he felt like anything good was going to come
3 of it.

4 Q. Did you and your family hire Mr. Schwacke or was he
5 a public defender appointed to you?

6 A. He was an appointed public defender.

7 Q. Are you aware of any independent investigation of
8 this car wreck other than what law enforcement had done?

9 A. No, just in talking to you I didn't even know that I
10 had money was placed available for me to have any sort of
11 verification of things which I would have used had I
12 known that I had access to a private investigator I would
13 have had a few things -- couple of things looked into.

14 Q. So, let me go back and ask it a different way. Are
15 you aware of any investigation done on your behalf of
16 this accident?

17 A. Oh, no sir.

18 Q. Back at the time before the plea, were you aware of
19 whether you had access to a private investigator at that
20 time?

21 A. No, sir.

22 Q. You may have mentioned this in passing, but how long
23 after -- let me rephrase that, I'm sorry. Did you ever
24 bond out on this charge?

25 A. No, sir. It was set too high, I couldn't make it.

Woodrow Baker v State of S.C.
Woodrow Baker-Direct Examination by Mr. Davis
April 22, 2015

1 Q. Okay I have two final questions for Mr. Baker, I
2 believe two final questions. Can you tell the Judge what
3 things Mr. Schwacke did or told you that influenced your
4 decision to plead guilty; things he did or told you?

5 A. Well, pretty basically like I said when I spoke to
6 my mother, when I called home and she had said he had
7 called and said that I was probably going to be coming
8 home with probation.

9 Which, you know, when I talked to him he said he
10 hadn't really told her that and, you know, I mentioned it
11 too but he said, you know, things -- crazy things have
12 happened. And I said well I wanted to pick McDonald
13 because she seemed like she was being fair with everybody
14 going through there.

15 So, I'm thinking okay if that's the case then worst
16 case I was thinking five years, you know, so if I could
17 -- I just wanted to get it over with. So, you know, I
18 just wanted to get the thing done and behind me so I
19 could get on home and get back to my life.

20 And so that's why I said let's go ahead and plead
21 guilty because I've done sat in the county jail for
22 almost two years. So I knew I would get the time from
23 sitting in the jail, so I was thinking I was going home
24 and then when I got hit with 13 I just -- I didn't --
25 couldn't believe this was -- I didn't know what to say or

Woodrow Baker v State of S.C.
Woodrow Baker-Direct Examination by Mr. Davis
April 22, 2015

1 do because I didn't couldn't believe that it was all
2 happening.

3 Q. I'm going to alter that. Two more questions now,
4 your mother, is she with us in the courtroom today?

5 A. Yes, sir.

6 Q. At the time of the plea how old was she?

7 A. Three years, she just turned 90, so that was almost
8 four years ago I guess she was 86, 87.

9 Q. Does she have anyone to care for her?

10 A. No. She's at home alone. That's the only reason
11 I'm really doing this, I mean I'm okay where I'm at and I
12 can -- I've accepted things and, but if it wasn't for my
13 mother I wouldn't -- somebody needs to be there with her
14 and that's why I'm doing this whole thing.

15 Q. Now, returning back to the handling of your case.
16 What's -- can you tell the Judge at the time that you
17 decided to plea, what your impression was about Mr.
18 Schwacke's preparation or investigation of your case?

19 A. I didn't -- really nothing, I don't think. I think
20 all along he assumed I would just go ahead and plead and
21 let the cards fall and just be done with the way things
22 were.

23 But, I just know every time I talked to him -- it
24 was really no impression -- nothing to pick me up or give
25 me hope in any kind of way. And, I don't know why, just

Woodrow Baker v State of S.C.
Woodrow Baker-Direct Examination by Mr. Davis
April 22, 2015

1 seem like I just needed to go ahead and try to get this
2 thing over with so I can -- thinking I was going to be
3 getting back home.

4 Q. And if -- finally, just to clarify when you
5 mentioned earlier McDonald, you're talking about Judge
6 McDonald that you pled in front of ---

7 A. --- yes, sir ---

8 Q. --- is that correct? Okay.

9 MR. DAVIS: Your Honor, if I could have just a
10 moment.

11 [Whereupon, Mr. Davis reviews documents]

12 Q. [Mr. Davis] Thank you Mr. Baker, that's all the
13 questions I have. The Attorney General may have some
14 questions for you.

15 THE COURT: Yes, ma'am.

16 MS. NEYLE: Okay. May it please the court?
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Woodrow Baker v State of S.C.
Woodrow Baker-Cross-Examination by Ms. Neyle
April 22, 2015

1 CROSS-EXAMINATION

2 BY MS. NEYLE:

3 Q. Mr. Baker, whose decision was it to plead guilty?

4 A. Mine.

5 Q. Your decision, right. And, do you recall telling

6 Judge McDonald that you wanted to plead guilty that day?

7 A. Yes, ma'am.

8 Q. And do you recall telling her that no one had

9 promised or coerced you into pleading guilty?

10 A. Yeah I thought that was ...

11 Q. And do you recall Judge McDonald telling you what

12 the sentencing guidelines were for Felony D-U-I Resulting

13 in Great Bodily Injury?

14 A. Yes, ma'am.

15 Q. And what were they?

16 A. Zero to 15 and...

17 Q. And do you recall telling Judge McDonald you were

18 satisfied with your -- with Mr. Schwacke's representation

19 of you?

20 A. Yes, ma'am.

21 MS. NEYLE: We're done, Your Honor.

22 THE COURT: Thank you. Any redirect, Mr. Davis?

23 MR. DAVIS: No, Your Honor, thank you.

24 THE COURT: You may step down.

25 [Whereupon, the witness is excused and exits the

Woodrow Baker v State of S.C.
Woodrow Baker-Cross-Examination by Ms. Neyle
April 22, 2015

1 witness stand]

2 MR. DAVIS: Judge, we would call Mr. Schwacke.

3 THE COURT: Mr. Schwacke come forward to be sworn.

4 [Whereupon, Mr. Schwacke comes forward]

5 [Whereupon, the witness is duly sworn by the Clerk

6 of Court]

7 CLERK OF COURT: Go ahead and take a seat. State

8 your name into the microphone and spell your last name

9 for the record.

10 THE WITNESS: David Schwacke, S-C-H-W-A-C-K-E.

11 THE COURT: You may proceed.

12 MR. DAVIS: Thank you, Your Honor.

13

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Woodrow Baker v State of S.C.
David Schwacke-Direct Examination by Mr. Davis
April 22, 2015

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DAVID SCHWACKE,

Having been first duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DAVIS:

Q. Mr. Schwacke, do you have the date you were appointed on this case? Do you recall?

A. I may be able to figure that out. He was -- the first time he and I met he was in the Charleston County Detention Center. And he was there for about three times. I can tell you the first time I -- I think the first time I saw him was not until May 2012. The case was originally, I believe, assigned to Ms. Kennedy.

Q. And approximately how many times did you meet with him prior to the guilty plea?

A. I would know there was at least three times down in Charleston and probably six to seven more times when he was in Berkeley.

Q. He was incarcerated up until and through -- up until and through the guilty plea, is that correct?

A. Correct. He was -- my notes he was in the hospital from November 26, I guess, then he went into the Charleston County Detention Center November 29. Then he moved over to the Berkeley County Detention Center in July.

Woodrow Baker v State of S.C.
David Schwacke-Direct Examination by Mr. Davis
April 22, 2015

1 Q. The State made no offers and no negotiations on
2 trying to resolve this case, did they?

3 A. It was going to be a straight up plea at all times.

4 Q. Was it your advice to Mr. Baker that he enter a
5 guilty plea rather than going to trial on this charge?

6 A. I would have suggested that I thought that would be
7 the appropriate thing to do, that there appeared to be
8 overwhelming evidence that would not be good for us at
9 trial.

10 And then you had to take into consideration when
11 this is going to be docketed on the trial docket, who the
12 judges were going to be, and make some determinations
13 based on those things.

14 Q. On behalf of Mr. Baker and through the public
15 defender's office, you sought and obtained a funding
16 order for a private investigator for this case, did you
17 not?

18 A. I don't know that we got to the point of actually --
19 I think obtained the order, but never had executed the
20 order at that point. He had made the decision to plea.
21 If we were going to be preparing for a trial we would
22 have done some other things.

23 Q. So, just to be clear on the record, so no
24 investigator was hired, no independent investigation in
25 this accident was done, is that right?

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David Schwacke-Direct Examination by Mr. Davis
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1 A. Correct.

2 Q. Do you recall prior to and I believe even at the
3 guilty plea, Mr. Baker asking specifically about the
4 toxicology from the driver of the other vehicle?

5 A. He was always curious on that.

6 Q. Were you able to obtain that information?

7 A. If you go through her records, you can see at one
8 point -- you can see on one of the MUSC trauma reports
9 that there was what they call a Trauma A profile that was
10 done and that was to do a urinalysis B and P ethanol.
11 It's marked; it doesn't have a number.

12 With regard to her, the victim's kind of immediate
13 history prior to the accident, she had been at work and
14 we knew there was witnesses that were going to say that
15 she had just gotten off work and had just driven a
16 coworker home.

17 So, we did not get any type of alcohol number from
18 her, but there was an indication that something was
19 looked for but no indication that anything was found.

20 MR. DAVIS: Your Honor, if we could have just a
21 moment?

22 THE COURT: All right, thank you.

23 [Whereupon, Mr. Davis confers with his client]

24 Q. [Mr. Davis] I believe a final question, Mr.
25 Schwacke, as opposed to alcohol readings though did you

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David Schwacke-Direct Examination by Mr. Davis
April 22, 2015

1 either obtain or did you see in discovery any indication
2 of illicit drug use that would have affected the
3 faculties of the other -- driver?

4 A. No.

5 Q. I'll break it down. You didn't see anything in the
6 discovery received that would indicate that, right?

7 A. Correct. That panel was done. That's the only
8 thing that indicates that anything was tested for, again
9 she was just leaving a work shift.

10 Q. Thank you Mr. Schwacke, no other questions.

11 MR. DAVIS: Thank you, Your Honor.

12 THE COURT: Ms. Neyle, any questions?

13 MS. NEYLE: Yes, sir.

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Woodrow Baker v State of S.C.
David Schwacke-Cross-Examination by Ms. Neyle
April 22, 2015

1 CROSS-EXAMINATION

2 BY MS. NEYLE:

3 Q. Mr. Schwacke, you mentioned overwhelming evidence.
4 Would you briefly characterize the State's evidence
5 against Mr. Baker? Do you recall?

6 A. You had a massively high blood alcohol level that
7 was tested. You had videos that were taken from the bar
8 where he was prior to the accident.

9 There were statements from people, and those kind of
10 cut both ways because there was a dram shop civil action
11 that was taken, there were statements done in connection
12 with that that were trying to mitigate the alcohol
13 consumption -- or at least how the person appeared.

14 But there were also statements including from a bar
15 tender who had cut him off. There was a, I guess a
16 parking attendant or somebody outside monitoring the
17 parking lot that he had gotten into his vehicle, they
18 tried to stop him from leaving. He actually backed into
19 a totally independent vehicle in the parking lot before
20 tearing out of the parking lot.

21 You have people, witnesses following behind in
22 traffic that indicated he was the person at fault in
23 causing the accident -- the causation of the accident.
24 And, you even had -- you'd have statements from the
25 people at the emergency room considering his conduct and

Woodrow Baker v State of S.C.
David Schwacke-Cross-Examination by Ms. Neyle
April 22, 2015

1 him?

2 A. Obviously, we discussed what the elements of the
3 offense were and that that would be the requirement the
4 State would have to prove. From that discussion and the
5 discussion when we had the discovery that obviously, I
6 had a client I had to tell bad news to.

7 I never said, I never said that there would be a
8 probation this was just a probation case. I think that's
9 what he believed and wanted it to be, but we discussed
10 all aspects of the case. The evidence and it was just
11 never going to look good for him.

12 Q. Did he ever tell you he didn't understand something?

13 A. I guess -- I don't specifically remember that.
14 There's always questions a client asks you in the course
15 of a case that you assume they don't know the answer to.
16 That's why they're asking you, so you can answer it
17 but...

18 Q. And, did you make any promises as to what sentence
19 he would receive?

20 A. I can tell you I don't do that. I don't like to
21 suggest a number to anybody. I can say we might hope to
22 try to do this, but I never say what a judge is going to
23 give to a client because I don't know. And I clerked for
24 two of them before I ever went into actual practicing
25 law. So, I know better than to say you will get 12 or

Woodrow Baker v State of S.C.
David Schwacke-Cross-Examination by Ms. Neyle
April 22, 2015

1 you will get unless it's been negotiated.

2 Q. And my last question, how long have you been
3 practicing law Mr. Schwacke?

4 A. Since November of 1981.

5 Q. My last question, if Mr. Baker had asked for an
6 investigator, how would you have gone forward?

7 A. We would have done that whether he asked for it or
8 not if we had actually gone to the next step at a trial.
9 I mean, there are things you do to a point and you see
10 kind of what the client wants to do. I never tell him
11 they've got to plead, they decide.

12 If they want a trial we do a trial, if he wants to
13 plea we do a plea. I just try to inform them with as
14 much as they need to know about a particular judge that
15 they are making a decision about pleading in front of.
16 That's why, I think, the 12 came up.

17 Q. Thank you.

18 MS. NEYLE: No further questions, Your Honor.

19 THE COURT: Mr. Davis, do you have any redirect
20 sir?

21 MR. DAVIS: Your Honor, if I could have just a
22 moment? I don't believe so.

23 [Whereupon, Mr. Davis confers with his client]

24 MR. DAVIS: Thank you, Your Honor. No other
25 questions for Mr. Schwacke.

Woodrow Baker v State of S.C.
Certificate of the Court Reporter
April 22, 2015

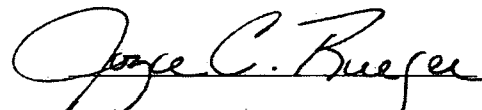
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Charleston County, South
Carolina on the 22nd day of April, 2015.

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

August 15, 2015



Joyce C. Rueger, EVR-M

Court Reporter

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY)	FOR THE NINTH JUDICIAL CIRCUIT
)	
Woodrow J. Baker,)	2013-CP-08-1995
S.C.D.C. No. 219004,)	
)	
Applicant,)	
)	
v.)	ORDER OF DISMISSAL
)	
State of South Carolina,)	
)	
Respondent.)	

HENRY P. BROWN
 CLERK OF COURT
 BERKELEY COUNTY, SC
 2015 MAY 19 AM 11:53
 FILED

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Woodrow J. Baker (Applicant) on September 5, 2013. The State (Respondent) filed its return on January 6, 2015. On April 22, 2015, this Court convened an evidentiary hearing at the Charleston County Courthouse. Applicant and his counsel, Rodney D. Davis, Esquire, were present at the hearing. Elizabeth H. Neyle, Esquire, of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified at the evidentiary hearing. Applicant’s plea counsel, David Schwacke (plea counsel), Esquire, also testified. This Court had before it a copy of the plea transcript, the Berkeley County Clerk of Court’s records regarding the subject conviction, Applicant’s records from the South Carolina Department of Corrections, and the pleadings in this case. This Court issues the following findings:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. In August 2012, the Berkeley County Grand Jury indicted Applicant for felony driving under the influence resulting in great



bodily injury (2012-GS-08-1311). On February 11, 2013, Applicant pled guilty as indicted. Plea counsel represented Applicant. The Honorable Stephanie P. McDonald sentenced Applicant to a term of imprisonment of thirteen years and a fine of \$5,100. Applicant did not appeal his guilty plea or sentence.

II. ALLEGATIONS

In this PCR action, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. "Counsel did not represent me to the fullest. Charge carried a fifteen years max. Counsel told me no more than twelve."

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety and heard testimony and arguments presented at the evidentiary hearing. This Court had the opportunity to observe each witness who testified at the hearing, assess their credibility, and weigh their testimony. This Court finds plea counsel's testimony credible and Applicant's testimony not credible. Set forth below are the relevant findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2014).

A. Summary of Testimony

Applicant testified he was arrested on December 19, 2011. He testified plea counsel was appointed to represent him, and he met with plea counsel about five or six times. Applicant testified he reviewed medical records, police records, and incident reports with plea counsel, and that plea counsel provided him with copies of those records. He testified he discussed the elements of his pending charge with plea counsel.



Applicant testified he thought he would receive probation if he pled guilty. Applicant testified his mother spoke to plea counsel and then told Applicant that plea counsel informed her that he thought Applicant would receive probation. He also testified he thought that in the "worst case," he would receive five years' imprisonment. Applicant testified plea counsel told him he would receive no more than twelve years' imprisonment. Applicant testified he could not believe that he received thirteen years' imprisonment. Applicant also testified he has five children, his mother is elderly, and his goal for this PCR application is to leave prison and take care of his mother.

Applicant testified it was his decision to plead guilty. He recalled telling the plea court that he wished to plead guilty and that no one had promised or coerced him into pleading guilty. He remembered telling the plea court that he was satisfied with his plea counsel's representation. He also testified he recalled the plea court advising him of the sentencing guidelines for the charge to which he was pleading guilty.

Plea counsel testified he has been a practicing attorney since 1981. He testified he met with Applicant multiple times, both in Charleston and Berkeley Counties. Plea counsel testified the State did not extend any plea offers to Applicant. He testified he suggested Applicant enter a guilty plea, due to the State's "overwhelming evidence" against Applicant, which included videos and eyewitness statements from bar patrons observing a highly intoxicated Applicant leaving a bar in his vehicle shortly before he struck the victim head-on in her vehicle. Plea counsel also noted Applicant's medical records after the crash reported a "massively high" blood alcohol concentration (BAC). He testified he provided Applicant with copies of all discovery materials.

A handwritten signature in black ink, appearing to be the initials 'WJ' followed by a stylized flourish.

Plea counsel testified he discussed with Applicant the elements of the offense with which he was charged and the sentencing guidelines for the charge. Plea counsel testified he never told Applicant that he could get probation if he pled guilty. He also testified that as a general practice he makes no promises on a possible sentence and never tells a defendant what a judge will do concerning sentencing.

B. Ineffective Assistance of Counsel

This Court finds Applicant's claim of ineffective assistance of counsel, that plea counsel told him he would receive "no more than twelve" years' imprisonment, is not credible and warrants dismissal. In a PCR action, the applicant bears the burden of establishing he is entitled to relief. *Lomax v. State*, 379 S.C. 93, 100, 665 S.E.2d 164, 168 (2008). To prove counsel ineffective when challenging a guilty plea, an applicant must show that counsel's performance was deficient and that, but for counsel's errors, there is a reasonable probability a guilty plea would not have been entered. *James v. State*, 377 S.C. 81, 83-84, 659 S.E.2d 148, 149 (2008). A defendant who pleads guilty upon the advice of counsel may attack the voluntary and intelligent character of the guilty plea only by showing the advice he received from counsel was not within the range of competence demanded of attorneys in criminal cases. *Bennett v. State*, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006). However, courts strongly presume plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing *Strickland v. Washington*, 466 U.S. 668, 690 (1984)).

Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007).

A handwritten signature in black ink, consisting of a series of loops and strokes, located in the bottom right corner of the page.

Admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” *Id.* at 137-38, 654 S.E.2d at 874. In determining guilty plea issues, it is proper to consider the guilty plea transcript and evidence at the PCR hearing. *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007).

This Court finds Applicant failed to meet his burden to show plea counsel’s performance rendered his guilty plea involuntary. Applicant’s allegation that plea counsel advised him about a possible twelve year or less sentence is without merit. Regarding this allegation, this Court finds plea counsel’s testimony credible and gives its great weight, and finds Applicant’s testimony not credible. This Court finds credible plea counsel’s testimony that he made no promises regarding what sentence Applicant might receive by pleading guilty. Plea counsel conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation with Applicant. He also advised Applicant of the possible sentencing range for his charge.

Furthermore, the plea colloquy shows the sentencing judge informed Applicant of the range of possible sentences. *See Holden v. State*, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011) (stating that “even where counsel offers misinformation, this deficiency can be cured where the trial court properly informs the defendant about the sentencing range”); *Griffin v. State*, 361 S.C. 173, 177, 604 S.E.2d 394, 396 (2004). The plea court informed Applicant that his charge carried a minimum sentence of thirty days and a maximum sentence of fifteen years. (Trial Tr. p. 5, lines 1-4). Having an understanding of the potential sentence he was facing, Applicant chose to plead guilty as indicted. (Trial Tr. p. 5, lines 7-9). Applicant acknowledged he was neither



promised nor coerced into pleading guilty. (Trial Tr. p. 20, lines 20-22). Applicant's testimony that he hoped he would receive a lighter sentence does not render his plea involuntary. See *Wolfe v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997) ('Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made.'). This Court finds no probative evidence showing Applicant's plea counsel's performance was deficient, prejudiced Applicant, or rendered his plea involuntary.

C. All Other Allegations

As to any and all other allegations raised in the application or at the hearing in this matter and not specifically addressed in this order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds Applicant has abandoned any remaining allegations.

IV. CONCLUSION

Based on the foregoing, this Court concludes Applicant has not established any constitutional violations or deprivations requiring this Court to grant his application. Therefore, this Court denies and dismisses Applicant's PCR application with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to the assistance of appellate counsel if he seeks review of the denial of this order denying PCR. If Applicant wishes to seek appellate review, counsel must serve and file a

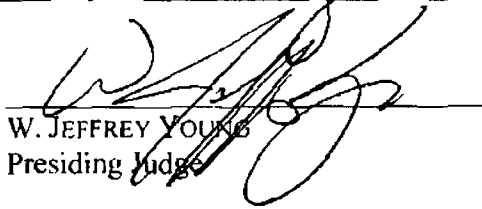


notice of appeal on Applicant's behalf. Rule 71.1(g), SCRCP. Applicant is directed to South Carolina Appellate Court Rule 243 for appellate procedures.

IT IS THEREFORE ORDERED THAT:

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 6th day of May, 2015.


 W. JEFFREY YOUNG
 Presiding Judge

Sumter, South Carolina

KNR2012-04-00560

WITNESSES

SC Highway Patrol

[Signature]

AGENCY CASE NUMBER

11HP6A0123

ARREST WARRANT NUMBER

M334638

DATE OF ARREST

April 19, 2012

ACTION OF GRAND JURY

True Bill

[Signature]

Foreperson of Grand Jury

Date: 25 August 2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS0801311

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

August Term

THE STATE

vs.

WOODROW JORAH BAKER JR

DOB:

W/M

Indictment for

Felony Driving Under The Influence
Great Bodily Injury

§56-05-2945(A)(1)

CDR: 0406

FILED

12 AUG 29 PM 2:16

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

