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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Florence County
D. Craig Brown, Circuit Court Judge

KESHA GRANT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001395

APPENDIX

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I . N D E X

(WHEREUPON, there were no witnesses called.)

1 THE COURT: Solicitor, you recognize.

2 MR. CLEMENTS: Thank you, Your Honor. If it
3 please the Court, Your Honor, we would call the case of
4 the State of South Carolina vs. Keshia Grant and that it's
5 indictment number 2012-GS-21-886. And this is a plea,
6 Your Honor, without negotiations or recommendations to the
7 charge as indicted, which is homicide by child abuse.

8 THE COURT: Mr. Floyd, how you doing?

9 MR. FLOYD: Fine, Your Honor.

10 THE COURT: You represent, Miss Grant?

11 THE DEFENDANT: I do, Your Honor.

12 THE COURT: You explain to her the offense of
13 murder or homicide by child abuse, the elements of the
14 offense, potential defenses and her Constitutional Rights?

15 MR. FLOYD: Yes, Your Honor.

16 THE COURT: How does she wish to plead?

17 MR. FLOYD: Guilty, Your Honor.

18 THE COURT: You agree with her decision to do
19 so?

20 MR. FLOYD: I do.

21 THE COURT: Do you feel if called upon to do so
22 the State could prove her guilty beyond a reasonable
23 doubt?

24 MR. FLOYD: I do, Your Honor.

25 THE COURT: Have you explain to her the

1 collateral consequence of this plea in that it's violent
2 and adversely affects her custody status and that it's a
3 most serious offense subject to the two-to-three-strike
4 rule?

5 MR. FLOYD: Yes, Your Honor.

6 THE COURT: Does she also understand that this
7 is a non-parolable offense, which means for all practical
8 purposes she will serve whatever I sentence her to day for
9 day?

10 MR. FLOYD: Yes, Your Honor.

11 THE COURT: Subject to the 85 percent rule, but
12 for all practical purposes day for day. She understands
13 that?

14 MR. FLOYD: Yes, Your Honor.

15 THE COURT: All right. Let's place Miss Grant
16 under oath if we could.

17 THE CLERK: Please raise your right hand. Do
18 you swear to tell the truth, the whole truth, and nothing
19 but the truth so help you God?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Miss Grant, are you under the
22 influence of any drugs or alcohol here today?

23 THE DEFENDANT: No, sir.

24 THE COURT: You experiencing any kind of
25 physical or mental problem that could prevent you from

1 understanding what's going on here today?

2 THE DEFENDANT: No, sir.

3 THE COURT: I want you to pay very close
4 attention as Mr. Clements summarize the facts that bring
5 us here today, pay very close attention because I'm going
6 to ask you about those facts.

7 MR. CLEMENTS: If it please the Court, Your
8 Honor, to my knowledge Miss Grant has no prior criminal
9 history. Your Honor, this happened on or about the 25th
10 of January 2011, on [REDACTED] Florence, which is
11 in Florence County. Your Honor, this happened when a
12 three-year-eleven-month-old child Minor [REDACTED] was
13 brought to the hospital here in Florence McLeod
14 unresponsive. Your Honor, originally the city police was
15 called in because the addresses that were given were not
16 the correct addresses and they thought it was a city case.
17 The city began to investigate, found out it was in the
18 county and called Florence County Sheriff's Office in to
19 investigate the case.

20 Your Honor, along with Miss Grant charged is
21 Geraldine Brockington, which is Miss Grant's mother who
22 actually had custody and care of the child at the time
23 because of a relative placement that was done by DSS. Your
24 Honor, the mother of the child who was related to Kesha
25 Grant was not able to take care of the child, was not

1 taking care of the child at the time properly, but the
2 child was brought to the E.R. unresponsive, had terrible
3 burns, scald burns, Your Honor. And I have -- pass up
4 for the Court's information, Your Honor, pictures. But
5 they were terrible scald burns to the child's body most of
6 them around the vaginal and buttocks area. Your Honor, I
7 have a copy of the autopsy to pass up. The manner of
8 death was found by MUSC to be homicide. And the cause of
9 death was the toxic effects of promethazine, codeine and
10 morphine along with a full thickness scald burns of the
11 pelvic, groin and buttock regions. So there was sepsis
12 from the burns and there were toxic effects from pain
13 medication that belong to Geraldine Brockington, the
14 victim's grandmother, that was administered we believe by
15 the family too.

16 **Minor** after she was burned. And according to
17 her siblings pans of water were put into the microwave
18 were heated up for a period of time with scalding hot
19 water and were poured into the baby's diaper, into
20 **Minor** diaper. **Minor** was
21 three-years-eleven-months old. She was develop-mentally
22 delayed and she suffered from cerebral palsy, but she was
23 a well-loved student at Florence School District One. And
24 she was at Carver Elementary School in the kindergarten
25 program there. But when the pathologist examined found

1 both recent burns and some that were a little older as
2 well and other injuries. Your Honor, although they are
3 statutorily victims, Mr. Joseph D. Dickey, Jr., an
4 attorney for the school district, is here with some
5 represents from **Minor** school.

6 Also, Your Honor, we have Ms. Sandra Sturkie
7 regional director at DSS is here and may wish to address
8 the Court because they stand in the place of the victims.
9 The other children -- **Minor** siblings have been
10 adopted and I have a letter here DSS ask me to pass up and
11 that the siblings were victims of this trauma in this
12 situation as well and they are attending counseling. They
13 been adopted. They continuing to attend counseling. The
14 brother even testified at a family court hearing, Your
15 Honor, and would have been one of our witnesses if we had
16 to go to trial on this case. But they have a letter from
17 the counselor that they wish for me to pass up to the
18 Court and I have showed that letter to defense attorney
19 Mr. Floyd.

20 Your Honor, I have representatives from Florence
21 County Sheriff's Office Investigator Jennifer Floyd, who
22 was the chief investigator in this case. She wishes to
23 add to the details of the facts or correct anything if I
24 misstated anything. Also, Your Honor, I think Ms. Sturkie
25 with DSS may wish to address the Court.

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THE COURT: I will hear from anybody that can shed light on the facts of this case. I'm going to hear from anybody concerning sentencing at the conclusion as soon as I finish discussing this matter with Miss Grant.

MR. CLEMENTS: Thank you, Your Honor. I defer this time to Investigator Floyd.

THE COURT: Ms. Floyd, how you doing?

INVESTIGATOR FLOYD: Great, thank you. Investigator Jennifer Floyd with the Florence County Sheriff's Office. On January 25th 2011, many peoples' lives were changed forever, most of them are in this courtroom today including the defendant, family members, teachers and staff at Carver and myself. But, Your Honor, there's only one person that doesn't have the opportunity to be in here today and that is a beautiful little girl name **Minor**

See on January 25th 2011, **Minor** lost her fight for child abuse that she had endured for some time. She went on to a better place. No matter what you hear today, there is no excuse. All you have to do is look at a ten page forensic autopsy report and then look at the crime scene photos. These documents describe the horrific acts she had to endure, words like full thickness burns tend to have inches in length with a seven inch span, old and new contusions, abrasions, hemorrhages. All these

1 words are not associated with an accident. These are
2 intentional all because [Minor] was a inconvenience.

3 In those photos, you will also see on the floor
4 of the home pee pads like the things people use for
5 animals in their home to go to the bathroom on. Well,
6 these were not used for the animals in this case, they
7 were used for [Minor] This is what she had to sleep on
8 because she was not allowed to sleep in beds like the
9 others because of her problem with not being potty-trained
10 yet. Also after receiving toxicology reports of [Minor]
11 we went back through the photos and were able to enlarge
12 the pills bottles in the home and we found the name of
13 Rosa Lee Brockington, which is the grandmother of the
14 defendant. And based on the prescription records, she was
15 prescribed numerous pain medications due to her medical
16 history.

17 There were numerous statements from the
18 defendant and one she claims all she could remember is
19 [Minor] hollering, crying. And instead taking her to the
20 hospital, she was worried about herself and going to jail
21 not the life of the victim. The defendant claim she
22 treated the burns with antibiotic ointment and cocoa
23 butter and she did all she could do. The defendant told
24 me that [Minor] would cry out and told her she was in
25 pain. Also in her statement, she told us that her son,

1 Macale, saw what happened. And at this point, she was
2 putting the blame on another child that was visiting the
3 home she said, but Macale did see what happened as he
4 began to tell people after being placed in another home.
5 In the forensic interview, the defendant's son tells that
6 he saw his momma pour hot water in the front and the back
7 of [Minor] And he said [Minor] was trying to cover
8 herself and this is when the water splashed and burned her
9 hands. Macale also said while his momma was doing this
10 that his grandma said stop Kesha and her response was I'm
11 trying to show her how to be potty trained.

12 Your Honor, as we stand here today, I would like
13 to show the defendant how we teach people and ask you to
14 sentence her to the maximum sentence where she can sit for
15 days and years rethinking and living out the memories of
16 that poor child crying out in pain for help while she just
17 sat there and watched her die. I don't get to have happy
18 memories of all the beautiful pictures and the cute videos
19 of [Minor] When I hear [Minor] name, the only memory
20 that comes to mind is the horrific crime scenes that are
21 in front you and I ask you to please change my memories
22 today with justice being served for [Minor]

23 THE COURT: All right. Miss Grant, you've heard
24 the facts that been related to the Court are those facts
25 true?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Are you indeed guilty of murder
3 homicide by child abuse?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You standing before me pleading
6 guilty, but you don't have to plead guilty to anything.
7 You could exercise your right to a jury trial. In that
8 process, the jury would determine whether or not the State
9 could actually prove you guilty beyond a reasonable doubt.
10 I would charge the jury as a matter of law that you're
11 presumed to be innocent. No one could require that you
12 take the witness stand. However, if you wanted to you
13 could, you could subpoena witnesses on your own behalf.
14 In addition to that, you and your lawyer could
15 cross-examine the State's witnesses. You have an
16 opportunity to eyeball them and confront them as they
17 testified against you. Do you realize by pleading guilty
18 you giving up all these rights?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You still wish to plead guilty?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Are you indeed guilty?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Mr. Solicitor, I understand there is
25 no plea negotiations or recommendations?

1 MR. FLOYD: No, Your Honor, just whatever you
2 decide the facts warrant in this case?

3 THE COURT: Is that your understanding,
4 Mr. Floyd?

5 MR. FLOYD: That's correct, Your Honor.

6 THE COURT: Is that your understanding,
7 Ms. Grant?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Miss Grant, are you satisfied with
10 your lawyer?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Have you understand all your
13 conversations with him?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You need any additional time to
16 confer with him?

17 THE DEFENDANT: No, sir.

18 THE COURT: You understood all of his
19 discussions with you concerning your Constitutional
20 Rights, the elements of these offenses and potential
21 defenses?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. Any complaints
24 whatsoever?

25 THE DEFENDANT: None.

1 THE COURT: All right. Has anyone promised you
2 anything, threatened you, pressured you, mistreated you in
3 any way shape or form in an effort to get you to plead
4 guilty here today?

5 THE DEFENDANT: No, sir.

6 THE COURT: It's been your decision to plead
7 guilty?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Are you indeed guilty?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Have you understood all my
12 questions?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have your answers been truthful?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You understand that you have ten
17 days to appeal any decision I might render here today?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Based upon your testimony, I find
20 there's a substantial factual basis for your plea, that
21 your decision was freely and voluntarily entered into
22 knowingly and intelligently with consent of competent
23 counsel with whom you say you're satisfied. I'll accept
24 your plea. And I'll be glad to hear from anybody who
25 would like to speak with regard to sentencing on behalf of

1 the State. One of the factual matters that was not made
2 very clear to me is what was the period of time between
3 the burn itself and the time that the child went to the
4 hospital.

5 MR. CLEMENTS: Five to seven days is what has
6 been told to me by the medical people, Your Honor. And it
7 was a mixture of the injuries from the burns and also
8 toxicity from pain medication that was adult pain
9 medication that evidently may have been given to **Minor**

10 Your Honor, also just telling us this because it
11 may enter giving you better sight of the big picture
12 Geraldine Brockington, Miss Grant's mother, is also
13 charged and we anticipate, Your Honor, resolving that case
14 sometime this week too. The reason it's not resolved
15 today is her attorney is out of town, but Ms. Brockington
16 had the custody of the child, but they all lived together.

17 THE COURT: Very good. All right, be glad to
18 hear anything with regard to sentencing. Do you have
19 anything else you would like to offer?

20 MR. CLEMENTS: Your Honor, if Ms. Sturkie wants
21 to speak for DSS, they were standing in loco parentis for
22 the child at that time.

23 THE COURT: Very good.

24 Yes, ma'am, your full name.

25 SANDRA STURKIE: Sandra Sturkie.

1 THE COURT: All right, Ms. Sturkie, be glad to
2 hear anything that you have to say.

3 SANDRA STURKIE: Well, Your Honor, you heard
4 from the Investigator the facts of the case. What is very
5 troubling is that as the agency attempts to take children
6 from abusive situations, our first choice is to always put
7 them with family because that's where we assume that they
8 will be the most safe, the most nurtured and most cared
9 for. And that was the option that we utilized in this
10 case as oppose to putting this child in foster care. We
11 learned that that was the wrong decision because we have a
12 child that is now dead.

13 I look at what's on that wall to do justly, to
14 love mercy and to walk humbly with God. I would ask that
15 this court leave the mercy that she receives between she
16 and God. And that what we do today is establish justice
17 because not only do we have a child that was tortured.
18 She was tortured and allowed to suffer for at least a week
19 for that one incident. We have a child, her own child who
20 at the age of six was forced to participate and he is
21 still dealing with the repercussions of that. He tells us
22 how he had at her instruction to go to the microwave and
23 heat the water until it bubbled because he didn't
24 understand the word boil. Not only watch, but have burns
25 on his own hands from having to be apart of that and grow

1 up trying to figure out is he apart of the reason that his
2 cousin died. There is not a sentence under the current
3 statute that I feel is appropriate. So given what we do
4 have available to us, I am asking that justice in this
5 case be the maximum sentence. We believe she should sit
6 jail for the rest of her life because **Minor** doesn't get
7 another chance. And hopefully her two children with a lot
8 of therapy and lot of love are going to get another
9 chance, but they got a long way to go, Your Honor, a long
10 way to go. I think you received the letter from the
11 therapist who's working with them to show that. I think
12 that is the closest thing to justice that we will get.
13 And we ask that you please consider that in your ruling.

14 THE COURT: Thank you.

15 Solicitor, anything further?

16 MR. CLEMENTS: Your Honor, I don't know if you
17 wish to hear from any representative of the school or not.

18 THE COURT: I be happy to hear anybody who would
19 like to speak.

20 MR. CLEMENTS: Several people are present here
21 from the school, Your Honor. I ask if they do address the
22 Court, if they stand and state their full name for the
23 record.

24 JOSEPH DICKEY: May it please the Court, your
25 Honor.

1 THE COURT: Yes, sir.

2 JOSEPH DICKEY: My name is Joseph D. Dickey, Jr.
3 I'm an attorney for Florence County School District One.
4 At this time, I like to introduce Ms. Megan Johnson. She
5 was **Minor** teacher while she was at Carver
6 Elementary. And during that time, Ms. Johnson grew to
7 know and love **Minor** At this time, she like to share
8 some comments about her.

9 THE COURT: Very good.

10 Yes, ma'am, your full name for the record.

11 MEGAN JOHNSON: My name is Megan Johnson.

12 THE COURT: All right, Ms. Johnson, be glad to
13 hear from you.

14 MEGAN JOHNSON: Your Honor, I would like to take
15 this opportunity to share with you and everyone here today
16 about **Minor** and the special place she holds at Carver
17 Elementary School. We sit here today and we're focused on
18 her tragic death, but I hope in these few moments we can
19 focus on her life. That we can remember who she was and
20 recognize the impact she had on so many who cared for her.
21 **Minor** was a child who you immediately loved.

22 As I watch that beautiful little girl get off
23 the bus on her first day, I instantly knew how special she
24 was. She was so excited to be at school and she was so
25 eager to learn and participate. The joy that she felt at

1 school was evident in her big brown eyes and her sweet
2 smile. In the classroom, Minor listened intently to
3 stories always wanted to give the right answer. She loved
4 to dance and sing. And I could always count on her to
5 participate during music time. She also enjoyed art
6 especially painting and she was always proud of her
7 creations. Minor loved to play with her classmates and
8 her friendly interactions with other students and staff
9 earned her many friends outside of the preschool program.
10 She was truly a child who was loved by everyone.

11 My favorite memory of Minor happened on a
12 field trip almost two years ago. We went trick or
13 treating at the Civic Center. When we finished trick or
14 treating, we sat on the floor near the stage for music and
15 puppet show. As we were getting the kids settled, we
16 looked up to see Minor in the front of the room
17 clapping her hands and dancing. In the midst of hundreds
18 of children there, Minor was the star. We had a
19 special nickname for Minor we affectionately called
20 her Little Bit because at 35 inches tall and 26 pounds,
21 she was much smaller than the other children. As I look
22 back and I reflect on her life and her passion for school,
23 I think her nickname was not only appropriate because of
24 her size, but because no matter the circumstances Minor
25 made each day a little bit brighter.

1 The memory of this sweet child is honored each
2 day at Carver. Walking through the parking lot, you see
3 many cars displaying her memorial sticker, which is a T
4 wrapped in a blue child abuse ribbon. Those same stickers
5 are on every preschool classroom and therapy room door.
6 On Friday's, you see staff members wearing memorial
7 T-shirts. There's also a bench in the preschool
8 playground area dedicated to **Minor** All of these
9 things are evidence of the great impact **Minor** made on
10 our school in the very short time she was with us.
11 **Minor** life was taken from her and those who loved her
12 far too soon. Although, she will remain in our hearts
13 forever, the greatest impact this tragedy can have is to
14 prevent anything similar from happening to another
15 innocent child. Therefore, we are respectfully asking the
16 Court to send the message that our children are important
17 by imposing the strongest punishment possible.

18 JOSEPH DICKEY: Thank you, Judge.

19 THE COURT: Mr. Clements.

20 MR. CLEMENTS: That's all, Your Honor. All
21 right.

22 Mr. Floyd, you recognize.

23 MR. FLOYD: Thank you, Your Honor. May it
24 please the Court, Your Honor.

25 THE COURT: Yes, sir.

1 MR. FLOYD: Your Honor, I began representing
2 Kesha back in January of, I believe, of last year 2011.
3 She was actually arrested on 26th of January, I believe.
4 She's been in the detention center as of today will be 622
5 days. If I done my math correctly and I done it a couple
6 times, Your Honor, so I believe that's correct. Your
7 Honor, I've had, you know, almost two years now to deal
8 with this case. I spent a lot of time down at the
9 detention center with Kesha. The Solicitor's been kind
10 enough to have her brought up here just so she could meet
11 with me when we had court going on and he's done that for
12 me a number of times. As we got in some situations, where
13 we just had court going on so often I was unable to get
14 down there and speak to her directly, so he was kind
15 enough to accommodate me in that regard. So I've spent a
16 lot of hours talking with Kesha about the facts of this
17 case and the law as it applies to this case.

18 Your Honor, Kesha's 24 now. She lived here in
19 Florence basically her whole life. She lived in the
20 household with her mother, Geraldine Brockington, who is
21 her co-defendant. She's lived with Ms. Brockington
22 basically her entire life. She's never lived out of her
23 mother's household. She went to South Florence High
24 School until she was, I guess, about the ninth grade. She
25 became pregnant with her oldest child when she was 15 and

1 basically dropped out of high school at that point, never
2 obtained her GED or anything like that afterwards. And
3 then her second child was born I believe when she was
4 either 19 or 20. But through all that, she and her
5 children have lived in the household with Ms. Brockington,
6 her mother. And not that it's a -- that big of a
7 discrepancy, but the children referenced in that letter
8 are not the siblings of the deceased child. They are
9 relatives, but the child was not Kesha's child. The two
10 children are referenced in that letter are her children.

11 Your Honor, she tells me that her work history
12 was kind of spotty until this happened. She had work some
13 at a nursing home, Heritage Nursing Home, Burger King.
14 Live there with her mother help, care for her children and
15 also the victim in this case, who I believe came to live
16 with them when she was very young. I'm not sure exactly
17 her age, but I think it was before first birthday when she
18 actually came and live in their household.

19 Your Honor, she tells me obviously having lived
20 in the house for several years with the child, I mean, she
21 considered her, you know, as one of her own. She
22 certainly has a lot of remorse about what happened here.
23 There's many things that happened here. You know, we had
24 burns. We had administration of medication. We had
25 failure to go seek medical treatment. We had all these

1 sort of things. I'm not sure exactly if she administered
2 any medication or not. The medication that was
3 administered actually belong to Kesha's mother, the
4 co-defendant.

5 Certainly, Your Honor, she bares responsibility.
6 She was in a position where she could have taken the child
7 to seek medical treatment once the burns were sustained.
8 It was no question about that and I think the record bears
9 that out. And she's accepting responsibility certainly
10 for her actions and the law as it applies to this case.
11 She's entering a plea of guilty. She feels that's the
12 right thing to go.

13 Your Honor, we have talked about the fact that
14 what she's pleading to here is a no parol offense, so she
15 knows that whatever sentence she gets that for all
16 practical purposes she's going to serve every day of it.
17 She knows that, she understands that. She and I been over
18 that a number of times. She's very well aware of what the
19 sentencing range is. She knows she could receive a life
20 sentence. She knows what the minimum is, but she also
21 knows what the maximum is. But knowing all that, she
22 decided to come here today and enter a plea. Certainly
23 feels a lot of remorse. One of the reasons for her plea,
24 Your Honor, is she does feel remorse about what happened.
25 She feels responsibility for what happened.

1 Prior to this, Your Honor, she was never in any
2 trouble. She doesn't have any criminal history whatsoever
3 that I'm aware of. I don't see any reference to any
4 magistrate's court convictions for anything up until this
5 point. Your Honor, certainly there's been references to
6 prior abuse, but Miss Grant certainly was never charged
7 with any of these prior to this. There was never any
8 family court proceedings for any of these prior to this.
9 As far as I know, she denies any knowledge of any abuse
10 prior to this. And not only ---

11 THE COURT: Let me ask you this, Mr. Floyd, if
12 you know what was the reason why she was taken from her
13 natural parents and place with Kesha Grant?

14 MR. FLOYD: Your Honor, it is my understanding
15 and I'm not sure if this is accurate, but I believe that
16 the child was taken from her mother because the mother was
17 a drug abuser and I believe that's the case.

18 MR. CLEMENTS: That's my understanding as well.
19 Ms. Sturkie can probably tell us exactly, Your Honor, what
20 the reason was.

21 THE COURT: Let's ask her what the reason was.

22 Ms. Sturkie, do you know the reason why she was
23 removed from her home of her natural parents?

24 SANDRA STURKIE: Without looking at the record,
25 Your Honor, my recollection is that the mother did have

1 drug problems and was unable to provide a safe environment
2 for Minor to live in.

3 THE COURT: All right, very good.

4 Thank you, Mr. Floyd. I didn't mean to
5 interrupt you, the thought crossed my mind wanted to know
6 that information.

7 MR. FLOYD: Not a problem, Your Honor. I don't
8 have the documentation here in front of me, but I thought
9 that was the case that was basically due to her drug
10 abuse. And I think it might have even been going on while
11 she was pregnant with the child and didn't stop, so that's
12 why the child was placed in the home with Miss Grant here
13 and her mother. And, Your Honor, she does have two
14 other -- Kesha has two children of her own as I referenced
15 earlier. Once again, as far as I know, there were never
16 any family court actions or anything of that nature
17 brought against her alleging any abuse towards those
18 children prior to this. Her record up until now just
19 seems clean.

20 Your Honor, I believe a lot of this frankly was
21 due to ignorance, not maliciousness. I mean, I think had
22 the injuries been handled better at the outset, we
23 wouldn't be standing here dealing with a homicide by child
24 abuse case. We might be dealing with abuse and negligent
25 case, but certainly not a case of this magnitude. And I

1 believe -- truly believe a lot of it was due just to
2 ignorance and just acting stupidly.

3 Your Honor, Kesha in my dealings with her is not
4 a malicious mean person. She's always been very polite,
5 very outgoing. She's always expressed a lot of remorse.
6 Obviously, she has a lot of emotion about this. She's not
7 a monster. She's not a person with no conscious. She
8 does have a conscious and she's displayed to me on a
9 number of occasions.

10 Your Honor, certainly we have an innocent child
11 here who's now deceased and we can't bring her back and
12 that's always a terrible tragic situation. And if Kesha
13 could reverse this, she would, but she can't, she's going
14 to have to live with it. Not just a prison sentence, but
15 she's going to live with the fact that her actions
16 contributed to this child's death. And I believe that's
17 going to be a heavy burden for her as well, Your Honor.

18 Certainly, Your Honor, you have a tough job in a
19 case like this. You have to decide appropriate
20 punishment. Obviously, part of the reason that we're
21 here is to punish the defendant and certainly a 20-year
22 sentence is a lot of punishment. This is not something
23 where she's going to get out ten years from now. It's
24 not going to happen, if she were to get 20. She knows
25 that 20 years is a real 20 years or a real 30 years is a

1 real 30 years whatever the case may be. Your Honor, we
2 would certainly ask that you to consider the minimum
3 sentence. But if not, just be as merciful as possible,
4 Your Honor, given the facts and circumstances of this
5 case. Your Honor, Miss Grant would like to speak to you.

6 THE COURT: Miss Grant, be glad to hear from
7 you.

8 THE DEFENDANT: Judge Nettles, how you doing
9 first of all. I want to say I apologize for wasting your
10 time for even being here cause all this could had been
11 avoided had I took her to the hospital. And the reason I
12 didn't take her was because I was scared. I'm a grown
13 woman and part of being grown is taking responsibility. I
14 take full responsibility, but I'm asking you, I'm asking
15 you to forgive me as well. It don't take life for me to
16 learn -- it doesn't take life for me to learn my lesson,
17 that's what I'm trying to say, so please be merciful to
18 me, please.

19 THE COURT: Anything further?

20 MR. FLOYD: I don't have anything further, Your
21 Honor.

22 MR. CLEMENTS: Your Honor, one thing I think I
23 believe when I stated it Mr. Floyd will agree with me,
24 that the drugs that were talked about that were given
25 painkillers weren't the co-defendant's drugs, Miss Grant's

1 mother, it was Miss Grant's grandmother's drugs, the
2 co-defendant's mother, just want to be sure we had all
3 those facts straight.

4 THE COURT: Anything further you like to say,
5 Mr. Floyd?

6 MR. FLOYD: Nothing further, Your Honor.

7 THE COURT: All right. I'm going to take about
8 a five minute recess if we could. We be back momentarily.
9 We stand at ease for five minutes.

10 (WHEREUPON, a short break was taken.)

11 THE COURT: Okay. All right. Before we get
12 started, this is obviously a very difficult case and we're
13 not going to have any disruptions from either side. If
14 there's anyone who speaks out, shows any kind of emotional
15 reaction whatsoever, the deputies been given instructions
16 to go ahead and take you into custody. I don't want any
17 of that to happen, so there will be no response to the
18 sentence here today.

19 Of the things that I'm called upon to do as a
20 circuit judge, this is certainly the most difficult. It's
21 a very difficult situation we find ourselves in and it
22 almost requires that you sit down and look at the very
23 purpose of criminal sentencing. The first element which
24 is one of the one basic truths of criminal sentence is to
25 deter the defendant from doing this type of activity in

1 the future.

2 This particular defendant, Miss Grant, spent 622
3 days in the detention center already. And to be quite
4 honest with you, when you think about it, probably if she
5 were to be turned loose today, I doubt she would find
6 herself in this position again. I think that her remorse
7 is indeed real. Another consideration that I'm compelled
8 to look at is the public deterrence to the public at
9 large. I mean, how does our criminal judicial system
10 handle homicide by child abuse, it's a real consideration
11 that I have to take -- have to consider in rendering the
12 appropriate sentence.

13 The other thing is separating this defendant
14 from the public at large. Would Miss Grant be a danger to
15 society, probably not. She has no criminal record. But
16 one of the things that is a very hallmark of criminal
17 penalties is retribution. And we all know that we have
18 here today the untimely death of a helpless three-year-old
19 child. And retribution is something that you -- that we
20 got to face. I mean, sometimes there's got to be a pound
21 of flesh for the crime that's being committed. Another
22 thing that kind of trouble me most as I'm looking at these
23 pictures is the burns. They were obviously terribly put
24 this young child in excruciating pain. My daughter
25 trained as a nurse at the MSG down in Augusta, Georgia,

1 which has a renowned burn unit. As my daughter was
2 dealing with some of those burn victims almost universally
3 they would always say that if they had a choice between
4 dying or dealing with the pain of a burn, they would
5 rather die. So I can't imagine what it been like for this
6 child to suffer for seven days with no medical treatment.
7 It's just horrendous. But it doesn't make it easier, but
8 those are things that I'm called upon to sort of evaluate
9 when I'm rendering a sentence. I take all these facts and
10 circumstances into consideration. It's a horrendous
11 crime. I've taken that into consideration of all the
12 facts that have been brought before me here today, taking
13 into consideration the defendant's lack of prior record.
14 I'm taking into consideration this is a non-parolable
15 offense. The fact she will serve it day for day and the
16 defendant's genuine remorse. And I've taken all this into
17 consideration. Miss Grant, on indictment
18 2012-GS-21-00886, murder homicide by child abuse, the
19 sentence of the Court that you be committed to the state
20 department of corrections for a period of 27 years, given
21 credit for 622 days. Good luck to you.

22 END OF REQUESTED TRANSCRIPT
23
24
25

FORM 5

FILED

STATE OF SOUTH CAROLINA

COUNTY OF Florence

2013 MAY 16 PM 2:59

IN THE COURT OF COMMON PLEAS

Debra Grant DO352697
Full name and prison number (if any) of Applicant

CONNIE REEL-SHEARIN
COP & GS
FLORENCE COUNTY, SC

2013-CP-21-1342

v.

State of South Carolina

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 veified (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 ckr 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 thfees 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 Florence County Detention Center
2. Name and location of Court which imposed sentence Florence City complex
1801 J.W. St Florence SC, 29501
3. Name(s) of co-defendant(s) (if any) Geraldine Broobington
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) _____
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) October 8th 2012
 - (b) For a period of 27 years

CONNIE REEL-SHEARIN
COP & GS
FLORENCE COUNTY, S.C.

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

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) I was told by my attorney that I would not win my appeal if I were to file one because 27yrs. is between 20-life so I was scared out of it.

(b) _____

(c) _____

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

- (a) Ineffective Assistance of counsel
- (b) Prosecutorial Misconduct
- (c) _____

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

- (a) Counsel didnt prepare and didnt challenge case
- (b) Did not receive Motion of Discovery; wrongfully charged w/o evidence
- (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?

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) I thought that maybe that's how attorneys were suppose to do. I was scared.

(b) I had a public defender, need someone who will fight for me, not judge.

(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? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

- (a) the name and address of each attorney who represented you:
 - i. Mr. Scott Floyd Public Defenders Office 180 N. Troy St Florence SC 29502
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Preliminary hearing
 - ii. Bond hearing
 - iii. Sentencing

19. State clearly the relief you seek in filing this application: A sentence reduction or what I was first charged with (unlawful neglect of a child)
I would like to have relief in a lower charge that is parole eligible

20. Are you now under sentence from any other court that you have not challenged?
None

STATE OF SOUTH CAROLINA)
)
County of)

VERIFICATION

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

[Handwritten Signature]

SWORN to and subscribed before me this 16th
day of May, 2013.

[Handwritten Signature]
_____ (L.S.)
Notary Public

My Commission Expires: 2/11/15

FILED
2013 MAY 16 PM 2:59
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

MAILED: A TRUE COPY
[Handwritten Signature]
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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

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

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Debra J. [Signature]
Applicant

SWORN or affirmed to and subscribed before me this
6th day of May, 2013.

[Signature]
Notary Public

My Commission Expires: 2/1/15

2013 MAY 16 PM 2:59
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY
Connie Reel Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
 Kesha Grant,)
 S.C.D.C. No. 352697,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2013-CP-21-1342

RETURN

In response to the post-conviction relief application filed May 16, 2013, the Respondent would show this Court:

I:

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. The Applicant was indicted at the July 2012 term of the Florence County Grand Jury for homicide by child abuse (2012-GS-21-0886). Scott P. Floyd, Esquire, represented the Applicant.

On October 18, 2012, the Applicant pled guilty as indicted. The Honorable Michael G. Nettles sentenced the Applicant to twenty-seven (27) years imprisonment. The Applicant did not appeal her plea or sentence.

Attached herewith and incorporated herein by reference are the records of the Florence County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the plea transcript. Any records not so attached will be forwarded upon receipt.

II.

In her application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

1. "Ineffective Assistance of Counsel"
 - a. "counsel didnt prepare and didnt challenge case"
2. "Prosecutorial Misconduct"
 - a. "Did not receive Motion of Discovery; wrongfully charged w/o evidence"

III.

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

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

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

S.E.2d 624, 625 (1989).

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

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v.

Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised the issue of prosecutorial misconduct on appeal. The failure to do so has waived this allegation as grounds for relief. Furthermore, a knowing and voluntary guilty plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (citing Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975); State v. Fuller, 254 S.C. 260, 174 S.E.2d 774 (1970)). Therefore, Respondent interprets Applicant's allegation of prosecutorial misconduct as an allegation of ineffective assistance of counsel. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794 (1989).

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held on those issues so requiring one.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
Bar No. 100777

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

12/18, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
)
)
 KESHA GRANT, #352697)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

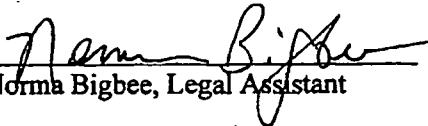
2013-CP-21-1342

AFFIDAVIT OF SERVICE BY MAIL

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:

Tristan M. Shaffer, Esquire
1928 Barnwell St.
Columbia, SC 29201

DATED this 18TH day of December, 2013.


 Norma Bigbee, Legal Assistant

State of South Carolina)	Court of Common Pleas
)	Twelfth Judicial Circuit
County of Florence)	Case No. 2013-CP-21-1342
)	
Kesha Grant,)	
)	
Plaintiff,)	
)	
-vs-)	Transcript of Record
)	
State of South Carolina,)	
)	
Defendant.)	
)	

April 15, 2015
 Florence, South Carolina

B E F O R E:

The Honorable D. Craig Brown, Judge

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

Frank C. Swaggard, Esquire
 Attorney for the Plaintiff

Croom Hunter, Esquire
 Attorney for the Defendant

Krystal J. Smith
 Court Reporter

KESHA GRANT - DIRECT BY MR. SWAGGARD

I N D E X

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WITNESS/DESCRIPTION	PAGE NUMBER
Kesha Grant	
Direct by Mr. Swaggard.....	5
Cross by Mr. Hunter.....	10
Scott Floyd	
Direct by Mr. Swaggard.....	16
Cross by Mr. Hunter.....	18
Applicant Rests.....	23
Court Reporter Certification.....	24

KESHA GRANT - DIRECT BY MR. SWAGGARD

E X H I B I T S

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

KESHA GRANT - DIRECT BY MR. SWAGGARD

1 APRIL 15, 2015

2 (WHEREAS this matter was scheduled for a post-conviction
3 relief hearing, the applicant appeared along with her
4 counsel of record. The hearing began at 12:30 p.m.)

5 THE COURT: Yes, sir, Mr. Hunter.

6 MR. HUNTER: May it please the Court.

7 THE COURT: Yes, sir.

8 MR. HUNTER: This is Kesha Grant versus the State of
9 South Carolina, 2013-CP-21-1342. Ms. Grant is incarcerated
10 with SCDC pursuant to the Florence County Clerk of Court's
11 orders.

12 Ms. Grant was indicted at the July 2012 term of the
13 Florence County Grand Jury for homicide by child abuse, 2012-
14 GS-21-0886. She was represented by Mr. Scott P. Floyd.

15 On October 18th, 2012, Ms. Grant pled guilty as indicted.
16 The Honorable Michael G. Nettles sentenced Ms. Grant to 27
17 years' imprisonment. She did not appeal. She filed this
18 post-conviction relief application on May 16th, 2013. She's
19 represented here today by Mr. Swaggard, and the State is ready
20 to proceed.

21 THE COURT: Mr. Swaggard?

22 MR. SWAGGARD: Thank you, Your Honor. May it please the
23 Court. We'd call Kesha Grant to the stand.

24 THE COURT: Ma'am, if you would, come around.

25 THE CLERK: Please step up to the witness box. Step up

KESHA GRANT - DIRECT BY MR. SWAGGARD

1 to the Bible. Put your left hand on the Bible and raise your
2 right hand as much as possible. Do you swear to tell the
3 truth, the whole truth, and nothing but the truth, so help you
4 God?

5 THE APPLICANT: Yes, ma'am, I do.

6 THE CLERK: Okay. Please take a seat and state your name
7 for the record.

8 THE APPLICANT: My name is Kesha Grant.

9 MR. SWAGGARD: Thank you, Ms. Grant. You're going to
10 have to speak up because we're taking down everything you say.
11 Okay?

12 KESHA GRANT, being first duly
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. SWAGGARD:

16 Q: Ms. Grant, who was your lawyer in the charges that the
17 attorney general just read to the Court?

18 A: Mr. Scott Floyd.

19 Q: Do you know how Mr. Floyd came to be your lawyer?

20 A: He was appointed to me.

21 Q: Okay. How many times did you and Mr. Floyd have an
22 opportunity to speak to one another before you entered into a
23 plea agreement?

24 A: On a rough estimate, maybe ten to 15 times.

25 Q: Okay.

KESHA GRANT - DIRECT BY MR. SWAGGARD

- 1 A: As far as the case in itself goes.
- 2 Q: And how many days would you say it was from the day that
3 you were arrested and taken to county between the day that you
4 entered into your plea agreement?
- 5 A: It was exactly 622 days.
- 6 Q: 622 days and you spoke ten to 15 times?
- 7 A: Uh-huh.
- 8 Q: Okay. Were those conversations long conversations?
- 9 A: They were.
- 10 Q: Did you have an opportunity to ask him about your case
11 every time you saw him?
- 12 A: Not every time, but I did ask him.
- 13 Q: Okay. Did you ask him specifically about the charges
14 that you had?
- 15 A: No, sir.
- 16 Q: Okay. Did he explain to you your charges?
- 17 A: He only explained the homicide by child abuse, the
18 charge. He didn't explain the (a)(1) or the (b)(1).
- 19 Q: When you say (a)(1) or (b)(1), do you mean the difference
20 in the subsections of --
- 21 A: Yes, sir.
- 22 Q: -- that statute?
- 23 A: Yes, sir.
- 24 Q: Okay. Did you ask him specifically about the differences
25 in --

KESHA GRANT - DIRECT BY MR. SWAGGARD

- 1 A: No, sir.
- 2 Q: -- those subsections?
- 3 A: I didn't know the difference. No, sir.
- 4 Q: Did you even know there were differences?
- 5 A: I did not.
- 6 Q: Okay. Did you the two of you ever speak about possible
7 defenses to your case?
- 8 A: No, sir.
- 9 Q: Did you ask him about any possible defenses to your case?
- 10 A: I did, and the only reason I don't think he could have,
11 like I told you, was because probably the severeness of the
12 case. So I don't -- to me in my opinion, I don't feel like --
13 me, I couldn't have come up with a defense. He probably could
14 have and I don't know if he tried, but I did ask.
- 15 Q: It's your belief that he didn't try to come up with a
16 defense to your case?
- 17 A: I don't believe he did.
- 18 Q: Okay.
- 19 A: And it may be because of the complexity of the case.
- 20 Q: Okay. Did you ever raise that question to him? Did you
21 tell him that you were concerned about that?
- 22 A: I did numerous of times.
- 23 Q: Okay. Did you ever ask him specifically about a defense
24 related to the cause of the child's death?
- 25 A: No, sir.

KESHA GRANT - DIRECT BY MR. SWAGGARD

1 Q: Okay. Did you ask him to review her autopsy report with
2 you?

3 A: I did.

4 Q: Did he ever do that?

5 A: No, sir.

6 Q: Okay. How many times would you say you asked him about
7 that?

8 A: I asked him every time he would come. I asked him
9 specifically for my motion of discovery. I wanted everything
10 that came in. And the only reason I kept continuously asking
11 for that because, with me being charged with that, I wanted to
12 know exactly what was the cause of death because I kept asking
13 and I kept getting a different answer each time.

14 Q: Okay. So in the 622 days and the ten to 15 times you saw
15 him, is it your testimony that you asked him every time to
16 review the autopsy report?

17 A: I did. I did. And when I said I fought for it four
18 solid years for my autopsy motion of discovery, I fought for
19 it.

20 Q: Okay. Is your belief that if the two of you had sat down
21 and gone over it together, you may have been able to craft an
22 effective defense?

23 A: I believe so.

24 Q: Okay. And if you had been able to do that, would you
25 have pled guilty in this case?

KESHA GRANT - DIRECT BY MR. SWAGGARD

1 A: I believe I would have, but then on the other hand I
2 believe if I would have took it to trial -- and I know the --
3 I know what hand I was playing, but I do believe to some
4 extent -- and I fight with it every day. I do believe that I
5 probably could have stood a better chance.

6 Q: Okay. In your post-conviction relief application, you're
7 alleging that Mr. Floyd was ineffective. Is there anything
8 that you'd like to tell the Court that I haven't asked you
9 about why you believe he was ineffective?

10 A: I just felt like I -- in my opinion, I don't feel like he
11 tried enough and the reason being because -- and I -- I don't
12 know how to exactly word this. I just don't feel like he
13 tried enough being that, for one, I should have been offered
14 -- and I looked this up in the law library, but I should have
15 been offered a mental evaluation for one because the state of
16 mind that I was in when I got in -- I'm not going to use this
17 as an excuse because right is right and wrong is wrong, but I
18 do feel like that should have been offered.

19 And when I looked that up, that was under 16-3-85, number
20 7, and it was McKnight versus State where she did not receive
21 a mental evacuation [sic].

22 Q: Do you mean a mental evaluation?

23 A: Evaluation. My bad.

24 THE COURT: Hold on a minute.

25 MR. HUNTER: Your Honor, I would just object to the

KESHA GRANT - DIRECT BY MR. SWAGGARD

1 applicant testifying as to case law.

2 THE COURT: Well, for purposes of this hearing, she's
3 cited a case and I'll take it for that purpose only.

4 MR. SWAGGARD: Thank you, Your Honor.

5 BY MR. SWAGGARD:

6 Q: Do you believe if you had had a mental evaluation that
7 the outcome of this case would have been different, that you
8 might not have pled guilty?

9 A: I don't know.

10 Q: Okay.

11 A: I don't know.

12 MR. SWAGGARD: Your Honor, I have no more questions of
13 the witness.

14 THE COURT: Yes, sir, Mr. Hunter.

15 CROSS-EXAMINATION

16 BY MR. HUNTER:

17 Q: Hello, Ms. Grant.

18 A: How you doing?

19 Q: All right. How are you?

20 A: I'm all right.

21 Q: So you spoke that you -- you testified that you spoke
22 with Mr. Floyd about ten to 15 times prior to your plea?

23 A: Yes, sir.

24 Q: Okay. Did y'all ever discuss going to trial?

25 A: It was discussed and I think I was scared out of it. In

KESHA GRANT - CROSS BY MR. HUNTER

1 fact, I know I was scared out of it because that life sentence
2 kept being thrown in my face.

3 Q: Okay. Who was throwing that in your face? Mr. Floyd?

4 A: Mr. Scott continuously. And it scared me out of it
5 because I wanted to do it, but I was afraid of getting up
6 there and getting in front of twelve people. It being a
7 child, I already knew what the outcome was going to be, and
8 then he was throwing it in my face. So when I say I was
9 scared out of it, I was scared out of it.

10 Q: So when you say you already knew what the outcome was
11 going to be, you knew that you would be found guilty?

12 A: Because -- exactly.

13 Q: Okay. And so you pled guilty to avoid getting that life
14 sentence?

15 A: Exactly.

16 Q: Okay. All right. And you pled -- I believe this was an
17 open plea. So you pled not knowing what sentence you would
18 get; right?

19 A: I did not know. And the only reason -- when I signed off
20 on the plea, I spoke with Scott before I did it. I should say
21 after I did it. And after I did it, he said you know that you
22 can get a life sentence, which I did not because from my
23 understanding he was supposed to have been talking to Mr. Ed
24 Clements as far as the 20 years go. And I myself -- when I
25 saw Judge Nettles, I asked him about the 20 years. I spoke to

KESHA GRANT - CROSS BY MR. HUNTER

1 Mr. Clements as well and he said that he didn't have a problem
2 with me getting the 20 years, but he would just state the
3 facts of the case, which he did.

4 Q: When did you speak to Mr. Clements? Was that the day of
5 your plea?

6 A: The day of my plea.

7 Q: Was Mr. Floyd with you when you --

8 A: No, sir.

9 Q: Okay.

10 MR. HUNTER: I beg the Court's indulgence.

11 Q: Let's move on to your guilty plea. Do you -- do you
12 recall when you pled guilty that Judge Nettles went over that
13 by pleading you were waiving your right to trial, your right
14 to question the evidence --

15 A: Yes, sir.

16 Q: -- et cetera? Okay. Do you remember telling Judge
17 Nettles that you were satisfied with Mr. Floyd's services?

18 A: I do remember telling him that.

19 Q: Okay. But is it your testimony today that you're not
20 satisfied?

21 A: And I'm going to tell you why I said that. And it was
22 more so I've never been in trouble and, when I did get in
23 trouble, I ended up getting in trouble for something real big
24 and again I was scared. And the only reason I said I was
25 scared because I truly felt like, if I went against Mr. Floyd,

KESHA GRANT - CROSS BY MR. HUNTER

1 I would have gotten in more trouble. I was in enough trouble.

2 Q: Okay. So you pled just because you were scared?

3 A: Exactly.

4 Q: Okay. But -- but no one promised or threatened you?

5 A: No, sir.

6 Q: You did tell the judge that it was your decision to plead
7 guilty?

8 A: Uh-huh.

9 Q: Okay.

10 THE COURT: Is that a yes?

11 THE APPLICANT: Yes, sir.

12 THE COURT: Thank you.

13 THE APPLICANT: I'm sorry. Excuse me.

14 THE COURT: That's okay.

15 BY MR. HUNTER:

16 Q: And you told the judge that you were pleading guilty
17 because you were guilty?

18 A: Yes, sir.

19 Q: Okay. Do you remember when the solicitor -- I guess it
20 was Mr. -- Mr. Clements went over the facts and then the judge
21 asked if you agreed with the facts?

22 A: I did. And I want to state something today and I just
23 mentioned it to my attorney. I'm going to run it past you.
24 When I said that, I asked Scott when we was standing in front
25 of the judge -- and I don't know if he remembers it or not,

KESHA GRANT - CROSS BY MR. HUNTER

1 but I asked him was I supposed to agree to everything that was
2 being said in the courtroom. And when I asked that question,
3 I meant with the judge and the solicitor and everything, and
4 his specific answer to me was yes.

5 Q: Okay. But the judge also asked you -- he said if you
6 didn't agree with something, you needed to speak up; right?

7 A: And I was scared.

8 Q: Okay. So you think you should have had a mental
9 evaluation?

10 A: I think it should have been offered. If it would have
11 made a difference or not, I don't know because it was -- I was
12 never given it.

13 Q: Okay. Do you remember telling the judge that you didn't
14 have any physical or mental problems?

15 A: I was on -- and I do not remember that. I don't want to
16 lie to you because I do not remember that.

17 Q: Okay.

18 A: But I was on medication in county and it was Paxil to be
19 exact.

20 Q: Okay.

21 A: And I just --

22 MR. HUNTER: And, Your Honor, this is on page -- the
23 bottom of page 4 and on to page 5.

24 BY MR. HUNTER:

25 Q: Do you recall now telling the judge -- well, the judge

KESHA GRANT - CROSS BY MR. HUNTER

1 asked you are experiencing any kind of physical or mental
2 problem that could prevent you from understanding what's going
3 on, and you said no, sir?

4 A: Huh-uh.

5 Q: You --

6 A: I don't remember that. I'm sorry. I don't.

7 Q: Okay. Well, that's fine. Do you remember telling the
8 judge that you understood all the questions he asked you?

9 A: I did.

10 Q: Okay. And telling him that you had answered truthfully
11 to all his questions?

12 A: Uh-huh.

13 Q: Okay. And then finally at the end of your plea you did
14 apologize; is that right?

15 A: Yes, sir.

16 Q: Okay.

17 MR. HUNTER: That's all I have. Thank you, Ms. Grant.

18 THE APPLICANT: Thank you.

19 MR. SWAGGARD: No more questions for this witness, Your
20 Honor.

21 THE COURT: All right. Ma'am, you may step down. Thank
22 you.

23 THE APPLICANT: Thank you.

24 MR. SWAGGARD: We'd call Scott Floyd, Your Honor.

25 THE COURT: Mr. Floyd, I'll remind you you're still under

SCOTT FLOYD - DIRECT BY MR. SWAGGARD

1 oath.

2 MR. SWAGGARD: Thank you, Your Honor.

3 SCOTT FLOYD, being first duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. SWAGGARD:

7 Q: Mr. Floyd, how are you today?

8 A: I'm fine. I hope you are.

9 Q: Thank you. I am. Mr. Floyd, you've heard Ms. Grant's
10 testimony. Was that testimony as far as how you became her
11 attorney consistent with your recollection of this case? That
12 you were appointed?

13 A: That is correct.

14 Q: Was her testimony about meeting with you approximately
15 ten to 15 times over the span of 622 days -- is that
16 consistent with your recollection of the case?

17 A: That may be about right. I -- you know, I generally try
18 to go down to the jail about once every month or six weeks or
19 so at least. And certainly, if she was in there and I was
20 representing her, I would have tried to have visited her each
21 time I went. So if it comes out to about that number, that
22 would probably be about right.

23 Q: Do you remember if at the outset of this case you had an
24 opinion as to whether or not Ms. Grant needed to try to plea
25 this case or if you thought it would go to trial?

SCOTT FLOYD - DIRECT BY MR. SWAGGARD

1 A: You know, I mean I didn't think her decision to plea was
2 -- was unwise. I mean I thought that it was probably a wise
3 decision.

4 Q: Did the two of you ever talk about potential defenses to
5 her charges?

6 A: Yes. I'm sure we did. You know, of course, in her
7 testimony she referenced cause of death and, you know, I
8 searched the hospital records to see if -- if there was any
9 evidence that the nurses or doctors had maybe given the child
10 a dose of morphine or something like that that could have
11 caused the death, but I didn't see any indication of anything
12 where the child had been administered any drugs in the nurses'
13 notes or anywhere else of that type.

14 Q: Do you have any specific recollection of discussing your
15 search through those records with Ms. Grant?

16 A: I'm pretty sure I did. I mean, you know, when I -- when
17 I went to see her in the jail, I had the file available and
18 anything that I had, you know, certainly I think we would have
19 talked about it.

20 Q: Do you remember her asking you to give her a copy of an
21 autopsy report?

22 A: I don't remember specifically, but if she had asked me
23 for anything, I would have given it to her.

24 Q: Do you have any record of reproducing your file for her?

25 A: I don't have anything here, but I don't have any record

SCOTT FLOYD - DIRECT BY MR. SWAGGARD

1 of her requesting it either.

2 Q: Was this case high-profile?

3 A: I mean I don't remember -- I mean I can't remember. When
4 you say high-profile, what do you mean?

5 Q: Was there media coverage of the case?

6 A: I think at the plea there might have -- there might have
7 been a reporter there. I can't remember.

8 Q: Leading up to the case and up to the plea, you don't
9 remember any news coverage or anything like that?

10 A: I don't remember. I mean nobody ever contacted me about
11 it.

12 MR. SWAGGARD: I beg the Court's indulgence. Your Honor,
13 may I have a moment just to confer with her?

14 THE COURT: Yes, sir.

15 (WHEREUPON, there was a pause in the proceedings.)

16 MR. SWAGGARD: Your Honor, I have no more questions for
17 Mr. Floyd.

18 THE COURT: All right. Mr. Hunter?

19 CROSS-EXAMINATION

20 BY MR. HUNTER:

21 Q: Mr. Floyd, just briefly, how long have you been
22 practicing law?

23 A: Since -- well, I graduated from law school in '88 and
24 then took the bar. So I guess -- I guess towards the end of
25 '88 I would have been licensed I suppose.

SCOTT FLOYD - CROSS BY MR. HUNTER

1 Q: And a substantial portion of that has been criminal
2 defense?
3 A: Yes.
4 Q: Okay. And in what capacity were you appointed to this
5 case?
6 A: Through the Public Defender's Office.
7 Q: Were you the chief public defender at the time?
8 A: I don't -- no, I wasn't.
9 Q: Okay.
10 A: I don't think so.
11 Q: Okay. And Ms. Grant testified that you met with her ten
12 or 15 times and I believe you said you thought that was
13 probably accurate?
14 A: Yeah. I mean I wouldn't disagree with that number.
15 Q: Okay. Would you have filed Rule 5 and Brady motions in
16 this case?
17 A: Yes.
18 Q: Have any problems getting discovery from the State?
19 A: I don't recall any.
20 Q: Okay. Would you have gone over it with Ms. Grant?
21 A: Oh, yes.
22 Q: Okay. Did you discuss with her her -- her version of the
23 events or facts?
24 A: I did.
25 Q: I believe you testified you thought it was probably in

SCOTT FLOYD - CROSS BY MR. HUNTER

1 her best interest to plea. Did you discuss any possible
2 defenses she might have?

3 A: Yes.

4 Q: Okay. Did -- did she have any real viable defenses in
5 your opinion?

6 A: Well, you know, my feeling was that her decision to plea
7 was -- was probably wise. I mean I didn't feel that any
8 defenses that she might have tried to present were going to
9 fly.

10 Q: Okay. Did you discuss the elements of the charge with
11 her?

12 A: I'm sure I did.

13 Q: She referenced the subsections in the statute. Are you
14 familiar with that?

15 A: I mean I can't -- I can't sit here and cite the
16 subsections. I mean I know that the sub -- I know that the
17 section that she pled under dealt with abuse and neglect.

18 Q: Do you feel the plea -- the charge and the plea would --
19 the charge -- I mean let me rephrase. Do you feel that she
20 was charged appropriately?

21 A: Yes. I mean the -- there had to be evidence of abuse or
22 neglect, which included failure to seek medical treatment even
23 if there was no abuse under that section, and I believe the
24 penalty for that was 20 to life.

25 Q: Okay.

SCOTT FLOYD - CROSS BY MR. HUNTER

1 A: If it led to the death of the child.

2 Q: Did Ms. Grant ever tell you that she wasn't guilty?

3 A: I don't remember her ever saying I'm not guilty. I mean
4 she told me what her --

5 Q: Okay.

6 A: -- what her role in the whole thing was.

7 Q: Okay. She admitted to what she had done?

8 A: Once again, she -- yeah. I mean she -- she told me what
9 she says she did or didn't do. I mean whether that's accurate
10 I don't know, but --

11 Q: Prior to her plea, did you review her constitutional
12 rights?

13 A: Yes.

14 Q: Okay. Did she ever tell you that she didn't understand
15 anything?

16 A: I don't remember her saying that.

17 Q: You don't recall whether or not y'all had any problems
18 communicating?

19 A: No, sir.

20 Q: Okay. Did you feel it was necessary to have her
21 evaluated?

22 A: No. I mean I never felt like she didn't understand legal
23 proceedings. I mean I had no reason to believe that.

24 Q: Okay. Did she kind of -- she testified that she kind of
25 felt like she was forced to plead guilty. Was it -- whose

SCOTT FLOYD - CROSS BY MR. HUNTER

1 decision in your opinion was it to plead guilty?

2 A: It was her decision.

3 Q: Okay. Did she ever indicate to you that she wanted to go
4 to trial?

5 A: No.

6 Q: Okay. We've addressed the autopsy report. You don't
7 recall her asking you for a copy of that?

8 A: I mean I don't recall.

9 Q: Okay. Do you -- do you recall -- she testified a few
10 minutes ago that she had a conversation with Solicitor
11 Clements on the day of her plea where he said that she could
12 plea to 20 years. Do you have any idea what she's talking
13 about there?

14 A: I have no clue and I -- I don't know why Ed or Mr.
15 Clements would have spoken to her outside of my presence.

16 Q: Okay.

17 A: I mean I have no idea.

18 Q: That would be --

19 A: That's the first time ever hearing about that is today.

20 Q: That would have been highly unusual?

21 A: It would have been very unusual.

22 Q: Okay.

23 MR. HUNTER: I beg the Court's indulgence.

24 THE COURT: All right.

25 MR. HUNTER: That's all I have. Thank you, Mr. Floyd.

1 THE WITNESS: Thank you.

2 THE COURT: Anything further?

3 MR. SWAGGARD: No further questions, Your Honor.

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

5 MR. SWAGGARD: Your Honor, that's the applicant's case.

6 THE COURT: All right. Anything by way of argument?

7 MR. SWAGGARD: Your Honor, we're going to rest on the
8 application and on the testimony offered here today.

9 THE COURT: Mr. Hunter, anything by way of argument?

10 MR. HUNTER: No, Your Honor. I think the record is
11 clear.

12 THE COURT: All right. I'll take a look at it. I'll let
13 you all know.

14 MR. SWAGGARD: Thank you, Your Honor.

15 (WHEREUPON, the proceedings ended at 12:52 p.m.)

16

17 --- END REQUESTED TRANSCRIPT ---

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State of South Carolina)
) Certificate
County of Florence)

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 23 constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Florence County, South Carolina, on the 15th day of April, 2015.

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

/s/ Krystal J. Smith

Court Reporter

Florence, South Carolina

August 7, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

Kesha Grant, #352697,)
Applicant,)

v.)

State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Case No. 2013-CP-21-1342

ORDER OF DISMISSAL

FILED
2013 JUN 11 PM 12:07
CLERK OF COURT
FLORENCE COUNTY, S.C.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 16, 2013. Respondent made a Return on or about December 18, 2013. The Court convened an evidentiary hearing into the matter on April 15, 2015, at the Florence County Courthouse. Applicant was present at the hearing and represented by Frank C. Swaggard, Esquire. J. Croom Hunter, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on her own behalf at the evidentiary hearing. Applicant's plea counsel, Scott Floyd, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Florence County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. The Court finds as follows:

I. PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. The Applicant was indicted at the July 2012 term of the Florence County Grand Jury for homicide by child abuse

CERTIFIED: A TRUE COPY
Cristie Ford Swain
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

(2012-GS-21-0886). Scott P. Floyd, Esquire, represented the Applicant.

On October 18, 2012, the Applicant pled guilty as indicted. The Honorable Michael G. Nettles sentenced the Applicant to twenty-seven (27) years imprisonment. The Applicant did not appeal her plea or sentence.

II. ALLEGATIONS

In her application, Applicant alleged she is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failure to thoroughly prepare for and challenge the State's case.
2. Applicant claimed she was improperly charged under the statute.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court finds Counsel's testimony credible and Applicant's testimony not credible. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Summary of Testimony

Applicant testified at the PCR hearing that she was represented by Scott Floyd, Esquire, at her plea. Applicant testified she and Counsel met approximately ten to fifteen times prior to the plea. Applicant testified 622 days elapsed between her arrest and her plea. Applicant testified she and Counsel had many long conversations, but they never discussed any possible defenses she could raise. She testified Counsel did not thoroughly explain the charges she was facing, and

she thought she was inappropriately charged. Applicant testified she asked Counsel to review the autopsy report with her because she wanted to know the official cause of death, but he never did. Applicant claimed her mental competency should have been evaluated.

On cross-examination, Applicant acknowledged she recalled the plea judge going over the constitutional rights she was waiving by pleading guilty. Furthermore, she acknowledged that she told the plea judge she was satisfied with Counsel's performance and had no complaints. Applicant acknowledged she admitted her guilt to the plea judge, agreeing with the facts recited by the solicitor, and she told the judge she wanted to plead guilty. Applicant also confirmed that she pled guilty because she knew she would be found guilty at trial, and she wanted to avoid a life sentence. Finally, Applicant testified she spoke to Solicitor Clements the day of the plea without Counsel present.

Counsel testified he has been practicing since 1988 with a substantial portion of his career devoted to criminal defense. Counsel testified he represented Applicant in his capacity as the Twelfth Circuit Public Defender. Counsel testified he filed Rule 5 and Brady motions, and he received discovery from the State. Counsel testified he reviewed the discovery materials with Applicant and discussed her version of events with her. Counsel testified Applicant did not have any viable defenses to raise at trial because of the overwhelming nature of the evidence. Counsel testified Applicant's estimation that he met with her 10-15 times was correct. Counsel testified he goes to the jail and visits his clients on a monthly basis. Counsel testified he reviewed the rights Applicant would waive by pleading guilty, and he never had trouble communicating with Applicant. Counsel testified Applicant never indicated she did not understand their conversations, and Counsel had no reason to believe Applicant was not competent. Counsel

testified he thought the charges brought by the State were appropriate. Counsel testified he could not specifically recall whether he went over the autopsy report with Applicant, but he did review discovery with her. Finally, Counsel testified he did not believe Solicitor Clements would have spoken to Applicant outside of his presence the day of the plea.

B. Ineffective Assistance of Counsel

In this post-conviction relief action, Applicant bears the burden of proving the allegations in her application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, Applicant must prove trial 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." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures trial counsel's

performance by its “reasonableness under prevailing professional norms.” *Id.* (citing *Strickland*, 466 U.S. at 688). Second, trial counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 117-18, 386 S.E.2d at 625.

This Court finds Applicant has failed to show Counsel’s performance fell below an objective standard of reasonableness. Counsel’s testimony indicated he was extremely familiar with the facts of Applicant’s case. This Court finds Counsel met with Applicant an adequate number of times and was familiar with the discovery materials. Counsel testified that he felt the charges brought by the State were appropriate, and he had no basis for challenging them. This Court further finds that based upon the solicitor’s recitation of the facts at the plea colloquy, combined with Counsel’s testimony at the PCR hearing, the evidence against Applicant was such that it was in Applicant’s best interest to go forward with the plea. As such, Applicant has failed to show ineffectiveness of counsel, and the allegation is without merit.

C. Involuntary Guilty Plea

Although not specifically alleged, this Court finds Applicant’s allegations could be construed as alleging her plea was involuntary. This Court finds the allegation to be without merit.

In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See *Al-Shabazz v. State*, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing *Drayton v. Evatt*, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability

that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging her guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of her plea and the charges against her. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights they are waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief

hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

This Court has had the opportunity to review the testimony from the PCR hearing, as well as the guilty plea transcript and finds Applicant knowingly, intelligently, and voluntarily entered her guilty plea. Applicant has presented no credible evidence to the contrary. Applicant's testimony that she pled guilty to avoid the possibility of a conviction and harsher sentence clearly shows Applicant was well aware of her actions and proceeded forward with her plea after weighing the pros and cons of such a decision. As such, this Court finds the allegation is without merit.

D. All Other Allegations

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

IV. CONCLUSION

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

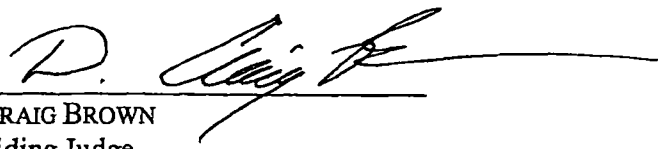
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, her post-conviction relief attorney

must serve and file a notice of appeal on Applicant's behalf. Applicant and her attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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.

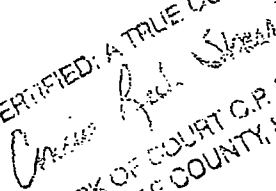
AND IT IS SO ORDERED this 11th day of June, 2015.



 D. CRAIG BROWN
 Presiding Judge
 Twelfth Judicial Circuit

, South Carolina

FILED
 2015 JUN 11 PM 12:07
 JOHNNIE REEL-SHEARIN
 C.C.P. & G.S.
 FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY

 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

WITNESSES

Jennifer Floyd Florence County Sheriff

DOCKET NO: 2012-GS-21-00886

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JULY TERM 2012

THE STATE

vs.

GERALDINE BROCKINGTON

KESHA GRANT

E. L. Clements, III

ARREST WARRANT NUMBER

M273089 M273089

ACTION OF GRAND JURY

TRUE BILL

Forfeisor of Grand Jury
Date: 8-19-12

VERDICT

Foreperson of Petit Jury

Date:

2012 JUL 19 AM 11: 09
ORNIE REEL-SHEARIN
CCJP & CS
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

INDICTMENT FOR
HOMICIDE BY CHILD ABUSE

At a Court of General Sessions, convened on JULY 19, 2012, the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- HOMICIDE BY CHILD ABUSE
CDR: 2356 16-03-0085(A)(1)

That GERALDINE BROCKINGTON and KESHA GRANT, who were the caregiver and guardian of the three year-old victim, did in Florence County on or about January 25, 2011, knowingly, willfully and unlawfully cause injuries resulting in subsequent death to one **Minor** a child under the age of eleven, while committing child abuse or neglect, and the death of **Minor** on January 25, 2011, resulted from said injuries which occurred under circumstances manifesting an extreme indifference to human life, by acts and omissions allowing the child to suffer severe burns and did not seek medical attention in a timely manner, in violation of Section 16-03-0085(A)(1), S.C. Code of Laws, 1076, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

78
 STATE OF SOUTH CAROLINA)
 COUNTY OF Florence)
 STATE VS.)
 Kesha Grant)
 AKA:)
 Race: B Sex: F Age: 24)
 DOB: [REDACTED] SS#: [REDACTED])
 Address: [REDACTED])
 City, State, Zip: Florence, SC 29501)
 DL#: [REDACTED] SID#: [REDACTED])

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012-GS-21-00886
 A/W#: M273089
 Date of Offense: 1/25/2011
 S.C. Code § : 16-03-0085(A)(1)(B)(1)
 CDR Code #: 2356

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Murder / Homicide by child abuse (20Y to Life)

CONVICTED OF or PLEADS

in violation of § 16-03-0085(A)(1)(B)(1) of the S.C. Code of Laws, bearing CDR Code # 2356
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
 ATTEST: [Signature] 15295 [Signature] 12061
 Clements, III, E. L. 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 27 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 622 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	\$	
§ 14-1-213 (Drug Court Surcharge)	\$150	\$	
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$	
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	
Proviso 90.5 (SCCJA Surcharge)	\$5	\$	5.00
% to County (if paid in installments)		\$	
TOTAL		\$	105.00

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

Clerk of Court/ Deputy Clerk: [Signature]
 Court Reporter: [Signature]
 CCA/217 (03/2011)

Presiding Judge: [Signature]
 Judge Code: 2140
 Sentence Date: 10/8/12

CERTIFIED TRUE COPY
 CLERK OF COURT, C.P. & G.S.
 FLORENCE COUNTY, S.C.