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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Horry County

G. Thomas Cooper, Circuit Court Judge

SAIRE CASTRO,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001415

APPENDIX

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF GENERAL SESSIONS
2012-GS-26-02937

State of South Carolina,)
)
vs.)
)
Saire Jerrel Castro.)
_____)

TRANSCRIPT OF RECORD

September 12, 2013
Conway, South Carolina

BEFORE:

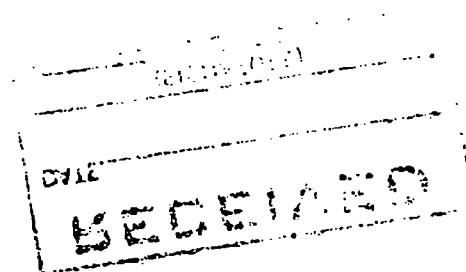
The Honorable, J. Derham Cole

APPEARANCES:

BY: Bradley C. Richardson, Esq.
Assistant Solicitor

BY: Randall K. Mullins, Esq.
Attorney for Saire Jerrel Castro

Brenda R. Babb
Circuit Court Reporter



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1 Mr. Richardson: Your Honor, before the Court
2 at this time is 2012-GS-26-2937, State of South Carolina,
3 County of Horry v. Saire Jerrel Castro, that's S-a-i-r-e,
4 J-e-r-r-e-l, Castro common spelling. It's a true billed
5 indictment for murder. The defendant is represented by Mr.
6 Randy Mullins, Brad Richardson on behalf the State. The
7 defendant has come before you and he's indicated on the
8 sentencing sheet that he's pleading guilty to the lesser
9 included charge of voluntary manslaughter with a
10 recommendation of thirty years from the State, Your Honor.
11 Additionally, as a condition of the plea, Your Honor, the
12 State will be dismissing 2011-GS-26-1267, 68, 69 and 70.

13 Your Honor, we do have present in the court room
14 various members of the victim's family including the mother
15 of his children and we've got Ms. Bowens, Betty Bowens, who
16 is the mother of the victim in this case, Kevin Bowens, and
17 Your Honor, they do wish to address the Court at the
18 appropriate time.

19 The Court: Okay.

20 Mr. Richardson: Your Honor, I'm also going to
21 pass up a order lifting the bench warrant. The charge that
22 will be dismissed we had a bench warrant on is 140.

23 The Court: All right, you are Saire Jerrel
24 Castro?

25 Mr. Castro: Yes, sir.

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1 The Court: Mr. Mullins is your lawyer?
2 Mr. Castro: Yes, sir.
3 The Court: Do you understand why you're here
4 today?
5 Mr. Castro: Yes, sir.
6 The Court: What do you understand the reason
7 you're here?
8 Mr. Castro: I understand I'm here to face the
9 charges of murder.
10 The Court: And why are you specifically here
11 this morning?
12 Mr. Castro: So I can accept the plea offer.
13 The Court: To what?
14 Mr. Castro: Voluntary manslaughter.
15 The Court: And Mr. Mullins is your lawyer?
16 Mr. Castro: Yes, sir.
17 The Court: How long has he been representing
18 you?
19 Mr. Castro: A year, little over a year.
20 The Court: And have you been in jail all that
21 time?
22 Mr. Castro: Yes, sir.
23 The Court: During that period of time have
24 you had plenty of time and opportunity to talk with Mr.
25 Mullins about the nature of the charge that is set forth in

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1 the indictment, that is what you're actually charged with,
2 as well as the offense for which you are offering to plead
3 guilty?

4 Mr. Castro: Yes, sir.

5 The Court: Has he been over this indictment
6 with you and explained to you what the State claims that
7 you did?

8 Mr. Castro: Yes, sir.

9 The Court: The State alleges that on or about
10 March the 1st of 2011 you did willfully and in
11 intentionally kill Kevin Bowens; that you committed those
12 acts with malicious aforethought and that you shot Mr.
13 Bowens and he died as a proximate result of those gunshot
14 wounds. The killing of another person with malice
15 aforethought, either expressed or implied, constitutes the
16 crime of murder for which you could receive a life sentence
17 that requires a mandatory sentence of not less than thirty
18 years. The Solicitor's indicated and you have indicted
19 that you're offering to plead to the lesser included
20 offense which is voluntary manslaughter.

21 Mr. Castro: Yes, sir.

22 The Court: Has Mr. Mullins explained to you
23 the difference between murder and voluntary manslaughter?

24 Mr. Castro: Yes, sir.

25 The Court: And you understand what those

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1 differences are?

2 Mr. Castro: Yes, sir.

3 The Court: Do you understand that voluntary
4 manslaughter still carries a potential punishment of up to
5 thirty years in jail?

6 Mr. Castro: Yes, sir.

7 The Court: And the Prosecutor has agreed to
8 let you plead guilty to the lesser charge but he's asking
9 that I give you that thirty year sentence which is the
10 maximum for voluntary manslaughter.

11 Mr. Castro: Yes, sir.

12 The Court: Do you understand that?

13 Mr. Castro: Yes, sir.

14 The Court: You still want to go forward and
15 plead guilty?

16 Mr. Castro: Yes, sir.

17 The Court: Has Mr. Mullins explained to you
18 each of the constitutional that you must give up if you
19 want to plead guilty?

20 Mr. Castro: Yes, sir.

21 The Court: You have the right to remain
22 silent. That means that nobody can make you testify during
23 the trial of the case. Nobody can make you testify at any
24 hearing. You don't have to make any statement and you
25 don't have to answer any questions that relates to these

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1 charges that have been brought against you. You have a
2 right to remain silent and to require the State to come
3 into court with sufficient evidence to establish your guilt
4 to the satisfaction of a jury beyond a reasonable doubt and
5 you are never required to assist the State in their efforts
6 to prove your guilt by you taking the witness stand or you
7 making any statement or you answering any questions that
8 might tend to prove your own guilt. You have the right to
9 remain silent [sic], to remain silent and to require the
10 State to come into court with sufficient evidence to
11 establish your guilt beyond a reasonable doubt. Do you
12 understand your right to remain silent?

13 Mr. Castro: Yes, sir.

14 The Court: Do you understand that when you
15 offer to enter a plea of guilty there are a number of
16 questions that I have to ask you. Some of those questions
17 relate to what you did that causes you to be guilty of any
18 crime to which you've offered to plead guilty and
19 necessarily that will require that you answer my questions
20 ---

21 Mr. Castro: Yes, sir.

22 The Court: --- in order to, for me to accept
23 your plea of guilty because not only do I have to
24 understand what the facts are that surround the event
25 itself but I have to determine whether or not your decision

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1 to plead guilty if freely and voluntarily made; that you
2 understand the consequences of that decision and that
3 nobody's pressured you into it or forced you into that
4 decision. You have told me that you do understand your
5 right to remain silent; is that true?

6 Mr. Castro: Yes, sir.

7 The Court: Do you wish to give that right up
8 in order to plead guilty?

9 Mr. Castro: Yes, sir.

10 The Court: You also have the right to
11 confront any witness who would offer evidence against you,
12 in other words, you have a right to require the State to
13 bring each of their witnesses into court and to have those
14 witnesses take the witness stand and to testify in your
15 presence under oath so that you can see who they are, you
16 can hear what they have to say and your lawyer can examine
17 each of those witnesses on their testimony in order to test
18 the credibility of the witness and the reliability of the
19 information that they're providing to the Court. When you
20 plead guilty witnesses don't take the witness stand and
21 testify under oath and you have no opportunity to examine
22 them on what they tell the Court. There may be some
23 witnesses here who would testify during the course of the
24 trial and they may even provide information to the Court
25 but you won't be able to examine those witnesses on those

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1 statements. Do you understand your right to confront and
2 to examine witnesses?

3 Mr. Castro: Yes, sir.

4 The Court: You understand that when you plead
5 guilty you must give that right up?

6 Mr. Castro: Yes, sir.

7 The Court: Is that what you wish to do?

8 Mr. Castro: Yes, sir.

9 The Court: Do you also understand that you
10 have a right to have a jury trial and to have a jury of
11 twelve people determine whether or not you're guilty? If
12 you elect to have a jury trial you help your lawyer select
13 the jury that will decide the verdict in your case. Twelve
14 jurors are selected from a larger panel or pool of jurors
15 and once those twelve jurors are selected they sit over
16 there in that jury box and they listen to the testimony.
17 They consider the evidence. They determine what if
18 anything occurred back on March the 1st of 2011, as it
19 relates to these particular charges against you and once
20 they decide what they believe occurred on that day they
21 apply the law that I provide them and they determine
22 whether or not you are guilty of any crime that the State
23 claims that you have committed. Before a jury could find
24 you guilty of any crime the State alleges against you, all
25 twelve jurors would have to be convinced of your guilt

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1 beyond a reasonable doubt and the burden is on the State to
2 convince them of that fact. The burden is never upon you
3 to prove that you're innocent or to prove that you're not
4 guilty and therefore you can have a jury trial and you
5 still don't have to take the witness stand and testify
6 during the course of the trial. You don't have to call any
7 witnesses, you don't have to produce any evidence. The
8 burden is not upon you to prove anything. The burden is
9 upon the State to prove your guilt. Do you understand your
10 right to have a jury trial?

11 Mr. Castro: Yes, sir.

12 The Court: Do you understand that when you
13 plead guilty you'll be giving that right up?

14 Mr. Castro: Yes, sir.

15 The Court: Is that what you wish to do?

16 Mr. Castro: Yes, sir.

17 The Court: You have discussed fully your case
18 with your lawyer?

19 Mr. Castro: Yes, sir.

20 The Court: Have you told him everything you
21 know about the facts and circumstances that relate to this
22 event on March the 1st, 2011?

23 Mr. Castro: Yes, sir.

24 The Court: Did you and he determine whether
25 or not you had any defense to the charge of voluntary

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1 manslaughter?

2 Mr. Castro: Yes, sir.

3 The Court: Do you know of any defense that
4 you have to this unlawful homicide?

5 Mr. Castro: No, sir.

6 The Court: You have no defense? Do you
7 understand what a defense is?

8 Mr. Castro: Yes, sir, I understand what
9 defense is.

10 The Court: But you have no defense to this
11 charge?

12 Mr. Castro: No, sir.

13 The Court: Has anybody promised you anything
14 other than the fact that they agreed to reduce this charge
15 from that of murder to that of voluntary manslaughter?
16 Were you promised anything other than that which induced
17 you to arrive at your decision to plead guilty?

18 Mr. Castro: No, sir.

19 The Court: Have you been threatened or
20 coerced or pressured by anybody in any way that resulted in
21 your decision?

22 Mr. Castro: No, sir.

23 The Court: Are you pleading guilty freely and
24 voluntarily?

25 Mr. Castro: Yes, sir.

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1 The Court: Was it your decision?

2 Mr. Castro: Yes, sir.

3 The Court: Are you satisfied with that
4 decision?

5 Mr. Castro: Yes, sir.

6 The Court: Did Mr. Mullins explain to you
7 that voluntary manslaughter is classified under the law as
8 a violent offense?

9 Mr. Castro: Yes, sir.

10 The Court: And do you understand the
11 significance of the designation of a crime as a violent
12 offense?

13 Mr. Castro: Yes, sir.

14 The Court: Did he also explain to you that
15 the crime of voluntary manslaughter is classified and
16 designated as a most serious offense under the law?

17 Mr. Castro: Yes, sir.

18 The Court: And do you understand what the
19 significance of that designation is?

20 Mr. Castro: Yes, sir.

21 The Court: Did he also explain to you that
22 the crime of voluntary manslaughter is classified is
23 designated as a no parole offense under the law?

24 Mr. Castro: Yes, sir.

25 The Court: And do you understand what that

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1 significance is?

2 Mr. Castro: Yes, sir.

3 The Court: And do you still wish to enter
4 your plea of guilty as you have indicated?

5 Mr. Castro: Yes, sir.

6 The Court: I'm going to ask the Solicitor to
7 tell me about the facts that relate to this charge. Listen
8 to what he tells me because when he's through I'm going to
9 ask you if you agree with his version of the facts or if
10 you disagree with it. He'll also tell me about any prior
11 criminal history that you have, so you need to listen to
12 that so you can tell me if he has stated that correctly or
13 not.

14 Mr. Richardson: Thank you, Your Honor.

15 The Court: Mr. Richardson.

16 Mr. Richardson: May it please the Court, on
17 March 1st, 2011, around 9:15 in the evening, that's p.m.,
18 Your Honor. Earlier that evening a co-defendant of Mr.
19 Castro's, Kareem Harry, had gone by a house where Mr.
20 Castro was staying, picked up and took him to, or they
21 drove two different vehicles. I believe Mr. Castro and
22 another co-defendant followed Mr. Harry to [REDACTED]
23 [REDACTED] in the Murrells Inlet section of Horry County. Your
24 Honor, there they confronted the victim, Kevin Bowens, at
25 Kevin's home. There had been some phone conversations we

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1 saw by cell records by and forth. There had been a dispute
2 between Mr. Harry and Mr. Bowens concerning a tv that Mr.
3 Harry's ex girlfriend had either sold or made some
4 arrangements with Mr. Bowens about a week prior, five days
5 or so prior. The tenor of the text messages that were sent
6 back and forth between Mr. Harry and Mr. Bowens were
7 related to coming by and picking up the tv or discussing
8 payment for the tv. I don't know that an agreement was
9 made. I've got Miss Kristina Patterson who was the
10 victim's live-in girlfriend, mother of one of the children.
11 She was there at the house at that time. Whenever they
12 arrived at the house, they being the defendants, Your
13 Honor, including Mr. Castro, they pulled up in the yard.
14 Mr. Harry got out and confronted Mr. Bowens, the victim,
15 talking. At some point within a few minutes, Mr. Castro
16 and another co-defendant got out of their vehicle and
17 approached. In full candor with the Court, Mr. Bowens had
18 a weapon on him. He was at his home, he was allowed to
19 defend himself, Your Honor, but he did have a weapon in
20 his, in his hip, I believe, Your Honor, it was down his
21 pants. As it is reasonable with several individuals that
22 he doesn't know there was no prior claimship with Mr.
23 Bowens and any of these defendants. He was out, everything
24 we have shows that up until that point there was not a hot
25 of heat in the argument. It got progressively louder in a

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1 short space of time. Mr. Castro pulled out a revolver, I
2 believe it was a .357, fired once at the victim and he fell
3 to the ground. Fired twice more, two shots struck the
4 victim, one shot struck the ground. Ms. Patterson, she
5 went outside shortly thereafter. By her statements the
6 defendants were still in the yard and then they fled the
7 scene, Your Honor. Miss Patterson had Mr. Bowens', one of
8 his older children I believe there at the time, along with
9 their baby child that was just a few months old.

10 The defendants fled the scene, Your Honor.
11 The officers were in quick pursuit and they were able to
12 detain both vehicles. Mr. Harry fled on foot that night
13 but Mr. Castro was actually taken into custody and was
14 being questioned at the South Strand Complex for Horry
15 County. In the middle of that interview, they didn't have
16 Mr. Castro under lock and key. They got up to give time to
17 think themselves and they were taking care of other
18 matters, Mr. Castro got up and left and he fled. He was
19 re-apprehended, he was not under arrest at that time, but
20 he was being questioned. He fled and fled down to Florida
21 where the Marshal Service arrested him I think about six
22 weeks later, Your Honor, after an exhaustive search. He
23 was brought back here under extradition, I believe he
24 waived extradition. Mr. Mullins was appointed at that
25 time.

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1 As we got the discovery in it was sent out,
2 brought Ms. Patterson in, Ms. Bowens, the defendant's
3 mother, brought everybody in. We talked about the case,
4 talked about the weight of the case. We discussed the plea
5 offer about two weeks ago and Mr. Castro's willing to plead
6 guilty to the charge. We were discussing scheduling this
7 for trial next month. This alleviates that need now, Your
8 Honor. They're heartbroken but they'll address that to the
9 Court in a moment.

10 The defendant has no prior adult history other
11 than the drug charges we dismissed and I think there's a
12 traffic infraction at the same time, but we'll be
13 dismissing those, Your Honor. Those were pending at the
14 time. He'd been arrested about a month, month and a half
15 prior to the shooting.

16 We never recovered the firearm. Hopefully it
17 will cause no more damage though, Your Honor. The State
18 believes this is a fair resolution. The malice would have
19 been the most difficult thing to prove at trial as it often
20 is, but we do feel this a fair resolution. We do ask for
21 the thirty years, Your Honor. And as stated, at the
22 appropriate time the victim's family does wish to address
23 the Court.

24 The Court: Let's do that now.

25 Mr. Richardson: Your Honor, Ms. Patterson

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1 actually, she's got an attorney as well, Mr. John Hilliard.

2 Mr. Hilliard: I'm actually more friends of the
3 family, Judge. I just happen to be a lawyer.

4 Mr. Richardson: We always address if there's
5 an attorney present.

6 Your Honor, Ms. Patterson has brought some
7 photos of the children, if I may approach?

8 The Court: Sure. Tell me your name again,
9 please ma'am?

10 Ms. Patterson: Kristina Patterson.

11 The Court: Kristina Patterson? Okay.

12 Mr. Richardson: Kristina, if you'll spell
13 your name for the record.

14 Ms. Patterson: K-r-i-s-t-i-n-a P-a-t-t-e-r-s-
15 o-n.

16 The Court: All right, tell me what you'd like
17 to tell me, please ma'am.

18 Ms. Patterson: I just, I brought you two
19 pictures, one is what our daughter looks like now. The
20 other one is the picture that Kevin took of the two of them
21 within the last hour of his life.

22 I'm here today to speak on behalf of my
23 daughter, Carmen, who will be two next week. She was only
24 five and half months when Castro came into our yard and
25 took her father's life. Her daddy to her is just a picture

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1 on the wall. For now that seems easy but as the years go
2 by she will start to realize that a father is supposed to
3 be more than just a picture. There's nothing like being
4 daddy's little girl and that's something that she'll never
5 get to experience. Saire Castro has to be punished for
6 what he has done even though no amount of time will bring
7 back my daughter's father. And that's all.

8 The Court: Okay, thank you, Ms. Patterson.

9 Mr. Richardson: Your Honor, this is Kevin's
10 mother, Patricia Boykin, she's not going to address the
11 Court. She did bring some photographs. Patricia Boykin is
12 the mother of Kevin.

13 Ms. Boykin: Two oldest children.

14 Mr. Richardson: Two oldest children.
15 Actually, the family has always come into court together,
16 come in to speak to me together. They all get along. But
17 she did bring some photographs, Your Honor. Didn't know if
18 you'd want me to pass them up.

19 The Court: What I want you to do is hold them
20 up and then I'll look and then ---

21 Mr. Richardson: Yes, sir, Your Honor. Two
22 oldest children, a little boy and a little girl, correct?

23 Ms. Boykin: Uh-huh, Zarell and Zenyara.
24 Zarell is twelve and Zenyara is six.

25 Mr. Richardson: We discussed having the

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1 children in here but we thought the impact on the children,
2 Your Honor, would ---

3 Ms. Boykin: Yes, he didn't want to come. He
4 said he feel like it would reverse him back because last
5 year was a struggle.

6 The Court: Well, I think you made the right
7 decision.

8 Mr. Richardson: Thank you, Your Honor.

9 The Court: Thank you.

10 Mr. Richardson: This is Ms. Betty Bowens,
11 Your Honor.

12 Ms. Bowens: Good morning.

13 The Court: Good morning.

14 Ms. Bowens: First, Your Honor, I would like to
15 thank you for giving me this opportunity to express my
16 feelings to the Court. Kevin was my baby out of four
17 children, born August the 6th, 1975. At the time of his
18 death he was thirty-five years of age.

19 No one will never know how I feel not even
20 another mother who has lost her son in a violent death; and
21 I miss my son. How do I feel? Like someone has stolen
22 something from me. I say this because just before this
23 happened my son had started making preparations in his life
24 to become a better person so his children and family will
25 be proud of him, not that we weren't, but he always wanted

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1 to better himself in life and that's was what he was
2 working on. You, see I had learned later that he had
3 contacted some of his childhood friends that are ministers
4 now and he let them know he was turning his life around and
5 that he was a new person in God's eyes. You see, just when
6 he was a new person his life was taken away from him. He
7 didn't deserve to die like that. I've been robbed of not
8 being to enjoy my son and his new like, not knowing what we
9 were about to encounter in the future.

10 How do I feel? I have this pain in my heart and
11 it won't go away. Every day I shed tears. I miss my son
12 so until I still have his phone number in my cell phone.
13 It's like a puzzle that's not completed because there's
14 some missing piece, my baby, my son, Kevin.

15 I would call Kevin and tell him about situations
16 that bother me sometimes, we conversate [sic] often. And
17 he would say, Ma, don't worry, it'll be okay, or he'd just
18 would come over and visit with me. I miss his presence,
19 his smile, his laughter, the way he just chuckled, his
20 voice. The time he took out of his life just to show how
21 much family meant to him. His family was very important to
22 him and he wanted to be surrounded by us all. We're from a
23 large family. I have fourteen brothers and sisters. My
24 Mother's Day and birthdays are not the same anymore. His
25 presence is missed at the dinner table during family

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1 gatherings and holidays. His cookouts are no more. I miss
2 him.

3 He's missed by so many friends in many, many
4 states. People as far as California knew him. He was a
5 special friend to many and just reading some of the post
6 that's on his Facebook, many of them would just, I learned
7 he was a mentor to many. Many of them would call on him
8 for advice and he would guide them in different situations.
9 His memorial book was full of nothing but loving memories
10 from family and friends, a book that was done by one of his
11 friends, and sented [sic] with me by another friend in
12 honor of his children. He had to be someone special for
13 them to have done that. Mr. Castro took away a friend to
14 many, a nephew from twenty-plus aunts and uncles, a host of
15 cousins, an uncle from many nieces and nephews to some of
16 them call him their Uncle Daddy because that's what he was
17 to them. A brother from two sisters, Sheila and Denise, a
18 brother from one brother, Timothy, two brother-in-laws and
19 one sister-in law. He took away our son from me and my
20 husband, but more importantly, he took away a father from
21 three biological children, Zerell, who will never be able
22 to be coached by his dad again in sports or have that
23 father and son talk. Zenyara will never have her first
24 father and daughter banquet at school as most girls do.
25 Carmen, who was about five months old at the time of her

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1 daddy's death will never know him for herself but have to
2 rely on others and many of her mother and friends to tell
3 her about him and Justin, his stepson, who has missed him
4 as though he was his own father because he treated him with
5 love. We all miss his presence in their outings and
6 birthday parties. Now all we have are memories of our
7 loved one, Kevin.

8 Mr. Castro made sure that Kevin would never
9 enjoy family again because he shot him not once, not twice,
10 but three times to make sure he was dead. I know that no
11 matter what sentence is handed down on today it will never
12 bring back my son Kevin. But since Mr. Castro made sure
13 that my son's children and our family and friends will
14 never enjoy having his presence among us again, or that
15 Kevin will never breathe again, I'm asking that he be given
16 the maximum amount of time without the possibility of
17 parol. Kevin may be free from this sinful world but I
18 don't want Mr. Castro be free or ever forget what he has
19 done and the lives that he has caused so much pain and
20 anguish to.

21 Mr. Richardson: Thank you, Your Honor. Your
22 Honor, that would conclude the State's presentation.

23 The Court: All right, Mr. Castro, you heard
24 what the Solicitor told me about the facts that relate to
25 the case?

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1 Mr. Castro: Yes, sir.

2 The Court: Do you agreed that those facts are
3 substantially correct?

4 Mr. Castro: No, sir.

5 The Court: And what is it that you disagree
6 with?

7 Mr. Castro: Well, on March 1st, Your Honor, I
8 was at a friends house earlier that day. I was helping my
9 mom move into a new house and we came back from leaving my
10 friend's and we were all having dinner when Kareen came
11 over to the house and asked my friend to go with him to
12 retrieve some money from Kevin had stole drugs from Kareem.
13 And he was, to make everything right he was supposed to pay
14 half his money and half of it a whole other way.

15 I went with my friend, Thomas Burn, to make
16 sure that nothing was going to happen so he could ride with
17 me and I could bring him home. And when we got there,
18 Kevin, I never met him, I don't know him. I didn't have
19 any reason to want to cause him any harm but when we got
20 there his actions led up to everything. I feel really
21 sorry for the family and how things tuned out but I was
22 there with my friends for my friends and the situation
23 changed in the blink of a eye; and he had a gun and I had a
24 gun and things that I was doing in my life as far as
25 selling drugs and everything and the week before that I was

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1 getting shot at and is the whole reason why I keep, or kept
2 the gun on me and the fact that that has happened and
3 everything changed so fast and those were the reasons why
4 it happened. I didn't plan on any of this. I'm truly
5 sorry for everything that's happened but that, that's how
6 it went, that's how it went down. That's exactly how it
7 happened.

8 The Court: But you went on Mr. Bowens'
9 property and you were armed when you went to his property?

10 Mr. Castro: Yes, sir.

11 The Court: Because you weren't invited by Mr.
12 Bowens to be there?

13 Mr. Castro: No, sir.

14 The Court: And you went on his property and
15 used your weapon against him?

16 Mr. Castro: Yes, sir.

17 The Court: Well you discussed with Mr.
18 Mullins what the elements of murder are?

19 Mr. Castro: Yes, sir.

20 The Court: You've discussed with Mr. Mullins
21 what the elements of voluntary manslaughter are?

22 Mr. Castro: Yes, sir.

23 The Court: You've discussed with him the
24 possibility of any defense that you could present at the
25 trial of the case?

Guilty Plea - September 12, 2012

25

1 Mr. Castro: Yes, sir.

2 The Court: And taking all that into account
3 and into consideration do you believe that if your case
4 went to trial before a jury of twelve people that you would
5 help select that there is a significant likelihood that you
6 would be found guilty either of the crime of murder or that
7 of the lesser offense of voluntary manslaughter?

8 Mr. Castro: Your Honor, I believe that I, I
9 would be charged with voluntary manslaughter because of the
10 fact that I was on his property and he does have the right
11 on his property to have his own weapon but I was not trying
12 to gain entry to his house. I was standing in the grass at
13 his house and I believe that those, those are the reasons
14 why I wouldn't be charged with murder but I would be
15 charged with voluntary manslaughter.

16 The Court: Well, you understand that the
17 State would have to present evidence in order to prove you
18 guilty? You've heard what the Solicitor says that he would
19 present by way of the facts. You of course know that you
20 could present evidence and testimony too if you wish to but
21 considering all that evidence that would be presented to a
22 jury, are you telling me that if all that evidence were
23 presented to the jury that you think that they would at
24 least find you guilty of voluntary manslaughter beyond a
25 reasonable doubt?

Guilty Plea - September 12, 2012

26

1 Mr. Castro: Yes, sir, Your Honor.

2 The Court: And so based upon that belief you
3 want to go forward and enter your plea guilty to voluntary
4 manslaughter?

5 Mr. Castro: Yes, sir.

6 The Court: So that you don't have to risk the
7 possibility that you'd be found guilty of the greater
8 offense which is murder?

9 Mr. Castro: Yes, sir, Your Honor.

10 The Court: All right. You are twenty-three
11 years old?

12 Mr. Castro: Yes, sir.

13 The Court: How far did you go in school?

14 Mr. Castro: I got my G.E.D.

15 The Court: Are you married?

16 Mr. Castro: No, sir.

17 The Court: Do you have children?

18 Mr. Castro: Yes, sir.

19 The Court: Are you employed?

20 Mr. Castro: No, sir.

21 The Court: And what kind of work have you
22 done?

23 Mr. Castro: When I was in school I was working
24 at McDonalds and from there various on and off jobs
25 eventually selling drugs.

Guilty Plea - September 12, 2012

27

1 The Court: And have you ever been treated
2 for any type of substance abuse or addiction?

3 Mr. Castro: No, sir.

4 The Court: Have you ever been treated for any
5 type of mental illness or emotional disturbance?

6 Mr. Castro: No, sir.

7 The Court: Do you suffer from any of those
8 conditions today?

9 Mr. Castro: No, sir.

10 The Court: You understand fully what you're
11 doing right now?

12 Mr. Castro: Yes, sir.

13 The Court: You do wish for me to accept your
14 pleas of guilty understanding the consequences of that
15 decision?

16 Mr. Castro: Yes, sir.

17 The Court: All right, I'll accept your plea
18 and hear from you and Mr. Mullins.

19 Mr. Mullins: May it please the Court, Your
20 Honor. Judge, I have been before this Court many times on
21 murder and death penalty cases and these are always sad
22 occasions. Their, a family has lost a man and another
23 family getting ready to lose a man. The children here
24 aren't going to have the benefit of a father on both sides.
25 There is nothing I can ever say to these victims that, that

Guilty Plea - September 12, 2012

28

1 will make them not hate me as this man's lawyer. But I
2 have to stand up for him today because that's my job.

3 He's been living a life, all the people in
4 this matter have been living a life of crime and there are
5 rules out on the street and they are not our rules in this
6 court room because we live by a code of conduct here that's
7 enforceable. But there's a code of conduct on the street
8 and that code of conduct is what's caused this matter
9 today. These people have lost their lives by the way they
10 were living and it's sad. It's sad children are going to
11 grow up without fathers. My client has a child he has not
12 seen. That child will never see him unless that child sees
13 him behind bars. These other children are going to grow up
14 without a father, that is equally sad. And as I've
15 practiced, and I was before this court room, they're more
16 likely to appear on the second floor because of not having
17 that guidance of a father.

18 Your Honor, I've looked at this case. We've
19 been to the scene. The Solicitor and I are the type of
20 individuals that have spirited debates on our cases, we've
21 had several. I think this is a fair resolution in this
22 matter. I've told my client that. I told him that he
23 never knew this man. This man's life should not have been
24 taken over the little bit of drugs and a tv here that was
25 involved. There's no question that should not have

Guilty Plea - September 12, 2012

29

1 happened. But the circumstances there in that cul de sac
2 that night caused this. I've talked to my client. He's
3 sorry he's taken this man's life. His family's here today,
4 Judge, and they're sorry that a member of their family took
5 another man's life; and they'd like to express that to the
6 Court if the Court deems that appropriate.

7 I ask the Court to be, if the Court can see
8 fit to do so, to be a bit merciful on this man giving
9 credit for time serves, give him less than the maximum. A
10 trial would have been in nobody's best interest here. A
11 trial would have taken up State resources. It would have
12 put the family reliving this matter. My client doesn't to
13 relive it and he doesn't want this family to relive it. We
14 ask for some forgiveness. We know that's hard to give,
15 especially when someone's taken away.

16 So, Judge, if you'd like to hear from any of
17 the family member that Saire Castro is more than just
18 someone whose life went bad, he didn't start that way.
19 His mother and father, his grandmother, his sister are
20 here. I have worked with his grandmother for probably a
21 year now on this case, met with them. This is a situation
22 where if he's stayed at his mama's house and finished
23 helping her move this afternoon we would not be standing
24 before this Court.

25 Mr. Harry is the architect of this matter

Guilty Plea - September 12, 2012

30

1 and the Solicitor and I have discussed what happens to Mr.
2 Harry after this; but he was there backing up a friend.
3 Now he's going to spend the rest of his life in prison for,
4 his adult life in prison, he'll be an old man when he gets
5 out for obeying a rule of the street and he understands
6 that that's a life he's got to give up.

7 Here, if Your Honor would like to hear from
8 them, that row Rose Castro, his mother, Harry Castro, his
9 father and Nettie Margaret Drayton, his grandmother and Amy
10 Castro, his sister, if the Court would entertain hearing
11 from them about Mr. Castro's life.

12 The Court: Well I'll be glad to listen to
13 anything you have to present.

14 Mr. Harry Castro: How you doing, sir?

15 The Court: Fine, thank you.

16 Mr. Harry Castro: My name is Harry Castro, I'm
17 his father. I want to say to the family I'm sorry for my
18 son taking your son's life. I know there's nothing can to
19 bring him back but I you ask for forgiveness, forgive him.
20 I believe you are Christians and if you could just forgive
21 him. I'm asking to have some forgiveness for him. He's
22 young and he did commit it. What he did was not right.
23 I'm just asking please have some, have some mercy,
24 forgiveness to my son.

25 The Court: Mr. Mullins, let me ask that any

Guilty Plea - September 12, 2012

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1 other person you'd like to have anything to say to me, that
2 all comments be directed to me, not to the Bowen family.

3 Mr. Harry Castro: I am sorry.

4 Mr. Mullins: I'm sorry, Your Honor. Mr.
5 Castro, I met with him this morning for the first time on
6 this and he, he's rather emotional, Your Honor.

7 The Court: I understand, that's why I didn't
8 cut him off but I'm saying I'm not going to hear from
9 anyone else who's going to direct comments to anyone other
10 than me.

11 Mr. Mullins: Yes, sir, I understand.

12 Mr. Harry Castro: I'm sorry, sir.

13 The Court: That's all right.

14 Mr. Harry Castro: I drove all night, I just got
15 here this morning.

16 The Court: I understand.

17 Mr. Harry Castro: I'm sorry.

18 The Court: What else would you like to tell
19 me?

20 Mr. Harry Castro: I'm sorry for my son what he
21 did. I know it's not right. I ask for forgiveness. I'm
22 really sorry, you know. There's nothing I can ---

23 The Court: Okay, thank you.

24 Mr. Castro: --- I'm sorry.

25 The Court: Thank you, sir.

Guilty Plea - September 12, 2012

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1 Mr. Mullins: Your Honor, this is my client's
2 mother, Abevarose Castro.

3 Ms. Castro: Your Honor, I too would like to
4 give my condolences and I do know what it is to lose a
5 child and not ever have that child in the house again. I
6 also agree with Attorney Mullins that, you know, it's a
7 horrible thing and the thing that strikes me the most is
8 the society that is out there in the world today is so many
9 times that you would tell a son or a daughter, change the
10 people you are with. Change the decisions that you are
11 making because it could never come of a anything good. I
12 know in my son's society, I do not know the man who's dead;
13 but I know son is a beautiful person, really has a very
14 good heart and I do think that had he not thought he was
15 doing the right thing in defense of hisself and his
16 friends, and I just imagine, I can only believe that what
17 he has told me because is, when he told me, he said Mom, I
18 thought he was going to kill me and he was in the position
19 of kill or be killed which though doesn't make it right,
20 but to lose my son for thirty years is hard. It's going to
21 be very hard. I do believe and I know by life experience
22 that people can change. Myself, I've done things in my
23 life but I'm a different person now and I'm a productive
24 member of society now. I have a job, I'm responsible and I
25 know how to be there for people and any time that son does

Guilty Plea - September 12, 2012

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1 in the prison I hope that he uses to an advantage to be
2 someone else and I'm just, this hold thing has torn so many
3 families apart. It's just been so hard and I've had, like,
4 the worse last two years of my life, and that's about it.

5 The Court: Okay, thank you, ma'am.

6 Mr. Mullins: Your Honor, this is Mary Drayton,
7 she's my client's grandmother. She's been working with me
8 on this case almost from the beginning.

9 Ms. Drayton: Your Honor, I want to give the
10 family my sincere, sincere apologies for their lose, for to
11 lose someone you love through any tragedy is truly painful.
12 I have prayed for their family and I pray for my own. I
13 will continue to do so.

14 My grandson is truly a beautiful person.
15 He's not perfect, he has his faults like anybody else. He
16 loves people. He will do what he can to help them. If you
17 need something, he's got it, he'll give it to you. If you
18 need help he can help you, ask him, he'll do it. Elderly
19 people, he's very mannerful. They ask me about him all the
20 time, how is he, he's in my prayers. Let him know we sent
21 our love. You know, and again, you know, the world today
22 has changed so much. If he made a mistake, it shouldn't
23 have happened, but he did. You know, I just pray to God
24 all the time, have merciful, Heavenly Father above, you
25 know, I know it's going to be hard for the victim's family

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1 to find in their heart to forgive but I'll keep praying
2 that in time that they're going to find it, that they're
3 going to be able to forgive and to heal, for both families
4 to heal because both families are involved, two families,
5 not just one. And that's all, thank you.

6 The Court: Okay, thank you, ma'am.

7 Mr. Mullins: That's all the family members that
8 would like to speak, Judge.

9 The Court: All right, Mr. Castro, is there
10 anything you'd like to tell me?

11 Mr. Castro: I just want to tell you again,
12 Your Honor, that I really am sorry for the situation and if
13 I could take it back I would.

14 The Court: On indictment 2012-2937, the
15 sentence of the Court is you, Saire Jerrel Castro, be
16 confined to the South Carolina Department of Corrections
17 for a period of thirty years. The defendant is to be given
18 credit for any time he's entitled to pursuant to 24-13-40.

19 Mr. Richardson: Thank you, Your Honor.

20 Mr. Mullins: Thank you.

21 End of requested transcript- - - -
22
23
24
25

CERTIFICATE OF REPORTER

I, the undersigned Brenda R. Babb, official court reporter the South Carolina Court Administration, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of General Sessions for Horry County, South Carolina.

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

July 14, 2013
Brenda R. Babb
Brenda R. Babb, CVR-Master
OFFICIAL REPORTER

STATE OF SOUTH CAROLINA

County of Horry

In the Court of Common Pleas

13

3626

Saire Castro #352370
Full name and prison number (if any) of Applicant,

vs.

State of South Carolina
Name of Respondent.APPLICATION FOR
POST-CONVICTION RELIEF**INSTRUCTIONS — READ CAREFULLY**

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

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

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

1. Place of detention Lieber Correctional Institution, Campbell
Thicket Road Ridgerville, SC 29472
2. Name and location of Court which imposed sentence Horry County, 15th Circuit
Horry County South Carolina
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2012GS2602937
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) September 12, 2012 30 Years Voluntary Manslaughter
 - (b) _____
 - (c) _____

13 MAY 24 PM 3:22
CLERK OF COURT

5. Check whether a finding of guilty was made

- (a) after a plea of guilty Applicant pleaded guilty
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____

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

No

7. If you answered "yes" to (6), list

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

- i. not applicable
 ii. _____
 iii. _____

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

- i. not applicable
 ii. _____
 iii. _____

(c) the date of each such result:

- i. not applicable
 ii. _____
 iii. _____

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

- i. not applicable
 ii. _____
 iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) not applicable
 (b) _____
 (c) Plea

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

- (a) Applicant was denied the right to effective
 (b) assistance of Counsel, guaranteed by the sixth and
 (c) 9th and 14th Amendments, when trial Counsel

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

- (a) failed to investigate, Counsel only met
 (b) with applicant two times during his stay
 (c) at detention, "jail". Counsel failed to request
Blain Hearing to determine Applicant's state of
mind at time of offense. Counsel was ineffective
in that Counsel did not evaluate applicant
applicant's educational background to determine if
applicant could knowingly and intelligently take a
Plea.

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? not applicable
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? not applicable
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? not applicable
- (d) any other petitions, motions or applications in this or any other Court? not applicable

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. not applicable
- ii. _____
- iii. _____
- iv. _____

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

- i. not applicable
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. not applicable
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. not applicable
- ii. _____
- iii. _____
- iv. _____

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

- i. not applicable
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

not applicable

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

(a) which grounds have been presented:

- i. not applicable
- ii. _____
- iii. _____

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

- i. not applicable
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) not applicable
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? _____
- (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? YES

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

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

- i. Mullins Law Firm, P.A. P.O. Box 585
N Myrtle Beach, SC 29597
- ii. _____
- iii. _____

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

- i. Mullins Plea arraignment
- ii. _____
- iii. _____

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

Reversed or reconsideration

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

NO

STATE OF SOUTH CAROLINA

County of Harley

VERIFICATION

13

36246

I, Saire Castro, 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.

Saire Castro

SWORN to and subscribed before me this 21st

day of May, 2013

Ludhean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2026

HARLEY COUNTY
13 MAY 24 PM 3:29
CLERK OF COURT
MELANIE FUGGINS-WARD

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

I, Saire Castro, Saire Castro, 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 therefor.

Saire Castro

Applicant

SWORN or affirmed to and subscribed before me this

21st day of May, 2013

Ludhean Bryant
Notary Public

My Commission Expires May 26, 2026

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2013-CP-26-3626
COUNTY OF HORRY	)	
	)	
Saire Castro,	)	
S.C.D.C. No. 352370,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed May 24, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Horry County Clerk of Court's orders of commitment. The Applicant was indicted at the August 2012 term of the Horry County Grand Jury for murder (2012-GS-26-2937). Randall K. Mullins, Esquire represented the Applicant.

On May 9, 2013, the Applicant pled guilty to voluntary manslaughter. The Honorable J. Derham Cole sentenced the Applicant to thirty (30) years imprisonment. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Horry County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the transcript.

II.

In his application for post-conviction relief the Applicant alleges he is being held in

custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failure to investigate.
 - b. Only met with Applicant twice.
 - c. Failure to request a Blair hearing.
 - d. Failure to evaluate Applicant's educational background.

Any claims not specifically enumerated in the Application or amendments thereto will be opposed by the State at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

III.

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.

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

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

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
S.C. Bar No. 100777

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

10/23, 2013

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
	)	
	)	2013-CP-26-3626
	)	
SAIRE CASTRO, #352370	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Daniel A. Selwa, II, Esquire
1053 London St., Suite A
Myrtle Beach, SC 29577

DATED this 23RD day of October, 2013.


 Norma Bigbee, Legal Assistant
 For Respondent

1
2 STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**
3 COUNTY OF HORRY) CASE NO: 2013-CP-26-3626

4 PCR HEARING

5 **B E F O R E:** The Honorable G. Thomas Cooper
6 February 4th, 2015

7
8 SAIRE CASTRO,
9 Petitioner,

10 vs.

 **ORIGINAL**

11 STATE OF SOUTH CAROLINA,
12 Respondent.

13
14 APPEARANCES:

15 Daniel Selwa, Esq.
16 For the Petitioner.

17
18 Joshua Thomas, Esq.
19 For the Respondent.

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21
22 Court Reporter:
23 Natalie Dahl, RPR
24
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I-N-D-E-X

WITNESS

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RANDALL MULLINS

Direct Examination by Mr. Thomas..... 13

Cross-Examination by Mr. Selwa..... 21

E-X-H-I-B-I-T-S

PETITIONER'S EXHIBITS

MARKED & ADMITTED

NO EXHIBITS

SAIRE CASTRO - DIRECT EXAMINATION

P-R-O-C-E-E-D-I-N-G-S

1
2 MR. THOMAS: This is Saire Castro versus State of
3 South Carolina, 2013-CP-26-3626. This is an
4 August 2002 indictment for murder. He was represented
5 on that charge by Randall Mullins. He pled guilty on
6 September 12, 2012 to voluntary manslaughter. Judge
7 Coal sentenced him to 30 years. He filed this PCR in
8 May of 2013 alleging various grounds of ineffective
9 assistance of counsel.

10 He's present in the courtroom and represented by
11 Daniel Selwa. The State is ready to proceed.

12 MR. SELWA: I would like to call Saire Castro to
13 the stand.

14 (Whereupon, SAIRE CASTRO, was duly sworn and
15 testified as follows:)

16 THE CLERK: State your name and spell your last
17 for the record.

18 THE WITNESS: Saire Castro, C-A-S-T-R-O.

DIRECT-EXAMINATION

19
20 BY MR. SELWA:

21 Q Mr. Castro, you are here because you filed a
22 petition for post-conviction relief against your trial
23 attorney; is that correct?

24 A Yep.

25 Q And who was that?

SAIRE CASTRO - DIRECT EXAMINATION

1 A Randy Mullins.

2 Q Can you tell the Court why Mr. Mullins was
3 ineffective for you?

4 A Randy Mullins failed to investigate my possible
5 defenses. In my motion to discovery, they were saying
6 that -- actually, didn't say anything about the drugs
7 that I'm speaking about, seems like I'm the only one
8 speaking about drugs, and there was no drugs found.
9 And, also, speaking about the victim having the gun,
10 but the gun wasn't found on the victim, it was found
11 inside the house. So it kind of -- what I was saying,
12 it didn't have no backup to it. There was no evidence
13 speaking to what I was saying, but then come to find
14 out, the gun was moved and found inside the house, and
15 then already after I was sentenced to the Department of
16 Corrections, I come back to my codefendant, he goes to
17 trial and I find out from his attorney that the drugs,
18 the cocaine, was found flushed down the toilet, and the
19 whole time I'm telling you this is what happened and
20 this is why it happened. All the evidence that I
21 needed to prove that, was nowhere in my motion to
22 discovery, and I found out after I got sentenced to 30
23 years.

24 So I kind of was looking at it like, well, I'm
25 telling you this, and you don't -- you don't believe

SAIRE CASTRO - DIRECT EXAMINATION

1 it because there is no proof, but the whole time the
2 proof was there, and I never knew about it.

3 Q This was a guilty plea, correct?

4 A It was.

5 Q How many times did you meet with Mr. Mullins?

6 A About two, three times -- about three.

7 Q And during those meetings, what kind of stuff did
8 he go over with you?

9 A He told me about stand-your-ground law for the
10 victim, saying that he was able to protect himself,
11 okay, and that I was telling him, well, if the victim
12 pulled a gun out on my codefendant, then -- and then I
13 shot him in reaction to that, he was telling me that
14 the law doesn't protect me because I was in an unlawful
15 act at the time. But what I wanted to know is if the
16 victim was in possession of the cocaine, and he was in
17 an unlawful act at the time, why would the law protect
18 him and not me, see what I'm saying?

19 Q And did -- you mentioned discovery, did he go
20 over all the discovery with you?

21 A Yes.

22 Q And what -- other than the drugs -- you say that
23 there was no evidence of any drugs in your discovery,
24 was there anything else that was missing?

25 A Well, the statement about I didn't find out until

SAIRE CASTRO - DIRECT EXAMINATION

1 I took the plea that they -- the Solicitor wasn't
2 mentioning it that, yeah, okay, the victim did come
3 outside with the gun, so who told him? Where was that
4 statement? Who told him to let him know that? That
5 was missing out of my motion of discovery.

6 Q Did you ask Mr. Mullins about that stuff?

7 A I didn't know about it until I was already at
8 SCDC, that is when I found out about everything.

9 Q Okay. Did Mr. Mullins speak to you about why you
10 should or shouldn't plea according to the facts and
11 what was stacked against you, did he go over that
12 consideration at all with you?

13 A Yes.

14 Q And do you recall what he talked to you about
15 regarding that?

16 A He was basically telling me that according to,
17 you know, the evidence, that this was the best option,
18 was to plea out versus going to a trial. He was
19 telling me, yes, it's a really good option. He is
20 telling me it was up to the judge's discretion at the
21 time, that voluntary manslaughter carries 2 to 30
22 years. So, basically, from what I tell to the judge, I
23 will be able to -- it wouldn't be just 30 years, it is
24 up to the judge's discretion from the facts of whether
25 he would give me 30 years or not.

SAIRE CASTRO - DIRECT EXAMINATION

1 Q And he explained to you that you could get 2, or
2 you could get 30, or anywhere in between?

3 A Yes.

4 Q Did he suggest to you that maybe you would get a
5 certain amount of time or not?

6 A I asked him one time before any mention of any
7 plea, and he was like possibly looking at 15 to 20
8 years.

9 Q Did you ask Mr. Mullins to conduct any kind of
10 investigation which you recall he didn't do?

11 A Not specifically. I didn't ask him for no
12 specifics, no.

13 Q In your PCR petition, you speak of competency
14 issues, and you allege that he failed to address that.
15 Do you feel that you were competent at that time or
16 able to understand everything that was going on?

17 A In regard to all the issues that I filed in my
18 PCR, I believe that my most -- my stronger issue would
19 be the failure to investigate. To answer your question
20 about the competency, I feel as though I'm more
21 competent now because of the fact that I have an
22 understanding of certain laws, but at the time I felt
23 competent in -- felt like, okay, yeah, I'm hanging on
24 your word, this is -- this is what it's supposed to be.
25 So, no, I didn't feel -- now I look at it like, no, I

SAIRE CASTRO - DIRECT EXAMINATION

1 wasn't competent then because I don't -- I didn't know
2 then what I know now.

3 Q Did you request extra time with Mr. Mullins to
4 explain stuff to you?

5 A No. I corresponded with him through the mail and
6 asked a couple of questions, which he sent me answers
7 to, and the only times that we really spoke was when I
8 first got here and then going towards the time to get
9 my sentence.

10 Q Did Mr. Mullins convey the offer to you?
11 Obviously you pled, so I'm assuming he did, but were
12 you able to see what the State offered you on paper?

13 A Was I able to see it on paper?

14 Q Yes.

15 A Yes.

16 Q And did he explain the difference between the
17 recommendation as a plea and a negotiated plea? Are
18 you aware of what a negotiated plea is?

19 A I guess -- well, the word "negotiation," you
20 know, where you are able to go back and forth, not ten,
21 not 20, not 30, that is negotiation, right, but this
22 plea is separate from this plea, no. I asked him one
23 time -- I asked a question, something about like a
24 15-year cap. I'm not a plea attorney, you know what
25 I'm saying. I do better in trial, that is what he told

SAIRE CASTRO - DIRECT EXAMINATION

1 me.

2 Q As far as your claim not to investigate, what did
3 Mr. Mullins do that would have not made you plea? What
4 didn't he do that you are complaining of now, that had
5 you known then, you wouldn't have pled guilty?

6 A If I would have knew that there was evidence to
7 back my story, what I was saying was true or had more
8 weight, then I would have elected to either go to trial
9 or be able to present this evidence, and it would have
10 come to a better plea for myself.

11 Q So to your knowledge, did Mr. Mullins file any
12 motions to have the information that wasn't provided to
13 him through discovery provided to him?

14 A I don't even know if he knew that the evidence
15 was missing exactly. The motion came from the
16 prosecutor, then the information in it would be that of
17 the prosecution's and not his, so I don't know.

18 Q All right. Other than the complaints that you
19 listed here, are there any other issues which you wish
20 to bring before the Court in regards to your
21 post-conviction relief?

22 A No.

23 MR. SELWA: No further questions. Answer any
24 questions that the AG's office will have for you.

25

SAIRE CASTRO - CROSS-EXAMINATION

CROSS-EXAMINATION

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BY MR. THOMAS:

Q Mr. Castro, you said you had two, three meetings with Mr. Mullins?

A Yes, sir.

Q And during those meetings, he clearly explained to you the murder charge that you were facing? He told you what the elements of murder were?

A Yes, sir.

Q And I believe you also had four other charges dismissed in exchange for this plea?

A Yes, sir.

Q You said you all looked over discovery, and the only thing you thought was missing was the information about the gun and drugs?

A Yes, sir.

Q Did you have an opportunity to tell Mr. Mullins your version of events?

A I did.

Q And that was pretty much the same thing you told us today and that you testified at Mr. Harry's trial?

A Yep. Yes, sir.

Q I think you said you didn't really have any sort of investigation that you told him to do; is that correct?

SAIRE CASTRO - CROSS-EXAMINATION

1 A Right.

2 Q You said that if you had known about information
3 about the gun and the drugs on the victim, you maybe
4 could have gotten a better plea deal?

5 A Or even -- it would have helped Mr. Mullins push
6 harder or fight harder knowing that there was -- that
7 that evidence was there.

8 Q Would you have gone to trial if you had known all
9 of that?

10 A I believe I would have gone to trial knowing all
11 of that. And as far as like the plea taking away the
12 other charges, how do I say, like that's a good thing,
13 but the major issue is dealing with a murder, and if I
14 went to trial, as I said, when I took the plea, would
15 you have been able to find me guilty of voluntary
16 manslaughter, and he would say, yes, you would be able
17 to find me guilty of voluntary manslaughter, so if I
18 went to trial, I would have been convicted of voluntary
19 manslaughter. You understand?

20 Q So how would that have changed your situation
21 today?

22 A Okay. With the facts and the evidence and
23 basically being able to prove that this man did pull
24 out a gun, that this man was in an unlawful act having
25 my codefendant's drugs in his possession, things like

SAIRE CASTRO - CROSS-EXAMINATION

1 that, it would have changed -- it would have changed
2 things dramatically to the fact that it wouldn't look
3 like I just went to somebody's house and shot them for
4 no reason. It would look like that I went to
5 somebody's house and I didn't have anything to do with
6 the conversation and leading to the escalation, and
7 when he pulled the gun out, I shot him. You see what
8 I'm saying? So it really would have been out there
9 that, yes, I was defending my codefendant.

10 Q But do you still think you would have been
11 convicted of voluntary manslaughter?

12 A Why I say that then and now is because in the
13 papers that I got from Mr. Mullins where they were
14 showing the elements of voluntary manslaughter and the
15 elements of murder, one of the elements say that you
16 have to try to de-escalate the situation, and I never
17 took it upon myself, please, don't shoot. So that is
18 why I said, yes, you could find me guilty of voluntary
19 manslaughter.

20 Q But do you remember waiving your right to a jury
21 trial when you pled guilty?

22 A Yes.

23 Q And, ultimately, that was your decision to enter
24 that plea, wasn't it?

25 A Yes.

RANDALL MULLINS - DIRECT EXAMINATION

1 Q As far as the competency issue, you are not
2 saying that you had a problem understanding your
3 conversations with Mr. Mullins, are you? You are just
4 saying that you didn't have a full grasp of the law
5 that you do now?

6 A Correct.

7 MR. THOMAS: Thank you, Mr. Castro.

8 MR. SELWA: No redirect.

9 THE COURT: You can come down now.

10 MR. SELWA: No further witnesses, Your Honor.

11 MR. THOMAS: State calls Mr. Mullins to the
12 stand.

13 (RANDALL MULLINS, having been duly sworn,
14 testified as follows:)

15 THE CLERK: State your name and spell your last.

16 THE WITNESS: Randall K. Mullins, M-U-L-L-I-N-S,
17 also known as Randy Mullins.

18 DIRECT-EXAMINATION

19 BY MR. THOMAS:

20 Q How long have you been practicing law?

21 A I got here in Horry County in 1985, worked in
22 title search for a year, passed the bar in 1986 and be
23 an attorney since.

24 Q How did you become involved in Mr. Castro's case?

25 A I was court appointed as a result of the several

RANDALL MULLINS - DIRECT EXAMINATION

1 codefendants in the matter, which was the procedure
2 here in Horry County at the time.

3 Q Before we go into your representation of him, one
4 of the other codefendants ended up going to trial?

5 A Yes, sir. Actually, my next door neighbor was a
6 juror on that trial.

7 Q And that was Mr. Harry?

8 A Correct.

9 Q And did you represent Mr. Castro at the time he
10 testified at that trial?

11 A No one even called me to tell me he was here for
12 trial. I found out when my neighbor came over to tell
13 me she sat on the jury.

14 Q How many meetings did you have with Mr. Castro?

15 A If I can refer to my billing sheet?

16 Q Absolutely.

17 A The first one was carried out by Jared Owenby
18 under Judge John's standing order to contract after so
19 many days, so that was one meeting that Jared had just
20 to say we're here, don't talk to the authorities, just
21 our initial get-acquainted meeting. I was unavailable
22 at the time.

23 I met with him on 5/13/11 at the jail for 2.3
24 hours. We had a docket appearance on June 3rd, and I
25 met with him at the courthouse there. I met with him

RANDALL MULLINS - DIRECT EXAMINATION

1 on July 26 at the detention center for an hour. I met
2 with the family for an hour on the 17th of November of
3 2011, met with him at the jail on December 6, 2011 for
4 two hours. June 5, 2012, 3.5 hours at the jail. July
5 5, 2012, 1.1 hours at the detention center. August 6,
6 2012, a half hour at the jail and then prior to the
7 plea hearing an hour here at the courthouse, excluding
8 the time I met with his family. I believe there is
9 some of them in the audience.

10 Q During all of those meetings, what kind of
11 conversations did you have about discovery? What did
12 you tell him about State's evidence?

13 A First he wanted discovery sent to a relative
14 because he didn't want it in his cell. There was a
15 rash of people reading discovery and suddenly they
16 became a snitch for the State to testify against them
17 because they find something out about them. So I
18 caution clients about that, about watching discovery.
19 So we sent it to their relative to start with, I
20 believe Netty Drayton.

21 Later, I had authority in writing to discuss the
22 case with Ms. Drayton, and later that authority was
23 revoked, so I sent another copy of discovery to the
24 client.

25 Q Did you have an opportunity to review that with

RANDALL MULLINS - DIRECT EXAMINATION

1 him personally?

2 A I did. In this case, and maybe just because I'm
3 getting old, I actually put my analysis in writing in a
4 three-page letter of what I thought about this and
5 discussed that with both him and his family of why I
6 thought voluntary manslaughter was a good idea.

7 Q Let's get to that. Could you tell us what the
8 State's theory of the case was, what the evidence
9 showed?

10 A If I could refer to my notes. This was a
11 situation -- this shooting actually happened at a
12 friend of mine's neighborhood, so of course I knew the
13 scene, but I went to the scene again to review it after
14 I had the Brady material to see what the detective's
15 notes and charts matched to what I saw.

16 Mr. Castro arrived on the scene with several
17 other individuals that were involved with this. He
18 described what had happened in the meeting December 6,
19 2011 at the jail. There was an Ashley Bletso, Amanda
20 Burn, Tammy Burn, Kareem Harry, Sage McFale, Olivia
21 Ward all involved in the shooting and eventual death
22 of Mr. Bowens there in the neighborhood. Mr. Bowens
23 was a drug dealer. Like most drug dealers, he had a
24 gun. There was some dispute between Kareem Harry, who
25 got Saire Castro involved in this. Saire, from my

RANDALL MULLINS - DIRECT EXAMINATION

1 information, didn't know the victim. He came there to
2 back up Kareem Harry that day.

3 Kareem was armed, as I understood. Mr. Bowens
4 was armed, but Mr. Bowens, although being a drug
5 dealer, was on his own property. The confrontation
6 escalated apparently. Saire saw Kevin Bowens with the
7 gun, shot him thinking he was going to shoot Kareem
8 Harry, all over drugs and a TV.

9 My theory on the case, and he had said, well, I
10 was defending Kareem, and no question if Kareem Harry
11 didn't get him involved, he probably wouldn't be in
12 jail today, or he may have been. There was another
13 series of charges he was facing. There was a string
14 of drug charges. After the first bond hearing Judge
15 John appointed me to all of those for the sake of
16 judicial economy. He had a trafficking cocaine, a
17 possession of ecstasy, possession of crack, marijuana
18 and unlawful negligent of a child, which involved a
19 young lady and a child in a car that he was pulled
20 over prior to this incident. So he had pending
21 charges at the time.

22 My fear was that the State would call the drug
23 case first, tag him with a conviction and then call
24 the murder case afterwards. So when he took the
25 stand, he would have a record, drug record. After

RANDALL MULLINS - DIRECT EXAMINATION

1 going to the scene and meeting with everyone, meeting
2 with the family and trying to find some way to work it
3 out, we looked back on some of the evidence, and I met
4 with Brad Richardson about that. Brad eventually
5 confessed, after I leaned on him a little bit, that
6 there had been a gun and cocaine on the victim,
7 Mr. Bowens, but the girlfriend and the neighbors moved
8 it prior to the body being moved. So he was armed and
9 he did have cocaine, and I knew that and the Solicitor
10 knew that and Mr. Castro knew that and the family, but
11 it still didn't take away from the fact that he was
12 standing in his own yard when this occurred.

13 I was concerned that Kareem Harry and Saire
14 Castro were not lawfully in place at the time they
15 were going to exercise self-defense. They brought on
16 the situation for themselves. This, in fact, if you
17 factor in the new stand-your-ground law creates
18 difficulty. Mr. Richardson and I had pretty intense
19 discussions on the matter, including the missing bag
20 of cocaine, that had we gone to trial, I would have
21 hung around the victim's neck. As a result of all of
22 this, Brad got down to pleading to manslaughter, not
23 negotiated, no recommendation, straight up plea. I
24 explained all of this to both Saire and his family in
25 writing in an effort to make sure that everyone

RANDALL MULLINS - DIRECT EXAMINATION

1 understood what I thought, including the fact that the
2 judge under that scenario is the ultimate arbiter of
3 the matter, he gives out the ultimate sentence, not me
4 or the Solicitor. We are free to argue whatever we
5 want, but the final disposition is the judge's.

6 Q So you explained self-defense to him?

7 A I explained murder, voluntary manslaughter,
8 self-defense, elements of self-defense, defense of
9 another, stand your ground and in writing -- when he
10 didn't get the letter that I thought he got, we
11 recessed it and went back to the jail, went over it
12 again, and I actually held the plea for about a week or
13 so for him to think about it.

14 Q So, ultimately, whose decision was it to accept
15 the plea?

16 A Saire Castro's.

17 Q And you explained to him that -- and I know this
18 is redundant, but you explained the sentence was up to
19 the judge, there was no promises or guarantees or
20 anything?

21 A I didn't think I could get any more out of Brad
22 Richardson than down to voluntary manslaughter. In
23 exchange for which, all of the prior drug cases were
24 all dismissed. So there was dismissal of all pending
25 charges and kicking the murder down to voluntary

RANDALL MULLINS - DIRECT EXAMINATION

1 manslaughter in a straight-up plea.

2 Q And last thing I want to ask you about, what was
3 your evaluation of his competency to stand trial and
4 to, I guess, understand what was going on?

5 A I didn't get a feeling from Saire that he was
6 incompetent when I was talking to him. He seemed to
7 understand me. This wasn't a
8 hurry-up-get-this-case-over-with guilty plea. We were
9 set for a trial date. If he didn't want the plea, I
10 could have tried it. You know, this was not anything
11 that was rushed at all. In the meetings I had with his
12 family, and I've been trying to do this more and more,
13 if you involve the family in the defense so they
14 understand what is going on, understand what you are
15 getting in -- with the consent of the client -- maybe
16 these things are not as harsh as they seem on plea day.

17 No one ever said he doesn't understand. If they
18 did, there was plenty of time from the time the case
19 was pending to send him for an evaluation, because he
20 was never out on bond after the murder case.

21 Q As far as going to trial, would you have been
22 ready if he asked you to?

23 A Sure.

24 Q But did he ever indicate to you that he wanted to
25 go to trial?

RANDALL MULLINS - CROSS-EXAMINATION

1 A We discussed it at length during that one
2 meeting, and he considered a trial. I would have had
3 to put the victim on trial. I would have had to
4 convince the judge to give me a charge on voluntary
5 manslaughter, and if the judge didn't give my a
6 voluntary manslaughter charge, it would have been a
7 straight up guilty/not guilty in front of a jury. They
8 wouldn't have had any other alternatives.

9 MR. THOMAS: Thank you. Answer questions that
10 Mr. Selwa has.

CROSS-EXAMINATION

11
12 BY MR. SELWA:

13 Q Did you have all the information you needed in
14 the discovery?

15 A I had enough to assess whether this was for trial
16 or not. There wasn't anything else -- I suspect that
17 there were drugs and a gun, and finally they admitted
18 that there were.

19 Q But you didn't have any information of that prior
20 to him pleaing?

21 A Oh, no, I had that prior to him pleaing. I had
22 it during a meeting with Mr. Richardson in his office.

23 Q Did you go over that with Mr. Castro?

24 A I did.

25 Q At any point, did you try to get a negotiated

RANDALL MULLINS - CROSS-EXAMINATION

1 plea?

2 A This was negotiated. It was negotiated from
3 murder to manslaughter. Do you mean -- Mr. Selwa, do
4 you mean I tried to say a cap of such-and-such or we
5 withdraw the plea? No. Brad wasn't going that far.

6 Q Okay. And as you stated earlier about
7 Mr. Castro's competency, it appeared to you that he
8 understood everything?

9 A It did.

10 Q At any point did he express that he didn't
11 understand anything or needed additional information?

12 A No, and Mr. Selwa, I took my time on this
13 specifically, and put everything in writing
14 specifically so that there wouldn't be a
15 misunderstanding.

16 Q And you were sure that he understood he could get
17 30 years?

18 A As much as I can be sure of telling someone the
19 judge can give you 30 years. But no one believes that
20 until they actually get it.

21 Q And so other than the coke and the gun, there was
22 no other discovery issues that you needed to follow up
23 on, to your knowledge?

24 A I had been to the scene. I met with the client,
25 talked to the codefendants' attorneys, went through the

RANDALL MULLINS - CROSS-EXAMINATION

1 CDs that Brad Richardson gave me. You know, it was --
2 it was basically one of those drug situations that went
3 poorly.

4 Q Okay.

5 MR. SELWA: Thank you, Mr. Mullins. No further
6 questions.

7 MR. THOMAS: No redirect.

8 THE COURT: You may come down, thank you very
9 much.

10 MR. THOMAS: That is all from the State, Your
11 Honor. And we ask he be excused.

12 THE COURT: All right. Any objection?

13 MR. SELWA: No objection.

14 THE COURT: Without objection. Free to go, thank
15 you.

16 MR. MULLINS: Thank you, Your Honor.

17 THE COURT: Anything further in the way of
18 summation or other evidence?

19 MR. SELWA: No, sir.

20 THE COURT: State?

21 MR. THOMAS: No, Your Honor.

22 THE COURT: All right. Thank you very much.
23 Proposed orders in 30 days.

24 (Whereupon, the proceedings concluded.)
25

1 CERTIFICATE OF REPORTER
2

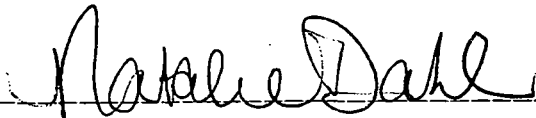
3 State of South Carolina)

4 County of Horry)
5

6 I, Natalie Dahl, Official Court Reporter for the
7 State of South Carolina, do hereby certify that the
8 foregoing is a true, accurate and complete Transcript
9 of Record of the proceedings had and evidence
10 introduced in the matter of the captioned case,
11 relative to appeal, in the Court of Common Pleas for
12 Horry County, South Carolina, on the 4th day of
13 February, 2015.

14 I do further certify that I am neither of kin,
15 counsel, nor interest to any party hereto.
16

17 August 2, 2015
18

19 
20 _____
21 Natalie Dahl, RPR

22 Court Reporter
23
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Saire Castro, #352370,)

Case No. 2013-CP-26-3626

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

FILED
HORRY COUNTY
2015 MAY -5 PM 3:00
CLERK OF COURT
LANE HUGGINS-WARD

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 24, 2013. Respondent made a timely Return on or about October 23, 2013. The Court convened an evidentiary hearing into the matter on February 4, 2015, at the Horry County Courthouse. Applicant was present at the hearing and represented by Daniel A. Selwa II, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

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

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In August 2012, the Horry County Grand Jury indicted Applicant for murder (2012-GS-26-2937). Randall K. Mullins, Esquire

G2

("plea counsel"), represented Applicant. On September 12, 2012, Applicant pled guilty to the lesser included offense of voluntary manslaughter. The Honorable J. Derham Cole sentenced Applicant to thirty (30) years imprisonment. Applicant did not appeal his plea or sentence.

II. ALLEGATIONS

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

1. "Applicant was denied the right to effective assistance of counsel guaranteed by the Sixth and 5th and 14th Amendments, when trial counsel failed to investigate. Counsel only met with applicant two times during his stay at detention, 'Jail.' Counsel failed to request Blair Hearing to determine Applicants state of mind at time of offense. Counsel was ineffective in that counsel did not evaluate applicant applicants educational background to determine if applicant could knowingly and intelligently take a plea."

At the evidentiary hearing, Applicant proceeded on only the allegations of ineffective assistance of plea counsel for failure to investigate.

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. The Court has weighed the testimony accordingly. Generally, the Court finds plea counsel's testimony credible, and finds Applicant's testimony not credible. 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 plea counsel failed to investigate possible defenses. He recalled

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reviewing all discovery with plea counsel. Applicant testified his discovery did not include any information that the victim had a gun and drugs in his possession at the time Applicant shot him. He recalled discussing the "stand your ground" law with plea counsel. Applicant testified he explained to plea counsel that he shot the victim after the victim pulled a gun on his co-defendant. He recalled plea counsel explaining the law did not protect him because he was not acting lawfully leading up to the shooting. Applicant testified he could have been convicted of voluntary manslaughter if he had gone to trial, but he recalled understanding a plea was better than a trial in his case.

Plea counsel testified he has been a practicing attorney since 1986. He recalled meeting with Applicant at least seven (7) times prior to the plea. He recalled personally reviewing discovery with Applicant, as well as sending a copy to a relative. Plea counsel testified Applicant believed he acted in defense of his co-defendant. Plea counsel testified he explained self-defense, defense of others, and "stand your ground" to Applicant. Plea counsel further testified he did not think Applicant could avail himself of any of these defenses because he went to the victim's property for a confrontation. Plea counsel testified he was familiar with the victim's girlfriend's testimony that she removed drugs and a gun from the victim's body before the police arrived. He recalled discussing the girlfriend's actions with Applicant.

Plea counsel testified he advised Applicant a plea was in his best interest. He recalled explaining to Applicant the difference between murder and voluntary manslaughter. Plea counsel also recalled explaining the fact the plea offer was without negotiations or recommendations, and the judge would determine the sentence. Plea counsel testified he advised Applicant the ultimate decision to plea was Applicant's to make.

B. Ineffective Assistance of Plea Counsel

In a post-conviction relief action, Applicant bears the burden of proving the allegations in his 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 plea counsel as a ground for relief, Applicant must prove plea counsel's "conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "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 plea 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 plea 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 plea counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the Court measures plea counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea 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. In the context of

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a guilty plea, Applicant must show there is a reasonable probability that, but for plea counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

The Court finds Applicant failed to meet his burden to prove plea counsel ineffective. The Court finds plea counsel's testimony very credible, and gives it great weight. Correspondingly, the Court finds Applicant's testimony not credible. Failure to conduct an independent investigation is not *per se* ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Here, Applicant has not shown how a further investigation would have uncovered any information to assist his defense. Trial counsel was fully aware of the facts regarding the missing gun and drugs. He reviewed the facts of this case thoroughly with Applicant prior to his plea. Applicant understood the facts were not favorable to his presentation of an affirmative defense. He also understood, as he testified at the hearing, that a conviction for voluntary manslaughter was the best case scenario if he went to trial. However, he was also faced with the likelihood of being convicted of murder. Under the facts of this case, Applicant has not demonstrated how a further investigation would have changed his decision to plead guilty. See Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (applicant must show "something that would have affected counsel's advice to [the applicant] to accept the plea bargain offered or that would have caused [the applicant] to decline to accept it").

Regardless, Applicant admitted his guilt at the guilty plea and indicated he was satisfied with counsel's representation. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) ("A guilty plea is a solemn, judicial admission of the truth of the charges against an

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individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements." (citations omitted)). Applicant admitted at the evidentiary hearing he knew the victim had a gun. He also admitted he told plea counsel the victim had a gun. Thus, he cannot now claim his plea was entered with no understanding of the facts regarding the missing gun and drugs. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (knowing and voluntary plea waives non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence (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))); Kolle v. State, 386 S.C. 578, 597 n.7, 690 S.E.2d 73, 83 n.7 (2010) (Kittredge, J., dissenting) (an inmate should not be able to collaterally attack a plea where counsel's alleged deficiency was known at the time of the plea and the inmate lied about counsel's performance at the plea). Accordingly, the Court finds trial counsel conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation.

C. 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.

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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 his 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 his attorney's 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), SCRCP, provides that if Applicant wishes to seek appellate review, his attorney must serve and file a notice of appeal on Applicant's behalf. Applicant is 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 27 day of April, 2015.



THE HONORABLE G. THOMAS COOPER, JR.
Presiding Judge



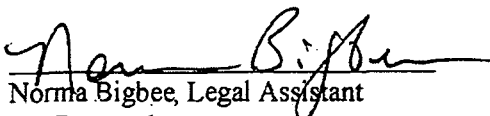
, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS
	)	2013-CP-26-3626
SAIRE CASTRO, #352370	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Daniel A. Selwa, II, Esquire
 1053 London St., Suite A
 Myrtle Beach, SC 29577

DATED this 19th day of May, 2015.


 Norma Bigbee, Legal Assistant
 For Respondent

WITNESSES

Troy Large Horry County Police Department

DOCKET NO. 2012-GS-26-02937
The State of South Carolina

County of Horry

Bradley C. Richardson
11H01632

COURT OF GENERAL SESSIONS

August, 2012 TERM

ARREST WARRANT NUMBER

M840045

CDR: 0116 16-03-0010, 0020

DOA: 5/3/2011

THE STATE

VS.

Saire Jerrel Castro

B/ M

DOB: [REDACTED]
SSN: [REDACTED]

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: JUL 26 2012

VERDICT

ATTORNEY: Mullins, Randall K.

Indictment for

MURDER

ORIGINAL

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT
MURDER

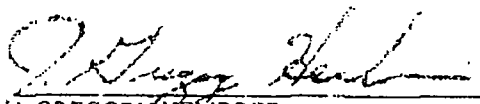
At a Court of General Sessions, convened on July 26, 2012, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Saire Jerrel Castro and/or his co-defendant(s) did in Horry County, on or about March 1, 2011, willfully, feloniously, and intentionally kill the victim, Kevin Bowens, with malice aforethought, either express or implied, by means of a shooting, and the victim did die as a proximate result thereof on or about March 1, 2011 in Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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


J. GREGORY PEMBREE
FIFTEENTH CIRCUIT SOLICITOR