

RECEIVED

DEC - 9 2015

S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Florence County

D. Craig Brown, Circuit Court Judge

RODNEY D. IVEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001314

APPENDIX

JOHN H. STROM
Appellate Defender

ALAN WILSON
Attorney General

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

J. CROOM HUNTER
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT	1
PRO SE APPEAL	32
COURT OF APPEALS ORDER DENYING APPEAL	33
APPLICATION FOR POST-CONVICTION RELIEF	34
RETURN	41
POST-CONVICTION RELIEF HEARING TRANSCRIPT	48
ORDER OF DISMISSAL	73
INDICTMENT	79

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE	)	2012-GS-21-119
	)	
	)	
	)	
State of South Carolina	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Rodney Dale Ivey	)	)
<u>DEFENDANT</u>	)	June 8, 2012
		Florence, SC

B E F O R E:

THE HONORABLE MICHAEL G. NETTLES, JUDGE.

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

ED CLEMENTS, SOLICITOR
Attorney for the State

SCOTT P. FLOYD, CHIEF PUBLIC DEFENDER
Attorney for the Defendant

KESHIA REED
Official Court Reporter

I N D E X

(WHEREUPON, there were no witnesses called.)

1 THE COURT: Mr. Clements, you recognize.

2 MR. CLEMENTS: Thank you, Your Honor. If it
3 please the Court, Your Honor, we are here on
4 2012-GS-21-119, which is a charge of murder, standing in
5 front of you is Mr. Rodney Dale Ivey. He's represented by
6 Mr. Scott Floyd. He is charged with the murder of Devin
7 Hamm Ivey.

8 Your Honor, this is a guilty plea without
9 negotiations or recommendations, but for also, Your Honor,
10 there is companion indictment 12-817 where we directly
11 indicted him for burying a body without notice and also
12 giving false information to law enforcement which will be
13 nol-pros with this plea to murder. And just a moment ago,
14 Mr. Floyd let me know that there was some pending charge
15 something to do with a TV rental, breach of a TV rental
16 agreement, which I didn't know anything about, but with
17 the plea to the murder, we'll dismiss that charge as well.
18 Other than that, there's no negotiations, no
19 recommendations.

20 THE COURT: Very good. Mr. Floyd, do you indeed
21 represent Mr. Ivey?

22 MR. FLOYD: I do, Your Honor.

23 THE COURT: Have you explain to him the offense
24 of murder, the elements of the offense, potential defenses
25 and his Constitutional Rights?

1 MR. FLOYD: Yes, Your Honor.

2 THE COURT: Does he understand that this is a
3 violent offense which adversely affects his custody
4 status, the fact that it's a most serious offense subject
5 to the two strike rule and that he will serve this
6 sentence day for day?

7 MR. FLOYD: Yes, Your Honor.

8 THE COURT: And how does he wish to plead?

9 MR. FLOYD: Guilty, Your Honor.

10 THE COURT: You agree with his decision to do
11 so?

12 MR. FLOYD: I do.

13 THE COURT: Do you feel if called upon to do so
14 the State could prove him guilty beyond a reasonable
15 doubt?

16 MR. FLOYD: I do, Your Honor.

17 THE COURT: All right. Let's place Mr. Ivey
18 under oath if we could.

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

22 THE DEFENDANT: I do.

23 THE COURT: Mr. Ivey, are you under the
24 influence of any drugs or alcohol her today?

25 THE DEFENDANT: No, sir.

1 THE COURT: You experiencing any kind of
2 physical or mental problem that could prevent you from
3 understanding what's going on here today?

4 THE DEFENDANT: No, sir.

5 THE COURT: All right. Mr. Floyd, he
6 understands that this is a minimum mandatory 30 years. He
7 can't get any less than 30 years. He understands that?

8 MR. FLOYD: He understand that, Your Honor.

9 THE COURT: Very good. Mr. Ivey, pay very close
10 attention to Mr. Clements as he summarizes the facts that
11 bring us here today. I'm going to ask you if you agree
12 with the facts as they have been recited.

13 MR. CLEMENTS: Thank you, Your Honor. First,
14 Your Honor, before I recite the facts Your Honor, I like
15 to introduce you to who's here in the courtroom today. We
16 have many people from the community out in support of the
17 Hamm family. Also, Your Honor, we have several folks here
18 I'm going to stand to the side, Your Honor, so you can see
19 them. And when I call their name, I ask that they raise
20 their hand and these are Devin's family members. Debra
21 Hamm is the mother of Devin. Debee Hamm is the father.
22 Yvonne is the grandmother. Shannon McKnight is her
23 sister. Alex McKnight is her brother-in-law. Heather
24 Broach is her best friend. Megan Sharp is her cousin.
25 Wendy Vesco is an aunt. Bryan Vesco is her uncle. Haley

1 Wise is her cousin. Sloan Walters is a cousin. Gaye Boss
2 is her aunt seated right here, Your Honor. Tamara Muniz
3 is a cousin. Yvonne Boss grandmother. I had her name on
4 their twice I apologize. Margaret Ashfall is a great
5 aunt. And Ellen Hamilton is the victim advocate here.

6 THE COURT: Very good.

7 MR. CLEMENTS: Also, Your Honor, I like to
8 introduce investigators here for the Florence County
9 Sheriff's Office that were involved in this case.
10 Investigator William Hester started this investigation,
11 Your Honor, as a missing person investigation. He started
12 that investigation on June the 9th, I believe was June the
13 9th 2011. Investigator Thomas McFadden and Investigator
14 Kathleen Streett became involved in the investigation
15 later. Your Honor, as it became clear that this became a
16 murder investigation and they actually took a video
17 statement from Mr. Ivey and they're involved in it. If
18 there's anything I misstate or anything important or
19 relevant I leave out on the facts, Your Honor, I defer to
20 them to add that when I finish.

21 THE COURT: Very good.

22 MR. CLEMENTS: Your Honor, as I stated, this
23 started out as a missing person's investigation on the 9th
24 of June, 2011, Mr. Rodney Dale Ivey was married to
25 Mrs. Devin Hamm Ivey. And Mr. Ivey has an extensive

1 criminal history, Your Honor. He has a breach of peace
2 from 2006, petty larceny from 2006 conviction. Also, Your
3 Honor, he has in 2007 grand larceny \$5,000 or more and
4 malicious jury to personal property, convictions entering
5 and attempting to enter a house without breaking
6 conviction from 2007 and burglary second degree
7 conviction, Your Honor, from 2007. In 2009, he had
8 forgery less than \$5,000 and then he had a parole
9 revocation as well conviction as a result of that.

10 He was an abuser of drugs, Your Honor. I think
11 he also someone he was a tattoo artist, which had
12 something to play with this. But this began at the Budget
13 Inn in Olanta. When he had -- I don't think he had been
14 out of prison too long. He was back and he persuaded
15 Devin to come back to him. He was there to the Budget Inn
16 with her and he was doing drugs. And he got to a point
17 she wanted to leave. He didn't want her to leave, kept
18 trying to get her to stay. And eventually, she was trying
19 to leave I think is what he told the investigators and he
20 got behind her and he demonstrated to Investigator
21 McFadden on the video that he choked her out by putting
22 one arm behind her neck and in front. Is that correct,
23 Investigator McFadden?

24 INVESTIGATOR MCFADDEN: That's correct.

25 MR. CLEMENTS: And choked her until she passed

1 out, until she went limp. And I think I'm not sure but
2 were they able to determine from the autopsy about whether
3 it was any broken bones or not too or was it too much
4 happen to the body before they could determine that? Too
5 much happen to the body for them to be able to determine
6 that. But he choked her out until she went limp. He put
7 her in the bed, kept her in the bed, had his drug dealer
8 come to the motel room and he did a tattoo on his drug
9 dealer. And his drug dealer touched her foot or leg or
10 something and jump and says what is that and he says
11 that's my wife. She's just passed out. But while she was
12 there dead in the bed, he was doing tattoos and getting
13 drugs, doing drugs.

14 He also told the investigators that he laid in
15 the bed with her all night and held her. And the way he
16 deposed of her was he stripped a sheet off the bed, tied
17 -- I think it was a tan in color bed sheet, tied it up the
18 four corners of it, tied her up. Devin was a petite
19 beautiful little person, not very large at all. And then
20 he deposed of her body on Brown Road, which is a dirt road
21 off of Salem Road.

22 One of the things that was so tragic to the
23 family is he reported her missing and gave all kind of
24 stories to Investigator Hester. I think several
25 different stories and they kept checking out the things he

1 was telling them about she gone off with a drug dealer or
2 gone off with different people. And they were checking
3 out the information and it was coming out not to be true
4 and this began on the ninth.

5 They finally found her body on the 15th and
6 because of the heat and time of year and the way her body
7 was left, it was so decomposed that the family was unable
8 to have an open casket funeral. They were unable to see
9 her. They were unable to tell her their goodbyes. They
10 just had to have a close casket funeral and this was
11 devastating to many of her family members. The body was
12 found on the 15th. And I think he didn't realize or did
13 not know that the body had been found, but he was in an
14 interview with Investigator McFadden and Investigator
15 Streett. And I think Investigator McFadden walked out the
16 room and was given the information by cell phone I believe
17 that they had found the body. He went back in and ask him
18 say how did you do this, show us how you did this. They
19 didn't tell him they found the body at that time. But he
20 had gave them all kind of stories and the family had been
21 frantic for days.

22 Law enforcement I know that Lieutenant
23 Bellflowers walked many of miles searching for her, if I'm
24 not mistaken. But there were all kinds of resources the
25 Sheriff called out and put every resource he had to

1 finding her. They believe her to be a missing person for
2 several days until they realize something was bad wrong
3 and then finally he told them that he had killed her, but
4 he sent them on a wild goose chase for many days. And if
5 he'd just gone ahead from the beginning instead of telling
6 some many lies about it. He did finally confess, but he
7 could have prevented that family from having to have a
8 closed casket funeral. They are very broken hearted. She
9 was dearly loved young lady by many many people in the
10 community and by her family. And this is one of the most
11 tragic and bizarre situations I been involved with to kill
12 her like he did and then to keep her in the motel room and
13 do a tattoo while she was laying there in the bed and he's
14 sitting on the bed with her and doing a tattoo. It just
15 kinds of boggles my mind, Your Honor. If there's anything
16 I left out factually or misstated, I ask the investigators
17 to either add to it or correct what I said.

18 THE COURT: Investigator Hester.

19 INVESTIGATOR HESTER: No, I think he's given a
20 good description of the events.

21 THE COURT: And, Investigator McFadden?

22 INVESTIGATOR MCFADDEN: Yes, Your Honor, if they
23 were saying anything about the confession, he also called
24 his mom and I think he told her they had an argument
25 earlier that day and I let him call her on video on the

1 phone. And he told her in that conversation that we had
2 an argument and I want to choke her to death. So his mom
3 said when you said you wanted to choke her to death, you
4 did? He said, yeah, mom, I did it. I choked her to
5 death.

6 THE COURT: All right. Mrs. Streett.

7 INVESTIGATOR STREETT: Your Honor, she was
8 thrown out on the side of the road like a piece of trash.
9 Like Solicitor Clements said tied her up with the bed
10 sheets and put her in the trunk, drove down the road,
11 tossed her out. Absolutely, no regard for the woman that
12 he had married.

13 THE COURT: Very good. All right. Anything
14 further?

15 MR. CLEMENTS: Your Honor, there are some family
16 members that would like to speak whenever, Your Honor,
17 thinks it's appropriate. I ask that you hear from them.

18 THE COURT: Okay. I will be glad to hear from
19 them at this time. I tell you what before we do that let
20 me ask the defendant about this factually. And then we'll
21 hear from the family.

22 MR. CLEMENTS: Yes, Your Honor.

23 THE COURT: Mr. Ivey, you've heard those facts
24 are they true and accurate?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Are you indeed guilty of murder?

2 THE DEFENDANT: Yes, sir.

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

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You still wish to plead guilty?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are you indeed guilty?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. I understand from the
23 State there's been no plea negotiations other than the
24 dismissal of some unrelated charges.

25 MR. CLEMENTS: No plea negotiations, Your Honor,

1 and we did directly indict for the way he deposed of the
2 body and for false information. We are nol-prossing that
3 indictment.

4 THE COURT: Is that your understanding of the
5 plea negotiations, Mr. Floyd?

6 MR. FLOYD: That's correct.

7 THE COURT: Is that your understanding, Mr.
8 Ivey?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Mr. Ivey, are you satisfied with
11 your lawyer?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You understood all your
14 conversations with your lawyer?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you understood your
17 conversations concerning the elements of this defense,
18 potential defenses and your Constitutional Rights?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Any complaints with him
21 whatsoever?

22 THE DEFENDANT: No, sir.

23 THE COURT: You understand that all of the
24 collateral consequences with regard to this plea, the fact
25 that it's a minimum mandatory 30 years and that it's a

1 violent offense. It is a most serious offense and a
2 minimum mandatory 30 years and it's day-for-day
3 non-parolable offense. You understand that, don't you?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Do you need any
6 additional time to confer with your lawyer?

7 THE DEFENDANT: No, sir.

8 THE COURT: All right. Any complaints with your
9 lawyer or law enforcement or anybody?

10 THE DEFENDANT: No, sir.

11 THE COURT: All right. Has anybody promised you
12 anything, threatened you, pressured you, mistreated you in
13 any way shape or form in an effort to get you to plead
14 guilty here today?

15 THE DEFENDANT: No, sir.

16 THE COURT: Has it been your decision to plead
17 guilty?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Are you indeed guilty?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You understood all my questions?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Have your answers been truthful?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You understand that you have ten

1 days to appeal any decision I might render here today?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Based on your testimony, I find that
4 there's a substantial factual basis for your plea. But
5 your decision was freely, voluntarily entered into,
6 knowingly and intelligently with consent of competent
7 counsel whom you say you are satisfied. I will accept
8 your plea and will be glad to hear from the victim's
9 family at this time.

10 MR. CLEMENTS: Yes, Your Honor. First is one
11 fact that I would like to let the Court know. I know is
12 important to the family. When Mrs. Hamm was autopsied,
13 there were no drugs or alcohol found in her system based
14 on the toxicology report that I have received.

15 THE COURT: Very good.

16 MR. CLEMENTS: Thank you, Your Honor. I would
17 ask that they stand and state their name, Your Honor, for
18 the record.

19 THE COURT: Yes, ma'am, I know this is a very
20 difficult time and just take your time, be glad to hear
21 anything that you would like to say.

22 DEBRA HAMM: Your Honor, Devin was my baby. She
23 was a very well liked girl. She never met a stranger.
24 She was so radiant. She had a smile from ear to ear and
25 she was well loved by her family. The day that I found

1 out that she was missing, I knew he had done something
2 with her. I knew it. I knew it in my heart, that whole
3 week was so -- I can't even explain how it was. It was
4 like you're living, but you're not because you're stuck.

5 Now, our life has to go on and it is so hard
6 sometimes, but I can remember the days that we spent with
7 Devin. The times that we spent with her and she lives in
8 our hearts and she will always be there with us. She was
9 very beautiful. She had a lot going for her and he took
10 it from her. And how he did her he treated her like a
11 dog. Your Honor, I ask that you give him the maximum
12 cause he don't deserve to live because guess what his
13 mother can go see him. I can't see my baby any more.

14 MR. CLEMENTS: Your Honor, for the record,
15 that's Debra Hamm, the mother.

16 THE COURT: Very good.

17 MR. CLEMENTS: If you would state your name?

18 SHANNON MCKNIGHT: Shannon McKnight.

19 THE COURT: Yes, ma'am, Mrs. McKnight, be glad
20 to hear from you.

21 SHANNON MCKNIGHT: My sister was a beautiful
22 girl. She loved everybody. And the hatred he has in his
23 heart he took that away from everybody. And he throw her
24 in the ditch like she didn't mean anything to anyone.
25 Then he called the house every day wanting to talk to us

1 and he hugged me when I went to give her teddy bear to my
2 momma. He cried on me. I wish she come back. I wish she
3 come back. And we were less than a mile from where he
4 threw her out. I'm never going to see my sister again.
5 Please don't ever let him out please.

6 GAYE ROSS: Your Honor, my name is Gaye Ross and
7 I'm the aunt of Devin Grace. I want to thank you for
8 allowing me to briefly speak about Devin Grace Hamm and
9 how horrific this crime has affected my family. A year
10 ago on June 9th 2011, the hands of another selfishly took
11 Devin Grace's life. Devin Grace with a pretty face, that
12 was how Devin was known in high school by all of her
13 friends. Devin was a cheerleader. She was well liked.
14 She was a social butterfly one might say. As pretty as
15 Devin was on the outside, she was equally as pretty on the
16 inside. Her smile was truly infectious. It went from ear
17 to ear as Debbie said.

18 She did never meet a stranger. She always
19 reached out to others with kind words and with a really
20 big smile. Her heart was definitely bigger than her tiny
21 frame body. She truly loved people and wanted to help
22 them. She would give someone her last dollar if they
23 needed it. Devin had so much to offer this world. She
24 had especially a big heart when it came to children. She
25 was an awesome aunt to her three-year-old niece Abby. She

1 and Abby were very close. There have been many
2 conversations with Abby trying to explain where her Aunt
3 Devin is. Why she could never see her again, all while
4 we're wiping away that baby's uncontrollable tears. It's
5 hard to explain to a child when you yourself don't
6 understand and you don't have the answers.

7 Devin's love and compassion for children and
8 people unfortunately played a role in the loss of her
9 life. Devin knew she needed to get out of this last eight
10 months abusive marriage. She had shared with us how
11 unhappy she was. Devin's words to her mother was she was
12 in her own living hell. The day of Devin's death she was
13 planning to leave. Her bags were packed and she had
14 enough. She was asked to watch Rodney's niece and nephew
15 as she had done many times. She had told us she worried
16 about those children when they were in their own home.
17 And it was because of her fear and concern that she choose
18 to watch those children that day. She delayed her plans
19 to leave in order to watch and in her mind protect these
20 children, that would be Devin's last selfless act on this
21 earth. And a page out of Devin's own diary, she expressed
22 her hopes to one day be a mother and have her own children
23 that along with many other hopes and dreams are never
24 going to happen for Devin. The night after the children
25 were gone Devin proceed with her plans to leave. And

1 unfortunately, she made this decision one day and may be
2 one second too late.

3 Rodney Ivey decided at that moment he would not
4 allow her to leave. He forcefully grabbed Devin around
5 her neck. He strangled her until he heard her neck snap.
6 Those were his words. Afterwards, he gave a tattoo to
7 someone knowing Devin laid dead in a nearby bed.
8 Apparently, he's an amateur tattoo artist. He then laid
9 with her lifeless body for hours and at dawn he wraps her
10 up in a sheet. He ties it up and he puts her in the trunk
11 of her own car. He drives less than six miles away and
12 discards her body in a small ditch as though she were
13 trash. He offered lies and nothing but false information
14 to my family and to the police. As we desperately search
15 for Devin six excruciating days later, we find her. This
16 person is incapable of carrying, feeling and allowed her
17 to stay out in the June temperatures all the while knowing
18 where he had put her.

19 By the time we found Devin, the elements of
20 nature had taken a toll on her body. She had to be
21 identified by her jewelry and the clothes she was wearing.
22 We did not get to touch her. We did not get to tell her
23 goodbye. We did not get to give her what every family
24 deserves to give their child, a proper burial and a proper
25 goodbye. All because this person's selfish and senseless

1 actions. After hearing these details when I try to tell
2 the Court what impact this murder has had on my family, I
3 can honestly say there's not any aspect of our lives that
4 have not been completely impacted. A death impacts you.
5 A crime of such heinous and demonic nature devastates
6 you.

7 We will forever be broken. Each day you search
8 for a mustard seed of courage to just put one foot in
9 front of the other. You lose all sense of safety. Fear
10 and anxiety has invaded our thoughts. You feel hopeless,
11 powerless and your faith is beyond shaken. These
12 intrusive memories are etched in your mind forever. You
13 have an overwhelming sadness that you have never
14 experienced before. You are no longer living. You are
15 merely existing. We're just numb. What an injustice for
16 a young life to be taken in such a violent manner all
17 because of this person's maliciousness. As far as
18 justice, unfortunately there can be no justice because
19 justice ultimate justice would mean we would have Devin
20 back.

21 Your Honor, we're asking of you and this court
22 today that you see fit to punish Rodney Ivey with a life
23 sentence and no chance of parole. The rest of his life in
24 a jail cell for Devin's life and the life of my family he
25 has destroyed. Rodney Ivey brutally took Devin's life and

1 deposed of her body. He's more than capable of committing
2 such crimes again. He has clearly proven that he is unfit
3 for society and this man deserves no mercy from this
4 court. Thank you.

5 THE COURT: Thank you, ma'am.

6 Mr. Clements, anything else?

7 MR. CLEMENTS: Your Honor, I think it's all been
8 said just ask you to take heed to what's been presented,
9 Your Honor.

10 THE COURT: Very good. All right. Mr. Floyd,
11 you recognize be glad to hear from you, your client and
12 anybody else who would like to speak in mitigation.

13 MR. FLOYD: Thank you, Your Honor. May it
14 please the Court, Your Honor, I'm standing here with
15 Rodney Ivey and also present are his mother, Ms. Marie
16 Knight, his father, Rodney McKinsey, and his sister,
17 Rebecca Ivey, who's standing over there to the far left.
18 Your Honor, I began representing Mr. Ivey June of 2011
19 about a year ago. And certainly we've discussed specific
20 facts of this case many times and we've gone over all the
21 evidence. And I, of course, advised him the nature of his
22 plea today and the fact that murder does carry a minimum
23 mandatory 30 year sentence. He understands that. Can
24 carry all the way up to life, he understands that as well
25 or anything in between. And he understands whatever

1 sentence he gets, Your Honor, is certainly day-for-day no
2 parole sentence. We've covered that. And I'm confident
3 that he understands that, knows consequences of his plea
4 are here today.

5 Your Honor, we evaluated the evidence and, of
6 course, this case is from an evidentiary standpoint would
7 be a whole different animal without his confession and he
8 and I certainly discussed that. As part of the process,
9 Your Honor, for me advising him in this case, I felt that
10 we needed to have a Jackson vs. Denno hearing. Normally,
11 we don't do that until the actual part of the trial. But
12 in this particular instance, two weeks ago today I believe
13 we had it over in Marion before Judge Seals, so we've
14 already had a Jackson vs. Denno hearing. Judge Seals
15 actually ruled that the statement that Mr. Ivey gave was
16 free and voluntary and would be allowed into evidence. So
17 if he had a trial, that would have been admitted.

18 Certainly parts of it may have been redacted,
19 you know, concerning his record and so forth. The
20 statement itself it had been ruled it was coming into
21 evidence. And so when I learn that, certainly I was able
22 to advise him, you know, as to what the State would in
23 fact present as evidence in this case. And you've heard
24 most of Solicitor laid it out pretty much.

25 In the beginning, he did speak to Investigator

1 Hester and I believe Investigator Rose as well, if I am
2 not mistaken. And those statements were non-custodial in
3 nature. He was there voluntarily. He gave them
4 information that frankly turned out to be false. And I
5 think that's basically what lead them to develop him as a
6 suspect because he was giving false information basically.
7 He was actually taken into custody. I think he was there
8 for two days in the detention center. And after a couple
9 of days, I believe he made the request to speak to someone
10 about the case. And I think at that point Investigator
11 McFadden and Investigator Streett came down to see him at
12 his request. And then he during the course of that
13 conversation confess to this crime, Your Honor. And so
14 that's basically the evidence that would have been
15 introduced in a trial. In addition to some physical
16 evidence and certainly that was not inconsistent with his
17 confession. In fact, it was consistent with what he said.
18 So those were the facts that I have before me and
19 certainly I discuss those with Mr. Ivey.

20 Your Honor, by way of background, he is 25 years
21 old. He's lived here in Florence County his whole life.
22 He went to South Side, South Florence school system. I
23 don't think he went to school past the ninth grade is my
24 understanding. He worked somewhat for his uncle, I
25 believe, in a roofing business. Apparently, he also was

1 some sort of amateur tattoo artist and did that some as
2 well, Your Honor.

3 Your Honor, he told me when he was 18 or so I
4 believe is when his history of drug use started. It
5 started then and unfortunately it continued basically
6 until his arrest on these charges. It didn't stop until
7 then. For a good six or seven years, you know, he was
8 basically pretty regular drug user. We discussed that. I
9 think he told me his drug of choice was cocaine in a large
10 part. And unfortunately, he was never able to get a
11 handle on that. He actually provided assistance to law
12 enforcement in that regard. Since, he had contacts in
13 that world, he was used quite frankly as an informant on
14 some occasions.

15 With regards to that, I believe he was arrested
16 in March on another property offense March of 2011 several
17 months before this happened. And I believe he was given a
18 PR bond probably because of that reason. In fact, I'm not
19 probably, I'm sure of it. Maybe, if he had been allowed
20 to stay in jail for a while and dry out, this never would
21 have happened. Unfortunately, we can only speculate, we
22 have to deal with what is not what could have been. So,
23 Your Honor, he -- Rodney's told me that he and Devin dated
24 for a number of years off and on type thing. I think he
25 actually went into the department of corrections on a YOA

1 sentence related to I believe a burglary. He is currently
2 in SCDC now on that very charge on a burglary charge on a
3 YOA sentence. He's in Turbeville Institute for that.
4 They married in 2010.

5 His prior record as you heard is pretty much
6 property type offenses prior to this. And as we often see
7 people who are addicted to drugs quite often commit
8 property offenses to defuel the habit. I think that's
9 pretty much consistent with what he's told me about his
10 background before this there was never any type of violent
11 crime on his record or anything of that nature, but
12 certainly they were property crimes. It all makes sense
13 given his background as he's given it to me, Your Honor.

14 Your Honor, this is obviously a heart breaking
15 situation a life has been lost and that can never be
16 replaced and it's a tragic terrible thing. Mr. Ivey has
17 expressed remorse to me. And I believe once he was in the
18 detention center and he sat there a couple of days and the
19 drugs started wearing off of him, I think his conscious
20 started bothering him quite frankly and that's why he
21 asked to see investigators and sat down and told them what
22 he told them.

23 Your Honor, I'm convinced that if he hadn't been
24 addicted to drugs and fueled up on that stuff, that this
25 never would have happened, but unfortunately, it did. And

1 that's not a defense certainly, certainly not a legal
2 defense, not a moral defense either, but I'm just
3 explaining the condition he was in, Your Honor. It's a
4 terrible thing and he certainly feels remorse for it as he
5 stands here today.

6 Your Honor, we would ask that you would consider
7 giving Mr. Ivey a minimum sentence. Certainly, that's not
8 a slap on the wrist, that's 30 years day for day is a long
9 time. We would ask that you consider that. If not, Your
10 Honor, just be as merciful as possible. I think that his
11 mother, Ms. Marie Knight, who's standing here behind me
12 would like to say a word to the Court, Your Honor.

13 THE COURT: Yes, ma'am, Ms. McKnight, you
14 recognize be glad to hear anything that you got to say.

15 MARIE MCKNIGHT: Your Honor, to start with, I
16 want to tell the family, I'm sorry and she was a sweet
17 girl. God I loved her with all my heart and my whole
18 family loved her. But I agree with him if it hadn't been
19 for the drugs, I don't think this would ever happen
20 because I know my son loved her and he's no murderer. If
21 it hadn't been for the drugs, he'd never done anything
22 like this. Because he's a good person and he do anything
23 in this world for you and she would too. She was a sweet
24 person and I loved to her death as one of my own. Please
25 have mercy on him.

1 MR. FLOYD: Your Honor, his father, Mr. Rodney
2 McKinsey would like to say a word.

3 THE COURT: Mr. McKinsey, you recognize.

4 RODNEY MCKINSEY: You know, prior to this
5 incident here, I stayed may be three weeks with Rodney,
6 Dale and Devin. We stayed in motels or stayed at the
7 house prior to this couple weeks. I never seen nothing in
8 no marriage turn towards Rodney about all this anger and
9 stuff. But I do know from experience that drugs do have a
10 big role in people's lives. I speak on my behalf I been
11 there done that. I do know drugs is out your system in
12 three days to four days, your cocaine. So undoubtedly the
13 day that this had happened Devin called me in
14 Johnsonville, I live in Johnsonville. She call me her and
15 Rodney said we're going to get a motel and I said, well,
16 go get one where there's a pool there and I come where
17 y'all at. They both stated that, no, they couldn't do
18 this, they had to do it in Olanta.

19 I was unaware of him being an informant to law
20 enforcement. And I didn't know nothing about it and I
21 learned this after everything has took place with these
22 two kids. Rodney is a very loving, caring young man.
23 Devin was a loving daughter-in-law. I'm sorry she -- all
24 this has happen to the family. You know, I got to live
25 with my son for something that drugs has caused him to do.

1 I'm not blaming it on the drugs and I don't know what took
2 place in that motel, but I do know I'm sorry for the
3 family. And I feel for my son cause I know he's got a
4 long road ahead of him and it's not an easy road. He has
5 to live with this thing every day also. So I just ask
6 mercy of the Court. And I'm sorry about Devin.

7 MR. FLOYD: Your Honor ---

8 THE COURT: Yes, ma'am, your full name?

9 REBECCA IVEY: Rebecca Ivey.

10 THE COURT: Yes, ma'am, Ms. Ivey, be glad to
11 hear from you.

12 REBECCA IVEY: I want to pay my respects to the
13 family. She was a good girl.

14 MR. FLOYD: Thank you, Your Honor, that's all we
15 have.

16 THE COURT: How old was Devin, Mr. Clements?

17 MR. CLEMENTS: She was 22 years old, Your Honor.

18 THE COURT: These are very difficult times.

19 And, of course, one of my responsibilities as a circuit
20 court judge is to sentence individuals charged with
21 criminal acts such as this, but I also have the
22 responsibility to maintain order in the court. And I'm
23 going to sentence Mr. Ivey and I don't want any outburst.
24 We can't have any outburst whatsoever involve. I'm going
25 to ask the deputies if there is an outburst to take that

1 individual into custody. I don't anticipate that there
2 would be. I'm just going to ask people to do on either
3 side. We can't have any disruptions in court. I want to
4 speak with the family. I know this a very difficult time
5 for you. I can't imagine what it would be like to lose a
6 child. I empathize with you all. I have children the age
7 this defendant. I have a child the age of the victim. I
8 know that it really flies in the face of the laws of
9 nature to have to bury a child. I can't imagine the pain
10 that that would cause.

11 You know when you have children when they're
12 small you think everything is very difficult and you think
13 as soon as you get them up and get them into school things
14 are going to get easier. But really you realize that the
15 problems don't go away, they change and they get worse.
16 And you never know what you're children are going to do
17 and how, the people they choose to hang around with and
18 the choices that they make.

19 I empathize with the family of the defendant.
20 There are no winners in this situation. And this is a
21 testament to what some people view as a victimless crime.
22 This is the very worst of the ramifications of drugs. A
23 very very difficult situation and I acknowledge that and I
24 understand and try to or at least try to empathize with
25 your situation.

1 I've taken into consideration Mr. Ivey's record,
2 which is considerable and significant. I have take into
3 consideration the facts and circumstances of the crime
4 itself and the lack of timeliness of acceptance,
5 responsibility and the lack of talent with regards to
6 disclosing to law enforcement what had actually happened.
7 And the sentence based on those factors that is the basis
8 of my sentence. And, Mr. Ivey, on indictment
9 2012-GS-21-00119 murder, the sentence of the Court is that
10 you be committed to the state department of corrections
11 for the rest of your natural life. Good luck to you.

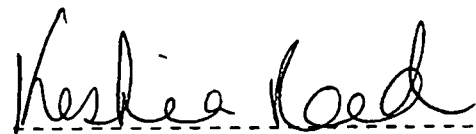
12 END OF REQUESTED TRANSCRIPT
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter and Notary Public
in and for the State of South Carolina At Large, do hereby
certify that the above-entitled cause was heard as
hereinafter set out; that I was authorized to and did
transcribe the said proceedings; and that the foregoing
and annexed paged, numbered 1 through 31, inclusive,
constitute a true and accurate transcription of my
stenographic report of the said cause taken during the
said hearing. In the Court of General Sessions for
Florence County, South Carolina, on the 8th day of June,
2012.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto. In witness
whereof, I have hereunto affixed my signature this 6th day
of February 2014.



Keshia Reed, Court Reporter

Yes I am writing in regards to me 12-119
 Rodney Dale Ivey getting sentenced to life
 Friday. I was told I only have ten days
 to file an appeal so. I am writing you
 all @ now wanting to file an appeal. So
 if you will start the paper work on my
 appeal. I don't feel like I got treated
 fairly, I feel the judge was with the
 family of the victim. Also I was told
 one thing by my lawyer and another
 happened when I got in front of the
 Judge so I want an appeal on my sentence

Thanks

Rodney Ivey

6-9-12

FILED
 2012 AUG -6 AM 11:43
 CONNIE McLENNAN
 CLERK
 CCCP & GS
 FLORENCE COUNTY, SC

Mailed
 8/15/12

The South Carolina Court of Appeals

The State, Respondent,

v.

Rodney Dale Ivey, Appellant.

Appellate Case No. 2012-212262

The Honorable Michael G. Nettles
Florence County
Trial Court Case No. 2012GS2100119

FILED
2013 APR 23 AM 11:40
CLERK OF COURT
FLORENCE COUNTY, SC

ORDER

Rodney Dale Ivey has failed to provide sufficient reasoning for filing an appeal from a guilty plea as required by Rule 203 of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Rodney Dale Ivey

Robert Michael Dudek

Salley W. Elliott

Scott Poston Floyd

FILED

4/4/13 AT

FORM 5

STATE OF SOUTH CAROLINA)

County of Florence)Rodney Dale Ivey #324929)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013 CP 21-2862APPLICATION FOR
POST-CONVICTION RELIEF2013 OCT 31 PM 2:28
CONNIE REEL-SHEARIN
CLERK OF COURT
FLORENCE COUNTY, SC

FILED

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick C.I.
2. Name and location of Court which imposed sentence Florence County
City County Complex
3. Name(s) of co-defendant(s) (if any) —
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-GS-21-00119
 - (b) —

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

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) June 8, 2012
- (b) Life Sentence
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Supreme Court
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. December 19, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

(c) _____

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

(a) The conditions at current Pka I've fallen Contradicts
 (b) what me & my attorney agreed upon
 (c) _____

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

(a) Ineffective Assistance of Counsel (24)
 (b) violation of Due Process 4th amendment
 (c) 5th

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

(a) any petition in a State Court under South Carolina Law? _____
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

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

(a) which grounds have been presented:

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

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

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

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

(a) ☒ Post Conviction Relief is the
 (b) 1st Remedy available for me to
 (c) appeal

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

(a) your arraignment and plea? ☒
 (b) your trial, if any? _____
 (c) your sentencing? _____
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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

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

i. Scott P. Floyel (City County Complex
 SC Bar #12067 180 North 1st Street
 ii. Florence, SC 29501

iii. _____

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

i. _____
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:
a modification of my current sentence
20. Are you now under sentence from any other court that you have not challenged?
1

STATE OF SOUTH CAROLINA)
County of Florence) VERIFICATION

I, Rodney Dale Truitt, 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.

Rodney Truitt

SWORN to and subscribed before me this 29
day of October, 2013.
Franklin (L.S.)
Notary Public

My Commission Expires: 12-16-2019

FILED
2013 OCT 31 PM 2:28
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

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

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

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

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

Rodney Ivey
Applicant

SWORN or affirmed to and subscribed before me this

29 day of OCT., 2013.

J. F. Nankin
Notary Public

My Commission Expires: 12-16-2017

2013 OCT 31 PM 2:28
 CONNIE REEL-SHEARIN
 CCJP & GS
 FLORENCE COUNTY, SC

FILED

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	FOR THE TWELFTH JUDICIAL CIRCUIT
Rodney D. Ivey, #324929,	)	Case No. 2013-CP-21-2862
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed October 31, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In January 2012, the Florence County Grand Jury indicted Applicant for murder (2012-GS-21-119). Scott P. Floyd, Esquire, represented Applicant. On June 8, 2012, Applicant pled guilty as indicted. In exchange for the plea, the State dismissed all other charges pending against Applicant.¹ The Honorable Michael G. Nettles sentenced Applicant to life imprisonment without the possibility of parole.

Applicant filed a timely notice of appeal, but the South Carolina Court of Appeals dismissed the appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR, on April 4, 2013. The remittitur was returned to the circuit court on April 22, 2013.

¹ Upon information and belief, these charges included burying a body without notice, giving false information to law enforcement, and obtaining property under false pretenses.

II.

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

1. "The conditions of current plea I've taken contradicts what me & my attorney agreed upon."
 - a. "Ineffective Assistance of Counsel (x4)"
 - b. "Violation of Due Process 4th amendment 5th"

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

Attached to this return and incorporated herein are the records of the Florence County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation of ineffective assistance of plea counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 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, the applicant must prove "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 the attorney 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). The 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 reviewing 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, the Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney'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 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of plea counsel probably raises questions of fact the

record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent further submits Applicant's allegation regarding the terms of his plea agreement is without merit. Respondent submits the record indicates the State fully complied with any plea agreement made with Applicant. Respondent further submits the record also reflects Applicant entered his plea freely, knowingly, and voluntarily. Simpson v. State, 317 S.C. 506, 508, 455 S.E.2d 175, 176 (1995) ("To knowingly and voluntarily enter a plea of guilty, all that is required is that a defendant have a full understanding of the consequences of his plea and of the charges against him." (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991))). Likewise, Applicant was advised at this plea of the consequences of pleading guilty, including the sentencing range. See Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997) (any possible errors by counsel regarding sentencing advice cured by plea colloquy). Furthermore, an applicant cannot attempt to enforce plea agreement terms that do not appear on the face of the record. See State v. Thrift, 312 S.C. 282, 296, 440 S.E.2d 341, 349 (1994). Thus, Respondent submits this allegation is without merit.

V.

Applicant further alleges due process violations. Respondent submits these allegations are likewise without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). To the extent Applicant alleges due process violations arising from

counsel's advice about the guilty plea, Respondent incorporates its response in Paragraphs II and III, supra, and requests a hearing. Sharper, 279 S.C. 264, 305 S.E.2d 247.

To the extent Applicant alleges further due process violations, he fails to set forth with specificity any facts supporting such a claim. The Uniform Post-Conviction Procedure Act requires that the applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In a post-conviction relief application, the applicant must make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) ("It is, therefore, incumbent upon the applicant to make at least a *prima facie* showing entitling him to relief." (citing Babb v. State, 240 S.C. 235, 125 S.E.2d 467 (1962); Crosby v. State, 241 S.C. 40, 126 S.E.2d 843 (1962); Tillman v. Manning, 241 S.C. 221, 127 S.E.2d 721 (1962); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965))). The allegations regarding the Fourth and Fifth Amendments are so vague that it is impossible for Respondent to respond. Since Applicant has failed to make even a *prima facie* showing, Respondent requests this allegation be dismissed pursuant to Rule 12(b)(6) for failing to meet the requirements of the Uniform Post-Conviction Procedures Act.

VI.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VII.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held on those issues so requiring one.

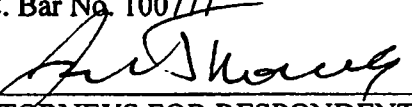
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
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

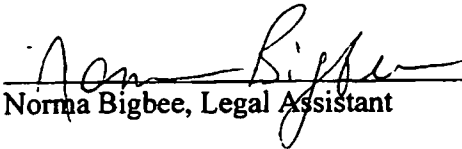
4/22, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	
	)	
	)	2013-CP-21-2862
	)	
RODNEY D. IVEY, #324929	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

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

Jonathan Waller, Esquire
1720 Main St., Suite 104
Columbia, SC 29201

DATED this 22nd day of April, 2014.


 Norma Bigbee, Legal Assistant

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2013-CP-21-02862
	)	
Rodney D. Ivey,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

April 15, 2015
Florence, South Carolina

B E F O R E:

The Honorable D. Craig Brown, Judge

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

Jonathan Waller, Esquire
Attorney for the Plaintiff

Josh Thomas, Esquire
Attorney for the Defendant

Krystal J. Smith
Court Reporter

I N D E X

	<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
1		
2		
3		
4	Conflict Issue.....	5
5	Rodney Dale Ivey	
6	Direct by Mr. Waller.....	8
7	Cross by Mr. Thomas.....	14
8	Applicant Rests.....	16
9	Scott Floyd	
10	Direct by Mr. Thomas.....	17
11	Cross by Mr. Waller.....	20
12	State Rests.....	21
13	Arguments of Counsel.....	21
14	Ruling.....	23
15	Court Reporter Certification.....	25

16

17

18

19

20

21

22

23

24

25

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

E X H I B I T SNO.DESCRIPTIONID.EV.

(No Exhibits Presented)

1 APRIL 15, 2015

2 (WHEREAS this matter was scheduled for a post-conviction
3 relief hearing, the applicant appeared along with his
4 counsel of record. The hearing began at 2:16 p.m.)

5 THE COURT: Mr. Waller, Mr. Thomas, can y'all approach a
6 minute?

7 (WHEREUPON, a bench conference was held off the record.)

8 THE COURT: All right. Call your case, Mr. Thomas.

9 MR. THOMAS: Thank you, Your Honor. May it please the
10 Court?

11 THE COURT: Yes, sir.

12 MR. THOMAS: This is Rodney Ivey versus the State of
13 South Carolina, Case Number 2013-CP-21-2862. This was a
14 January 2012 indictment for murder. The applicant was
15 represented on that charge by Scott Floyd of the Public
16 Defender's Office.

17 He pled guilty as indicted on June 8th, 2012, before Judge
18 Nettles. Judge Nettles -- that was an open plea. Judge
19 Nettles sentenced him to life without parole. He did file a
20 Notice of Appeal from that pro se, and the Court of Appeals
21 dismissed it for failing to comply with the rules regarding
22 appeals from pleas.

23 This PCR was filed in October 2013 alleging various
24 grounds of ineffective assistance of counsel regarding the
25 sentencing. He is represented by Jonathan Waller, and the

1 State is ready to proceed.

2 THE COURT: All right. Before we go any further, what
3 we've -- I called the lawyers up here, and Mr. Floyd, who
4 represented Mr. Ivey, at the time of his plea and leading up
5 to the plea.

6 And I -- I believe it's his mother and sister that are in
7 the audience. I saw them in here earlier this morning, and
8 they looked familiar to me and I was trying to recall where I
9 had seen them from.

10 And Mr. Waller, who represents Mr. Ivey in this matter --
11 the long and the short of it was that I was concerned that I
12 had had something -- had some involvement in this case in some
13 way, shape or form at some point. And even looking at the
14 victim's family -- I think the victim's family is seated over
15 to the left side of my courtroom -- one of them looks familiar
16 to me as we sit in here.

17 Now, I don't know if it was the incident subject to this
18 matter. The date of the offense occurred in 2011, if I recall
19 correctly. Isn't that right, Mr. Waller?

20 MR. WALLER: Yes, sir.

21 THE COURT: In 2011, and I was elected to the bench in
22 2010. So I would have been on the bench when this matter
23 occurred and when it came before the Court.

24 Now, Judge Nettles took the plea. Judge Nettles signed
25 the sentence sheet. Judge Nettles was in -- he handled the

1 case of the plea, et cetera. The only thing that -- the only
2 thing that I could -- could have had some involvement which
3 would be -- which would not be reflected in the record, if it
4 was a matter that came before me on a bond hearing, and I
5 think that's probably -- probably what it was, but I just
6 don't recall with any specifics. I believe that's what it
7 probably would have been, but wanted to put that on the
8 record.

9 Anything from you, Mr. Waller, with regards to that
10 issue?

11 MR. WALLER: Your Honor, as you said, you're -- you were
12 not the --

13 THE COURT: Okay.

14 MR. WALLER: -- judge on any of the -- anything
15 dispositive. I was looking back through the Clerk's records.
16 If you did handle a bond hearing, there is not an order --

17 THE COURT: Okay.

18 MR. WALLER: -- or anything like that in the Clerk's
19 file.

20 THE COURT: Well, I mean you've discussed with your
21 client -- at least you conveyed up here at the sidebar that
22 you discussed with your client whether or not he knows me, and
23 he's indicated that --

24 MR. WALLER: Yes, sir. He does not recall you having any
25 involvement in this case.

1 THE COURT: Okay. And I may have simply seen something
2 in the paper from it. I just don't -- I do remember the facts
3 of the case and I wanted to put that on the record, but I see
4 absolutely nothing where I had any involvement in this case
5 whatsoever in the disposition of the case.

6 And so do you, Mr. Waller, have any objection to me
7 hearing this matter here today?

8 MR. WALLER: I do not, Your Honor, and I've spoken with
9 my client about it and I don't believe that he does either.

10 THE COURT: All right. Mr. Ivey, you've had a -- if
11 you'll stand up, please, sir? Raise your right hand.

12 (WHEREUPON, the applicant complied.)

13 THE COURT: Do you swear to tell the truth, the whole
14 truth, and nothing but the truth, so help you God?

15 THE APPLICANT: Yes, sir.

16 THE COURT: You can put your hand down. You're Rodney
17 Dale Ivey?

18 THE APPLICANT: Yes, sir.

19 THE COURT: And you discussed with your lawyer outside of
20 my presence what I've put on the record here?

21 THE APPLICANT: Yes, sir.

22 THE COURT: Do you have any objection to me hearing this
23 matter here today?

24 THE APPLICANT: No, sir.

25 THE COURT: Okay. How about you, Mr. Thomas? Anything

RODNEY DALE IVEY - DIRECT BY MR. WALLER

1 you want to put on the record, sir?

2 MR. THOMAS: No objection from the State, Your Honor.

3 THE COURT: All right. Anything further from the State
4 before I recognize Mr. Waller?

5 MR. THOMAS: That's all, Your Honor.

6 THE COURT: All right. Mr. Waller, you're so recognized.

7 MR. WALLER: Thank you, Your Honor. We'd call Rodney
8 Dale Ivey to the stand.

9 THE COURT: All right. Mr. Ivey, if you'd come around to
10 be sworn, please, sir.

11 THE CLERK: Please place your left hand on the Bible and
12 raise your right hand. Do you swear to tell the truth, the
13 whole truth, and nothing but the truth, so help you God?

14 THE APPLICANT: Yes, ma'am.

15 THE CLERK: Please take your seat and state your name for
16 the record.

17 THE APPLICANT: It's Rodney Ivey.

18 RODNEY DALE IVEY, being first duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. WALLER:

22 Q: Mr. Ivey, how are you this morning?

23 A: All right. How about yourself?

24 Q: Sorry for the mix-up with getting you transported. How
25 did Scott Floyd come to be your attorney in this case?

RODNEY DALE IVEY - DIRECT BY MR. WALLER

1 A: I think -- I guess he was appointed to me as a public
2 defender.

3 Q: Okay. And were you able to meet with him before you pled
4 guilty in this case?

5 A: On a couple of occasions.

6 Q: Okay. Did y'all discuss what you were charged with?

7 A: Yes, sir.

8 Q: Okay. Did y'all discuss the elements of that offense?

9 A: Yes, sir.

10 Q: Okay. Did you understand those conversations?

11 A: Yes. Yes, sir.

12 Q: Okay. Can you speak up just a little bit? She has to
13 take down everything you're saying.

14 A: All right.

15 Q: Okay. Did you and Mr. Floyd discuss the possible
16 penalties of the charge?

17 A: Yeah.

18 Q: Okay. Did you understand those conversations?

19 A: Yes, sir.

20 Q: Okay. Did you and Mr. Floyd discuss what evidence the
21 State had? Did y'all have a chance to go over the discovery
22 provided by the State?

23 A: Yes, sir.

24 Q: Okay. Did you have any questions for Mr. Floyd about
25 that?

RODNEY DALE IVEY - DIRECT BY MR. WALLER

1 A: I think there might have been some. I don't really
2 remember.

3 Q: Okay. Do you -- do you know if he answered your
4 questions?

5 A: I'm pretty sure he did.

6 Q: Okay. Did you and Mr. Floyd have an opportunity to talk
7 about any possible defenses that you might have had?

8 A: Yeah, I think. I think we did.

9 Q: Okay. Did you possibly give him any witnesses or
10 anything like that? Any names of witnesses?

11 A: No, not that I recall.

12 Q: Okay. You had given a statement regarding this case; is
13 that right?

14 A: Yes, sir.

15 Q: Okay. And you actually had a *Jackson v. Denno* hearing
16 prior -- excuse me -- prior to entering your guilty plea?

17 A: Yes, sir, in Marion County.

18 Q: Okay. And that was in front of Judge Seals?

19 A: Yes, sir.

20 Q: Okay. And Judge Seals actually issued a ruling in that?

21 A: Yes, sir.

22 Q: Okay. So your statement was -- was going to be admitted
23 into evidence was your understanding?

24 A: Yes, from my understanding.

25 Q: Okay. How long after Judge Seals ruled on that did you

RODNEY DALE IVEY - DIRECT BY MR. WALLER

1 enter your guilty plea?

2 A: I don't think -- it was, like, a week or so I think.

3 Maybe a couple weeks. I can't exactly remember.

4 Q: Okay. Did you and Mr. Floyd have a chance to talk
5 between those two times?

6 A: I think we spoke, like, a couple days before I got
7 sentenced.

8 Q: Okay. And did y'all talk about what sentencing would
9 entail either prior to the ruling on the *Denno* issue or after,
10 before you got sentenced?

11 A: Yes, sir. I think so.

12 Q: Okay. Did y'all talk about the maximum possible
13 penalties?

14 A: Yes, sir.

15 Q: Okay. And that's what you got; is that right?

16 A: Yes, sir.

17 Q: Okay. Did y'all talk about the minimum penalty?

18 A: Yes, sir.

19 Q: Okay. Did you talk about what the judge would take into
20 account in coming up with a sentence?

21 A: I don't understand what you said.

22 Q: Did y'all talk about who could speak at a sentencing?

23 A: Yes, sir. Yeah, yeah.

24 Q: Did y'all talk about what evidence the State and you
25 could present to the judge for him to make his decision?

RODNEY DALE IVEY - DIRECT BY MR. WALLER

1 A: Yes, sir.

2 Q: Okay. When you pled guilty, what was your -- what was
3 your understanding of what your sentence was going to be?

4 A: I -- I was thinking I was going to get 30 years is what I
5 was thinking.

6 Q: Okay. And why did you think that --

7 A: Or from my understanding.

8 Q: Okay. I didn't mean to interrupt you. Why -- why did
9 you think that?

10 A: Because I mean he led -- I mean pretty much he led me to
11 believe that's what I was going to get, 30 years. That's the
12 only reason I took the -- the guilty plea.

13 Q: Okay. When you signed the sentencing sheet, do you
14 recall that?

15 A: Yes, sir.

16 Q: Okay. Is that -- what did you think you were signing
17 then?

18 A: The plea for the 30 years.

19 Q: Okay. You thought it was -- when you signed that, you
20 thought it was for --

21 A: No. I knew it was an open plea, but from what he -- I
22 thought he was going to get me the 30 years.

23 Q: Okay. And again, why did you think that?

24 A: That's what he -- I asked him was he going to get me the
25 30 years and he said he was sure he could. That he could get

RODNEY DALE IVEY - DIRECT BY MR. WALLER

1 me in front of Judge Nettles, who was a good judge, and I just
2 felt like he was going to get it for me.

3 Q: Okay. Now, did you speak at the plea?

4 A: No, sir.

5 Q: Okay. Why did you not speak at the plea?

6 A: Because Mr. Floyd said that I didn't need to say nothing
7 to the victim's family or nothing.

8 Q: Okay. How about the investigators? Did they speak at
9 the plea against you?

10 A: I felt like they did.

11 Q: Okay. Now, what -- were they supposed to speak?

12 A: Not from my understanding they wasn't.

13 Q: Okay. And how did you get that understanding?

14 A: Because they said before -- when -- before the guilty
15 plea, before I pled guilty, the solicitor or somebody, whoever
16 the dude was that was in the other room with me and my lawyer,
17 he said that no recommendation -- no negotiation and no
18 recommendation and nobody was going to speak up against my
19 behalf except the victim's family.

20 Q: Okay. So that was the solicitor that said that?

21 A: I -- I don't know if it was Ed Clements or somebody else
22 that was in the room with us in the office. I don't know who.
23 I don't know his name.

24 Q: Okay. But it wasn't anybody associated with y'all?

25 A: No.

RODNEY DALE IVEY - DIRECT BY MR. WALLER

1 Q: Okay. Once your statement had been ruled on, was there
2 ever any question about you pleading guilty?

3 A: What do you mean?

4 Q: Were you -- were you going to plead guilty or were you
5 going to go to trial?

6 A: I mean I pled not guilty at my preliminary hearing.

7 Q: Right. I understand that. When -- after the judge ruled
8 on your statement, what was your position?

9 A: I mean the only reason I pled guilty was because I
10 thought he was going to get me the 30 years.

11 Q: Okay. And what was that basis on? What did you base
12 your thoughts on?

13 A: From what me and him talked about. Fromm what we talked
14 about that day in the courtroom. I mean we didn't talk but
15 maybe seven to ten minutes at the most.

16 Q: Okay. Mr. Ivey, I've asked you all the questions that I
17 have. Is there anything you think I've left out that the
18 Court needs to be aware of?

19 A: I don't think so.

20 Q: Okay. Please answer any questions Mr. Thomas has.

21 A: Okay.

22 MR. THOMAS: May it please the Court?

23 THE COURT: Yes, sir.

24 CROSS-EXAMINATION

25 BY MR. THOMAS:

RODNEY DALE IVEY - CROSS BY MR. THOMAS

- 1 Q: Mr. Ivey, you said you had a couple of meetings with Mr.
2 Floyd?
- 3 A: Yes, sir.
- 4 Q: And you said you went over the discovery with him at that
5 time?
- 6 A: Yeah. Well, we did part of it one time and then part of
7 it another time.
- 8 Q: Okay. So you saw all of the State's evidence against
9 you?
- 10 A: Yeah.
- 11 Q: And you talked about the elements of murder with him?
- 12 A: Yes, sir.
- 13 Q: And you were able to explain to him sort of your version
14 of what happened that day?
- 15 A: Pretty much, yeah.
- 16 Q: You said after that *Denno* hearing it was your decision to
17 plead guilty?
- 18 A: Yes, sir.
- 19 Q: I know you testified on direct that you knew it was an
20 open plea; is that accurate?
- 21 A: Yes, sir.
- 22 Q: And Mr. Floyd explained to you that an open plea meant 30
23 to life?
- 24 A: Yeah, yeah.
- 25 Q: And you remember Judge Nettles -- I know Judge Nettles at

RODNEY DALE IVEY - CROSS BY MR. THOMAS

1 the hearing said you couldn't get anything less than 30?

2 A: Exactly, yeah.

3 Q: And Mr. Floyd also said that you understood it could
4 carry up to life. Do you remember that?

5 A: Yes, sir.

6 Q: And you never stopped anybody and said, whoa, whoa, whoa,
7 Judge, I think I'm getting 30?

8 A: I didn't -- I mean -- no.

9 Q: All right. Thank you, Mr. Ivey. That's all I have.

10 MR. WALLER: No further questions, Your Honor.

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

12 THE APPLICANT: All right.

13 MR. WALLER: Your Honor, the applicant rests.

14 THE COURT: All right. Anything from the State?

15 MR. THOMAS: Your Honor, the State would call Scott Floyd
16 to the stand.

17 THE CLERK: Do you swear or affirm that the testimony you
18 are about to give will be the truth, the whole truth, and
19 nothing but the truth, so help you God?

20 THE WITNESS: I do.

21 THE CLERK: Please take your seat and state your name for
22 the record.

23 THE WITNESS: My name is Scott Floyd.

24 MR. THOMAS: May it please the Court.

25 SCOTT FLOYD, being first duly sworn,

SCOTT FLOYD - DIRECT BY MR. THOMAS

1 testified as follows:

2 DIRECT EXAMINATION

3 BY MR. THOMAS:

4 Q: Mr. Floyd, just some background information. You've
5 probably said this a few times today, but how long have you
6 been practicing law?

7 A: Since 1988.

8 Q: And how did you become involved with Mr. Ivey's case?

9 A: He was appointed to the Public Defender's Office.

10 Q: And I know the policy of the office is that somebody
11 files Rule 5s. Did you file Rule 5 or did somebody file the
12 Rule 5 motions?

13 A: Somebody in my office would have filed them. I didn't
14 personally do it, but yes, they were filed.

15 Q: But you had an opportunity to review the State's
16 response?

17 A: Yes.

18 Q: Could you just briefly give us sort of an overview of
19 what the State's evidence was against Mr. Ivey?

20 A: The main evidence they had was, of course, a confession
21 from him, and I think much of the -- the details about where
22 they were and what happened after the incident, I think it
23 kind of matched up with the -- some of the physical evidence,
24 such as bedsheets and that sort of thing that was found on the
25 scene.

SCOTT FLOYD - DIRECT BY MR. THOMAS

1 And I mean they had obviously people who could
2 corroborate the fact that Mr. Ivey was at the hotel where
3 this, you know, took place and that sort of thing.

4 Q: And --

5 A: I mean that's what I recall off the top of my head. I
6 don't have the file sitting here in front of me.

7 Q: But it is safe to say you had a chance to go over all
8 that with him?

9 A: Yes.

10 Q: And how many times do you think you met with him?

11 A: You know, I can't remember. I -- when he was originally
12 assigned to our office, I'm sure Jack was still -- Jack Lawson
13 was still alive and in charge of the office, and I don't think
14 initially I got that file assigned to me. I think that after
15 Jack got sick, I acquired that file, which probably would have
16 been sometime after August of 2011, and it may have been a
17 little bit later than that before it actually came to my desk.

18 But in any event, I met with him -- I recall I met with
19 him in Marion for -- before we had the *Jackson v. Denno*
20 hearing at least once. And then I met him here I think
21 several times in Florence.

22 Q: Do you feel like you had enough meetings with him to sort
23 of be prepared to advise him on his issues?

24 A: Yes.

25 Q: And sort of what -- what sort of defenses or thought

SCOTT FLOYD - DIRECT BY MR. THOMAS

1 theories of the case, trial strategies, that sort of thing --
2 what did you sort of prepare after talking with him about the
3 case?

4 A: Well, of course, he was concerned about his confession
5 and I -- and he should have been because obviously that was a
6 damaging piece of evidence, and so we decided to file the
7 *Jackson v. Denno* motion and have that hearing to determine
8 whether or not that was going to come in. And pretty much he
9 decided that if it was going to come in, he was going to
10 plead, and if it wasn't going to come in, then we would
11 prepare, you know, for trial possibly after that.

12 And, of course, we had the hearing and Judge Seals ruled
13 that it was coming in. And at that point, I mean there was
14 never any doubt in my mind based on what he told me that it
15 was going to be a plea.

16 Q: So whose decision was it ultimately to enter that plea?

17 A: Oh, it was Mr. Ivey's decision.

18 Q: And what did you explain to him about the sentencing
19 range?

20 A: That murder carries a minimum mandatory 30-year sentence
21 and a maximum of life in prison, and it can be anything in-
22 between the minimum and the maximum.

23 Q: And what were the terms of his plea that he ultimately
24 entered in terms of the recommendation, negotiation?

25 A: It was just a straight-up plea to murder. There were no

SCOTT FLOYD - DIRECT BY MR. THOMAS

1 recommendations or negotiations.

2 Q: And you explained all that to him?

3 A: Oh, yes.

4 Q: Did you ever promise him that he would get the 30 years?

5 A: I never did.

6 Q: Did you ever tell him that you had some sort of knowledge
7 that Judge Nettles was going to give him 30 years?

8 A: I did not because I didn't have any such knowledge.

9 Q: Do you remember at the plea you discussed -- the
10 sentencing range was discussed? You talked about how it could
11 carry 30 to life?

12 A: I'm pretty sure I would have covered that on the record.
13 Yes, sir.

14 Q: Did he ever stop you at any point in the plea and tell
15 you he didn't -- he thought he was getting 30?

16 A: No, sir.

17 Q: Thank you, Mr. Floyd. That's all I have.

18 A: Yes, sir.

19 THE COURT: Mr. Waller?

20 MR. WALLER: Just briefly.

21 CROSS-EXAMINATION

22 BY MR. WALLER:

23 Q: Mr. Floyd, after the *Jackson v. Denno* hearing, it was a
24 couple weeks before he pled?

25 A: I'm not sure the date, but if that's what the record

SCOTT FLOYD - CROSS BY MR. WALLER

1 shows, yes. I don't -- I don't doubt that.

2 Q: Okay. Was it called or going to be called? Is there a
3 specific reason that you -- that y'all chose to plead on that
4 day?

5 A: Yes, there is because he wanted to plead in front of
6 Judge Nettles, and Judge Nettles was available.

7 Q: Okay. So y'all kind of got to pick the --

8 A: I think the solicitor kind of let us -- yeah -- choose
9 it.

10 Q: Okay.

11 MR. WALLER: No further questions, Your Honor.

12 THE COURT: Anything further?

13 MR. THOMAS: No redirect.

14 THE COURT: Sir, you may step down.

15 MR. THOMAS: And that's all from the State, Your Honor.

16 THE COURT: All right. Anything further from the
17 appellant's counsel -- applicant's counsel? I'm sorry.

18 MR. WALLER: Just a brief argument, Your Honor.

19 THE COURT: All right.

20 ARGUMENTS OF COUNSEL

21 MR. WALLER: Your Honor, I believe the testimony was that
22 Mr. Ivey was under the understanding that he was pleading
23 guilty. By signing the sentencing sheet, he thought he was
24 agreeing to a 30-year sentence.

25 Mr. Floyd testified that they essentially got -- got to

1 choose the judge. That Mr. Ivey also testified that that's
2 why he thought he was getting 30 years.

3 Your Honor, I think that Mr. Ivey was clearly under the
4 understanding that that's what he was going to get, and we
5 would ask that you grant his application and remand it to the
6 General Sessions Court for a resentencing.

7 THE COURT: Okay. Bear with me just a minute here. All
8 right. Mr. Thomas?

9 MR. THOMAS: Just briefly in response to that, Your
10 Honor, the case law says that the defendant's understanding of
11 the terms of his plea agreement can be settled by the record,
12 the plea colloquy, and the testimony of counsel.

13 I think Mr. Floyd was clear that he understood this was
14 an open plea. Mr. Ivey even admitted he understood it was an
15 open plea.

16 The colloquy with Judge Nettles is fairly thorough. He
17 does tell him -- that's on page 5 at line 5 -- that it carries
18 a minimum of 30, and then Mr. Floyd goes on on page 21, line
19 24, and mentions that it carries up to 24 [verbatim]. At no
20 point did the applicant ever say that he thought that he was
21 getting 30.

22 We would just submit that the record before the Court
23 demonstrates that he entered this plea knowingly and
24 voluntarily, with full knowledge of what the possible sentence
25 could be. Thank you.

RULING

THE COURT: All right. All right. Based upon testimony presented here in court today -- the applicant bears the burden of proof in a post-conviction relief action.

To attack the -- to attack a guilty plea, the defendant may only attack the voluntary and intelligent nature or character of a plea by showing, one, that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases and -- and he must also show that there is a reasonable probability that, but for counsel's errors, defendant would not have pled guilty and would have insisted on going to trial.

Based upon this Court's review of the plea transcript, as well as all items that were made part of the record and submitted to the Court by the State, and the testimony elicited from the stand, this Court hereby concludes that applicant has failed to meet his burden of showing that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases.

More specifically, the applicant asserts that it was his understanding that he would receive a 30-year sentence and, in essence, that is why he pled guilty. However, the testimony of Mr. Floyd here today is that the applicant was never promised such sentence.

Furthermore -- furthermore, the Court specifically -- and

1 while Mr. Thomas specifically pointed out the Court going over
2 the minimum sentence with the applicant, and Mr. Floyd
3 eliciting or stating at the time of the plea not only the
4 minimum but the maximum potential penalty that the applicant
5 could face, the Court on page 12 of the transcript also --
6 also questioned the applicant, stating "I understand from the
7 State there has been no plea negotiations other than the
8 dismissal of some unrelated charges."

9 Furthermore, going on to page 13, line 4, wherein the
10 Court indicates or asks Mr. Floyd, "Is that your understanding
11 of the plea negotiations, Mr. Floyd?" Mr. Floyd's response is
12 "that's correct."

13 More importantly, the Court inquires of Mr. Ivey, "Is
14 that your understanding, Mr. Ivey?" Whereupon, Mr. Ivey
15 responds, "That is." Excuse me. Mr. Ivey responds on line 9,
16 "Yes, sir."

17 Based upon what I've heard here today and based upon this
18 Court's review of the record, the Court finds that applicant
19 has failed to meet its burden and, therefore, denies such
20 request for relief.

21 If you'll get me an order, please, sir.

22 MR. THOMAS: Yes, Your Honor.

23 (WHEREUPON, the proceedings ended at 2:51 p.m.)

24

25 --- END REQUESTED TRANSCRIPT ---

1	State of South Carolina	)	
2		)	Certificate
3	County of Florence	)	

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 24 constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Florence County, South Carolina, on the 15th day of April, 2015.

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

17 S/ Krystal J. Smith

18	Court Reporter
----	----------------

20	Florence, South Carolina
----	--------------------------

21	July 8, 2015
----	--------------

the plea, the State dismissed all other charges pending against Applicant. The Honorable Michael G. Nettles sentenced Applicant to life imprisonment without the possibility of parole.

Applicant filed a timely notice of appeal, but the South Carolina Court of Appeals dismissed the appeal pursuant to Rule 203, SCACR, on April 4, 2013. The remittitur was returned to the circuit court on April 22, 2013.

II. ALLEGATIONS

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

1. "The conditions of current plea I've taken contradicts what me & my attorney agreed upon."
 - a. "Ineffective Assistance of Counsel (x4)"
 - b. "Violation of Due Process 4th amendment 5th."

At the evidentiary hearing, Applicant proceeded on only an allegation his guilty plea was involuntary because trial counsel mis-advised him about the sentence he would receive.

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. 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 he met with plea counsel a couple of times. He recalled discussing the charges he faced and reviewing discovery. Applicant also recalled discussing the possible range of penalties he would face if convicted. Applicant testified he gave a confession. He recalled discussing

the confession with plea counsel and agreeing to enter a guilty plea if the confession could not be suppressed. Applicant recalled having a suppression hearing before Judge Seals. He testified he made the decision to enter the guilty plea after losing the suppression hearing. Applicant testified he thought he would get a thirty year sentence in exchange for his plea. However, he admitted he understood he was entering an “open” plea, without recommendations or negotiations as to sentence. Nevertheless, Applicant maintained he pled guilty because trial counsel led him to believe Judge Nettles would sentence him to thirty years.

Plea counsel testified he was appointed to Applicant’s case in his role as the chief public defender. He testified he met with Applicant enough to be prepared to go forward with the plea. Plea counsel testified he reviewed discovery with Applicant and discussed the charges with him. Plea counsel recalled the outcome of the suppression hearing regarding Applicant’s confession would be dispositive of whether Applicant would enter a guilty plea. Plea counsel recalled discussing the sentencing range with Applicant. He testified he did not promise Applicant Judge Nettles would give him a thirty year sentence. Plea counsel recalled Applicant appearing to understand the terms of the plea, and Applicant did not indicate at the plea hearing that he did not understand the sentencing range.

B. Involuntary Guilty Plea

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). In post-conviction relief cases, an applicant asserting his guilty plea was involuntary must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may

collaterally attack the plea only by showing (1) counsel's advice was deficient and (2) there is a reasonable probability that, but for counsel's deficient advice, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52 (1985); Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56 (quoting McMann v. Richardson, 397 U.S. 759 (1970)). However, the Court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

The Court finds Applicant failed to meet his burden to show his guilty plea was induced by mis-advice of plea counsel. Regarding this allegation, the Court finds plea counsel's testimony credible and gives it great weight. The Court finds Applicant's testimony he was told he would receive a thirty year sentence to be not credible. Plea counsel conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation. He advised Applicant of the possible sentencing range for his charge. He also explained to Applicant that the sentencing

judge could issues a sentence between thirty years and life. Accordingly, the Court finds plea counsel's advice was not deficient in this regard.

Furthermore, the plea colloquy reveals the sentencing judge and plea counsel informed Applicant of the range of possible sentences. (Plea Tr. p. 5, lines 5-7; p. 21, lines 21-25). Applicant also acknowledged at the plea colloquy that he understood the terms of his plea. (Plea Tr. p. 12, line 22-p. 13, line 9). Accordingly, any misconception he may have had about the possible sentence was cured by the plea colloquy. Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011) (citing Bennett v. State, 371 S.C. 198, 638 S.E.2d 673 (2006); Burnett v. State, 352 S.C. 589, 576 S.E.2d 144 (2003); Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998); Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997)). Therefore, Applicant has failed to demonstrate his guilty plea was involuntary.

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.

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 counsel'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, counsel 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 15th day of May, 2015.



THE HONORABLE D. CRAIG BROWN
Presiding Judge
Twelfth Judicial Circuit

Florence, South Carolina

FILED
2015 JUN -1 PM 2:25
CORRIG REEL-SHEAR &
CCCP & GS
FLORENCE COUNTY, SC

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

FILED

2012 JAN -5 PM 2: 18

CONNIE REEL-SHEARM
COOPER
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Cherie J. J. J.
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

DOCKET NO. 2012-GS-21-00119

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JANUARY TERM 2012

THE STATE

vs.

RODNEY DALE IVEY

Indictment for

MURDER

WITNESSES

William Hester Florence County Sheriff

E. L. Clements, III

ARREST WARRANT NUMBER

M273694

ACTION OF GRAND JURY

TRUE BILL

Kimberly Brumfield
 Foreperson of Grand Jury
 Date: 1/5/12

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on JANUARY 05, 2012 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- MURDER

CDR: 0116

16-03-0010,0020, 16-01-0060

That RODNEY DALE IVEY did in Florence County on or about June 09, 2011, feloniously, willfully and with malice aforethought kill one Devin Ham Ivey, by means of choking her, and that the said Devin Ham Ivey did die as a proximate result thereof; in violation of Sections 16-03-0010, 0020, and 16-01-0060, 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.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR