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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

J. Ernest Kinard, Jr., Circuit Court Judge

TERRANCE D. PATTERSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000882

A P P E N D I X

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1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

COURT OF GENERAL SESSIONS

2011-GS-40-00884

2011-GS-40-00866

3
4
5 State of South Carolina,)

6 Plaintiff,)

7 vs.)

TRANSCRIPT OF RECORD

8 Terrence D. Patterson,)

9 Defendant.)

10 December 3, 2012

11 Columbia, South Carolina

12
13
14 B E F O R E:

15 THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

16
17
18 A P P E A R A N C E S:

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Attorney for the Plaintiff

21 E. DEON O'NEIL, ESQ.
22 Attorney for the Defendant

23
24
25 DEBORAH M. McCURDY, RPR
Official Court Reporter

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

(WHEREUPON, no witnesses were called
during these proceedings.)

E X H I B I T S

(WHEREUPON, no exhibits were introduced
during these proceedings.)

1 DECEMBER 3, 2012

2 MS. WALKER: The State calls Terrence
3 Patterson.

4 THE CLERK: Raise your right hand, please.
5 (Defendant complies.)

6 THE CLERK: Do you swear to tell the truth,
7 the whole truth, and nothing but the truth, so help
8 you God?

9 THE DEFENDANT: Yes, ma'am.

10 MS. WALKER: Your Honor, standing before you
11 is Terrence Patterson. He is here today to enter
12 two guilty pleas, Your Honor, under Indictment
13 2011-GS-40-866 for murder, and 2011-GS-40-884 for
14 attempted murder.

15 This was originally set for trial this week;
16 however, the Defendant is going to plead guilty.
17 He is here today with his attorney, Deon O'Neil, of
18 the private bar.

19 THE COURT: Is that correct, Mr. O'Neil?

20 MR. O'NEIL: Yes, Your Honor.

21 THE COURT: Have you explained to your client
22 the charges contained in the indictment, the
23 possible punishment, and his constitutional rights?

24 MR. O'NEIL: I have.

25 THE COURT: And have you explained -- well,

1 and how does he wish to plead?

2 MR. O'NEIL: Guilty.

3 THE COURT: And do you agree with his decision
4 to plead guilty?

5 MR. O'NEIL: I do.

6 THE COURT: All right. And you are -- on the
7 sentencing sheet it says Captain Terrence. His
8 name is Terrence?

9 MS. WALKER: Terrence. I have no idea why it
10 says that. I will amend that right now.

11 (Complies.)

12 THE COURT: And have you explained to your
13 client the charges contained in the indictment, the
14 possible punishment, and his constitutional rights?

15 MR. O'NEIL: I have.

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

17 MR. O'NEIL: Guilty.

18 THE COURT: And do you agree with his decision
19 to plead guilty?

20 MR. O'NEIL: Yes, ma'am.

21 THE COURT: And you are Terrence D. Patterson?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And, sir, you are pleading to one
24 count of murder and one count of attempted murder,
25 is that correct?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: And how old are you, sir?

3 THE DEFENDANT: Thirty-one.

4 THE COURT: How far did you go in school?

5 THE DEFENDANT: Eleventh grade.

6 THE COURT: Are you married?

7 THE DEFENDANT: No, ma'am.

8 THE COURT: Do you have children?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Their ages?

11 THE DEFENDANT: Twelve, ten, eight, six, and
12 five.

13 THE COURT: And, sir, are you on probation or
14 parole?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: And how long have you been in
17 jail?

18 THE DEFENDANT: Thirty months.

19 THE COURT: And have you ever been treated for
20 the abuse of alcohol, drugs, or for mental illness?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: Within the last 24 hours have you
23 taken any medication, drugs, or alcohol?

24 THE DEFENDANT: No, ma'am.

25 THE COURT: All right. Listen closely to the

1 Solicitor as she states the facts.

2 MS. WALKER: Thank you, Your Honor. This
3 incident occurred on June 19th, 2010. I need to
4 start earlier in the day to give Your Honor kind of
5 a full context of the things that happened.

6 This is a gang beef between the Folk gang
7 members and the Blood gang members. The testimony
8 at trial, Your Honor, would have been that this
9 Defendant is a member of the Folk Nation.

10 Your Honor, early in the day, around 1:30 in
11 the afternoon at the Ashley Oaks apartment complex,
12 two of his Co-Defendants, Daqwan Johnson and Brian
13 Campbell -- and this is all on video, Your Honor --
14 pulled in to this apartment complex and shoot at a
15 resident of the complex as he is exiting and
16 emptying the trash. They shoot at him and then
17 spin out and leave the apartment complex.

18 Several hours later, Your Honor, as three of
19 the other Co-Defendants are driving down Farrow
20 Road, that car is shot back -- that car shot back
21 in a retaliatory shooting for the first shooting of
22 the day.

23 Your Honor, they were driving Daqwan Johnson's
24 car at the time. Daqwan Johnson was not in the
25 car, nor was this Defendant. In that car at the

1 time were Brian Campbell, Marquez Prophet and
2 Detrick Walker.

3 One of the rival gang members, who is a
4 resident of that Ashley apartment complex, shot at
5 those individuals -- I'm sorry, at the Gable Oaks
6 apartment complex -- shot at those individuals.

7 Your Honor, at that point in time those three
8 Co-Defendants called Daqwan Johnson -- who has
9 already been tried and convicted of murder and
10 attempted murder in this case and received 50 years
11 in front of Judge Knox McMahon -- told them to
12 bring this car back, that he was tired of this, and
13 that they were going to finally get -- they were
14 going to have a final resolution to this gang beef.

15 At that point, Your Honor, they all meet up.
16 It is the late evening hours of June 19th of 2010.
17 They all meet up, so four Co-Defendants at that
18 point in time, Your Honor. It is Marquez Prophet,
19 Brian Campbell, Detrick Walker, and Daqwan Johnson.

20 At that point, Daqwan Johnson makes a decision
21 that they need to get the guns. That is how
22 Terrence Patterson becomes involved.

23 They call Terrence Patterson, who was at his
24 girlfriend's house, Your Honor, located at [REDACTED]
25 Medical Drive here in Columbia, in Richland County,

1 Your Honor.

2 And he calls them over to that apartment where
3 he then arms them for this retaliatory shooting
4 that is going to take place.

5 Your Honor, he arms all of the Co-Defendants
6 with several guns. He gave a .380 handgun, Your
7 Honor, to one of the Co-Defendants; a 9-millimeter
8 handgun; he armed an additional Co-Defendant with a
9 SKS; and he armed himself with an AK-47, Your
10 Honor.

11 This, Your Honor, was one of the long guns
12 that he armed one of the Co-Defendants with. This
13 gun would have been carried by Brian Campbell at
14 the time.

15 The gun that this Defendant had, Your Honor,
16 was an AK-47. This is the gun that he went to this
17 apartment complex with, Your Honor.

18 Daqwan Johnson, Your Honor, came equipped with
19 his own gun, which is a .223.

20 And the two handguns, Your Honor, in this case
21 were not recovered.

22 They then got in Brian Campbell's -- I'm
23 sorry, they then got in Daqwan Johnson's car, drove
24 from Medical Drive to North Main Street, where they
25 got out of the car, went through a cut, and to the

1 apartment complex, Judge.

2 At this point, Your Honor, they all kind of
3 spread out. This is all captured on video footage
4 as well. They all spread out and triangulated
5 around this building, Your Honor, where they saw
6 Edward Miller, also known as Weenie. He was the
7 intended target of this attack, Your Honor.

8 The Defendant -- you can see where the
9 majority of the weapons were fired. They came
10 through the cut located on North Main Street.

11 Items -- shell -- evidence, Items Number 1
12 through 21, which would have been the shell casings
13 that were later matched by a ballistics report to
14 the gun that this Defendant had, Your Honor, was
15 fired from here, Your Honor, to this building, Your
16 Honor, literally firing through a playground to the
17 intended target.

18 When he was questioned by police officers in
19 this case, Your Honor, who would have been Sergeant
20 Thomas, he said that he had seen the crowd, he saw
21 his man, and he opened fire.

22 The crowd that he saw, Your Honor, that he let
23 off all the rounds of this gun in, was a crowd of
24 women and children, some of whom were actually
25 playing on that playground, who had absolutely

1 nothing to do with this gang beef, Judge.

2 At that point, Your Honor, with over 40 shell
3 casings, over 40 shots that were fired that night,
4 Your Honor, one struck and killed Gary Reese, the
5 victim in this case, whose mother is here in the
6 courtroom, Your Honor, and she would wish to
7 address the Court at the appropriate time. And
8 another grazed Lametrus Stephens. That is the crux
9 of the attempted murder.

10 Judge, at that point, after unleashing this
11 onslaught of fire on this crowd, Your Honor, they
12 then ran back to the cut, got back in Daqwan
13 Johnson's car, left, dropped off guns, and then
14 they went to Studio 54 to a birthday party where
15 they I guess spent the rest of the night
16 celebrating.

17 On the way, Your Honor, from this murder that
18 they just committed to Studio 54, they get a phone
19 call. Different individuals within that group, but
20 still the same five Co-Defendants, get phone calls
21 letting them know that Gary Reese was killed.

22 Once again, Gary Reese was not the intended
23 target, Your Honor, but he was -- and there would
24 have been testimony to this -- allegedly a
25 high-ranking member of the Blood gang, which was

1 beefing with Mr. Patterson's gang, the Folk Nation,
2 Judge.

3 Your Honor, once they get that phone call,
4 according to one of his Co-Defendants, Terrence
5 Patterson said: I don't play. You see how I get
6 down? You see how I hit the corner? The AK is
7 still hot.

8 He is referring to the gun that he has just
9 fired, Your Honor.

10 At that point, when they are at Studio 54,
11 there is another shooting that takes place with
12 Blood members who are enraged by the murder of one
13 of their high-ranking members, Gary Reese. Stormed
14 that club. And there is another shooting that
15 takes place.

16 Your Honor, over the course of this date, from
17 1:30 on June 19th to the early morning hours of
18 June 20th, there are four separate incidents that
19 take place in which multiple guns are fired,
20 multiple rounds throughout Richland County and the
21 City of Columbia, Judge, that leaves one person
22 dead and another person grazed by this wound.

23 This Defendant, after this party, after I
24 guess celebrating, he then flees to Detroit,
25 Michigan, Your Honor.

1 Through the course of their investigation,
2 they are able to piece together through Crime
3 Stoppers tips and their investigation, Your Honor,
4 Sergeant Thomas and Sergeant Reese are able to
5 piece together what happened, who the players
6 involved are.

7 They then contact the United States Marshals
8 in Detroit, Michigan. They locate Terrence
9 Patterson. They go to Detroit to get Terrence
10 Patterson, bring him back. They advise him of his
11 rights.

12 He initially, Your Honor, gives a statement in
13 which he denies, you know, his involvement for
14 about 30 minutes. And then after 30 minutes, when
15 he is confronted with the evidence against him,
16 with the fact that guns have been recovered --
17 because one of his Co-Defendants told where they,
18 you know, where they hid the guns at, that the
19 girlfriend stated that the guns were in fact hidden
20 there by this Defendant -- he then does become
21 forthcoming, Your Honor.

22 He explains his involvement. He explains that
23 he went there, that he was actually masked at the
24 time, he was wearing a black mask over his face.

25 He talks about going through the cut, opening

1 fire on the crowd, and he gives the
2 I-seen-the-crowd-I-seen-my-man-and-I-started-
3 shooting statement, Your Honor, and then leaving,
4 and then fleeing to Detroit, Michigan.

5 Those are the facts.

6 THE COURT: All right. Sir, do you agree with
7 the facts as stated by the Solicitor?

8 THE DEFENDANT: Not all of them.

9 THE COURT: All right. Tell me what you agree
10 to.

11 THE DEFENDANT: I agree to the fact that I
12 did -- I was involved in the shooting. I did open
13 fire with my weapon. But I don't agree to the fact
14 that I gave everybody weapons to go out there and
15 shoot. I don't agree with the fact that I bragged
16 about what I done, because I didn't. I don't agree
17 to the fact that we celebrated what happened,
18 because I had no problem with Gary Reese.

19 THE COURT: All right. But you agree to the
20 fact that Gary Reese is shot?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: By the gun?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: And y'all are saying it is his gun
25 is the one that did -- or one in the group -- you

1 were involved in the group that went there to
2 shoot --

3 MS. WALKER: To shoot Weenie.

4 THE COURT: -- Weenie. And then Gary Reese
5 gets shot. And you are shooting along with the
6 other --

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: -- four people, is that what
9 you --

10 THE DEFENDANT: Yes, ma'am, Your Honor.

11 THE COURT: All right. And somebody else gets
12 grazed?

13 MS. WALKER: Lametrus Stephens, Your Honor.
14 He is the victim of the attempted murder.

15 THE COURT: And that is your reason for the
16 plea to the attempted murder, is that correct, sir?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And, sir, you understand that the
19 attempted murder carries up to 30 years, the murder
20 carries 30 to life. You understand that, sir?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Knowing that, sir, you still wish
23 to plead guilty?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: And you understand, sir, I could

1 run those sentences consecutive and you'd be
2 looking at life plus 30 years. You understand
3 that, sir?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Knowing that, you still wish to
6 plead guilty?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: All right, sir, when you plead
9 guilty you give up certain important -- well, let
10 me ask you this. You understand that these are
11 violent, most serious offenses, sir, meaning
12 that -- are these day-for-day?

13 MR. O'NEIL: The murder is day-for-day, Your
14 Honor.

15 THE COURT: You understand the murder is
16 day-for-day, which means that you have to serve
17 every day of the sentence that you get? You
18 understand that, sir?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: All right, sir. You understand
21 that under the two-strikes law, because it is
22 classified as most serious, that if you were to get
23 another offense in the future that is classified as
24 most serious, that the State could proceed against
25 you with life without parole. You understand that,

1 sir?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Knowing that, sir, you still wish
4 to plead guilty?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: And, sir, you also understand that
7 no one can -- do you fully understand the nature of
8 the charges against you and the range of possible
9 punishment?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: And when you plead guilty, sir,
12 you give up certain important constitutional
13 rights. You have the right to a jury trial.

14 At a jury trial I would instruct the jury --
15 and we are prepared to go forward with that
16 today -- that there is a presumption that you are
17 innocent, that the State would have the burden of
18 proving you guilty beyond a reasonable doubt. They
19 would call witnesses, sir, against you. You and
20 your attorney would have the opportunity to
21 cross-examine any of those witnesses, sir. You
22 would not have to testify. You would have the
23 right to remain silent. The State would have the
24 burden of proving you guilty beyond a reasonable
25 doubt. If you gave any incriminating statements,

1 sir, you would have the opportunity to challenge
2 those statements. But by pleading guilty today,
3 sir, you give up those important constitutional
4 rights and also your right to a jury trial.

5 Is that what you wish to do today, sir?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: All right. And are there any plea
8 negotiations?

9 MS. CAMPBELL: No, ma'am.

10 MS. WALKER: No, Your Honor.

11 THE COURT: And, sir, you have been
12 represented today by Mr. Deon O'Neil. Are you
13 satisfied with his representation?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And, sir, has he done everything
16 for you that you feel he could have done or should
17 have done?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Have you talked with your lawyer
20 as often and for as long as necessary for him to
21 properly represent you?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Do you need any more time to talk
24 with him?

25 THE DEFENDANT: No, ma'am.

1 THE COURT: All right. And have you
2 understood all of your talks with your lawyer?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And he has explained everything
5 here to you today, is that correct?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: And, sir, are you completely
8 satisfied with your lawyer's services?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: And has anyone promised you
11 anything or held out any hope of reward to get you
12 to plead guilty today?

13 THE DEFENDANT: No, ma'am, Your Honor.

14 THE COURT: All right. And has anyone
15 threatened you or used force to get you to plead
16 guilty today?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: Has anyone used any pressure or
19 intimidation to cause you to plead guilty today?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: And have you had enough time to
22 make up your mind as to whether or not you want to
23 plead guilty today?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: And, sir, are you pleading guilty

1 of your own free will?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And are you pleading guilty
4 because you are guilty of murder and attempted
5 murder?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: And, sir, have you understood all
8 of my questions?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: And is there anything you would
11 like to ask me about what we have just gone over?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: And has anyone suggested to you
14 how to answer my questions?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: And have you been absolutely
17 truthful in each and every answer that you have
18 given this Court today?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: And, sir, you understand you have
21 the right to appeal this guilty plea and the
22 sentence of this Court within ten days of today's
23 date. If you cannot afford an attorney for an
24 appeal, you will be appointed an attorney at no
25 cost to you. You understand that, sir?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: All right. I find that there is a
3 substantial factual basis for the plea. I also
4 find that the Defendant's decision to plead guilty
5 is freely, voluntarily, knowingly, and
6 intelligently made; that he is represented by
7 counsel to whom he has indicated to me he is
8 completely satisfied with. I will accept his plea.

9 And I will be glad to hear from the victim,
10 and then I'll come back to you, Mr. O'Neil, and
11 I'll hear from you and anyone else you would like
12 me to hear from.

13 MS. CAMPBELL: May it please the Court, Your
14 Honor? Just for the record too, just for PCR
15 purposes too, we did order the transcript of the
16 prior trial, and that has been turned over to the
17 Defense, and he has had an opportunity to review
18 that, to have that testimony.

19 THE COURT: Is that correct, sir?

20 THE DEFENDANT: Yes, ma'am.

21 MS. CAMPBELL: And as far as his prior record,
22 Your Honor, first back in 2006 he had one count of
23 unlawful carrying of a weapon conviction, and a
24 second count of the same thing. And then in 2007
25 he was convicted of simple possession of marijuana.

1 And then an out-of-state conviction from 2003 is
2 for criminal domestic violence from 2003 up in --
3 it looks like in the Michigan area.

4 THE COURT: All right.

5 MS. CAMPBELL: Your Honor, present in the
6 courtroom is Gary Reese's mom. I think she would
7 like to address the Court briefly, with the Court's
8 permission.

9 THE COURT: All right.

10 VICTIM'S MOTHER: Hi. My name is Latonya
11 Samuels. I'm Gary's mother.

12 I have --

13 THE COURT REPORTER: I can't hear.

14 THE COURT: Hold on one second, ma'am. The
15 court reporter can't hear you. And, do y'all have
16 a microphone up there y'all can give her?

17 (Complies.)

18 VICTIM'S MOTHER: My name is Latonya Samuels.
19 And I'm Gary's mother. I have been dealing with
20 this the last two years. My children are not
21 angry. Gary played a part in it too. But that
22 didn't mean for him to kill my child.

23 I have to take over the responsibility of
24 being his kid's father. I understand this young
25 man have kids too. But my grandkids will never see

1 their father again. And I accept the plea. And
2 I'm tired. This needs to stop. I'm tired.

3 THE COURT: Yes, ma'am.

4 All right, thank you for being here today.
5 I'm sorry for your loss, ma'am.

6 Anything else from the State?

7 MS. CAMPBELL: Nothing else from the State,
8 Your Honor.

9 THE COURT: All right.

10 MR. O'NEIL: Thank you, Your Honor. May it
11 please the Court?

12 THE COURT: Yes, sir.

13 MR. O'NEIL: It is my understanding that, upon
14 speaking with Mr. Gary Reese's family, that they
15 would not oppose a 35-year sentence for Mr.
16 Patterson.

17 MS. CAMPBELL: She was aware that there was a
18 35-year request by the Defense, and she did not
19 think that was unreasonable.

20 MR. O'NEIL: Yes, Your Honor.

21 It is pretty much a tragedy on everybody's
22 part here. And I guess first, on behalf of
23 Terrence, I want to express his sympathy to Gary's
24 family. I think, as everybody agrees, Gary was not
25 the intended victim of this case. He was just

1 caught in the crossfire, essentially at the wrong
2 place at the wrong time, Your Honor.

3 I think Terrence knew Gary. I think all of
4 them had been friends. I think actually Gary had a
5 child with one of Terrence's cousins. I think they
6 were friendly. There was no ill-will between
7 Terrence and Gary in this case, Your Honor.

8 Terrence, when he made the statement to law
9 enforcement about this case, he basically told
10 Investigator Thomas in this case that essentially
11 this had been brewing about a month, month and a
12 half before this, that Terrence's house and car had
13 been shot up by individuals before this.

14 I think this night just reached a tipping
15 point where unfortunately they sought to resolve
16 this problem probably in an inappropriate way, Your
17 Honor.

18 As Terrence told you, he has five kids of his
19 own here. He has a minimum prior record. Those
20 two weapon charges were both pled guilty in
21 transfer court. His other charges in South
22 Carolina is a misdemeanor, simple possession of
23 marijuana. He doesn't have any substantial record
24 here.

25 As he told you, he is 31 years old. He does

1 not have a record that would indicate that he is a
2 lifelong criminal. He just has misdemeanors on his
3 record, Your Honor.

4 I think if you speak with law enforcement in
5 this case, I think they will tell you that Terrence
6 was probably the most upfront and straight-up
7 individuals when he came to tell them what happened
8 in this case.

9 After initially about 30 minutes of kind of
10 hemming and hawing about what happened, he told
11 them exactly what his involved in this case was.
12 He didn't hide anything from them, the Court and
13 from law enforcement in this case.

14 Terrence has always wanted to take
15 responsibility for these charges here. I think he
16 truly deep down inside never really wanted to have
17 to resolve this in a trial, Your Honor. The only
18 question and the only reason why it took kind of
19 two and a half years to kind of get here is because
20 we were always trying to find the appropriate
21 resolution in this case, when it became how much
22 time Terrence would have to serve for his actions
23 in this case.

24 Your Honor, the minimum on this charge is 30
25 years for the murder charge. I think, Your Honor,

1 a 35-year sentence would be appropriate in this
2 case.

3 Like I said, Terrence is 31 at this point. On
4 a 35-year sentence he will have to do that
5 day-for-day. That would keep him incarcerated
6 until his mid 60s, Your Honor. I think that would
7 be an appropriate sentence in this case for
8 retribution for what happened for the loss of Gary.
9 Nothing can be done to bring Gary back here. And
10 Terrence realizes he has to make some sort of
11 punishment for his action in this case.

12 He did want to make sure the Court is aware he
13 did not harm the other Co-Defendants with these
14 weapons. He told Investigator Thomas that at the
15 time of his statement here and he has always
16 maintained that. I think Investigator Thomas can
17 tell you that Terrence was probably the more
18 honest, straightforward individual in this case.
19 So he wanted to make sure that was clear.

20 And, Your Honor, actually Terrence has been
21 incarcerated since July 16th, 2010, is when they
22 went to Michigan to go get him. Since he has been
23 in the jail, he has been involved in some programs
24 to help himself out, Your Honor. He's been
25 involved in the Men's and Fathers' Group there at

1 the jail here, Your Honor. That is a group that
2 basically tries to equip offenders with skills
3 necessary to not reoffend when they get out. He
4 also was involved in the Pre-Release Life Skills
5 Group there at the Detention Center, Your Honor.
6 He also was involved in the Impact of Crime Group
7 there at the center -- at the jail, Your Honor.
8 And also he has been involved with the Turning Leaf
9 Project here. I have certificates and letters from
10 those four projects that Terrance has been involved
11 in. I would like to pass them up for Your Honor to
12 consider. And I have shown Solicitor Campbell a
13 copy of those certificate.

14 (Complies.)

15 MR. O'NEIL: Your Honor, in the courtroom in
16 support of him, his baby's mother is here. Some of
17 his other cousins are in this courtroom as well.
18 They don't want to address the Court, but they just
19 want to be here so Your Honor will know they are
20 here for support.

21 Based on Terrance's minimum prior record, his
22 essential cooperation with law enforcement by
23 giving his statement as to the events that night,
24 and his effort to try to rehabilitate himself while
25 in the jail, Your Honor, we would ask for a 35-year

1 sentence here.

2 And I think Terrence wants to address the
3 Court at this time.

4 THE COURT: I will be glad to hear from you.

5 THE DEFENDANT: I just want to apologize to
6 the victim's family. I apologize for what happened
7 to their son. I know he can't come back. And I
8 just regret everything that happened. I just
9 wasn't thinking at the time.

10 That's all.

11 THE COURT: All right. Thank you.

12 Anything else from the State?

13 MS. CAMPBELL: The only thing the victim's
14 mother wanted me to correct, she said they were not
15 friends. She just wanted me to tell the Court
16 that.

17 THE COURT: Anything else?

18 MR. O'NEIL: No, Your Honor.

19 THE COURT: All right. And I appreciate the
20 victim's consideration of your request.

21 And, once again, ma'am, I extend my
22 condolences for your loss, but I also have to take
23 into consideration the community. And while it is
24 unfortunate for Ms. Samuels and the victim in this
25 case, it could have been a lot worse. It could

1 have been more than two indictments. It could have
2 been -- I think he said it was 40 rounds?

3 MS. WALKER: At least, Your Honor.

4 THE COURT: Forty rounds. For that reason --
5 and I understand the other guy got 50 years after
6 trial?

7 MS. WALKER: Yes, Your Honor.

8 THE COURT: From Judge McMahon.

9 I have taken into consideration his accepting
10 responsibility here today, but I am going to still
11 give him 40 years. And it is 30 on attempted
12 murder. And run those concurrent. And he will get
13 credit for the time that he has been in jail, 871
14 days that he has been in jail.

15 MS. CAMPBELL: Thank you.

16 THE COURT: All right. That is on
17 Indictment 2011-GS-40-866 and 884.

18 All right. Thank you.

19 Good luck to you, sir.

20 MR. O'NEIL: Thank you, Your Honor.

21 (WHEREUPON, the proceedings were concluded.)
22
23
24

25 (END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 3rd day of December, 2012.

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

October 31, 2013

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

BOOK 247 OF 0270

11/866

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

The State of South Carolina

vs.

Terrance Patterson,

Defendant.

IN THE COURT OF GENERAL SESSIONS

Warrant Number: k668257-8

**ORDER MODIFYING DEFENDANT'S
SENTENCE**

This matter came before the Court on Defendant's Motion to Reconsider. A hearing on this Motion was held on January, 15, 2013. Present at the hearing were Deon O'Neil, for the Defendant, and Luck Campbell and Meghan Walker, for the State.

On December 3, 2012, the Defendant pled guilty to Attempted Murder and Murder. This Court sentenced the Defendant to forty (40) years in the Department of Corrections, with credit for time served at Alvin S. Glenn Detention Center prior to trial.

The Court, having reviewed and considered Defendant's Motion and oral argument of counsel, modifies Defendant's sentence. In lieu of the current sentence of 40 years, Defendant will be sentenced to thirty-five (35) years in the Department of Corrections, with credit for time served at Alvin S. Glenn Detention Center prior to trial.

THEREFORE, IT IS ORDERED that Defendant's sentence of forty (40) years be modified to thirty-five (35) years.

AND IT IS SO ORDERED.

WJB
The Honorable DeAndrea G. Benjamin
Presiding Judge, Fifth Judicial Circuit
Court of General Sessions

2013 MAR -4 PM 4:00
JESSIE W. McBRIDE
C.C.P. & J.S.

RICHLAND COUNTY
FILED

Columbia, South Carolina
This 4 day of February, 2013

march

ac

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

31

COUNTY OF Richland
 STATE VS.
Capt. Terrance D Patterson

INDICTMENT/CASE#: 2011-GS-40-0866A/W#: K668257Date of Offense: 6/19/2010S.C. Code § : 16-03-0010CDR Code #: 0116

AKA:

Race: BLACK Sex: M Age: 31DOB: SS#:Address: BAILEY STCity, State, Zip: COLUMBIA, SC 29203DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Murder / Murder

☐ CONVICTED OF or ☒ PLEADS

SENTENCE SHEET

in violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Campbell, Luck 12001 SC Bar# Defendant Attorney for Defendant 74814 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 40 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. 871 days

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

*Fine: \$
 § 14-1-206 (Assessments 107.5 %) \$
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$
 § 56-5-2995 (DUI Assessment) \$12 \$
 § 56-1-286 (DUI Breath Test) \$25 \$
 Proviso 47.9 (Public Def/Prob) \$500 \$
 § 14-1-212 (Law Enforce. Funding) \$25 \$
 § 14-1-213 (Drug Court Surcharge) \$150 \$
 § 50-21-114(BUI Breath Test Fee) \$50 \$
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
 Proviso 90.5 (SCCJA Surcharge) \$5 \$
 3% to County (if paid in installments) \$
 TOTAL \$

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ beginning

\$ paid to Public Defender FundOther:

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

Clerk of Court/ Deputy Clerk Joanette McBrideCourt Reporter:

SCCA/217 (03/2011)

Presiding Judge Judge Code: 2161Sentence Date: 12-3-12

FORM 5

STATE OF SOUTH CAROLINA)

County of RICHLAND)TERRENCE D. PATTERSON #353407)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2013CP4005970

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

RICHLAND COUNTY
 FILED
 2013 OCT - 1 PM 1:42
 JENNIFER W. HARRIS
 CLERK, C.P. & D.S.

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 ~~ALVIN S. GLENN DETENTION CENTER~~
McCormick CORR. INST. 386 Redemption Way McCormick SC 29899
2. Name and location of Court which imposed sentence RICHLAND COUNTY
JUDICIAL CENTER 1701 MAIN ST. COLUMBIA SC 29201
3. Name(s) of co-defendant(s) (if any) DAQUAN JOHNSON, MARQUEZ PROPHET,
DETRICK WALKER, BRIAN CAMPBELL
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) ATTEMPTED MURDER 2011-GS-40-0884
 - (b) MURDER 2011-GS-40-0866

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) DECEMBER 3, 2012 30 YRS FOR ATT. MURDER
- (b) DECEMBER 3, 2012 40YRS FOR MURDER RAN CONCURRENT
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? NO
BUT MY LAWYER FILED A MOTION TO RECONSIDER
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Motion to reconsider Richland County.
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. N/A
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. N/A
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. N/A
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) BECAUSE I PLEAD GUILTY IN TRIAL
- (b) _____

(c) _____

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

(a) PIEA Counsel provided erroneous advise
 (b) which caused me to plead guilty.
 (c) _____

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

(a) Counsel advised me I would receive
 (b) sentence 30 years, however I received
 (c) 40 Counsel failed to object.

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

(a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

- i. _____
- ii. N/A
- 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?

N/A

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

(a) which grounds have been presented:

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

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

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

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

(a) Did not Appeal
(b) _____
(c) _____

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

(a) your arraignment and plea? yes
(b) your trial, if any? yes
(c) your sentencing? yes
(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

Yes

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. DEON O'NEIL 1720 MAIN STREET Suite 202 Columbia S.C. 29201

ii. _____

iii. _____

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

i. MR. DEON O'NEIL Represented me at my Guilty plea

ii. _____

iii. _____

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

I wish to receive sentence counsel advised
me I would receive which prompted my
guilty plea

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

NO

STATE OF SOUTH CAROLINA)

VERIFICATION

County of McCormick)

I, Terrence Patterson, 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.

Terrence Patterson

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

Joan L. Young (L.S.)
 Notary Public

My Commission Expires: 10/1/2021

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

I, Terrence Patterson, 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.

Terrence Patterson
Applicant

SWORN or affirmed to and subscribed before me this

16 day of Sept, 2013

Joanne L. Young
Notary Public

My Commission Expires: 10/1/2021

RICHLAND COUNTY
FILED
2013 OCT -1 PM 1:42
JEANETTE M. HARRIS
C.C.P. & G.S.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Terrence Patterson # 353407,

2013-CP-40-5970

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

RECEIVED
2014 FEB 26 PM 2:18
JEANETTE W. MCGRIDE
C.C.P. & G.S.

Respondent, making its Return to the Application for post-conviction relief filed October 1, 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 Richland County Clerk of Court. Applicant was indicted during the February 2011 term of the Richland County Grand Jury for Murder and Attempted Murder (2011-GS-40-0866, -0884). He was represented by Deon O'Neil, Esquire. On December 3, 2012, Applicant appeared before the Honorable DeAndrea G. Benjamin, where he pled guilty as indicted. Judge Benjamin sentenced Applicant to forty years for murder and a concurrent thirty years for attempted murder. Applicant did not appeal his guilty pleas or sentences.

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

II.

In his Application, Applicant alleges that he is being held in custody unlawfully based on allegations of ineffective assistance of counsel for providing erroneous advice which caused Applicant to plead guilty and for advising Applicant that he would receive a thirty year sentence. Any claims not specifically enumerated in the application or amendments filed by counsel of record will be opposed by Respondent at an evidentiary hearing, and Respondent will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. First, the Applicant must prove that counsel's performance was

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

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

IV.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

Feb. 25, 2014.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
TERRENCE D. PATTERSON, #353407)
Applicant,)
vs)
STATE OF SOUTH CAROLINA,)
Respondent.)

IN THE COURT OF COMMON PLEAS

2013-CP-40-5970

AFFIDAVIT OF SERVICE BY MAIL

NOTED
2014 FEB 26 PM 2:13
JEANETTE W. MORRIS
C.C.P. & G.

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:

Tommy A. Thomas, Esquire
Post Office Box 88
Irmo, South Carolina 29063

DATED this 25th day of February, 2014.


Kelly Oppenheimer, Legal Assistant
For Respondent

State of South Carolina	)	In the Court of General Sessions
	)	Fifth Judicial Circuit
County of Richland	)	2013-CP-40-05970

Terrance D. Patterson,	)	
	)	
Plaintiff,	)	
	)	Transcript of Record
vs.	)	
	)	
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	
	)	

December 10, 2014
Columbia, South Carolina

B e f o r e :

The Honorable J. Ernest Kinard, Jr., Judge

A p p e a r a n c e s :

Tommy Thomas, Esq.
Attorney for the Plaintiff

Clay Mitchell, Esq.
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

<u>WITNESS/DESCRIPTION</u>				<u>PAGE NO.</u>
Case called/Mr. Mitchell				4
	Direct	Cross	Redirect	Re-cross
Terrance Patterson				
Mr. Thomas	5		24	
Mr. Mitchell		17		
Deon O'Neil				
Mr. Mitchell	26			
Mr. Thomas		37		
The Court	45			
Ruling by the Court				46
Certificate Page				47

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
------------	--------------------	-------------	------------

-- NO EXHIBITS ENTERED --

1 MR. MITCHELL: Good morning, Your Honor. May it
2 please the Court. This is *Terrence Patterson vs. the State*
3 *of South Carolina*, Case No. 2013-CP-40-5970.

4 Mr. Patterson was indicted during the February 2011
5 term of the Richland County Grand Jury for murder and
6 attempted murder, Indictment No. 2013-GS-40-866 and -884.
7 He was represented on those charges by Mr. Deon O'Neil.
8 Applicant appeared before Judge Benjamin on December 3,
9 2012, where he pled guilty as indicted. Judge Benjamin
10 sentenced applicant to 40 years for -- excuse me -- 40
11 years for murder and 30 years for attempted murder. He did
12 not appeal those guilty pleas or sentences.

13 He did file -- counsel did file a motion for
14 reconsideration, and there was a hearing held on that
15 motion on January 28, 2013, before Judge Benjamin again.
16 She issued an order March 4, 2013, where she amended the
17 sentence from 40 years to 35 years.

18 So Applicant's filed this application for post-
19 conviction relief October 1, 2013, where he's alleged
20 various allegations of ineffective assistance of counsel.
21 Mr. Patterson's here today and represented by Mr. Tommy
22 Thomas, and I will turn it over to him now.

23 THE COURT: All right. Mr. Thomas.

24 MR. THOMAS: Yes, sir. Your Honor, if it please the
25 Court, we'd call Mr. Patterson to the stand.

DIRECT EXAMINATION BY MR. THOMAS - TERRANCE PATTERSON

4

1 THE COURT: All right, Mr. Patterson.

2 TERRANCE PATTERSON, having been
3 first duly sworn, testifies as follows:

4 DIRECT EXAMINATION BY MR. THOMAS:

5 Q Mr. Patterson, you're currently incarcerated at the
6 South Carolina Department of Corrections.

7 A Yes, sir.

8 Q And what kind of sentence are you serving?

9 A A 35 year sentence, sir.

10 Q All right. And how does that break down, you have two
11 charges?

12 A Yes, sir.

13 Q All right, sir. And what were those charges?

14 A Murder and attempted murder.

15 Q All right, sir. And you received, originally, 40 on
16 the murder --

17 A And 30 for the attempted murder.

18 Q And those are running --

19 A Concurrent.

20 Q -- concurrent.

21 A Yes, sir.

22 Q And then a motion for reconsideration was filed?

23 A Yes, sir.

24 Q All right, sir. And what happened at the motion for
25 reconsideration?

1 A We went in front of the judge, and she stated that
2 she'd get back with us.

3 Q And then she reduced it to 35.

4 A 35 years. Yes, sir.

5 Q All right, sir. So in essence, you have a 35-year
6 sentence?

7 A Yes, sir.

8 Q And is that day-for-day?

9 A Yes, sir.

10 Q Okay. Now, you understand that in filing this post-
11 conviction relief action, that you're asking this Court to
12 set aside your conviction.

13 A Yes, sir.

14 Q All right. And that if this conviction is set aside,
15 that you could go back to trial on the murder and the
16 attempted murder?

17 A Yes, sir.

18 Q All right, sir. You understand that you have exposure
19 by doing that.

20 A Yes, sir.

21 Q Luck Campbell was the solicitor on this case?

22 A Yes, sir.

23 Q You could go back and she could decide that --
24 Solicitor's Office could decide they were going to try you
25 on this case.

DIRECT EXAMINATION BY MR. THOMAS - TERRANCE PATTERSON

6

1 A Yes, sir.

2 Q And that you potentially could get life without
3 parole.

4 A Yes, sir.

5 Q All right, sir. Now, knowing that, you wish to
6 proceed today?

7 A Yes, sir.

8 Q All right. Have -- am I retained or was I appointed
9 to represent you?

10 A Appointed.

11 Q Okay. Now, Mr. Patterson, you feel like that your
12 counsel was ineffective?

13 A Yes, sir.

14 Q All right, sir. And you feel like that he was
15 ineffective in that you entered in --- into a guilty plea?

16 A Yes, sir.

17 Q And you feel like you don't -- you did not have all
18 the information necessary at the time?

19 A Yes, sir.

20 Q All right. Now, were there any promises made to you
21 in regards to how much time you were going to get?

22 A We spoke about a sentence before my trial.

23 Q All right. Now, was this case actually called for
24 trial?

25 A Yes, sir.

DIRECT EXAMINATION BY MR. THOMAS - TERRANCE PATTERSON 7

1 Q And it was your intent to go to trial on this case?

2 A Yes, sir.

3 Q Now, you had co-defendants.

4 A Yes, sir.

5 Q And how much time did your co-defendants receive?

6 A Daqwan Johnson received 50 years.

7 Q Was that at trial?

8 A Yes, sir.

9 Q All right.

10 A Bryan Campbell received 30 years; Marquez Prophet
11 received, I believe, 17 years; and Detrik Walker received
12 23 years.

13 Q All right, sir. What did they -- what were they
14 alleging happened, Mr. Patterson?

15 A They stated that we entered the neighborhood with guns
16 and opened fire on a crowd of people.

17 Q Okay. And they -- the allegations were that this was
18 a gang --

19 A Yes, sir.

20 Q That it was one gang against another?

21 A Yes, sir.

22 Q And that there was some bad blood between everybody?

23 A Yes, sir.

24 Q Were you members of a gang?

25 A No, sir.

DIRECT EXAMINATION BY MR. THOMAS - TERRANCE PATTERSON

8

1 Q All right. And some of the co-defendants actually
2 received sentences for voluntary manslaughter; is that
3 correct?

4 A Yes, sir.

5 Q Okay. And if you were guilty of anything, what did
6 you feel like you were guilty of?

7 A Voluntary manslaughter.

8 Q Voluntary manslaughter. Did you ever have any intent
9 to kill anyone?

10 A No, sir.

11 Q Okay. Now, what happened -- you said that you were
12 talking with your trial counsel about the amount of time
13 that you would receive on a plea.

14 A Yes, sir.

15 Q And how much time did you believe that you were going
16 to receive?

17 A 30 years, sir.

18 Q Now, is that why you entered into this plea?

19 A Yes, sir.

20 Q Okay. And you -- I read the transcript. You, of
21 course, have seen the transcript.

22 A Yes, sir.

23 Q There's discussion in this transcript about 35.

24 A Yes, sir.

25 Q Now, did that raise any red flags to you, or what was

DIRECT EXAMINATION BY MR. THOMAS - TERRANCE PATTERSON 9

1 your understanding about your attorney saying 35 years?

2 A My understanding was that he spoke with the victim's
3 mother and the judge, and they spoke about a 30 year
4 sentence, to my understanding.

5 Q And the victim's mother did, in fact, make a statement
6 to ---

7 A Yes, sir.

8 Q --- the Court. And she stated that she did not have
9 any problem with -- with the sentence. You remember?

10 A Yes, sir.

11 Q Okay.

12 MR. THOMAS: Your Honor, if I could beg the Court's
13 indulgence just for a second.

14 THE COURT: All right.

15 Q Now, Terrance, so the reason that you entered to make
16 this plea, or the reason that you entered into the plea and
17 decided not to go to trial was the representation of 30
18 years.

19 A Yes, sir.

20 Q Okay. Now, you said there were some other things that
21 you felt like that you knew now, information that you had,
22 that had you known this information, you would have elected
23 to go to trial.

24 A Yes, sir.

25 Q Okay. And one of those things was something you had

DIRECT EXAMINATION BY MR. THOMAS - TERRANCE PATTERSON 10

1 indicated to me about a false statement by Bryan Campbell.

2 A Yes, sir.

3 Q What -- what is that?

4 A That he alleged he wasn't involved, and he wasn't
5 there when it happened. But he was.

6 Q All right. How do you think that affected you?

7 A They -- they -- they got a arrest warrant to arrest me
8 because of that statement that he ---

9 Q Based upon ---

10 A --- gave.

11 Q --- Mr. Campbell.

12 A Yes, sir.

13 Q Okay. And you felt like that's something that your
14 attorney could have brought to the attention of the Court?

15 A Yes, sir.

16 Q Or could have a made a -- a motion in regards to that.

17 A He could have -- he could have investigated that, sir.

18 Q Okay. Now, you also indicated to me that you said
19 that the -- there was a supplement to the warrant?

20 A Yes, sir.

21 Q And that on that supplement, they had indicated that
22 there was a witness. What -- what did you find about that?

23 A I -- I want to know who was the witness that viewed
24 the video.

25 Q All right. Now, the video, what do you mean by

DIRECT EXAMINATION BY MR. THOMAS - TERRANCE PATTERSON 11

1 "video"?

2 A They said they had a video.

3 Q Video of what?

4 A I guess us at the crime scene.

5 Q Okay. And the crime scene was where?

6 A In Gable Oaks Apartment.

7 Q Okay. Did you ever see that video with your attorney?

8 A Yes, sir.

9 Q All right. And where you ever informed or did you
10 ever receive any kind of information in regards to what the
11 witness was going to say?

12 A No, sir.

13 Q Now, in regards to discovery, did you receive your
14 discovery prior to trial from your attorney?

15 A Yes, sir.

16 Q Okay. Did you have an opportunity to sit down and go
17 through that with him?

18 A Yes, sir.

19 Q Okay. Do you feel like there was other information
20 that you could have been provided?

21 A Yes, sir.

22 Q And what was that?

23 A Like the ballistics that's not in there now. The
24 inconclusive fragments from the gun, they stating that my
25 gun was the one that killed this guy. The false statement,

DIRECT EXAMINATION BY MR. THOMAS - TERRANCE PATTERSON 12

1 you know.

2 Q What do you -- in regards to the ballistics, what --
3 what do you mean by the ballistics? What -- what were you
4 -- what did you see?

5 A They said that the man was killed by a distant gunshot
6 wound.

7 Q Now, that came from what report?

8 A The -- I guess the police report or the autopsy -- the
9 -- the coroner, I guess, or whoever did the autopsy report.

10 Q Okay. And you were -- you were told this or did you
11 see that?

12 A I read it.

13 Q You read that?

14 A Yes, sir.

15 Q Okay. And there were a number of different weapons
16 that were at the scene --

17 A Yes, sir.

18 Q -- allegedly. Okay. And what type of weapon did they
19 say that you had?

20 A AK-47.

21 Q All right. And that is a distinctive caliber weapon?

22 A Yes, sir.

23 Q And what caliber weapon is that?

24 A 7.62 by 3; 9 millimeter.

25 Q All right. And were they able to -- and I mean by

DIRECT EXAMINATION BY MR. THOMAS - TERRANCE PATTERSON 13

1 "they," either the State or the police or SLED or anyone,
2 able to identify that that was the weapon that killed this
3 individual?

4 A No, sir.

5 MR. THOMAS: And did -- Your Honor, Court's
6 indulgence.

7 THE COURT: Okay.

8 Q Who was -- the State had put together a theory of what
9 they thought had happened they presented to the judge at
10 the plea?

11 A Yes, sir.

12 Q And who did the State believe was the intended target?

13 A Edward Miller.

14 Q And why was he target -- why was he ---

15 A Ed -- Edward Miller.

16 Q Edward Miller? And why was he the target or intended
17 target?

18 A Because it was an ongoing beef.

19 Q Between these two rival gangs.

20 A Yes. Yes, sir.

21 Q All right. And who, in fact, ended up being killed?

22 A Gary Reese.

23 Q And who was Gary Reese?

24 A I guess he was a friend of one of those guys, but I
25 know Gary Reese.

DIRECT EXAMINATION BY MR. THOMAS - TERRANCE PATTERSON 14

1 Q You knew Gary.

2 A Yeah. He got a baby by one of my cousin.

3 Q All right. Did you have any reason to kill Gary
4 Reese?

5 A No, sir.

6 Q Did you ever have any intention of killing Gary Reese?

7 A No, sir.

8 Q Okay. And in regards to what was presented to the
9 judge at the plea --

10 MR. THOMAS: Your Honor, I beg the Court's indulgence
11 just for a second. May I approach?

12 THE COURT: Sure.

13 Q Mr. Patterson, I want to show you page 13 of the
14 original transcript. There are two transcripts, there's a
15 -- the original and the -- and the motion for
16 reconsideration. (Hands document to witness) Can you just
17 read that to yourself, on page 13.

18 A Which part, sir?

19 Q The part that I've underlined.

20 A (As read) "But you agree to the fact that Gary Reese
21 is shot." "Yes, ma'am." "By the gun." "Yes, ma'am." And
22 y'all are saying it is -- his gun is the one that did or
23 one in the group ..."

24 Q All right. Now, this is questions to you from the
25 Court, from Judge Benjamin?

DIRECT EXAMINATION BY MR. THOMAS - TERRANCE PATTERSON 15

1 A Yes, sir.

2 Q And in reading that, what is your interpretation of
3 what is being said?

4 A That they try to say that it was my gun that killed
5 him.

6 Q Okay. And was there ever any proof that was presented
7 or that could be presented to show that it was your gun
8 that actually killed this gentleman?

9 A No, sir.

10 Q Okay. And was it ever brought to the judge --
11 sentencing judge's attention that there was no proof that
12 your gun was the gun that killed this individual?

13 A No, sir. Nobody ever said.

14 Q Okay. Now, you're aware of "hand of one, hand of
15 all."

16 A Yes, sir.

17 Q Okay. And did you discuss that with your attorney?

18 A Yes, sir.

19 Q All right. And did you discuss with him what the
20 elements of murder are?

21 A No, sir. I don't remember.

22 Q Did he talk about "intent"?

23 A Yes, sir.

24 Q Okay. And did -- what was your discussion with him,
25 if any, in regards to intent in this murder charge?

DIRECT EXAMINATION BY MR. THOMAS - TERRANCE PATTERSON 16

1 A Intent means you had the intention to go and kill
2 someone.

3 Q All right. And is that why you were going to trial is
4 because you felt like that you did not intend to kill this
5 individual?

6 A Yes, sir.

7 Q Now, you understand that your actions were extremely
8 reckless.

9 A Yes, sir.

10 Q And that you're lucky that other individuals weren't
11 injured or killed.

12 A Yes, sir.

13 Q But you believe that -- that you were guilty of
14 manslaughter.

15 A Yes, sir.

16 Q Okay. Now, how bout the attempted murder? Was that
17 ever explained to you?

18 A No, sir.

19 Q Did you understand why you were pleaing to an
20 attempted murder?

21 A Because someone was grazed at the crime scene.

22 Q Okay. And was there any ever -- any evidence as to
23 whose -- whose bullet grazed that individual?

24 A No, sir.

25 Q Okay. Now, this is your opportunity, Mr. Patterson.

CROSS-EXAMINATION BY MR. MITCHELL - TERRANCE PATTERSON 17

1 You've been waiting a long time to come into court on this
2 post-conviction relief action. I'm not saying that I have
3 forgotten anything, but I wanted to ask you is there
4 anything else that you feel like I may have not presented
5 on your behalf that you want me to? Or is there any other
6 information that you would like to bring to the attention
7 of the Court?

8 A No, sir.

9 Q Okay. You feel like we've covered everything?

10 A Yes, sir.

11 Q All right.

12 MR. THOMAS: Your Honor, I have no further questions.

13 THE COURT: Okay.

14 MR. MITCHELL: All right. May it please the Court.

15 CROSS-EXAMINATION BY MR. MITCHELL:

16 Q Good morning, Mr. Patterson.

17 A Good morning.

18 Q Let's see, so you pled guilty to murder and attempted
19 murder; isn't that right?

20 A Under the errands (sic) advice of my counsel, sir.

21 Q Okay. But you -- you did plead guilty. You stood up
22 and said, "I'm guilty"; isn't that right?

23 A Well, this is not a hearing about whether I'm guilty
24 or not.

25 Q No. I'm just asking, like, whether you told judge --

CROSS-EXAMINATION BY MR. MITCHELL - TERRANCE PATTERSON 18

1 you told Judge Benjamin that you were guilty of the crimes
2 that they charge you with, right?

3 A (No audible response.)

4 Q Is that right?

5 A (No audible response.)

6 Q You pled guilty before Judge Benjamin; isn't that
7 right?

8 A Yes, sir.

9 Q Okay. When she asked you how you wanted to plead,
10 then you said "guilty," right?

11 A Under the advice of my counsel.

12 Q Okay. Right. Yeah. And then -- seems to me your big
13 issue is whether you had the intent to actually kill the
14 victim in this case; is that right?

15 A Yes, sir.

16 Q Now, you never denied being at the scene; is that
17 right?

18 A Yes, sir.

19 Q And you agreed with the facts that the solicitor
20 stated, except for a few of them, right? You didn't agree
21 with everything that she said.

22 A Right.

23 Q You didn't agree with you provided the weapons for
24 everyone, right?

25 A Right.

1 Q And then you -- you didn't believe that you celebrated
2 afterwards.

3 A Right.

4 Q But you -- you didn't say anything about not having an
5 AK-47 that day, did you?

6 A No, sir.

7 Q So you admitted being there, at the scene of the
8 crime, with an AK-47?

9 A Yes, sir.

10 Q Right. And you admitted shooting over a playground,
11 in order to hit a supposed target; is that right?

12 A I didn't shoot over a playground, sir.

13 Q That was part of the facts the solicitor presented to
14 the Court, wasn't it?

15 A Yes, sir.

16 Q You didn't challenge that that day, did you?

17 A No, sir.

18 Q Now, you understand the maximum -- maximum sentence of
19 murder is life without parole; is that right?

20 A Yeah.

21 Q And the judge went over that with you, didn't she?

22 A Yes, sir.

23 Q So she -- so you understood that you could be
24 sentenced to life without parole, right?

25 A Yes, sir.

CROSS-EXAMINATION BY MR. MITCHELL - TERRANCE PATTERSON 20

1 Q And your attorney argued that you should be sentenced
2 somewhere around 35 years; is that right?

3 A I guess so.

4 Q At the plea hearing, didn't he ask the judge to
5 sentence you under 40 years?

6 A No, sir.

7 Q He -- he didn't ask to sentence you ---

8 A He made that statement, but he didn't ask them to
9 sentence me under that.

10 Q Okay. So he -- but he asked the Court -- maybe not
11 asked the Court ---

12 A Yeah.

13 Q --- he told the Court that he thought you should get
14 about 35 years or so; isn't that ---

15 A Yes, sir.

16 Q And then you were sentenced to 40; and then you had a
17 motion for reconsideration hearing and that was amended to
18 where you were sentenced to 35, correct?

19 A That's right.

20 Q Okay. So you're serving a sentence, now at 35 years,
21 because of that motion for reconsideration, correct?

22 A Yes, sir.

23 Q Now, you went over that video of the incident, isn't
24 that right, with your lawyer?

25 A Yes, sir.

1 Q Okay. And that was mentioned at the guilty plea
2 hearing as evidence the State would present at trial, if
3 you went to trial, right?

4 A Yes, sir.

5 Q They were going to show that video to the jury; is
6 that right?

7 A Yes.

8 Q Okay. Now, the judge asked you if you had been
9 promised anything in exchange for your plea, and you said,
10 "no"; is that correct?

11 A Yes, sir.

12 Q You said "yes"? I'm sorry.

13 A (No audible response.)

14 Q So you had hoped to get a sentence of 30 years, but
15 instead you got a sentence of 40 years; is that right?

16 A Yes, sir.

17 Q Okay. Now, back to the intent, your lawyer advised
18 you of "hand of one, hand of all," right?

19 A Yes, sir.

20 Q So you -- the bullet you shot wouldn't have to be the
21 one that killed the victim in order for you to be charged
22 with murder; is that right?

23 A Yes, sir.

24 Q Did he explain that to you?

25 A Yes.

CROSS-EXAMINATION BY MR. MITCHELL - TERRANCE PATTERSON 22

1 Q And you understood?

2 A Yeah.

3 Q Okay. And how many co-defendants were there?

4 A Four.

5 Q Four co-defendants. And they got a variety of
6 sentences, too; is that right?

7 A Yeah.

8 Q Mr. Johnson got -- he got 50 years; is that right?

9 A Yes, sir.

10 Q And it was their testimony, your co-defendants's
11 testimony, that you provided the guns; isn't that right

12 A Yes, sir.

13 Q And your attorney challenged that at the plea hearing
14 and at the motion for reconsideration hearing, right?

15 A I guess. I don't -- I don't see where he challenged
16 it.

17 Q I'm sorry.

18 A I never read where he challenged it at.

19 Q Oh. Okay. But did -- in -- in -- at the motion for
20 reconsideration hearing, he said that you took issue with
21 two factual situations. One was whether you celebrated,
22 and the other one was whether you provided the guns.

23 A Yeah. Yes. Yes, sir.

24 Q Okay. And the State stated that there were 40 shell
25 casings fired, somewhere around there; is that right?

1 A (No audible response.)

2 Q Or they recovered 40 shell casings.

3 A Yes, sir.

4 Q Shell -- I'm sorry. Okay. So they recovered 40 shell
5 casings from the scene.

6 A Yes, sir.

7 Q And some of those were from an AK-47; is that right?

8 A Yes, sir.

9 Q But they -- the forensic -- the ballistics were
10 inconclusive of what bullet killed the victim, right?

11 A Yes, sir.

12 Q And what hit the other victim that you were charged
13 with attempted murder, right?

14 A Yes, sir.

15 Q Okay.

16 MR. MITCHELL: One second, Your Honor.

17 THE COURT: All right.

18 Q And at the plea hearing, the judge asked you if you
19 were satisfied with your attorney, and you said you were;
20 is that right?

21 A Yes, sir.

22 Q Then you were -- then she asked you again if you were
23 completely satisfied, you said "yes."

24 A Yes, sir.

25 Q Okay. That's all the questions I have. Thank you.

RE-DIRECT EXAMINATION BY MR. THOMAS - TERRANCE PATTERSON 24

1 MR. THOMAS: Your Honor, if it please the Court.

2 RE-DIRECT EXAMINATION BY MR. THOMAS:

3 Q Mr. Patterson, counsel had asked you about the facts
4 as presented by the solicitor --

5 A Yes, sir.

6 Q -- on the day of your plea. You believe there was
7 some inaccuracies in regards to that?

8 A Yes, sir.

9 Q And what were those inaccuracies?

10 A That I supplied everybody with the guns; that I was
11 shooting over a playground and I wasn't; that I intended to
12 kill Gary Reese and I didn't.

13 Q And how about the -- the so called "party" afterwards.

14 A No celebrating at all.

15 Q Okay. And did your defense counsel bring these
16 inaccuracies to the attention of the Court?

17 A I believe so, sir.

18 Q You think that -- that he did?

19 A I believe so.

20 Q Okay. Are you sure?

21 A No, I'm not sure.

22 Q Okay. All right. And counsel also asked you about
23 the life without parole.

24 A Yes, sir.

25 Q And today we're basically -- you're arguing that your

RE-DIRECT EXAMINATION BY MR. THOMAS - TERRANCE PATTERSON 25

1 plea was not voluntarily given because you were promised
2 30.

3 A Yes, sir.

4 Q Okay. And you ended up with 35. Why are we arguing
5 about five years?

6 A Because it's a day-for-day, sir.

7 Q Okay. And because you were promised the 30.

8 A Yes, sir.

9 Q Okay. And in fact, when -- did you go to motion for
10 reconsideration?

11 A Yes, sir.

12 Q All right. You were there.

13 MR. THOMAS: May I approach, Your Honor.

14 THE COURT: Okay.

15 Q (Hands document to witness) Show you page 4 of the
16 motion for reconsideration transcript. And I just want you
17 to read that to yourself, if you would, please, lines 1
18 through 5.

19 A (As read) "I would ask Your Honor to consider a
20 sentence close to 30 years for Terrance because that would
21 be still day-for-day, still a considerably -- considerably
22 long sentence than the individuals who got 30 years on
23 attempted murder."

24 Q Right. Is that closer to what you were promised when
25 he was asking for the 30?

DIRECT EXAMINATION BY MR. MITCHELL - DEON O'NEIL

26

1 A Yes, sir.

2 Q Okay.

3 MR. THOMAS: Your Honor, I have no further questions.

4 THE COURT: All right.

5 MR. MITCHELL: No further questions.

6 THE COURT: You can step down.

7 MR. THOMAS: Your Honor, if it pleases the Court,
8 that's the applicant's case.

9 THE COURT: All right.

10 MR. MITCHELL: Your Honor, the State calls Mr. Deon
11 O'Neill.

12 DEON O'NEIL, having been first
13 duly sworn, testifies as follows:

14 DIRECT EXAMINATION BY MR. MITCHELL:

15 Q Good morning, Mr. O'Neil.

16 A Good morning.

17 Q Thank you for being here today. How long have you
18 been practicing law?

19 A Since November, 2006. So over eight years now.

20 Q Were you present for Mr. Patterson's testimony?

21 A I was.

22 Q Have you had a chance to review your file in
23 preparation for this hearing?

24 A I have.

25 Q How did you become involved in this case?

1 A I received Mr. Patteron's case through a conflict from
2 the Public Defender's Office. I represented him early on
3 in my practice in the Public Defender's Office; and then I
4 left the Public Defender's Office -- would have been July,
5 2010 -- went into private practice and received Mr.

6 Patterson's case while I was in private practice.

7 Q Did you review the charges with him?

8 A I did.

9 Q He was charged with murder and attempted murder at
10 that time?

11 A That's correct.

12 Q Okay. Did you go over -- did you go over the maximum
13 sentence?

14 A I did.

15 Q What was that in this case?

16 A Life -- well, life -- life plus 30.

17 Q Okay. And that was reviewed with the judge, too, at
18 the plea hearing wasn't it?

19 A Correct.

20 Q Okay. So he could have -- he could have been serving
21 life, consecutive 30, right?

22 A Correct.

23 Q Okay. Did you review his rights to a trial?

24 A Yes.

25 Q What were your discussions about whether he wanted to

1 go to trial or plead guilty to the offenses?

2 A He indicated early on that he wanted a -- wanted a
3 trial. Well, let me -- he wanted the case resolved with a
4 voluntary manslaughter plea. But if we couldn't get it
5 resolved with a voluntary manslaughter plea, then he wanted
6 to go to trial.

7 Q And where there any plea -- were any plea offers made
8 in this case?

9 A There were -- there were plea negotiations.

10 Q Right.

11 A There -- there were never any plea offers. We tried
12 to negotiate because one of the co-defendants went to trial
13 first; and they wanted Mr. Patterson to testify in that
14 trial, and Mr. Patterson didn't want to testify in that
15 trial.

16 So we tried to negotiate with the prosecution a deal
17 for Mr. Patterson. I think Mr. Patterson wanted -- if I'm
18 -- if my memory serves me correctly, a 15-year deal for
19 voluntary manslaughter. I proposed that to the prosecutor
20 and they rejected that -- that offer, and then I think we
21 scheduled his case for trial at that point.

22 Q So he pled guilty the week the case was called trial?

23 A Yeah. After the morning -- I think it might have been
24 -- whatever that morning might have been -- it must have
25 been a Monday morning of the case being called to trial he

1 pled guilty.

2 Q Did you file a motion for discovery in this case?

3 A I did.

4 Q Were those discovery materials turned over to you?

5 A They were. There was one issue with discovery. Mr.
6 Patterson had already -- always maintained to me that there
7 was a video that law enforcement showed him, that showed
8 the faces of the individuals during -- during the shooting.
9 In the video that we all -- that we reviewed together, at
10 the jail and here at the courthouse, you could never see
11 the faces of the individuals in that video. It was a
12 distance, kind of search -- security video. You couldn't
13 tell the -- who the individuals were. Mr. Patterson always
14 maintained that he was shown a video when he was arrested
15 that you could actually see the faces.

16 Q Okay.

17 A I made that point to the prosecution. They never
18 provided me any video. They said they had no such video
19 and that -- all the video that they'd had, that they turned
20 over here. So I know that's what one of his big
21 contentions that they showed him a video that you could
22 actually see the faces of the individuals in.

23 Q Was he wearing a mask when this incident happened?

24 A I -- I -- I think I wouldn't term it a "mask." I
25 think there were some allegations people had bandannas on.

1 I can't specifically remember whether Mr. Patterson was
2 alleged to have had a bandanna or not. There were
3 individuals that they claimed had things that covered their
4 face. Mask probably -- probably more general term, but
5 they were -- allegations that some of the individuals had
6 things to cover their faces.

7 Q Just something that covers a face, not like a ski
8 mask.

9 A Yes.

10 Q Okay. What was Mr. Patterson's version of events that
11 day?

12 A His version of events of that day -- I mean, he gave a
13 statement to law enforcement that basically said that one
14 of the other co-defendants was shot at earlier that day.
15 They called him, they all got in the car, and they went out
16 there looking for the individual that shot at one of the
17 other co-defendants earlier that day.

18 He always maintained that there were no kids around in
19 the playground that -- when they were shooting. And he --
20 and he never aimed towards any kids. They all -- they all
21 kind of separated for -- for lack of a better word. Nobody
22 was kind of standing next to each other. They all kind of
23 spread out. And who was all -- he all -- he always
24 indicated that he never shot at any children, and only shot
25 the one individual that had shot at one of the co-

1 defendants earlier that day.

2 Q So it was a planned kind of attack almost. Then they
3 kind of spread out around the apartment complex, Mr.
4 Patterson and the co-defendants; is that what happened?

5 A I don't know if I would term it as "planned," but they
6 -- it -- it is was definitely enough agreement that would
7 make him responsible under hand of one is the hand of all.

8 Q Okay.

9 A They all agreed to go there and essentially shoot at
10 the individual who had shot at one -- one of the other co-
11 defendants earlier that day.

12 Q Now, did you explain the "hand of one/hand of all"
13 theory to Mr. Patterson?

14 A I did.

15 Q So he understood that -- did -- did you explain to him
16 that he did not have to fire the bullet that killed the
17 victim in order to charge for murder?

18 A Yes. We went over in discovery the fact that law
19 enforcement could not indicate whose weapon actually killed
20 the deceased in this case. I also indicated to him
21 unfortunately, under hand of one is the hand of all, it
22 didn't matter whose weapon actually fired the fatal shot.
23 If -- if they all agreed to go there to shoot at the
24 individual, to commit a crime, then they're all responsible
25 for anything that reasonably flows from what they agreed to

1 do.

2 Q How did you know that law enforcement couldn't
3 determine which gun fired the bullet?

4 A There was ballistic reports that indicated that the --
5 the -- the projectile that entered Mr. Reese was too
6 damaged to determine where -- what -- to determine
7 specifically where -- what gun it came from.

8 Q Okay. And you had -- did you have a copy of those ---

9 A I did.

10 Q --- ballistic reports? Did you review that with Mr.
11 Patterson?

12 A I did.

13 Q He talks about a co-defendant Campbell's statement.
14 Did -- who gave statements in the case?

15 A And I -- I don't want to be wrong. I think everybody
16 gave a statement, and I think Mr. Campbell originally gave
17 a statement that essentially said he was dropped off
18 earlier and wasn't a part of this. I'm pretty sure he gave
19 a statement that basically said he wasn't part of this --
20 part of this at all. He was dropped off earlier.

21 Q Now, Mr. Patterson, he gave a statement himself,
22 right?

23 A That's correct.

24 Q What -- what was the substance of his statement?

25 A That essentially one of the co-defendants called him

1 and said he got shot at; that he and some other individuals
2 got in the car; and that he went to look for -- I think
3 "Weenie" was a name that they referred to the individual,
4 Mr. Miller -- Weenie was the individual that -- name they
5 referred to the individual as.

6 Q Okay. So it's -- really amounted to a confession at
7 that point?

8 A He probably didn't think it was a confession, but it
9 was a statement that -- that legally implicated him in --
10 in a murder.

11 Q Now, part of your defense -- what was part of your
12 defense relating to his relations with law enforcement, or
13 his, I guess, candor with law enforcement?

14 A We tried to use that as mitigation, the fact that he
15 had essentially took responsibility for what -- what he was
16 doing here.

17 Q So law enforcement -- what was their opinion of his
18 statements, and I guess, his assistance in the case?

19 A I mean, I -- I spoke with the investigators prior to
20 his plea, and -- and they indicated that they thought he
21 was the one that was being the most truthful about what
22 actually happened here. Other individuals were not being
23 truthful in their statement as to their involvement of what
24 actually happened.

25 Q And that was something that you -- was that relayed to

1 the plea judge at that time?

2 A I don't have the transcript in front of me, but it --
3 it's my opinion, I -- I -- if my recollection's correct, I
4 think I mentioned that fact I thought law enforcement
5 stated he was the most truthful out of -- out of everybody.

6 Q Okay. And the record will speak for itself on that.
7 Now, the -- move to the plea. At the sentencing, Mr.
8 Patterson understands what his maximum sentence could be
9 that day?

10 A Correct.

11 Q And there were no -- I mean, it wasn't a negotiated
12 sentence.

13 A No. What happened was we were set to go to trial, and
14 then me and the solicitor went back to talk to the judge,
15 of course, about scheduling, are we going to go forward
16 with the trial. The solicitor indicated to me that she had
17 spoke with -- let me back up a second. Mr. Patterson told
18 me that he -- he was familiar with the victim.
19 Essentially, they were like family.

20 So I -- I talked with the prosecutor, said, can we
21 work this out, talk to the -- talk to the victim's mother
22 and see can we work something out on this.

23 My -- my recollection would be that she said that the
24 -- she had spoke with the victim's mother, and the victim's
25 mother was okay with a 30-year sentence. And she indicated

1 to me that she would not -- in the plea hearing, would not
2 be asking for time. She would leave it up to the judge.
3 And I -- I left that discussion with the prosecutor and the
4 judge with the impression that -- that it would be likely
5 that Mr. Patterson would get 30 years, and I relayed that
6 to Mr. Patterson.

7 Q Okay. So you had hoped to get the minimum of 30 years
8 for the murder, right?

9 A I'm not sure I would classify it as -- I left there
10 with the belief that nobody would be in opposition of me
11 asking for a 30-year minimum on the -- on the murder
12 charge.

13 Q And that -- is -- is that what you argued at the
14 mitigation stage of the plea?

15 A Now, I need -- I would need to look ---

16 Q Okay.

17 A --- at the transcript. I remember asking for 30
18 years. If I -- if it says 35, I -- I need to look at it to
19 see -- see what it says. But I remember asking -- I need -
20 - I need to look at it, but my recollection would be I
21 asked for 30 years at the original sentence hearing --
22 sentencing hearing.

23 Q So what prompted you to file the motion for
24 reconsideration?

25 A Judge Benjamin gave him 40 years.

1 Q So that was higher than you expected --

2 A Yes.

3 Q -- is that fair to say? So you filed the motion for
4 reconsideration. There was a hearing on that. What was
5 argued at that hearing?

6 A I think at that time, maybe the other individuals had
7 already been sentenced at that point. I can't remember
8 precisely here. I can't remember what other things I
9 exactly argued that -- of course we needed some sort of
10 change of circumstances, and I can't remember exactly what
11 else we argued here. But I thought a 30 year -- 30-year
12 sentence in general would be more in line as to what the
13 other co-defendants had already gotten here.

14 Q And you were successful on that motion.

15 A Yeah.

16 Q Well, at least ---

17 A Not as successful as I wanted to be, but ...

18 Q Okay. But it was -- he got dropped five years; is
19 that right?

20 A Correct.

21 Q Okay.

22 MR. MITCHELL: One second, Your Honor. That's all the
23 questions I have. Please answer any questions that
24 applicant's counsel has. Thank you.

25 THE WITNESS: Thank you.

1 MR. THOMAS: Your Honor, if it please the Court.

2 THE COURT: All right.

3 CROSS-EXAMINATION BY MR. THOMAS:

4 Q Mr. O'Neil --

5 A Yes, sir.

6 Q -- thank you for being here. Now, you were -- you
7 said you were appointed to this case?

8 A Yes, sir.

9 Q Did you have ample opportunity to investigate it?

10 A I did.

11 Q Okay. Did you see the necessity of hiring a private
12 investigator?

13 A I did not.

14 Q Okay. And how bout -- we talked a little bit about
15 the ballistics. Did you see a necessity of hiring a
16 private ballistics expert in this case?

17 A I did not.

18 Q Okay. And that was for what reason?

19 A Because the State's evidence was that it was
20 inconclusive. So I didn't think it -- the only thing --
21 the only results would have been if I hired a ballistic
22 expert, that expert could either one, say it belonged to
23 somebody specifically, potentially Mr. Patterson, or one of
24 the other co-defendants. But at the end of the day,
25 legally, at a trial, it wouldn't -- it didn't legally

1 matter whose gun it -- it belonged to in an actual trial.

2 Q Okay. And he -- and I -- and I guess that takes us to
3 the next question about the involuntary manslaughter -- or
4 I mean -- or voluntary manslaughter, was did you explore
5 that possibility?

6 A Not in -- not in that line of -- line of thinking.
7 The only -- the only way we explored voluntary manslaughter
8 was that there was allegations -- and I think me -- me and
9 Mr. Patterson talked about this -- there were allegations
10 that this individual had also shot at Mr. Patterson before;
11 that basically was -- the situation was they were shooting
12 at these individuals shooting at Mr. Patterson, people in
13 Mr. Patterson's group were shooting back at them. And
14 these people had been shooting at Mr. Patterson for a
15 while.

16 Q Right.

17 A So the only time we kind of -- we kind of addressed
18 the situation of voluntary manslaughter was maybe that he
19 was -- that this shooting occurred under the heat of
20 passion with legal provocation. Essentially, they had been
21 shot at earlier that day --

22 Q Right.

23 A -- so maybe the situation was they were still provoked
24 by this -- this shooting, was still under their -- under
25 that stress; and therefore, their retaliation could be

1 voluntary manslaughter.

2 Q Now, would that have been your theory of defense had
3 this case gone to trial?

4 A Would have been, yes.

5 Q Okay. So -- and -- and that's what you would have
6 hoped would have been able to show that this was not a
7 murder, that this would have been a voluntary manslaughter
8 if anything?

9 A Yes.

10 Q Okay. And matter of fact, Mr. Patterson had wanted to
11 go to trial all the way up til, I guess, the day that the
12 case was called to trial.

13 A Yes. Because -- and my advice to him was always if
14 they're not going to make a deal with you, that -- that
15 there's a good chance you can get 30 years, we might as
16 well go to trial. Because if you go to trial -- the -- the
17 other co-defendant had got 50 anyway. So if they're not
18 going to make a deal with you and I didn't have the
19 impression that these people going to get close to 30, you
20 might as well go to trial and have some appealable issues
21 to have, instead of just pleading guilty.

22 Q Okay. So in -- in essence, and I think you've
23 testified that, after the solicitor had spoken with the --
24 the victim's family, that -- that you felt like they were
25 willing to accept 30 years.

1 A Yes.

2 Q Okay. And that -- that's how, I guess, this plea
3 offer -- if it was a plea offer -- emerged in regards to
4 the 30 years.

5 A I mentioned -- I wouldn't classify it as plea offer.
6 I -- I would classify it as change of my advice to Mr.
7 Patterson.

8 Q Okay.

9 A I would say -- I -- I told Mr. Patterson that I
10 believe he -- we can get 30 years if he pled guilty.

11 Q Okay. So basically, when he decided that he was going
12 to plea to this, it was based upon your representation
13 that, "I believe we're going to get 30 -- we can get 30
14 years out of this."

15 A Well, I can't speak to what -- what made him decide.
16 I can tell you that my advice changed based on what I
17 believed we could get in the plea. I -- I would tell you
18 my advice changed. I thought it would probably be good for
19 him to plead guilty and get -- and get 30 years, as opposed
20 to going to trial and get upwards of 50.

21 Q Which would have been a good deal, under the
22 circumstances of what he was facing.

23 A Yes.

24 Q Okay. Now, Judge Benjamin sentences him to 40 years.

25 A Yes.

1 Q And then you filed a motion for reconsideration?

2 A Correct.

3 Q And why did you file that motion for reconsideration?

4 A Because I didn't think 40 years was in line for Mr.
5 Patterson's responsibility in -- in this incident.

6 Q Okay. And in that circumstance, you asked the judge,
7 Judge Benjamin -- I think the -- it said somewhere close to
8 30. You felt like 30 was -- was appropriate.

9 A Yes.

10 Q Okay. Now, how bout the mitigation at the -- at the
11 plea itself in front of Judge Benjamin. You think that --
12 that you could have been, I guess, more helpful, if you had
13 been able to point out -- or had pointed out to the Court
14 that -- that it was inconclusive as regards to who -- who
15 actually was the shooter that killed this individual?

16 A Like I say, I never got the transcript for the -- that
17 original plea. It -- it would always be better to try to
18 push back harder as to who -- who actually fired the
19 weapon. I think -- I think I made that point clear that
20 Mr. Patterson claimed he never fired the weapon, never
21 fired the weapon that killed the individual here.

22 Q Right.

23 A But without looking at the transcript right in front
24 of me, I can't tell you how -- how hard I pushed on that
25 issue.

1 Q Okay. And how bout were there any inconsistencies in
2 regards to the facts that the solicitor presented to the
3 Court?

4 A Yes. Mr. Patterson always took issue with the fact
5 about there -- there was -- there was statements made by
6 solicitor, through the discovery, that Mr. Patterson, when
7 he learned of Mr. Reese's death, celebrated that. And Mr.
8 Patterson, from Day One, always denied that. He said he
9 knew Mr. Patterson that -- no. He knew Mr. Reese, said
10 that they were -- they were essentially friendly and that
11 he would not have celebrated his death.

12 Q Okay. And ---

13 A And he also -- and he also disagreed with the fact
14 that he provided any of the co-defendant's with weapons.
15 He always indicated that they had their own weapons. He
16 didn't -- he didn't supply the rest of them with their
17 weapons.

18 Q Do you know whether these inconsistencies were brought
19 to the attention of the Court?

20 A I think I -- I think I -- I characterized it as Mr.
21 Patterson took issue with those two factual points.

22 Q Okay. All right. Now, when you were testifying, it
23 kind of -- it kind of made me think about the statement
24 that Mr. Patterson gave to the police.

25 A Yes, sir.

1 Q Did you look into that to see whether or not it was
2 suppressible, were there -- proper Miranda warnings given?

3 A I did because I think they -- I think his initial
4 statement was given in Michigan, if I -- if -- if I
5 remember correctly here.

6 Q Right.

7 A Or either from Michigan -- on the way from Michigan,
8 back to South Carolina here.

9 Q Yes, sir.

10 A So I think I looked into the fact of whether or not,
11 in Michigan, I think they were required to record
12 statements in Michigan, and that -- of course, that
13 requirement's not in -- in here, in South Carolina. So I
14 looked into that I think.

15 Q Yes, sir.

16 A And I think -- the other parts of his statement were
17 actually audio recorded. So we actually listened to his
18 statement. And I -- on the audio recording, I think they
19 gave him Miranda warnings before -- before they began to
20 talk to him actually on the audio. So ...

21 Q Right. Now, so it'd been your opinion that they were
22 not -- that it was not suppressible?

23 A I didn't -- I don't remember thinking that they were
24 any suppressible -- any Fourth Amendment issues with -- or
25 Fifth Amendment issues with his --

1 Q Right.

2 A --- with his statement.

3 Q And you looked at the indictments, Mr. Patterson had
4 testified, in regards to, I guess, one of -- the arrest
5 warrant being based upon false testimony. Did you see
6 anything in there that would have been objectionable in
7 this case?

8 A I don't remember seeing anything in there. I -- I
9 don't think me and Mr. Patterson had that discussion about
10 any problem with the arrest warrant and/or indictment. So
11 I don't -- I -- we didn't -- we didn't -- we didn't
12 personally address that issue --

13 Q Okay.

14 A -- to my recollection.

15 Q And -- and I -- I guess, one last question: Your
16 reason, again, for the motion for reconsideration was to
17 bring that more in line into the 30 years that you had been
18 talking to Mr. Patterson about.

19 A Two reasons: The 30 years that we'd discussed before;
20 and then the bring him more in line to what the other co-
21 defendants had received in -- in their sentence.

22 Q All right.

23 MR. THOMAS: Your Honor, beg the Court's indulgence.

24 THE COURT: All right.

25 MR. THOMAS: Your Honor, we have no further questions.

1 MR. MITCHELL: Nothing further.

2 DIRECT EXAMINATION BY THE COURT:

3 Q All right. Mr. O'Neil, this is the transcript. Look
4 at page 22, about line 13. At no point did you ever ask
5 for 30 years. Just read -- read what it says there.

6 A (Complies) Yes. Yes, Your Honor.

7 Q Well, you asked for 35. You said the victim said 35.
8 Now, you testified earlier that the victim said 30, but you
9 didn't represent that to the Court at all. And then when
10 you didn't get 35 and she gave him 40, you made a motion to
11 reconsider and asked for 35 again; and the judge gave him
12 35.

13 A Yes, Your Honor. I -- the transcript said I asked for
14 35. In my mind I remember asking for 35 ---

15 Q I -- I understand and it's been a while. And you
16 thought you asked for 30, but you asked for 35.

17 A Yes, sir.

18 Q And the victim's family did not oppose 35, and Ms.
19 Campbell agreed with that.

20 A Yes, Your Honor.

21 Q But you never asked for 30. All right. You can step
22 down.

23 THE COURT: All right. Anything else?

24 MR. MITCHELL: Nothing further from the State.

25 MR. THOMAS: Nothing from us, Your Honor.

1 THE COURT: Well, I can't help you with this. I mean,
2 you know, best -- best he gets is another shot, and he
3 might get 50 to life like his co-defendant did.

4 MR. THOMAS: Yes, sir.

5 THE COURT: It's just -- I mean, I'm sorry you've got
6 five kids and he was 31 at the time. At the motion for re-
7 hearing, Mr. O'Neil pointed out that he disagreed that he
8 gave them guns and so forth. But you know, Judge Benjamin
9 says that's what -- I understand that's what he says, but
10 everybody else says he did. And she believed that and
11 she's the sentencing judge. So --

12 MR. THOMAS: Yes, sir.

13 THE COURT: -- he was kind of lucky that she dropped
14 it the five years, I think. But I understand he wanted 30,
15 but you know --

16 MR. THOMAS: Yes, sir.

17 THE COURT: -- he didn't put up enough proof for me to
18 set it aside.

19 MR. THOMAS: Thank you, Your Honor.

20 THE COURT: Okay.

21 MR. MITCHELL: Thank you, Your Honor.

22 -- END OF TRANSCRIPT OF RECORD --

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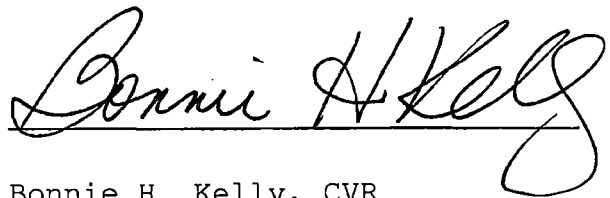
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CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fifth Circuit Court for Richland County, South Carolina, on the 10th day of December, 2014.

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



Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

July 7, 2015

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Terrence D. Patterson, #353407,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2013-CP-40-05970

ORDER OF DISMISSAL

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed October 1, 2013. Respondent made its Return on February 26, 2014, requesting an evidentiary hearing be convened. Kristy G. Goldberg, Esquire, was appointed by the Richland County Clerk of Court. On October 14, 2013, Tommy A. Thomas was substituted as counsel.

An evidentiary hearing was held on December 10, 2014, at the Richland County Courthouse. Applicant was present and represented by Counsel Thomas. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, E. Deon O'Neil, Esquire. The Court had before it the Richland County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the guilty plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the February 2011 term of the Richland County Grand Jury for Murder and Attempted Murder (2011-GS-40-0866, -0884). He was represented by Deon O'Neil, Esquire. On December 3, 2012,

Applicant appeared before the Honorable DeAndrea G. Benjamin, where he pleaded guilty as indicted. Judge Benjamin sentenced Applicant to forty (40) years' imprisonment for murder and a concurrent thirty (30) years' imprisonment for attempted murder. Applicant filed a Motion to Reconsider on December 4, 2012. A hearing was held on that motion on January 29, 2013, before Judge Benjamin who issued an order modifying Applicant's sentence to thirty-five (35) years imprisonment on March 4, 2014. Applicant did not appeal his guilty pleas or sentences.

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

1. Involuntary guilty plea in that counsel misadvised Applicant as to the sentence he would receive and that counsel failed to review discovery with Applicant prior to the plea.
2. Ineffective assistance of counsel in that counsel failed to investigate the State's ballistic evidence.

II. SUMMARY AND EVIDENCE PRESENTED AT THE PCR HEARING

Applicant's Testimony

Applicant testified he was originally sentenced to forty (40) years' imprisonment on the murder charge, but after a successful motion for reconsideration his sentence was reduced to thirty-five (35) years' imprisonment. Applicant testified Counsel promised him that if he pled guilty, he would receive a sentence of thirty (30) years imprisonment. Applicant complained that certain co-defendants received plea offers allowing them to plead down to voluntary manslaughter. He also testified the victim's mother was agreeable with a thirty (30) year sentence. Applicant testified he only pled guilty because he thought he would receive a thirty (30) year sentence. Applicant stated that he disagreed with certain facts in the solicitor's recitation of events the day of the incident.

Applicant testified he received discovery prior to trial and that Counsel reviewed these materials with him. Applicant stated he believed a ballistics report would show which individual fired the fatal shot, but no such report was included in discovery. Applicant testified he knew the victim and that he had no intention of killing him. Applicant explained that he was caught in the cross-fire.

Counsel E. Deon O'Neil's Testimony

Counsel testified he represented Applicant on the charges currently before the Court. Counsel testified he reviewed the charges and the maximum sentences for each in detail with Applicant. Counsel indicated Applicant initially wanted to take the case to trial. Counsel testified the State did not make any plea offers because Applicant did not wish to testify against other co-defendants. Counsel testified he reviewed discovery with Applicant. He further explained that Applicant gave a statement to law enforcement implicating himself in the retaliatory shooting. In that statement, Applicant described being shot at earlier that day and described he and his co-defendants' plan to get revenge by shooting at those who they believed were responsible for the earlier shooting. The State considered the statement a confession. Counsel stated that there were over forty (40) rounds fired but law enforcement could not identify which individual fired the fatal shot because the ballistics were too damaged. Counsel concluded it did not matter who fired the fatal shot because the prosecution was proceeding under a "hand of one is the hand of all theory," and Applicant had already admitted to firing a weapon. Counsel testified he fully explained the "hand of one is the hand of all" theory to Applicant in their meetings.

Counsel testified that he was prepared to try the case and that the defense theory would likely be that the events warranted a voluntary manslaughter charge if anything. Counsel stated

he would have argued that Applicant and his co-defendants were acting under a heat of passion in their retaliation of the shooting earlier that day.

Counsel described he and Applicant's disagreement with the prosecuting solicitor's recitation of events. This led Counsel to file a motion for reconsideration which was ultimately successful in reducing Applicant's sentence from forty (40) years to thirty-five (35) years on the murder conviction. Counsel argued that a thirty-five (35) year sentence was more in line with what his more culpable co-defendants' sentences.

III. APPLICABLE LAW

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

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any

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).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Involuntary Guilty Plea

Applicant argues he did not plead guilty knowingly and voluntarily. This Court finds otherwise and concludes that Applicant's guilty plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v.

Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Applicant claims Counsel advised him he would receive a sentence of thirty (30) years' imprisonment, thus rendering his guilty plea involuntary. This Court finds this contention without merit. This Court finds the record reflects Applicant was advised of the waiver of his constitutional rights by the plea court. This Court finds very credible Counsel's testimony regarding his preparation and advice concerning the case and the amount of time Applicant was facing. The record reflects Applicant admitted his guilt to the plea court. This Court finds Applicant's testimony regarding a promise of a particular sentence not credible. The record reflects that Applicant was further advised by the plea court of the maximum sentence he could receive on each charge, which included a life sentence on the murder charge. (Plea Tr. P. 14); See Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997) (any possible misconceptions about sentence length cured by colloquy at guilty plea hearing). Applicant was fully informed of

the nature and consequences of his plea. Correspondingly, this Court finds Applicant's testimony regarding his potential sentencing range to be neither credible nor supported by the record.

This Court finds Applicant's allegation that Counsel failed to review discovery with him to be meritless. Counsel's credible testimony on the issue is persuasive. Counsel met with Applicant and reviewed the discovery materials.

This Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. This allegation is denied and dismissed with prejudice.

Failure to Investigate Ballistics Evidence

This Court finds Applicant failed to meet his burden to prove that counsel's performance was either deficient or ineffective for failing to investigate the State's ballistics evidence. "Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). In light of Counsel's credible testimony that he evaluated and apprised Applicant on the matter, Applicant has produced no credible testimony that would even remotely diminish his culpability in the murder. Counsel gave credible testimony that he apprised Applicant of the "hand of one is the hand of all" and its application to the case. See State v. Dickman, 341 S.C. 293, 295, 534 S.E.2d 268, 269 (2000) ("It is well-settled that a defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense."). Regardless, the allegation rests entirely on speculation. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the

allegation is supported only by mere speculation as to the result.") Therefore, this allegation is readily denied and dismissed.

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.

V. 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. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). 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 PCR 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, PCR 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 will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 19 day of February, 2015.


ERNEST KINARD, JR.
Presiding Judge

Cannon, South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Terrence D. Patterson #353407,)
Applicant,)

2013-CP-40-05970

v.)

State of South Carolina,)
Respondent.)

NOTICE OF MOTION AND
MOTION TO ALTER OR
AMEND THE JUDGMENT

2015 MAR -4 AM 11:32
RICHLAND COUNTY
FILED
JEANNETTE H. MCBRIDE
C.C.P. & J.S.

PLEASE TAKE NOTICE that the Applicant, through his undersigned attorney will move before the Honorable J. Ernest Kinard, Jr. to alter or amend the judgment entered in this action on February 19, 2015. A copy of the Order of Dismissal was received by the undersigned attorney on February 23, 2015.

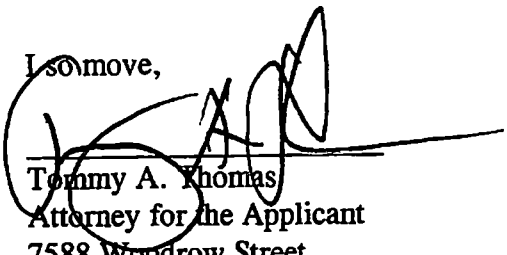
COMES NOW the Applicant, by and through his undersigned attorneys, and submits the following grounds in support of his Motion to Alter or Amend the Judgment:

1. Counsel has received communication from his client with concern about certain items not being fully addressed in the Courts Order.
2. Counsel would like to preserve Applicant's right to alter or amend the Order of Dismissal.

For the above reasons, the Applicant would respectfully request that this Court Alter or Amend its decision and ruling dated February 19, 2015;

THEREFORE, based upon the foregoing the Applicant prays that the Court
alter or amend the Order of Dismissal.

Isomove,



Tommy A. Thomas
Attorney for the Applicant
7588 Woodrow Street
Irmo, SC 29063
(803) 732-5507

March 2 2015

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
)

Docket No.: 2013-CP-40-05970

Terrence D. Patterson #353407

Applicant,

vs.

State of South Carolina,

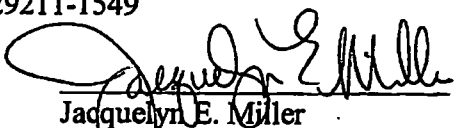
Respondent.

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2015 MAR -4 AM 11:32
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Applicant, hereby certify that I placed in the United States Mail, a copy of a Notice of Motion and Motion to Amend Judgment with postage prepaid and the return address clearly shown on said envelope to J. Clayton Mitchell, Esq. with the Office of the Attorney General at:

J. Clayton Mitchell, Esq.
Office of the Attorney General
PCR Division - 5th Circuit
P.O. Box 11549
Columbia, SC 29211-1549


Jacquelyn E. Miller
Secretary to Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

March 2, 2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Terrence D. Patterson #353407

Plaintiff,

v.

State of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS
IN THE FIFTH JUDICIAL CIRCUIT

Case No. 2013-CP-40-05970

**ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER,
REHEAR, ALTER, OR AMEND**

This matter comes before the Court by way of Plaintiff's Motion to Alter or Amend pursuant to Rule 59(e), SCRCF. Specifically, Plaintiffs ask this Court to reconsider its Order of Dismissal filed February 19, 2015.

After consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Furthermore, Plaintiff's Motion fails to specify grounds upon which relief may be granted. Accordingly, this Court hereby **DENIES** Plaintiff's Motion under Rule 59(e), SCRCF, to Alter or Amend this Court's Order filed February 19, 2015. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.Columbia, South Carolina
March 21, 2015

 Ernest Kinard, Jr., Judge
 Fifth Judicial Circuit

WITNESSES

✓
(S) Arthur L Thomas – Columbia Police
Department

ARREST WARRANT NUMBER

K668258

ACTION OF GRAND JURY

TRUE BILL

Maria H. Gardiner
Foreperson of Grand Jury
Date: FEB 09 2011

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO: 2011-GS-40-0884

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

February TERM 2011

42

THE STATE
vs.

Terrance D Patterson

Indictment for
ATTEMPTED MURDER

SC Code: 16-03-0029
CDR Code: 3410

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
FILED
C.C.C. PLS. AND G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

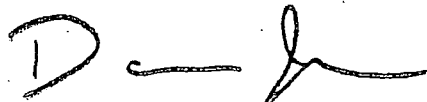
INDICTMENT

At a Court of General Sessions, convened on February 9, 2011, the Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That Terrance D Patterson did in Richland County on or about June 19, 2010, did with the intent to kill, attempt to kill Lamettress Stevens with malice aforethought, either expressed or implied. All in violation of SC Code of Laws § 16-3-29 (1976, as amended).

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



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Arthur L Thomas – Columbia Police
Department

ARREST WARRANT NUMBER

K668257

ACTION OF GRAND JURY

TRUE BILL

Mena Gardina
representor of Grand Jury
ate: FEB 09 2011

VERDICT

representor of Petit Jury
ate:

DOCKET NO. 2011-GS-40-0866

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2011

42

THE STATE
vs.

Terrance D. Patterson

Indictment for
MURDER

SC Code: 16-03-0010
CDR Code: 0116

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
J. C. C. P. & G. S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

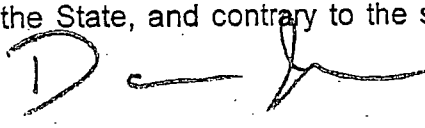
At a Court of General Sessions, convened on FEBRUARY 9, 2011, the Grand Jurors of Richland County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Terrance D. Patterson did in Richland County, on or about June 19, 2010, willfully, feloniously, and intentionally kill the victim, GARY REESE, with malice aforethought, either express or implied, by means of Gunshot wound(s), and the victim did die as a proximate result thereof, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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



DAN JOHNSON, SOLICITOR