

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Brooks P. Goldsmith, Circuit Court Judge

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60 SUPREME COURT

MAURICE C. KINARD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001205

APPENDIX

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INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT DATED DECEMBER 9, 2013	1
INDICTMENT AND SENTENCING SHEET	47
APPLICATION FOR POST-CONVICTION RELIEF	50
RETURN	58
POST-CONVICTION RELIEF TRANSCRIPT DATED APRIL 1, 2015	63
ORDER OF DISMISSAL	100

I N D E XWitness/Description Page No.

Maurice Kinard

Examination by the Court... 5

Examination by the Court Resumes... 23

Sentence of the Court... 44

Certificate Page... 46

E X H I B I T SNo. Description I.D. Ev.

C-1 Victim's Impact Statement... 44

1 MS. McDUFFIE: Thank you, Your Honor, may it please
2 the court? The state calls Maurice Kinard.

3 THE COURT: Thank you.

4 (WHEREUPON, THE DEFENDANT IS DULY SWORN.)

5 THE COURT: All right, you are Maurice Kinard?

6 DEFENDANT: Yes, ma'am.

7 THE COURT: All right and, counsel, tell me your whole
8 name again.

9 MR. SUTHERLAND: Tivis, Your Honor, T-i-v-i-s. Last
10 name is Sutherland, S-u-t-h-e-r-l-a-n-d.

11 (A PAUSE.)

12 THE COURT: All right. All right, Mr. Kinard, and Mr.
13 Sutherland represents you. Is that right?

14 DEFENDANT: Yes, ma'am.

15 THE COURT: All right.

16 Mr. Sutherland, have you had an opportunity to discuss
17 with your client the nature of this offense, the maximum
18 possible penalty and consequences, and his constitutional
19 rights, including his right to a jury trial?

20 MR. SUTHERLAND: Yes, I have, Your Honor.

21 THE COURT: In fact, you know that we were about to
22 select a jury in this matter. Is that right?

23 MR. SUTHERLAND: That's correct, Your Honor.

24 THE COURT: And in your opinion, does your client
25 understand the nature of this offense, the maximum possible

1 penalty, and his constitutional rights, including his right
2 to a jury trial?

3 MR. SUTHERLAND: Yes, he does, Your Honor.

4 THE COURT: And tell me how he wishes to plead.

5 MR. SUTHERLAND: He wishes to plead guilty, Your
6 Honor.

7 THE COURT: All right, and as to voluntary
8 manslaughter?

9 MR. SUTHERLAND: That's correct, Your Honor.

10 THE COURT: And do you concur with his decision?

11 MR. SUTHERLAND: Yes, I do, Your Honor.

12 THE COURT: And in your opinion, do you believe that
13 the state could produce sufficient evidence to convict and
14 establish your client's guilt beyond a reasonable doubt,
15 and if he was to stand trial, that his conviction would be
16 probable?

17 MR. SUTHERLAND: I believe so, Your Honor. Yes,
18 indeed.

19 THE COURT: All right. Now, do you have any concern
20 regarding your client's competency?

21 MR. SUTHERLAND: None whatsoever, Your Honor.

22 THE COURT: He hasn't required any sort of
23 mental-health evaluation?

24 MR. SUTHERLAND: None, Your Honor.

25 THE COURT: All right. Very well.

M. KINARD - EXAMINATION BY THE COURT

5

1 EXAMINATION BY THE COURT:

2 Q. Now, Mr. Kinard, I have a number of questions to ask
3 of you, and if you do not understand my question, please do
4 not answer it, but let me know that you don't understand my
5 question. There are many ways to explain any one thing.
6 And if you need to stop and talk to Mr. Sutherland, I want
7 you to feel very comfortable in telling me you need to stop
8 and talk to him, okay?

9 A. Okay. Yes.

10 Q. All right.

11 A. Yes, Your Honor.

12 Q. And thank you for answering me with your voice because
13 Ms. Harris must take down everything you're saying. So, I
14 need you to answer with your voice, so thank you for that.

15 A. Yes, Your Honor.

16 Q. Now we'll begin, Mr. Kinard. I'm going to ask you to
17 tell me how old you are.

18 A. Thirty-four, Your Honor.

19 Q. How far did you go in school?

20 A. Tenth grade, Your Honor.

21 Q. All right. Do you have your GED?

22 A. No, ma'am.

23 Q. Okay, and tell me how long you have been locked up.

24 A. Three years, Your Honor.

25 Q. Okay. Before you were locked up, did you work?

M. KINARD - EXAMINATION BY THE COURT

6

1 A. Yes, ma'am.

2 Q. Where did you work?

3 A. State Budget and Control Board off of Bull Street.

4 Q. What did you do for them?

5 A. Landscaping, Your Honor.

6 Q. Landscaping, okay, and have you ever been treated for
7 alcohol, drug abuse, or any mental-health issues?

8 A. Well, as a child I was diagnosed with ADH.

9 Q. Yes.

10 A. Attention deficit disorder.

11 Q. Yes.

12 A. Yes, ma'am.

13 Q. All right, and so did you receive medicine for that?

14 A. Yes, ma'am.

15 Q. Okay, and that's when you were a child?

16 A. Yes, ma'am.

17 Q. Okay, and how long has it been since you took medicine
18 for ADHD?

19 A. Well, I was taking it when I came to Alvin S. Glenn
20 Detention Center when I came on this charge right here.

21 Q. Oh, okay. So, you have continued to take it as an
22 adult?

23 A. Yes, Your Honor.

24 Q. All righty, and have you not been receiving it while
25 you were at the jail?

M. KINARD - EXAMINATION BY THE COURT

7

1 A. I was taking it a few times, and they stopped my
2 prescription, Your Honor.

3 Q. Okay, and -- all right. Very well, and tell me. How
4 has it manifested itself with you not having your medicine
5 for ADHD?

6 A. I mean, it's ---

7 Q. Have you had any problems at the jail as a result?

8 A. Sometimes I do and, you know, I just have to deal with
9 it because of where I'm at.

10 Q. Okay, and what kind of problems do you have?

11 A. Sometimes I can't sleep, and it's like a real jittery
12 or be in a real jittery mood.

13 Q. I understand, okay, because obviously you haven't had
14 your ADHD medicine in the last twenty-four hours, right?

15 A. Yes, Your Honor.

16 Q. Okay, and so do you believe that not having your ADHD
17 medicine is going to keep you from understanding what
18 you're doing here today?

19 A. No, Your Honor.

20 Q. If you believe at any point in time that not having
21 your medicine is affecting you, will you let me know?

22 A. Yes, Your Honor.

23 Q. Okay. Very well, and I don't mind repeating things,
24 and I don't mind going over things. If you get distracted,
25 that's all right. Just let me know, and we'll go right

1 back over what we're talking about. okay?

2 A. Yes, Your Honor.

3 Q. Just let me know.

4 Now, in the last seventy-two hours, have you had any
5 medicine, drugs, or alcohol of any kind?

6 A. No, Your Honor.

7 Q. All right.. Are you aware of any issues or challenges
8 or problems that you have, a physical problem or a mental
9 problem, a nervous problem, a drug or an alcohol problem?
10 Are you aware of any problem that you have that might or
11 that could interfere with your ability to know what you're
12 doing here today?

13 A. No, Your Honor.

14 Q. Now, I want to begin by talking with you about the
15 fact that, as I understand, this indictment was originally
16 indicted as murder. You understand that?

17 A. Yes, Your Honor.

18 Q. But you understand that in negotiations, your attorney
19 has negotiated the charge of voluntary manslaughter. You
20 understand that?

21 A. Yes, Your Honor.

22 Q. Okay, and do you understand that that is what I am
23 informed that you are going to be pleading to today,
24 voluntary manslaughter?

25 A. Yes, Your Honor.

M. KINARD - EXAMINATION BY THE COURT

9

1 Q. Okay, and is that what you intend to do?

2 A. Yes, Your Honor.

3 Q. Okay, and have you had an opportunity to talk fully
4 with Mr. Sutherland about the elements of voluntary
5 manslaughter?

6 A. Yes, Your Honor.

7 Q. And you feel like you understand that charge?

8 A. Yes, Your Honor.

9 Q. Very well. Very well. Now, there are some issues
10 that we need to talk about. There's some consequences to a
11 plea of voluntary manslaughter. Do you understand that?

12 A. Yes, Your Honor.

13 Q. Have y'all had ample time to talk about that?

14 A. Yes, Your Honor.

15 Q. Okay. Now, I want you to be really careful, and if
16 you have any questions of me about what we go over,
17 particularly the consequences of your plea here today, I
18 want you to let me know, all right?

19 A. Yes, Your Honor.

20 Q. All right. Now, I want to begin by sharing with you
21 that voluntary manslaughter is, first of all, it is a
22 violent offense. Have you had a chance to talk to Mr.
23 Sutherland about the fact that voluntary manslaughter is a
24 violent offense?

25 A. Yes, Your Honor.

M. KINARD - EXAMINATION BY THE COURT

10

1 Q. Okay, and the fact that this is a violent offense
2 affects both your time and will have an impact on your
3 classification at SCDC, but it will also affect you after
4 your release from SCDC. And let me just give you some
5 examples because there are some consequences to pleading to
6 a violent cause of action, and let me just give you some
7 examples.

8 First of all, you would be housed in a facility for
9 violent offenses at SCDC. So, it has that immediate
10 effect, but it also has the effect of -- and while you're
11 at SCDC, it will impact your inability to work, to earn
12 work credits and educational credits. Do you understand
13 that?

14 A. Yes, Your Honor.

15 Q. And also when you are released from the South Carolina
16 Department of Corrections, it will affect your inability to
17 work at a nursing home or community residential care
18 facility. Do you understand that?

19 A. Yes, Your Honor.

20 Q. It will also keep you from being able to work in any
21 capacity at a school district.

22 A. Yes, Your Honor.

23 Q. It will impact on your ability to own or possess or
24 use body armor. There are a number of different impacts
25 that this conviction will have on you. Do you understand

M. KINARD - EXAMINATION BY THE COURT

11

1 that?

2 A. Yes, Your Honor.

3 Q. All right. Now, do you understand that a charge of
4 voluntary manslaughter carries a sentence of between two
5 and thirty years in prison?

6 A. Yes, Your Honor.

7 Q. All right, and do you understand that this is a
8 no-parole offense?

9 A. Yes, Your Honor.

10 Q. So that whatever sentence I give you is the sentence
11 that you probably need to count on serving. Do you
12 understand?

13 A. Yes, Your Honor.

14 Q. All right. There is a provision that your lawyer may
15 have talked to you about called community supervision that
16 says that once you serve eighty percent of your sentence,
17 that you are eligible for what's called community
18 supervision. But in an abundance of precaution in deciding
19 whether or not you want to plead to voluntary manslaughter,
20 I think it is important that you think more in terms of
21 whatever sentence I give you is the sentence you're going
22 to serve. You understand?

23 A. Yes, Your Honor.

24 Q. All right. All right, sir. Now, do you understand
25 that pursuant to section 17-25-45, which is the recidivism

1 statute, that this is also what's known as a most-serious
2 offense?

3 A. Yes, Your Honor.

4 Q. And what I mean by that is that over the course of
5 your life, if you have a most serious conviction, which you
6 will after today, and you are subsequently charged with a
7 most-serious offense, then the state may serve notice on
8 your lawyer and you that it intends to seek life without
9 the possibility of parole. And once that notice is served,
10 if you are then convicted, it is mandatory that the judge
11 impose a sentence of life without the possibility of
12 parole. Do you understand that?

13 A. Yes, Your Honor.

14 Q. That's -- the statute is known as the two-strike,
15 three-strike rule. Do you understand, Mr. Kinard, what
16 life without the possibility parole means?

17 A. Yes, Your Honor.

18 Q. You understand that it means that you will be in
19 prison, would be in prison for the rest of your life?

20 A. Yes, Your Honor.

21 Q. All right. Now, also I will share with you, Mr.
22 Kinard, that the three-strike rule is also impacted by a
23 most-serious offense because if you were to have a serious
24 offense and then be charged with another serious offense,
25 that two -- a most serious and a serious offense and then

M. KINARD - EXAMINATION BY THE COURT

13

1 charged with a serious offense, likewise the state could
2 serve notice on you of its intention to seek life without
3 the possibility of parole. And if you were convicted, your
4 life sentence without the possibility of parole would be
5 mandatory. Do you understand that?

6 A. Yes, Your Honor.

7 Q. Okay. Now, have you had a chance to go over your
8 record with Mr. Sutherland?

9 A. Yes, Your Honor.

10 Q. All right.

11 THE COURT: And, Mr. Sutherland, based on your review
12 of that record, what number strike do you believe this to
13 be?

14 MR. SUTHERLAND: This? This would be his first
15 strike.

16 MS. McDUFFIE: Your Honor, this is the second.

17 MR. SUTHERLAND: Oh? What's, what's he had?

18 MS. McDUFFIE: He has a proximity charge.

19 MR. SUTHERLAND: Oh, the drug charge, Your Honor.

20 THE COURT: Yes. All right.

21 BY THE COURT:

22 Q. Do you understand that? Do you understand this your
23 second strike?

24 A. Yes, Your Honor.

25 Q. All right. You're absolutely positive about that?

M. KINARD - EXAMINATION BY THE COURT

14

1 A. Yes, Your Honor.

2 Q. Okay. In other words, if you are ever charged with a
3 serious offense or a most-serious offense after today, then
4 you need to -- as you decide whether or not you want to
5 plead here today, you must understand and you must factor
6 in that if you are ever charged with a serious or
7 most-serious offense, that the state will serve you notice
8 of intent to seek life without the possibility of parole.
9 Do you understand?

10 A. Yes, Your Honor.

11 Q. And do you have any questions of me or Mr. Sutherland
12 about that?

13 A. No, Your Honor.

14 Q. Okay. Now, are you on probation or parole at this
15 time?

16 A. No, Your Honor.

17 Q. All right. Well, here's what you have told me, Mr.
18 Kinard. You have told me that you understand this offense.
19 You understand it's voluntary manslaughter; you understand
20 it has a sentence of up to thirty years. It's a no-parole
21 offense. That it's a violent and most serious, and you
22 understand those consequences. Keeping these matters in
23 your mind, Mr. Kinard, tell me how you wish to plead to the
24 offense of voluntary manslaughter.

25 A. Guilty, Your Honor.

M. KINARD - EXAMINATION BY THE COURT

15

1 Q. Do you understand, Mr. Kinard, that when you plead
2 guilty to an offense, that you give up certain very
3 important constitutional rights?

4 A. Yes, Your Honor.

5 Q. And we'll going to talk about them, but we won't talk
6 about them all, but if you have any questions, I want you
7 to ask them of either of me or of Mr. Sutherland.

8 You give up the right to remain silent; you no longer
9 silent when you tell me that you are guilty. It makes
10 sense. You give up your right against self-incrimination,
11 which means that no one can make you testify against
12 yourself. But when you under oath tell me that you are
13 guilty, you obviously waive your Fifth Amendment right.
14 You testify against yourself: you tell me you're guilty.
15 You give up your right against self-incrimination because I
16 don't know what's more incriminating when you say I'm
17 guilty. That's about as incriminating a statement as there
18 can be.

19 You give up your right to have your lawyer, Mr.
20 Sutherland, cross-examine witnesses who would testify
21 against you. You give up your right to have him summon
22 witnesses to come testify in your defense. You give up
23 your right to present defenses. You give up your right to
24 challenge any incriminating statements that you may have
25 made in your case.

1 You give up your right to a jury trial. You give up
2 your right to have your lawyer challenge any stops or
3 searches or seizures that you think were not appropriate.

4 And you know, Mr. Kinard, if you wanted a jury trial,
5 you would have a jury trial. Only you can waive the jury
6 trial for yourself. And at that jury trial, Mr. Kinard, it
7 would be left up to you whether you wanted to testify or
8 you wanted not to testify.

9 And if you decided to go to trial and not testify, I
10 would tell the jury that they could not consider your
11 decision not to testify on the issue of whether you were
12 guilty or not guilty because that was the exercise of your
13 Fifth Amendment right, and that the burden was and remains
14 on the state to prove guilt beyond a reasonable doubt. And
15 I would instruct the jury that they couldn't even discuss
16 your decision not to testify in the jury room. That
17 wouldn't be an appropriate subject for them to even talk
18 about in the jury room, and I would tell them that. Do you
19 understand?

20 A. Yes, Your Honor.

21 Q. All right. Now, Mr. Kinard, we haven't talked about
22 all of your constitutional rights, but do you understand
23 that your constitutional rights are preserved for you at
24 trial, and some very important ones you waive when you
25 plead guilty?

M. KINARD - EXAMINATION BY THE COURT

17

1 A. Yes, Your Honor.

2 Q. And we're talked about some but not all of them. You
3 understand that?

4 A. Yes, Your Honor.

5 Q. All right. Now, understanding that your
6 constitutional rights are preserved for you at trial, that
7 you waive them when you plead guilty, I ask. Is that what
8 you wish to do?

9 A. Yes, Your Honor.

10 Q. And do you clearly understand when you plead guilty,
11 you give up your right to have a jury determine if you're
12 guilty or not guilty? Do you understand?

13 A. Yes, Your Honor.

14 Q. And do you know that if I accept your plea, I will
15 sentence you?

16 A. Yes, Your Honor.

17 Q. All right. Now, we're going to stop here and just
18 pause for a moment and kind of go over where we've been.
19 You told me some things about yourself, and you have told
20 me that you understand this offense.

21 A. Yes, Your Honor.

22 Q. And the consequences and the maximum possible penalty.
23 And you've also told me that you understand your
24 constitutional rights.

25 A. Yes, Your Honor.

M. KINARD - EXAMINATION BY THE COURT

18

1 Q. We've talked about all those things. Keeping all of
2 these matters in the forefront of your mind, do you still
3 wish to continue with your plea of guilty?

4 A. Yes, Your Honor.

5 Q. All right. Now, I want you to listen very carefully
6 to what I'm going to be told because the solicitor is going
7 to go over the facts. When she's finished, I'm just going
8 to ask you is that what happened. I need you to correct
9 anything that needs correcting to be sure that I have an
10 accurate picture of what occurred, okay? Every plea has to
11 be supported by a factual basis, so please listen very
12 carefully.

13 A. Yes, Your Honor.

14 THE COURT: All right, who's going to do it? She's
15 leaving us.

16 MS. McDUFFIE: Your Honor, I'm going to go over the
17 facts, and then Ms. Simpson will supplement, and then
18 she'll also go over the victim's impact for Your Honor.

19 THE COURT: All right. Very well. Thank you.

20 MS. McDUFFIE: Your Honor, this incident occurred on
21 November 25, 2010, which was Thanksgiving Day three years
22 ago. This defendant executed the victim, Desmond Lewis, on
23 that day.

24 He, Mr. Lewis, went over to Ms. Rosita Jarvis's home.
25 He backed into her driveway. This was a house that was

1 associated with people that had associations with this
2 defendant, and the victim and the defendant had been having
3 I think what witnesses would have testified to as an
4 ongoing dispute amongst themselves. There had been
5 shootings prior in the neighborhood back and forth, Your
6 Honor, between the two of them.

7 THE COURT: Shootings?

8 MS. McDUFFIE: Yes, Your Honor.

9 THE COURT: Okay.

10 MS. McDUFFIE: On this day, Mr. Lewis backed into that
11 driveway. As he was backing in his vehicle, he -- his
12 vehicle tapped a minor child who was living in that home.
13 Mr. Lewis got out of the vehicle, made sure that the child
14 was all right. He went into the home. Spoke with her
15 mother. Offered to pay any medical bills that the child
16 may have. He -- Your Honor, the state's position is he
17 tried to do the right thing, and the child was not injured.

18 Your Honor, this defendant heard about that, and there
19 had been the ongoing dispute. He went over to that house.
20 Mr. Lewis was leaving the house. He was unarmed. He was
21 attempting to get in the vehicle when Mr. Kinard began to
22 shoot at him. He shot at him nine times.

23 As Mr. Lewis was laying on the ground dying, Mr.
24 Kinard said you're not dead yet, motherfucker. And asked
25 the crowd who had assembled for another gun so he could

1 continue to shoot him.

2 Your Honor, not only did he shoot Mr. Lewis nine times
3 and ultimately kill him, but stray bullets from this went
4 into a car. A woman who was just driving down the street
5 who had no business with -- I mean, just literally was
6 driving down the street, a bullet struck and entered her
7 vehicle, Your Honor. She stopped and law enforcement
8 assisted her. Luckily she was fine; the bullet just went
9 into her door of her vehicle, but she was not injured in
10 any way.

11 When law enforcement arrived, they began to talk to
12 witnesses, all of which denied knowledge as to anything in
13 the beginning. They then were able to focus in on this
14 individual as a -- as the suspect and as the defendant.

15 Your Honor, they also saw the minor child who had been
16 hit with the car. She refused EMS attention. She appeared
17 to be fine to the officers; they didn't see that, you know,
18 that anything was wrong with her from that.

19 Your Honor, they were able to speak with numerous
20 witnesses, about a dozen witnesses, Your Honor, who all
21 placed this defendant there, who all placed him doing the
22 shooting, standing over him and firing those nine shots,
23 Your Honor.

24 Your Honor, this defendant was arrested; he was taken
25 into police custody. He did not give any statements to

1 police. Law enforcement after his arrest executed a search
2 warrant at his home. This incident occurred at [REDACTED]
3 Road, and his mother's address where police believed he was
4 residing was [REDACTED].

5 During the search warrant, they were searching the
6 house, mainly looking for the weapon, Your Honor. The
7 ceiling in the living room kind of had like a drop-down
8 soffit almost similar to what's in this courtroom, Your
9 Honor, and it had tiles along it. One of the officers
10 happened to slide back one of the tiles, and they found the
11 weapon in the soffit of the ceiling.

12 Ballistics confirmed that that was the gun that was
13 used to shoot and kill Mr. Desmond Lewis. They also were
14 able to take swabs of the gun, and this defendant's DNA was
15 on the trigger of the gun, Your Honor. So, in addition to
16 the witnesses that saw him shoot and make those statements,
17 Your Honor, we also had ballistics and DNA that matched the
18 gun and matched this defendant's DNA on that trigger of the
19 gun. Your Honor, he was taken into custody.

20 The reason we were prepared to go to trial today,
21 called the case for trial, the reason the case is old is I
22 believe Mr. Sutherland is the sixth attorney.

23 MR. SUTHERLAND: The sixth? I was thinking third, but
24 possibly, and it's not his fault.

25 MS. McDUFFIE: It's not, Your Honor. It's not. The

1 wait on behalf of the state or the defendant -- there were
2 multiple conflicts, and then people left the practice, and
3 the case has been conflicted to multiple attorneys. Mr.
4 Sutherland, I believe, has been on the case since maybe
5 March of this year.

6 MR. SUTHERLAND: March or April, I think.

7 MS. McDUFFIE: Towards the beginning of this year, so
8 we tried to expedite this as quickly as possible. So, that
9 is the reason for the delay in this regard.

10 Your Honor, the family of Mr. Lewis is present;
11 they're seated in the upper gallery. Ms. Simpson will
12 address, Your Honor, the victim impact.

13 Standing with us are Sergeant Shawn McDaniels, an
14 investigator, Willie Gonzalez, both of the Richland County
15 Sheriff's Department, who did an excellent job
16 investigating this case.

17 Your Honor, due to multiple issues in the case and the
18 prior difficulties between this defendant and the victim,
19 we have negotiated a range of fifteen to twenty-five years.
20 We are asking for the full twenty-five years in this case.
21 We believe that it was a violent killing, violent
22 execution, Your Honor. But we do believe that a plea to
23 the range of fifteen to twenty-five -- and we are asking
24 for a sentence of twenty-five, Your Honor -- is in the best
25 interest of this case and the interest of justice.

M. KINARD - EXAMINATION BY THE COURT

23

1 This defendant's prior record goes back ---

2 THE COURT: Hold on for me because I know I do that a
3 bit different, and I know that can throw you a little bit,
4 and I'll forget. I want to keep that in mind. So, thank
5 you so much.

6 EXAMINATION BY THE COURT RESUMES:

7 Q. Yes, sir. Is that what happened?

8 A. Yes, ma'am.

9 Q. All right.

10 MR. SUTHERLAND: And I would say substantially that
11 there are more facts, but I'll get into that during
12 mitigation.

13 THE COURT: All right.

14 BY THE COURT:

15 Q. Now, has anyone promised you anything or held out any
16 hope of any kind of reward to get you to plead guilty?

17 A. No, Your Honor.

18 Q. Has anyone tried to force you or threaten you,
19 overcome your will, or intimidated you to cause you to
20 plead guilty?

21 A. No, Your Honor.

22 Q. Have you had enough time to make up your mind that
23 this is what you want to do?

24 A. Yes, Your Honor.

25 Q. And are you pleading guilty freely and voluntarily?

1 A. Yes, Your Honor.

2 Q. I want to talk about your representation with Mr.
3 Sutherland, okay? We're going to shift focus a little bit,
4 and I'll ask. In general terms, are you satisfied with his
5 legal services that he's provided for you?

6 A. Yes, Your Honor.

7 Q. All right, and apparently, Mr. Kinard, you've had a
8 number of attorneys over time, and they've gone out into
9 private practice or left or whatever, and you've gotten to
10 know a number of lawyers with regards to this matter. Is
11 that right?

12 A. Yes, Your Honor.

13 Q. And Mr. Sutherland, though, has represented you since
14 the spring?

15 A. Yes, Your Honor.

16 Q. Okay, and do you feel as though you've had adequate
17 time meeting with Mr. Kinard regarding your case?

18 A. Yes, Your Honor.

19 Q. In other words, have you had an opportunity to have
20 him explain to you each and every element of this offense?

21 A. Yes, Your Honor.

22 Q. Have you had time for him to do an adequate
23 investigation?

24 A. Yes, Your Honor.

25 Q. Have you met with him for as many times -- meaning

M. KINARD - EXAMINATION BY THE COURT

25

1 however many times -- and for as long as a period on each
2 of those occasions as you believe appropriate for him to
3 properly represent you?

4 A. Yes, Your Honor.

5 Q. Okay. Has he been over the evidence with you that the
6 state has to present at trial to prove your guilt?

7 A. Yes, Your Honor.

8 Q. I have no idea, Mr. Kinard, if you wanted copies of
9 it, but if you did want copies of it, did he provide that
10 for you?

11 A. Yes, Your Honor.

12 Q. All right. Has he talked to the people that you
13 wanted him to talk to?

14 A. Yes, Your Honor.

15 Q. Okay. Has he done those matters in his investigation
16 of your case that you wanted him to do?

17 A. Yes, Your Honor.

18 Q. All right, and in your conversations with him, Mr.
19 Kinard, have you been able to understand him?

20 A. Yes, Your Honor.

21 Q. Has he answered all of your questions?

22 A. Yes, Your Honor.

23 Q. Do you have any lingering questions today?

24 A. No, Your Honor.

25 Q. Now, are you completely satisfied with Mr.

1 Sutherland's services?

2 A. Yes, Your Honor.

3 Q. And, Mr. Kinard, has anyone associated with your case
4 -- and that would be the solicitor's office, your
5 attorneys, any of them, any of the law enforcement
6 individuals involved in your arrest, or any of the folks at
7 the detention facility where you have been for three years
8 plus -- has anyone associated with your case mistreated you
9 in any way?

10 A. No, Your Honor.

11 Q. Have you understood my questions?

12 A. Yes, Your Honor.

13 Q. And I want you to just to contemplate whether or not
14 you have any questions of me about what we have been over
15 today.

16 A. No, Your Honor.

17 Q. Do you understand, Mr. Kinard, that you have a right
18 to appeal your guilty plea and any sentence that I impose?
19 Do you understand?

20 A. Yes, Your Honor.

21 Q. Do you also understand that if you wish to appeal, you
22 or an attorney on your behalf -- obviously Mr. Sutherland
23 would help you with that -- you have ten days from today to
24 appeal? Do you understand?

25 A. Yes, Your Honor.

M. KINARD - EXAMINATION BY THE COURT

27

1 Q. All right, but if you want to appeal, I can promise
2 you Mr. Sutherland wants you to tell him as quickly as you
3 know, okay?

4 A. Yes, Your Honor.

5 Q. And keep a copy of it if you do it in writing. Give
6 him that in writing. Keep a copy at least, okay?

7 A. Yes. Yes, Your Honor.

8 Q. All right, but give him enough time to get that done.

9 Now, Mr. Kinard, with regards to each and every answer
10 that you have given me here today, have you been absolutely
11 candid with me?

12 A. Yes, Your Honor.

13 Q. Have you been truthful with me?

14 A. Yes, Your Honor.

15 Q. And have your answers been your very own answers?

16 A. Yes, Your Honor.

17 Q. Whose answers have you given me today?

18 A. Mine, Your Honor.

19 Q. Did anybody tell you how to answer my questions?

20 A. No, Your Honor.

21 Q. Very well. Now I'm about to conclude, Mr. Kinard. I
22 just want to be sure that not having your ADHD medicine
23 hasn't had any affect on your ability to understand these
24 proceedings. Have you understood these proceedings?

25 A. Yes, Your Honor.

M. KINARD - EXAMINATION BY THE COURT

28

1 Q. And finally do you have any questions?

2 A. No, Your Honor.

3 Q. Do you believe that the ADHD medicine -- or your
4 failure to have that medicine has had any affect on your
5 ability to understand these proceedings today?

6 A. No, Your Honor.

7 THE COURT: Very well. I find that there is a
8 substantial factual basis for this plea. I find that Mr.
9 Kinard's decision to plead guilty is freely and
10 voluntarily, knowingly and intelligently made. That he's
11 had advice of counsel with whom he tells me he is
12 satisfied, and I will accept the plea.

13 Now I need his record, and happy to hear from the
14 victim's family.

15 MS. McDUFFIE: Thank you, Your Honor, It's a 1996
16 loitering. 1997 unlawful weapon, one year probation. 1998
17 possession of crack, two years suspended on time served.
18 1999 false information to police. 2000, two counts of CDV
19 first; PWID second, eighteen months; resisting arrest, one
20 year suspended to probation for two years. 2002, the
21 proximity charge that we discussed earlier, five years
22 suspended with three years' probation. 2004, CDV third and
23 then in 2009 it was CSC with a minor second which was pled
24 to ABHAN. Your Honor, may I approach?

25 THE COURT: You may.

1 (OFF-THE-RECORD BENCH CONFERENCE.)

2 THE COURT: Okay, and that concludes?

3 MS. McDUFFIE: Yes, Your Honor.

4 THE COURT: All right. Now, yes, ma'am. Talk to me
5 about the victim's family, and certainly I'm happy to hear
6 from them.

7 MS. SIMPSON: Yes, Your Honor, and Nicole Simpson for
8 the state.

9 If I could have his members of his family please
10 stand? Here him -- or here on behalf of him, Sharon Lewis
11 as well as Nathaniel Lewis, his mother and father; Precious
12 Cannon, his aunt; Eric Craft, his uncle. Ashley Outzie,
13 that would be Desmond's daughter's mother. He does have or
14 did have a thirteen-year-old daughter; she would have been
15 ten at the time of his death. And Gregory Perry, his
16 cousin as well.

17 THE COURT: And can we do that again? I just want to
18 know who you are. If you'd just raise your hand and let me
19 know when your name is called? I just want to know who you
20 are.

21 MS. SIMPSON: Sharon Lewis. That would be Desmond's
22 mother.

23 THE COURT: Thank you.

24 MS. SIMPSON: Nathaniel Lewis, his father.

25 THE COURT: Thank you.

1 MS. SIMPSON: Precious Cannon, his aunt; Eric Craft,
2 his uncle; Ashley Outzie, his daughter's mother; and
3 Gregory, his cousin.

4 THE COURT: Thank you. Thank you all for being here.

5 MS. SIMPSON: And, Your Honor, the family has prepared
6 a statement that I'm going to read on their behalf.

7 THE COURT: All right, and then we'll make it a
8 court's exhibit.

9 MS. SIMPSON: Excellent.

10 THE COURT: Thank you. Great.

11 MS. SIMPSON: We, the family of Desmond Lewis,
12 would like to let the court know how this
13 has devastated our family and the mental
14 state, especially during the holidays.

15 And I think especially with this occurring on
16 Thanksgiving.

17 THE COURT: Sure.

18 MS. SIMPSON: And now this plea happening near
19 Thanksgiving.

20 THE COURT: Sure.

21 MS. SIMPSON: His mother and daughter have
22 experienced the greatest effects. His
23 mother especially had a very difficult time
24 with the loss of her son. We want the
25 person who has caused this, that would be

1 Maurice Kinard, to be held accountable for
2 his actions. Desmond had become a better
3 person to his daughter, his family, and the
4 community. He was actually feeding the
5 senior citizens in the neighborhood.

6 Your Honor, and that would be the statement on behalf
7 of the family.

8 We are seeking the full twenty-five years here today,
9 and I'd like to add a little bit as to why we think this
10 defendant has been given the benefit of the lesser charge
11 of voluntary manslaughter and going from thirty to life
12 down to fifteen to twenty-five.

13 As we prepared this case, Your Honor -- Ms. McDuffie
14 gave you some of the general facts, but I think one of the
15 key, key issues -- and we understand the back and forth and
16 the exchange in this case and the defense that would have
17 been argued. That at the time that this happened, there is
18 no doubt, and the witnesses we would have presented,
19 Desmond accidentally hit the minor girl and was very
20 apologetic. Willing to pay the medical expenses, things of
21 that nature.

22 At that point, he was not armed. The state would not
23 have presented any witnesses to show that he had a weapon,
24 or that anything threatening was going on at that time. As
25 a matter of fact, most of the witnesses would have

1 testified that things were calm and cool, and everybody
2 thought everything was okay. This was Thanksgiving
3 evening.

4 At one point, there is one witness who initially
5 indicated that he didn't tell the police the whole truth,
6 mainly because he was scared, and I think that's kind of
7 indicative. And as law enforcement told you, a lot of this
8 community and witnesses were hesitant to come forward in
9 this case out of fear for retaliation or what may happen to
10 them, which is very sad because it affects not only the
11 Bluff Road or Starlight community. It affects all of our
12 community.

13 But one of the witnesses did indicate, and everyone
14 was aware -- this is a tight-knit community, either related
15 or just knowing each other from the neighborhood -- of the
16 dispute. What the issue or the source, the source of that
17 dispute is, is -- there were a variety of reasons.

18 However, this defendant was actually given the
19 opportunity -- to our understanding, that day one of the
20 witnesses would have gone up to Mr. Kinard and said do you
21 want to fight Desmond Lewis, essentially to quash the beef,
22 as he would have put it, and he said no. Then they also
23 went to Desmond Lewis, who said no. I don't want to fight
24 today. Nobody wanted to fight; everything was fine.
25 Nothing -- in no way, shape, or form was this defendant

1 being threatened at the time of this shooting.

2 Essentially witnesses would have testified that he
3 kind of came out from nowhere and just started shooting, at
4 which point that's when he said motherfucker, you ain't
5 dead yet. And asked for another gun, which has been very
6 difficult for us in deciding what to do with this case.
7 However, this is the best outcome.

8 And, Your Honor, I rarely put in personal experiences
9 during a plea or something that happened when you think
10 about a case. But this week I was at the store, and in
11 passing I couldn't go to the same places. And someone said
12 -- who is aware of what I do -- that it's just as if people
13 don't care anymore about other people. And I think this
14 case is indicative of how little some of us have come to
15 value human life and how easily it can be taken.

16 This did not have to happen. It did not have to
17 escalate to this, and we do believe that the twenty-five
18 years is warranted and more than deserved in this case.

19 THE COURT: And the minor child that was the victim of
20 the car, just you said being tapped by the car, was that
21 his child?

22 MS. SIMPSON: No, Your Honor.

23 THE COURT: Okay. Okay.

24 MS. SIMPSON: Our understanding was ---

25 THE COURT: I don't need to know who it was. That's

1 all I need.

2 MS. SIMPSON: Oh.

3 THE COURT: That's all I needed to know is not his
4 child.

5 MS. SIMPSON: Correct.

6 THE COURT: Not his biological child. Okay. All
7 right. Got it.

8 Now, anything else?

9 SERGEANT McDANIELS: Sure. Yes, Your Honor. Sergeant
10 McDaniels from the Richland County Sheriff's Department.

11 THE COURT: Yes, sir, Sergeant.

12 SERGEANT McDANIELS: I appreciate the opportunity.

13 THE COURT: Yes.

14 SERGEANT McDANIELS: And I think the two assistant
15 solicitors kind of tapped on what our stance is. We, too,
16 seek the high end of twenty-five years, primarily because
17 of the effect that it had on the community. This is a
18 tight-knit community and of course, you know, the lingering
19 words of you ain't dead yet, motherfucker, it's still in
20 the neighborhood. And we have a lot of elderly people who
21 are, who are also looking forward to the outcome and, and
22 some closure.

23 We are constantly in that neighborhood policing, and I
24 have to -- I have to give some, some concern to officer
25 safe -- officer safety in the future while policing that

1 neighborhood.

2 You know, this wasn't an ongoing dispute, but it was a
3 dispute that was almost at a point resolved by, by way of
4 communicating through someone who knew both sides. And so
5 when that failed, you know, clearly Mr. Kinard here
6 exacerbated the situation by basically just outright
7 refusing to even talk it out and to settle the beef. And,
8 you know, the end result is this gentleman -- you know,
9 shooting the victim nine times and, and, and stating that
10 where witnesses could hear, you know, the previous comment.
11 You know, it, it lingers in the community.

12 And I can tell you on behalf of law enforcement, as
13 well as on behalf of the family and the community, that we
14 are concerned about, you know, this type of behavior being
15 repeated. You know, neighborhood legends are often times
16 not the best legends, and we want to make sure that we send
17 the appropriate message to this small community here in
18 Richland County, and let them know this is not what we're
19 going to stand for, not just law enforcement but the
20 justice system as a well. Thank you.

21 THE COURT: Thank you kindly. Yes, sir, Sergeant.

22 All right, anything further from the state?

23 MS. McDUFFIE: Not at this time, Your Honor.

24 THE COURT: Thank you very much, Ms. McDuffie.

25 All right. Yes, sir, Mr. Sutherland.

1 MR. SUTHERLAND: May it please the court, Your Honor?

2 THE COURT: Yes, sir.

3 MR. SUTHERLAND: As I indicated earlier, there are
4 actually a lot of facts that were missing from the state's
5 presentation. I have a lot of respect for the solicitors
6 on this case, Ms. McDuffie, Ms. Simpson; the investigators,
7 Investigator Gonzales, Investigator McDaniels, when they
8 speak of the impact and the effect on the community.

9 There was an impact, there was an effect on the
10 community of the victim in this case driving around
11 shooting up people's houses and threatening people that if
12 you come into the street after 6 PM, I'm going to kill you.
13 And with respect to this being squashed or handled on that
14 night, there are -- there is a witness that says this
15 wasn't being squashed. That the victim said I don't care
16 what anybody says. I'm going to kill him. Therein lies
17 the nature of the dispute, and also therein lies the
18 sufficient legal provocation with respect to voluntary
19 manslaughter.

20 I believe there is reason to negotiate a range of
21 fifteen to twenty-five years because he's certainly
22 culpable and responsible for his actions. But what led up
23 to those action and what provoked that response and
24 provoked that result was consistent fear, consistent
25 threats. Numerous witnesses have given statements to that

1 effect, have spoken with my investigators and, in fact,
2 it's in the discovery that, that the state has that they
3 turned over to me. In particular, I'm thinking of, of the
4 one particular statement: I don't care what anybody says.

5 Talking about squash and the beef:

6 I don't want to talk about him right now.

7 I'm going to kill him.

8 So, I understand where the state's coming from and
9 what their responsibility and their role is here, but
10 there's certainly a lot more facts at play.

11 This all started with Mr. Kinard in the yard of family
12 members that was right across the street from the incident
13 location. He has family members at the incident location.
14 These people are, are related to one another: cousins,
15 nieces, and so forth. He was standing out with the father
16 of his two friends in the yard, and the father, Ward
17 Spruill, Sr., had a pair of binoculars, and Mr. Kinard
18 asked if he could see the pair binoculars, and he started
19 looking through the binoculars. Mr. Lewis saw him looking
20 through binoculars, and he came up and he asked him. What
21 are you? With the police? And that's how this whole start
22 -- whole thing started.

23 Their witnesses have told them, as they told my
24 investigators, that he's just driving around this area like
25 a shark. That he's always armed. Whether he's on a

1 bicycle he has a handgun, or whether he's in a vehicle he
2 has a handgun. He's pointing this firearm out the window
3 threatening him earlier, earlier that day, Your Honor,
4 earlier that day.

5 The issue with this case is that last line that they
6 spoke about and those last few seconds of this thing. I
7 don't have any doubt that he was in fear. It's -- just to
8 me, voluntary manslaughter is, is the lawful result in this
9 case.

10 I hate that there are family members of the victim
11 here and that I have to say what I must say, but I'm
12 sincere in what I've -- and I've investigated this case. I
13 worked on this case very hard, and the sort of -- the trail
14 just isn't as accurate as it should be. He was not looking
15 for trouble. The trouble was coming to him, and he
16 happened upon this scene.

17 They spoke about him backing in and tapping this
18 little girl at this incident location. What happened, one
19 of the residents of that house had driven by the victim's
20 house just before this happened. The victim jumps in the
21 car and says: What the fuck is he doing driving by my
22 house? And speeds over there, backs into the driveway, and
23 hits this little girl. There's a commotion. There's all
24 sorts of things going on here that still do not defeat the
25 nature of the offense and the negotiated range of fifteen

1 to twenty-five, which I think is appropriate to have a
2 scale to get a just result.

3 I understand they negotiated fifteen to twenty-five,
4 and now they're asking for the maximum end of that. I
5 believe in the middle range would be appropriate between
6 the state and between the defense simply based on the
7 reality here that there -- he was being menaced. He was
8 being threatened. His friends, his family members were
9 being threatened. They were being shot at, Judge. That's
10 the reality here. It doesn't make this not a voluntary
11 manslaughter.

12 This is the result that I would have hoped for from
13 the jury certainly, but I can't say that, and I told my
14 client. I can't tell you that they're going to listen to
15 our witnesses, that they're going to listen to me, but I
16 certainly believe that they can prove this offense. And I
17 told him that I thought that the best, the best and the
18 sure result was to take what we were hoping to get and to
19 get a sentencing range.

20 So, I just, I just agree with the nature, not with the
21 facts they spelled out. I certainly disagree that he
22 should get at the, at the top end of the spectrum. I
23 believe the middle would be appropriate. The defense wants
24 fifteen; they want twenty-five. There's a lot of
25 difficulty brought on by the actual victim in this case.

1 Certainly the ultimate difficulty is my client's
2 responsibility. It's just not as one-sided as the
3 presentation, Your Honor, and I'd ask the court to consider
4 twenty years in the center of the range.

5 Also on behalf of Mr. Kinard's family, his aunt,
6 Doretha Woodard, would address the court if that's
7 appropriate.

8 THE COURT: Sure. Happy to hear from her.

9 MR. SUTHERLAND: Thank you, Your Honor.

10 THE COURT: And all I need you to -- yes, ma'am -- is
11 just state your name for the record.

12 MS. WOODARD: Doretha W. Woodard.

13 THE COURT: Doretha, how do you spell Doretha? You
14 might want to stand. It might just be a little easier for
15 you, if you're able to. Okay.

16 MS. WOODARD: D-o-r-e-t-h-a.

17 THE COURT: Okay.

18 MS. WOODARD: And my last name is Woodard,
19 W-o-o-d-a-r-d.

20 THE COURT: Yes, ma'am.

21 MS. WOODARD: Maurice mother died, and I took care of
22 Maurice during that time. And I'm just asking the court --
23 that he has a fifteen-year-old daughter, and I'm asking the
24 court to have mercy on him and not give him the whole
25 twenty-five years. That's all I have to say.

1 THE COURT: Thank you so much. Thank you for being
2 here.

3 MR. SUTHERLAND: And, Your Honor, his father, Maurice,
4 is present. I don't know that his father wishes to address
5 the court.

6 THE COURT: Happy to hear from his father. You're his
7 father?

8 MR. KINARD: Yes, ma'am.

9 THE COURT: Yes, sir. I'm happy to hear from you if
10 you wish to speak. You don't have to, but I'm happy to
11 hear from you.

12 MR. KINARD: Yes, ma'am. First, I want to say I'm
13 sorry for the family. I'm sorry that it happened, and it's
14 just a terrible thing that happened.

15 THE COURT: Yes, sir.

16 MR. KINARD: You know, my baby boy, he got a, like she
17 said, he got a fifteen-year-old girl.

18 And I know things didn't turn out right. Wasn't none
19 of us that went over there had any trouble. People tell
20 all kind of stories, Judge. You know that. We try to do
21 other things, work to make things just straight, Judge. I
22 hope that you in your heart and the court will take it
23 under some, some kind of consideration and not to get him
24 for the whole thirty years. I would appreciate that.

25 THE COURT: All right, sir. Thank you now. Thank you

1 very much.

2 Okay, anything further from the defense?

3 MR. SUTHERLAND: Your Honor, I do believe that Maurice
4 would -- wishes to address the court.

5 THE COURT: Sure. Sure. I'd be happy to hear from
6 you.

7 DEFENDANT: Your Honor.

8 THE COURT: And I've been saying Kinard but it's
9 Kinard.

10 DEFENDANT: Kinard..

11 THE COURT: I'm sorry about that, Mr. Kinard.

12 DEFENDANT: Yes. I'd like to address the victim's
13 family.

14 THE COURT: Okay, if you would just do that through
15 me. They're listening. You can face me, and they're
16 listening.

17 DEFENDANT: Well, tell to the Lewis family that I'm
18 sorry for what I've done, and I wish I could have talked to
19 Desmond, and we could have had some better issues. I'm
20 know he's gone. We can't bring him back, and I was so
21 sorry that this happened. Just ask you to forgive me in
22 this court today.

23 THE COURT: Thank you.

24 DEFENDANT: Thank you.

25 THE COURT: All right, anything further?

1 MR. SUTHERLAND: Nothing further, Your Honor. Thank
2 you.

3 THE COURT: All right. Very well.
4 Anything further from the state?

5 MS. SIMPSON: Just briefly, Your Honor, to address
6 some of the issues that defense brought up in its
7 mitigation.

8 We have considered some of the mitigation in making
9 this offer. As far as -- the state isn't claiming that
10 Desmond Lewis was perfect by any means, but neither was
11 this defendant, and they did have a dispute that was
12 ongoing.

13 But as far as numerous witnesses supporting that he'd
14 actually pointed a gun at him that day and threatened him,
15 we do not believe that is what the evidence would have
16 shown. And that in the moment, this situation had not
17 escalated. That -- by anything, this was the end of the
18 evening, and words are not enough, just quite frankly, are
19 not enough, especially for nine shots to an unarmed young
20 man.

21 And I would like to just point out that this defendant
22 came to that house with his family members armed with this
23 handgun, and most all of the witnesses indicated at this
24 time Desmond, he was leaving. You know, there was no
25 issue. So, this defendant did have a choice and

1 unfortunately made a wrong one.

2 And while -- you know, the reality is twenty-five
3 years is warranted. He still has his life. Desmond, his
4 young thirteen-year-old daughter will never be able to see
5 him again or his family. So, he is getting a benefit, and
6 we just ask that you sentence him to the twenty-five years
7 in this case.

8 THE COURT: All right, any response?

9 MR. SUTHERLAND: Just briefly, and he was armed due to
10 having been shot at and having been threatened.

11 THE COURT: Very well. Thank you. Thank you.

12 MS. SIMPSON: And, Your Honor, just to mark as a
13 court's exhibit.

14 THE COURT: Thank you.

15 (VICTIM'S IMPACT STATEMENT MARKED INTO EVIDENCE AS
16 COURT'S EXHIBIT NUMBER 1.)

17 SENTENCE OF THE COURT:

18 THE COURT: All right, I've listened to everyone, and
19 I want to again thank both families for their words.

20 You know, I wish I had an answer for the fact that
21 there are so many guns in our society, and that so often
22 people -- just as your words were you're so sorry today,
23 I'm so sorry that you ever found your way to a gun.

24 When I was coming along and young men got mad at each
25 other, they got in a good, old-fashioned fist fight, and

1 nobody lost their life. If there's a difference between
2 when I grew up and the world today, I guess that concerns
3 me as much as any that guns are an option. I wish they
4 weren't and they are.

5 And, Mr. Kinard, your conduct on that day, you know it
6 was not appropriate, of course. And having considered all
7 that everyone has told me, I think probably voluntary,
8 given the history, is an appropriate sentence. I have
9 absolutely no problem accepting the plea to voluntary under
10 the circumstances, but certainly these facts are rather
11 aggravated.

12 All right, Mr. Kinard, with regards to your sentence,
13 I'm going to sentence you to the state Department of
14 Corrections for a period of twenty-five years, giving you
15 credit for the time that you have served. Good luck to
16 you, sir.

17 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM 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 ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 9TH DAY OF DECEMBER, 2013.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

S/ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

AUGUST 16TH, 2014

WITNESSES

(S) William Gonzalez - Richland County Sheriff

DOCKET NO. 2011-GS-40-1134

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

February TERM 2011

154

ARREST WARRANT NUMBER

M721199

ACTION OF GRAND JURY

TRUE BILL

Mena Gardner

Foreperson of Grand Jury

Date: FEB 11 2011

VERDICT

Foreperson of Petit Jury

Date:

THE STATE

vs.

Maurice C. Kinard

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,

Jeanette W. McBride
C.C.C.P.&G.S.

RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

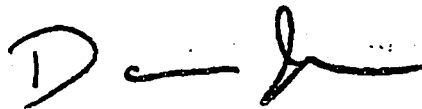
At a Court of General Sessions, convened on February 9, 2011, the Grand Jurors of Richland County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Maurice C. Kinard did in Richland County, on or about November 25, 2010, willfully, feloniously, and intentionally kill the victim, DESMOND LEWIS, with malice aforethought, either express or implied, by means of Gunshot wound, 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

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.Maurice C Kinard

AKA:

Race: BLACK Sex: M Age: 34DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: [REDACTED]

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Voluntary ManslaughterINDICTMENT/CASE#: 2011-GS-40-1134A/W#: M721199Date of Offense: 11/25/2010S.C. Code §: 16-03-0010CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-3-50 of the S.C. Code of Laws, bearing CDR Code # 0217
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Joanna McDuffie
McDuffie, Joanna11043
SC Bar#James Kinard
Defendant[Signature]
Attorney for Defendant6985
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 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.☐ 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 16-25-20 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter:

Presiding Judge

Judge Code:

Sentence Date:

SCCJA 212 (02/2011)

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF LeeMaurice Kinard 271081
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

2014 CP 400 2212
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION REVIEW

RICHLAND COUNTY
FILED
2014 APR -7 PM 9:16
JEANETTE W. MCBRIDE
Clerk, S.C.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 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 Lee Correctional Institution
2. Name and location of Court which imposed sentence Richland County
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-65-4017-36
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) December 09, 2013 / 25 Yrs @ 85%
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓ Plea Agreement
- (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?
in The Process of Filing Related Appeal
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Richland County Court House
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. No Answer Yet
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

SUPPLEMENTAL PAGES

(Question 11 Continued: in the South Carolina Appellate Court Rules Section 407. The Attorney never conducted any follow up investigation of an independent nature.

Question 11 (b) Order a Mental Evaluation in my case or on my behalf. My entire case, hinged on the truth of the facts.

Question 11 (c) Witness statements and the Private Investigators Report (This person died after his report was wrote) which can shed ample light and reasons for my actions in this situation and Prove Beyond a Shadow of a Doubt That My actions were of the nature of Self-Defense

Question 12(A) Belated Appeal in Richland County

Question 13(A) (ii): of Motion For Belated Appeal.

- (a) Ineffectual Assistance of Counsel
 (b) No Mental Evaluation Prior to Plea
 (c) Attorney Withholding Pertinent Evidence Vital to Defense
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel Failed Duty of Responsibility as outlined
 (b) Neither Counsel ever ordered or Tried to
 (c) My Attorney asked for My ONLY Copies of
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Filed Motion For
 (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? Yes
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. Motion For Belated Appeal
 ii. Motion For Telling of P.C.R. awaiting result
 iii. _____
 iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Richland County Court House
 ii. Richland County Court House
 iii. _____
 iv. _____
- (c) the disposition thereof:
- i. Not determined yet
 ii. Not determined yet
 iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. N/A
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- 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?
- No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Attorney Failed to File and Perfect Direct 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? _____
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? He didn't File on
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

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. Ms. Courtney Gibbs Public Defender Richland Co.
- ii. MR. Travis Colley Sutherland IV Pro bono 1976
Barnwell Street Col.
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Ms. Gibbs Was Replaced by MR. Sutherland IV
- ii. _____
- iii. _____

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

Over Turn Conviction and a Fair Trial

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

No

STATE OF SOUTH CAROLINA)

County of Lee)

VERIFICATION

I, MA, 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.

Maurice Kinard

SWORN to and subscribed before me this 2
day of April, 2014.

Debra Series (L.S.)
Notary Public

My Commission Expires: 11-4-2015

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

I, ~~Wk~~, 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.

Monica Kimmel
Applicant

SWORN or affirmed to and subscribed before me this
2 day of April, 2014.

Debra Sines
Notary Public

My Commission Expires: 11-4-2015

RICHLAND COUNTY
 FILED
 2014 APR -7 AM 9:16
 JEANETTE W. MCBRIDE
 C.C.P. & G.S.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Maurice Kinard, #271081,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2014-CP-40-02212

RETURN

Respondent, making its Return to the application for post-conviction relief filed April 7, 2014, 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 (2011-GS-40-1134). Applicant was represented by Tivis C. Sutherland, IV, Esquire. On December 9, 2013, Applicant appeared before the Honorable Diane S. Goodstein, where he pled guilty to Voluntary Manslaughter. Judge Goodstein sentenced Applicant to twenty-five years imprisonment. Applicant did not appeal his guilty plea or sentence.

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

II.

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

1. "Ineffective Assistance of Counsel;"
 - a. "No Mental Evaluation prior to plea;" and
 - b. "Attorney withholding pertinent evidence vital to defense;" and
 - c. "Counsel failed Duty of Responsibility as outlined."

Any claims not specifically enumerated in the application or amendments made by counsel of record will be opposed by the State at an evidentiary hearing, and the State 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.

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 applicant 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 plea counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, 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 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, the State requests that an evidentiary hearing be held.

Signature block to follow

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT

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

June 10, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

2014-CP-40-02212

MAURICE KINARD, #271081)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

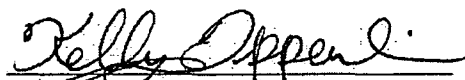
STATE OF SOUTH CAROLINA,)

Respondent.)

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

Jonathan Waller, Esquire
The Law Office of Jonathan Waller, LLC
1720 Main Street, Suite 104
Columbia, South Carolina 29201

DATED this 10th day of June, 2014.


 Kelly Oppenheimer, Legal Assistant
 For Respondent

I N D E X

Proceedings	4
Maurice C. Kinard,	
Direct Examination by Mr. Waller	5
Cross-Examination by Mr. Mitchell	16
Redirect Examination by Mr. Waller	21
Tivis Sutherland, Esq.,	
Direct Examination by Mr. Mitchell	22
Cross-Examination by Mr. Waller	29
Certificate Page	37

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
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No exhibits introduced during proceeding.

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 11:54 a.m.)

MR. MITCHELL: May it please the Court, Your Honor:

The ---

THE COURT: Certainly.

MR. MITCHELL: This is *Maurice Kinard v. the State of South Carolina*, 2014 CP-40-02212. Mr. Kinard was -- was indicted in February 2011 for murder. He was represented on that charge by Mr. Tivis Sutherland. He appeared before the Honorable Diane Goodstein on December 9th, 2013, where he pled guilty to lesser-included voluntary manslaughter. He was sentenced to 25 years' imprisonment on that. He did not appeal his sentences -- or his sentence or plea.

Mr. Kinard filed this application for postconviction relief April 7th of 2014, where he's alleged some aspects of ineffective assistance of counsel and failure to file a notice of appeal. I'd note that this was a negotiated sentence. It was -- I think the negotiated range was ---

MR. WALLER: --- 15 to 25.

MR. MITCHELL: --- 15 to 25. I'd note Mr. Kinard is here today and represented by Mr. Jonathan Waller. And at this time I turn it over to him.

THE COURT: Mr. Waller.

MR. WALLER: Good morning, Your Honor.

THE COURT: Morning.

DIRECT EXAMINATION BY MR. WALLER - MAURICE KINARD

5

1 MR. WALLER: Your Honor, Mr. Kinard has raised several
2 allegations of ineffective assistance of counsel. I
3 believe our main one, to kind of narrow it down for the
4 Court, was ineffective of -- assistance of guilty-plea
5 counsel in that but for the -- the errors of -- of -- trial
6 -- well, what would've been trial counsel -- it was right
7 before a trial commenced. But for those errors, he would
8 not have pled, but have would -- would have proceeded on to
9 trial and also the -- the appeal issue, Your Honor.

10 THE COURT: All right. You ready to proceed?

11 MR. WALLER: I am, Your Honor.

12 THE COURT: All right. You may call your first
13 witness.

14 MR. WALLER: Your Honor, applicant calls Maurice
15 Kinard.

16 (Off the record briefly.)

17 (Whereupon, the witness came forward.)

18 MAURICE KINARD, having been first duly sworn,
19 testified as follows:

20 (Whereupon, the witness entered the witness stand.)

21 DIRECT EXAMINATION

22 BY MR. WALLER:

23 Q Mr. Kinard, how are you this morning?

24 A I'm good, sir.

25 Q All right. How did Mr. Sutherland come to be your

1 attorney?

2 A Well, I had several lawyers and I had came about -- I
3 fired my lawyers, and the state appointed me him.

4 Q Okay, when you say "fired," how did -- how'd you get
5 the other attorneys?

6 A Well, they were appointed to me through the courts. I
7 had a few -- well, I had a public defender at first.

8 Q Okay. How many -- if you remember, how many previous
9 attorneys did you have before Mr. Sutherland?

10 A About four or five, I believe.

11 Q All right.

12 A Yes.

13 Q At what point was Mr. Sutherland appointed to
14 represent you?

15 A That was around April, I believe.

16 Q Okay. April of what year?

17 A That was 2 -- I think it was 213 [sic].

18 Q Okay.

19 A Yeah.

20 Q And were you locked up, or were you out on bond?

21 A I was locked up.

22 Q Okay. How many times did you and Mr. Sutherland meet
23 during the -- the time he represented you?

24 A Several.

25 Q Okay. You got an estimate for me?

DIRECT EXAMINATION BY MR. WALLER - MAURICE KINARD

7

1 A About five/six times.

2 Q Okay. And how -- what was the time period between
3 when he was first appointed and when you actually proceeded
4 to -- to trial and then ultimately pled guilty?

5 A It was like maybe -- can you repeat that question
6 again?

7 Q How long did Mr. Sutherland actually represent you?

8 A Oh, it was probably about -- oh, about two months.

9 Q Okay. And when ---

10 A Two to ---

11 Q --- y'all met ---

12 A --- three months.

13 Q --- did y'all discuss the charge against you?

14 A Yes.

15 Q Okay. Did y'all discuss the elements of that charge?

16 A Yes.

17 Q Did y'all discuss what evidence the state would have
18 to show in order to prove you guilty?

19 A Yes, he did.

20 Q Okay. Did y'all discuss the potential penalties of
21 that charge?

22 A Yes.

23 Q Did you understand all your discussions with him?

24 A Yes, I did.

25 Q Can you speak up just ---

1 A Yes.

2 Q --- a little?

3 A Yes ---

4 Q Thank you.

5 A --- I did.

6 Q Now, back to the evidence, what did -- did you and Mr.
7 Sutherland discuss the evidence the state actually had for
8 each element?

9 A Yes, he did.

10 Q Okay. Did you understand those conversations?

11 A Yes.

12 Q Okay. Now, you were originally charged with murder;
13 is that correct?

14 A Yes, sir.

15 Q Okay. When you and Mr. Sutherland met, did y'all talk
16 about any defenses that you might have?

17 A No.

18 Q Okay. Did you think you had a valid defense?

19 A Yes.

20 Q Okay. Did you -- what -- what did you think that your
21 -- your defense was?

22 A Well, I wanted to -- I had a -- it was -- I told him
23 that I wanted to -- a self -- my case was, like, self-
24 defense.

25 Q Okay. Did you give him some information based on

1 that?

2 A Yes, I did.

3 Q Okay. What did you tell him?

4 A Well, actually, when I spoke to him and told him,
5 well, it was a -- with a guy -- I had a altercation with
6 the guy. He kept coming around and, you know, where I was
7 hanging at my friend's house. And, you know, I had a
8 majority -- I had a good time where I can spend majority
9 time there, and the guy kept coming around and told him
10 that I wanted to argue that for self-defense.

11 Q Okay. Did you give him the names of some of people
12 that you wanted to talk to?

13 A Yes, I did.

14 Q Okay. Do you know if Mr. Sutherland hired an
15 investigator?

16 A Yes, he did.

17 Q Okay. Did -- to your knowledge, did that investigator
18 talk to those people whose names you provided?

19 A Yes, he did.

20 Q Do you know if he talked to all of them?

21 A Not all of them, I don't think.

22 Q Okay. Did you and Mr. Sutherland talk about what the
23 investigator found out through his investigation?

24 A Yes.

25 Q Okay. When the day came for your trial, to the best

1 of your knowledge, did the investigator have everything he
2 was looking for?

3 A I believe -- I believe so.

4 Q Okay. So -- so as far as you know, he had concluded
5 his investigation?

6 A I believe -- yes, sir.

7 Q Okay. What did you and Mr. Sutherland discuss when
8 you actually shifted into preparing for your actual trial?

9 A Well, I actually told him I wanted to -- I wanted --
10 the Day 1, we was going to trial, but I wanted to go to
11 trial. But I didn't think he was prepared to go on with
12 Day 1 of the trial. And I wanted to go forth and try to
13 beat this case, but I don't think he was prepared for it.

14 Q Okay. So you don't feel that y'all were ready?

15 A No, sir.

16 Q Okay. Why don't you think that y'all were ready?

17 A Because I had asked him to -- to call my witness on my
18 behalf, which they was present in the courtroom for the day
19 of my sentence. But they never approached the -- the -- I
20 mean, approached the table to speak on my behalf.

21 Q Okay. I -- I'm -- I want to shift back to -- to -- to
22 getting ready for the trial, on the actual morning of the
23 trial.

24 A Uh-huh.

25 Q Why -- why don't you think that y'all were ready for

DIRECT EXAMINATION BY MR. WALLER - MAURICE KINARD

11

1 the -- to start a trial?

2 A Because I don't think that he had everything down pat,
3 like I wanted it to be.

4 Q Okay. Did you think y'all needed some more time?

5 A Yes.

6 Q Okay. Did y'all discuss asking for a continuance to
7 have more time to get ready?

8 A No, we didn't.

9 Q Okay. You just testified that you didn't feel that
10 y'all were prepared to go to trial the morning of the
11 actual trial; is that right?

12 A Yes.

13 Q Okay. Based on that, what did you decide to do?

14 A Well, I told Mr. Sutherland to talk to solicitor
15 office and go at them with a legit number, which he did,
16 and the solicitor turned it down. And I asked for another
17 number; she turned it down. So I told him, let's go ahead
18 and see what we can do, what the outcome would have been.

19 Q Okay. But ultimately, you ended up deciding to plead
20 guilty; is that right?

21 A Yes, sir.

22 Q Okay. Was that in exchange for some -- some type of
23 plea deal?

24 A No, it wasn't.

25 Q It -- it wasn't in exchange for some type of plea

1 deal?

2 A No.

3 Q Okay. And did you plead guilty to voluntary
4 manslaughter?

5 A Yeah.

6 Q Okay. But you were originally charged with murder?

7 A Yes, sir.

8 Q Okay. You pled -- in you and Mr. Sutherland's
9 discussions, were you aware that the minimum for murder was
10 30 years?

11 A Yes. Day-for-day.

12 Q Okay. And that's not what you received?

13 A No. Not no 30 ---

14 Q Okay.

15 A --- day-for-day.

16 Q Are you sure you didn't plead guilty to voluntary
17 manslaughter?

18 A Oh, yes. Yeah.

19 Q Okay.

20 A I'm sorry. Yes, I did.

21 Q After you made a decision to plead guilty, what did
22 you and Mr. Sutherland talk about?

23 A I wanted him to file a -- a direct appeal.

24 Q Well, let me back you up. I -- I'm talking before you
25 actually pled guilty. After you decided to, what did y'all

DIRECT EXAMINATION BY MR. WALLER - MAURICE KINARD 13

1 talk about?

2 A Oh, we talked about the -- the circumstances of the --
3 the outcome of -- of the -- of the sentencing and
4 everything.

5 Q Okay. Did Mr. -- Mr. Sutherland -- excuse me -- give
6 you any indication of what amount of time he thought you
7 would get?

8 A No.

9 Q Okay. Did y'all talk about what the judge would take
10 into account during the sentencing portion?

11 A I can't remember.

12 Q Okay. Did you understand that the judge would hear
13 from -- from you in -- in determining their sentence?

14 A Yes.

15 Q Okay. Did you understand the judge would hear from
16 the state in determining the sentence?

17 A Yes.

18 Q Okay. Had you, prior to that, given him some -- some
19 information on your background or anything that could help
20 him with sentencing?

21 A Well, yeah -- not really.

22 Q Okay. Were some of your family members there to speak
23 on your behalf?

24 A Yes.

25 Q Okay. Did they do so?

1 A Yes. My father and auntie.

2 Q Okay. Was anyone else there to speak on your behalf?

3 A Well, my -- my family was. And I had some witness
4 that was out there at the time, but ---

5 Q Okay.

6 A --- they didn't speak.

7 Q Okay. So the other people did not speak on your
8 behalf?

9 A They didn't speak, but they were present.

10 Q Okay. Do you know why they didn't speak?

11 A No.

12 Q Okay. After you were sentenced, did you talk to Mr.
13 Sutherland again?

14 A I mean, we talked about -- yes. Yeah.

15 Q Okay. Did you ask him to file anything on your
16 behalf?

17 A Yes.

18 Q Okay. What -- what did you ask him to file?

19 A The appeal.

20 Q Okay. When did you ask him to do that?

21 A After I received my time.

22 Q Okay. How -- how long after?

23 A Soon as I got sentenced.

24 Q Okay.

25 A Soon ---

DIRECT EXAMINATION BY MR. WALLER - MAURICE KINARD 15

1 Q Are you -- do you know if he did that?

2 A I don't -- no, he didn't do it.

3 Q Okay. Let me ask you this, Mr. Kinard: Had you have
4 felt like y'all were prepared that morning the trial
5 started, would you have pled guilty?

6 A No, I wouldn't.

7 Q Okay. What would you have done?

8 A I would've went to trial.

9 Q Okay. What more do you think Mr. Sutherland could've
10 done to get ready?

11 A Well, he could -- he could --he could've called some
12 more witness on my behalf and investigate my case a little
13 thoroughly.

14 Q Okay. What are you asking the Court to do here today?

15 A Well, I'm asking if -- if I can get a -- my case
16 overturned or get a time cut.

17 Q Okay. Why do you -- why do you want that? What are
18 you trying to go back and do?

19 A I'm trying to go back and -- trying to go back on --
20 on effective assist counsel, because I feel that he didn't
21 do what I asked him to do.

22 Q Okay. I've asked you all the questions that I have.
23 If I -- if you think I've forgotten anything or if there's
24 anything else that you think the Court needs to be aware
25 of, is there anything you can think of?

1 A No, sir.

2 Q Okay. Please answer any questions that Mr. Mitchell
3 has.

4 THE COURT: Mr. Mitchell, cross-examination.

5 CROSS-EXAMINATION

6 BY MR. MITCHELL:

7 Q Hi, Mr. Kinard.

8 A How you doing?

9 Q All right. All right. Let's see. So you were
10 originally charged with murder; is that correct?

11 A That's correct.

12 Q So the -- the facts leading up to that, you had some
13 prior altercations with a guy; is that right?

14 A That's correct.

15 Q So you had some stuff leading up to this, and this guy
16 was, in your opinion, not a good guy; is that right?

17 A That's correct.

18 Q And then the situation kind of escalated, and you
19 ended up shooting him; is that right?

20 A That's correct.

21 Q And you shot him multiple times?

22 A That's correct.

23 Q Okay. And there were -- the state said they were
24 ready to present about a dozen witnesses that saw the
25 shooting; is that correct?

CROSS-EXAMINATION BY MR. MITCHELL - MAURICE KINARD 17

1 A Yes, it is.

2 Q Okay. Yeah. The state actually considered this at,
3 like, an execution type. Isn't that how they kind of
4 worded it a little bit?

5 A Well, I don't consider it -- it would've been
6 execution.

7 Q Okay. The state said that, though, when they -- the
8 prosecutor said that. Did they?

9 A Yes.

10 Q Okay. To -- to the plea judge, right?

11 A Yes, they did.

12 Q Okay. Now, you said Mr. Sutherland -- Mr. Sutherland
13 represented you from about April up until the plea -- April
14 of that year and then you pled in December; is that ---

15 A Yeah.

16 Q --- that's correct?

17 Okay. So it would've been that whole time, from April
18 to December ---

19 A Yeah ---

20 Q --- when he ---

21 A --- because that ---

22 Q --- represented you?

23 A --- because he was my last appointed attorney on this
24 case.

25 Q Right. Okay.

1 A Yeah.

2 Q You -- you mentioned you had ---

3 A Several ---

4 Q --- numerous other ---

5 A --- attorneys.

6 Q --- attorneys. And that wasn't any fault of yours,
7 though, was it?

8 A No.

9 Q I mean, you didn't have problems with them; they just
10 kind of moved on or took ---

11 A Yeah. I mean ---

12 Q --- jobs?

13 A --- you know, I had problems with a few -- I fired a
14 few of them because I went up for a bond a few times and
15 never got my bond. And some other things was -- some other
16 stuff that was involved.

17 Q Okay. Going to the plea deal, so you were prepared to
18 go to trial that day, right?

19 A Yes, I was.

20 Q And then you worked out a plea deal with the
21 solicitor; is that correct?

22 A Yes.

23 Q And the -- the negotiated -- it was a negotiated plea,
24 right?

25 A Negotiated.

CROSS-EXAMINATION BY MR. MITCHELL - MAURICE KINARD 19

1 Q So the judge had to sentence you within the range,
2 correct?

3 A Fifteen to 25. Yes.

4 Q Fifteen to ---

5 A Correct.

6 Q --- to 25?

7 So she could've gone anywhere before that -- anywhere
8 between 15 and 25, right?

9 A That's correct.

10 Q And you understood that when you pled?

11 A Yes, I did.

12 Q Okay. And you ended up getting 25; is that correct?

13 A Yeah, the whole ---

14 Q Okay.

15 A --- time.

16 Q And the state argued for the upper range ---

17 A Yes.

18 Q --- and Mr. Sutherland argued for the lower range,
19 right?

20 A Yes.

21 Q Okay. You know, Judge Goodstein asked you a good
22 number of questions, but she really focused on whether you
23 thought this was a voluntary plea. So you -- you knew what
24 you were doing that day, didn't you?

25 A That's correct.

1 Q I mean, you -- you understood that you were pleading
2 guilty and that you could've been sentenced between that
3 range, and that's what you were working with, right?

4 A That's correct.

5 Q And you agreed to that deal, and the state agreed to
6 drop you from murder to voluntary, correct?

7 A Part of the deal.

8 Q Okay.

9 A That's correct.

10 Q Judge Goodstein also asked you whether you've talked
11 with Mr. Sutherland enough. Do you remember that?

12 A Yes.

13 Q And you answered in the affirmative, that you had had
14 enough time to talk to him?

15 A Yes.

16 Q Okay. So you're telling the Court today that you did
17 not have enough time, but you told Judge Goodstein that you
18 did have enough time to talk to him?

19 A Yes.

20 Q Okay. On to the appeal issue, Judge Goodstein also
21 thoroughly went over your rights to appeal. Do you -- is
22 that correct?

23 A That's correct.

24 Q So she advised you, you have 10 days from the date of
25 that plea to appeal; is that right?

REDIRECT EXAMINATION BY MR. WALLER - MAURICE KINARD 21

1 A That's correct.

2 Q Okay. And you remember that and you remember the 10-
3 day ---

4 A That's ---

5 Q --- time limitation?

6 A That's correct.

7 Q Okay. Yeah. She even mentioned that you must do it
8 quickly if you want to appeal; is that right?

9 A Correct.

10 Q Okay.

11 MR. MITCHELL: No further question -- no further
12 questions for this witness. Thank you.

13 THE COURT: Anything else?

14 MR. WALLER: Just one, Your Honor.

15 THE COURT: Yes, sir.

16 REDIRECT EXAMINATION

17 BY MR. WALLER:

18 Q How long after the judge issued her sentence did you
19 ask Mr. Sutherland to file an appeal on your behalf?

20 A Right after -- right after court was over with.

21 MR. WALLER: No further questions.

22 THE COURT: All right. All right. Thank you, sir.
23 You may step down.

24 (Whereupon, the witness exited the witness stand.)

25 THE COURT: You may call your next witness.

DIRECT EXAMINATION BY MR. MITCHELL - TIVIS SUTHERLAND 22

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

2 THE COURT: Applicant rests.

3 MR. MITCHELL: The state would call Mr. Tivis
4 Sutherland.

5 (Whereupon, the witness came forward.)

6 TIVIS SUTHERLAND, having been first duly sworn,
7 testified as follows:

8 (Whereupon, the witness entered the witness stand.)

9 DIRECT EXAMINATION

10 BY MR. MITCHELL:

11 Q All right, Mr Sutherland.

12 A Good afternoon.

13 Q How long have you been practicing law?

14 A Eleven years -- twelve -- eleven or twelve years.

15 Q Okay. Has it been mostly criminal defense or ---

16 A It has been 99 percent. And the only time that I get
17 involved in civil cases is if, you know -- I had one client
18 where a C.O. beat her up at the jail on video, things like
19 that. If I have a client who will have a car wreck, I got
20 buddies that I work with and I'll refer that over to them.
21 But it's -- it's just criminal defense, pretty much.

22 Q Can you give us a little bit of information about your
23 background? What -- where did you start -- where did you
24 work out of law school?

25 A I was at the Richland County Public Defender's Office.

DIRECT EXAMINATION BY MR. MITCHELL - TIVIS SUTHERLAND 23

1 I was there for a little over two years -- around two
2 years. I had made a two-year commitment to them. Then I
3 went into a private practice. And I just got the gray hair
4 because I started older; you know, was in the Army before
5 and a couple of other things so . . .

6 Q Okay. How did you become involved in Mr. Kinard's
7 case here?

8 A I'd gotten something from the clerk of court. You
9 know, and Mr. Kinard had mentioned that he had fired, you
10 know, a few lawyers. And it tends to be the case at times
11 where, if somebody's firing a bunch of people, I'll -- I'll
12 get the case from the clerk of court. Because I just -- I
13 get along with people pretty much and -- and don't have too
14 many issues with them.

15 Q So you met with Mr. Kinard while he was incarcerated?

16 A I did. He and I -- when I first got it, he had been
17 sitting down there for a while and didn't seem like there
18 was any movement on it. And I went ahead and, you know,
19 got an investigator on the case; talked to him a little
20 bit; met him intermittently.

21 Once it started coming up to where, you know, we had a
22 couple months, I think, notice of the December trial and --
23 I'd say the week before, we met probably every other day to
24 prepare him -- his testimony.

25 Q Okay. So this case was -- you thought it was going to

1 trial at that point? You were fully ---

2 A Oh, it ---

3 Q --- prepared ---

4 A --- it ---

5 Q --- to go?

6 A --- was. It -- it was in my -- I -- I had sit down
7 with Ms. Campbell, who was prosecuting the case, and Joanna
8 McDuffie, who was prosecuting, maybe the week before for
9 about hour. And I explained to them why, in my view, this
10 was voluntary manslaughter, despite the -- we had a couple
11 of bad facts -- despite those bad facts, which, you know,
12 they were talking about an execution thing.

13 The deceased, Desmond Lewis -- we had subpoenaed
14 witnesses who were going to testify at trial that he was a
15 neighborhood bully; that he went around and threatened
16 people if they were going to be in the street after 6 p.m.
17 -- "If I see you in the street after 6 p.m., I'm going to
18 kill you." -- shooting up people's houses, all that sort of
19 thing. And he had had difficulties with Maurice
20 previously.

21 I was -- I did intend to argue self-defense,
22 naturally, but it was my view that voluntary manslaughter
23 was something that was obtainable. The only reason the
24 self-defense -- again, going to argue it as best I could --
25 was a problem, just because of the nature of the facts. I

DIRECT EXAMINATION BY MR. MITCHELL - TIVIS SUTHERLAND 25

1 mean, my guy just runs up behind somebody; empties a pistol
2 in their back in front of like ten people or something.

3 The -- the guy who got shot falls over. And my guy
4 says to him, "You ain't dead yet, motherfucker? Somebody
5 give me another gun." That's in front of like a dozen
6 witnesses.

7 Now, that said, that sounds bad and they were all
8 hyped up about that. But the lead-up in investigating that
9 the guy was terrorizing this neighborhood, that was
10 significant and that was important to me. And I felt like
11 I could get voluntary. I mean, it's a big risk under those
12 circumstances, but I felt like it was a possibility.

13 And I sat down with Ms. Campbell and Joanna, and they
14 were, like, "Nope. Nope. Not going to happen. Not going
15 to happen."

16 And then, after jury qual, I was carrying my guy's
17 suit down to him. And typically, when Ms. Campbell is
18 going to come away on something, it's after jury qual.
19 And I'm waiting, and my phone rings. And it's Joanna. And
20 she had said they wanted him to plead to 30 or something --
21 30 years on voluntary.

22 And I think I might have -- it's a little bit fuzzy --
23 I might have talked to Maurice first, or I might've tried
24 to talk them down a little bit before I went in there.
25 Where we ended up, he was wanting to get 15. They came

DIRECT EXAMINATION BY MR. MITCHELL - TIVIS SUTHERLAND 26

1 with a range of 15 to 25, and they negotiated it so he --
2 just so the judge couldn't give him 30 under the
3 circumstances. But we basically got a negotiated sentence,
4 a contract between the defense and the state, for this
5 sentence or nothing at all.

6 Q Did you fully advise Mr. Kinard of what -- of the
7 negotiations that had gone on?

8 A We did -- we did talk about it. And I think he may
9 have been surprised that they had come with the -- or maybe
10 not. I might've even told him, "Well, it's Ms. Campbell.
11 She might make an offer after jury qualis."

12 But I can't remember what his reaction was. But he --
13 you know, he -- he and I talked about it. And naturally,
14 he was wanting to do the best for himself that he could.
15 And they were wanting to do the worst to him that they
16 could. And, you know, the 15 to 25, I mean, you know,
17 murder's just 30 to life, day-for-day.

18 And under those circumstances, you get convicted of
19 murder, you're probably going to get the whole boat, in --
20 in my view. So I thought -- I thought the offer was fair.
21 And I thought -- frankly, I thought we would be fortunate
22 -- and I had my blinders on that we were going to get it if
23 we tried the case. But we would've been fortunate to get a
24 verdict of voluntary manslaughter, in my view, simply
25 because of the couple of bad facts we were dealing with

DIRECT EXAMINATION BY MR. MITCHELL - TIVIS SUTHERLAND 27

1 there.

2 Q You mentioned your investigator. Mr. Kinard also
3 mentioned, I think, a few witnesses that he thought you
4 should contact. What was the investigator's conclusions
5 after he spoke with those witnesses?

6 A The investigator -- their originally -- previous
7 attorney had had Bobby Watkins working on Maurice's case.
8 And Bobby Watkins passed away. And I'm -- I'm real close
9 to Jay Phillips anyway. So Jay was the one that worked on
10 the case.

11 And he went around -- basically, he and a couple
12 fellas -- Chris Lorick, I think, was working with him --
13 that -- that he was working with -- and talked to
14 everybody. And we had six people from the neighborhood
15 present under subpoena that day. And I -- I -- I mean, I
16 got it in my pocket. But there were six people, basically,
17 that were going to be there.

18 And actually, we had one witness who was going to
19 testify that somebody took the gun off the dead guy, which
20 would've been important with what we were trying to
21 accomplish there: that he had dope and he had a firearm on
22 him at the time that he was shot. Now, as far as forensics
23 goes and them coming in from the backside and all that,
24 that's just something to hash out and to argue so . . .

25 Q And moving on to the appeal issue, did Mr. Kinard ask

1 you to file an appeal?

2 A I do not remember. I listened to his testimony; I
3 don't remember that. I remember a little while later
4 getting a letter from him and him talking about an appeal.

5 And I'm pretty sure I wrote him back and said:
6 Listen, you know, it's -- either it's too late for that or
7 -- or something to that effect; you need to file a PCR. I
8 don't remember at the time, particularly, only because it
9 was a negotiated sentence. I mean, we made a contract with
10 the state, and we ended up what we contracted for.

11 Typically, other than, you know, the advisement of the
12 judge or something like that, in the -- in the context of
13 the negotiated sentence, we did this. We bargained for
14 this. We worked for this. And we achieved this. And this
15 is ours.

16 So I don't remember talking to him. I remember
17 getting a letter from him awhile later asking about it, and
18 I just wrote him back and told him to file PCR, I'm pretty
19 sure.

20 Q Okay.

21 A So

22 Q And did you see a reason to file an appeal at that
23 point?

24 A I did not. It -- again, it was a negotiated sentence,
25 and we got what we bargained for. It did not occur to me

CROSS-EXAMINATION BY MR. WALLER - TIVIS SUTHERLAND 29

1 to appeal under those circumstances. And I remember --
2 it's -- I don't know how long ago it was -- but somebody at
3 the Court of Appeals or something was getting tired of
4 people appealing pleas. I remember a couple of opinions or
5 -- or something to that effect. And it -- I think it is
6 possible to be frivolous under certain circumstances.

7 Q Thank you. I have no further questions. Please answer
8 anything Mr. Waller has.

9 A All right. You're welcome.

10 THE COURT: Cross-examination.

11 MR. WALLER: Thank you, Your Honor. Just briefly.

12 CROSS-EXAMINATION

13 BY MR. WALLER:

14 Q Mr. Sutherland, how long before the trial date were
15 you appointed?

16 A It was as Maurice testified; it was in April. And so
17 that's eight months and maybe -- might've been early April.
18 And we just -- just right before Christmas we were supposed
19 to do it, which around here is December 10th/12th. Every
20 year it's the second week of December. So I'd say eight
21 months.

22 Q Okay. And when -- when did you hire the investigator?

23 A Jay -- I can pull that up. Sorry. My file is on my
24 phone these days. Okay. Ex parte investigator -- because
25 we've got to go through the Court with the appointed cases

1 to get funding for it. June 26th.

2 And it would -- this was just the -- the order thing
3 -- or the -- the paperwork to get it done. So I would say
4 he probably wouldn't have met Maurice for a week or so
5 after that, maybe. I mean, I just -- and probably, I just
6 talked to Maurice -- and -- I might've actually -- Jay and
7 I might've gone to see him. I'm not too sure.

8 Q Okay.

9 A But it was ---

10 Q But ---

11 A --- like June -- it was couple of months or so down
12 the road. And I knew that we had the Bobby Watkins stuff,
13 because he had given it to me. The P.D.s didn't have it in
14 the file that they gave me from representing him. So we
15 needed to talk to these people and start establishing --
16 it's, like -- I call the guy a shark, patrolling the
17 neighborhood like a shark, if that -- if -- that -- that's
18 what he was, just swimming around out there, looking to
19 bite somebody.

20 Q Okay.

21 A Yeah.

22 Q Could've been about July, though, before he ---

23 A I mean, yeah. It ---

24 Q --- officially ---

25 A Yeah. Yeah. Because the end of June, you get ---

1 Q Okay.

2 A --- the paperwork. It's probably not -- it'd be a
3 week or so before anybody does anything on it.

4 Q And in -- in the original discovery, is it safe to say
5 the people in that neighborhood were reluctant to talk to
6 law enforcement at the beginning?

7 A Oh, sure. I mean, it -- you know, it's right down on
8 -- on Bluff Road. And there's just a lot of stuff going
9 on, and there's a lot of tension between the residents and
10 law enforcement. And, you know, you can do the chicken-
11 and-the-egg argument about it. But, I mean, a lot of
12 people get hassled down there who aren't doing nothing, and
13 a lot of people get arrested who are doing something.

14 So it's not surprising that people don't want to talk
15 to the cops in -- in certain places.

16 Q Did your investigator have any -- any issues with
17 that, people don't want to talk to him?

18 A Oh, no. I mean, you just have to meet Jay. Jay's a
19 30-years-retired Lexington -- he was Donnie Myers' right-
20 hand man on these death penalty cases, and people just have
21 to talk. I -- I don't how to say -- he gets everybody to
22 talk to him.

23 Q Okay.

24 A So ---

25 Q So he -- in your opinion, he'd completed his

1 investigation?

2 A Oh, sure. And he -- he got the people there too. Him
3 and Chris had to give a couple of people rides or
4 something. But there -- everybody was there, because I had
5 just went out there and I said, "All right. Everybody stay
6 here. It's going to be a couple of days probably before
7 y'all get to testify. Once we're done with X, Y and Z, you
8 know, we'll sit down; I'll sort of walk you through the
9 process."

10 They were just all there.

11 Q Okay.

12 A And -- sitting out there -- and I also told them I was
13 probably going to cut them loose for a little bit.
14 Because, you know, it was a murder; might get to be
15 three/four/five days down the road. So ---

16 Q Okay. So it's your testimony that you were fully
17 prepared to -- to start trial that morning?

18 A Oh, sure. And, it -- I mean, it just is. And he and
19 I had worked and worked on his testimony in the run-up to
20 it and not, like, messing around with it or anything. But,
21 you know, I tell all my people.

22 I'm, like, "Listen, Ms. Campbell is going to try to
23 destroy you, okay? You need to get your facts together.
24 You need short sentences. All right? And you need to know
25 it."

CROSS-EXAMINATION BY MR. WALLER - TIVIS SUTHERLAND 33

1 And I'd always say, "Just tell it like it is, and
2 nobody can make you tell it like it ain't." But I told
3 him, like, she's going to be coming after him. We -- we
4 just have to be ready for it.

5 Q Okay.

6 A So

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

8 MR. MITCHELL: Nothing further from the state.

9 THE COURT: Thank you, sir. You may step down.

10 THE WITNESS: Yes, sir. Thank you.

11 (Whereupon, the witness exited the witness stand.)

12 MR. MITCHELL: The state rests, Your Honor.

13 THE COURT: The state rests. Anything in reply?

14 MR. WALLER: Nothing, Your Honor.

15 THE COURT: All right. I'll be glad to hear argument.

16 MR. WALLER: Your Honor, Mr. Kinard testified that he
17 clearly believed that Mr. Sutherland wasn't ready, due to
18 the relatively short period of time that he had been
19 representing Mr. Kinard. This are very serious
20 allegations. Obviously, a murder is the most serious
21 offense that exists in our criminal justice system.

22 And it was less than six months that the investigator
23 was able to -- to work on the case. They'd -- Mr. Kinard
24 testified there was -- they had never discussed moving for
25 a continuance. Your Honor, because of this, he was in --

1 he was in a position to have to take the lesser of two
2 evils: proceed to trial with an attorney he felt was --
3 was not ready and had not prepared his case properly, or
4 take a -- a guilty-plea offer that was something that he
5 did not want to do but felt that he would end up with a
6 much stiffer penalty had he proceeded to trial.

7 Your Honor, I believe the testimony was that if Mr.
8 Sutherland had been prepared and if Mr. Kinard had felt he
9 would -- he would have been prepared, he would not have
10 pled guilty but would have proceeded to trial. We would
11 ask that you grant Mr. Kinard's application for
12 postconviction relief and remand to the general-sessions
13 court for a new trial.

14 THE COURT: All right. Thank you, sir.

15 MR. WALLER: Thank you, Your Honor.

16 MR. MITCHELL: Your Honor, briefly, I think, you know,
17 this allegation really falls under involuntary guilty plea.
18 And I think applicant testified that he did plead guilty
19 voluntarily. He understood all the consequences of what
20 went wrong with his plea. He understood the range; he
21 understood what he was doing. I think that's very clear
22 from his testimony today and from the guilty plea
23 transcript as well.

24 I think -- going to the failure to investigate, I
25 think Mr. Sutherland's testimony is very persuasive on

1 that, in that he hired an investigator who went out and
2 actually found these people and had them ready, prepared to
3 testify at trial. I think there was -- he -- the testimony
4 was there was about six witnesses that were there. They
5 were all subpoenaed. The investigator were -- had fully
6 gone through and investigated the case and had them ready
7 to testify and, really, to portray the victim in a bad
8 light, which is what the strategy would've been to
9 hopefully get a voluntary conviction at trial.

10 And that seems like, you know, if not a full
11 acquittal, then voluntary would be the next-best -- next-
12 best thing. I think the -- Mr. Kinard got, you know, the
13 benefit of the bargain here. It was a negotiated range;
14 knew exactly what he was doing.

15 And I think the -- no. Excuse me. I think, you know,
16 it's just -- his testimony today and the testimony at the
17 guilty-plea hearing show that he absolutely pled
18 voluntarily. It's the state's position that he has failed
19 to failed to meet his burden here, and we ask you to deny
20 the application.

21 THE COURT: All right. Anything in reply?

22 MR. MITCHELL: Thank you.

23 MR. WALLER: Nothing further, Your Honor.

24 THE COURT: Mr. Waller, I agree with the argument of
25 the state in this case. And I'm going to ask Mr. Mitchell

1 if he will prepare an order consistent with his arguments
2 to the Court today.. Thank you.

3 MR. MITCHELL: Thank you, Your Honor.

4 MR. WALLER: Thank you, Your Honor.

5 (Whereupon, the proceeding was concluded at 12:30 p.m.)

6 --- END OF TRANSCRIPT OF RECORD ---
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CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 1ST
DAY OF APRIL, 2015.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

AUGUST 15, 2015

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Maurice Kinard, #271081

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2014-CP-40-02212

ORDER OF DISMISSAL

2015 MAY 22 PM 12:19
FILED
RICHLAND COUNTY
JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed April 7, 2014. Respondent made its Return on June 13, 2014, requesting an evidentiary hearing be convened. Jonathan D. Waller, Esquire was appointed by the Richland County Clerk of Court. An evidentiary hearing was held on April 1, 2015, at the Richland County Courthouse. Applicant was present and represented by Counsel Waller. 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, Tivis C. Sutherland, 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 (2011-GS-40-1134). Applicant was represented by Tivis C. Sutherland, IV, Esquire. On December 9, 2013, Applicant appeared before the Honorable Diane S. Goodstein, where he pleaded guilty to voluntary

manslaughter. Pursuant to the negotiated sentencing range of fifteen (15) to twenty-five (25) years', Judge Goodstein sentenced Applicant to twenty-five (25) years' imprisonment. Applicant did not appeal his guilty plea or sentence.

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

1. Ineffective assistance of counsel in failing to prepare, in failing to file a notice of appeal, and in failing to properly advise on self-defense.

II. SUMMARY AND EVIDENCE PRESENTED AT THE PCR HEARING

Applicant's Testimony

Applicant testified Counsel was appointed to represent him on the charges at issue in April 2013. He was his sixth attorney. Applicant testified Counsel met with him between five to six times while he was incarcerated. Applicant acknowledged Counsel reviewed the charges, potential penalties, discovery, and all evidence the State was prepared to introduce in their case.

Applicant believed he acted in self-defense when he killed the victim. Applicant acknowledged that dozens of eyewitnesses saw him unload a clip into the victim. The State categorized the killing as an execution. Applicant explained that he and the victim had prior altercations and that he kept coming around the neighborhood. Applicant claimed Counsel was not prepared to take the case to trial. Applicant testified he gave Counsel names of people who would corroborate his version of events. Applicant testified Counsel hired an investigator who spoke to some, but not all of these witnesses. Applicant did not believe the witnesses were subpoenaed and ready to testify in his defense.

Applicant testified that he ultimately chose to plead guilty to the lesser included offense of voluntary manslaughter. Applicant noted that if he was convicted or pled to murder he would

have to serve that sentence day for day which was not the case with a plea to voluntary manslaughter.

Applicant claimed he requested Counsel to file an appeal after the plea hearing concluded. Applicant recalled that the plea judge advised him that he would have ten (10) days to file a notice of appeal. Applicant acknowledged his testimony at the plea hearing contradicted much of what he swore to the plea judge.

Counsel Tivis C. Sutherland's Testimony

Counsel testified he represented Applicant on the charges currently before the Court for about eight (8) months. Counsel testified he was appointed to represent Applicant. Counsel testified he was previously employed by the Fifth Circuit Public Defenders' Office. He testified he often gets appointed on difficult cases where the public defenders' office may have a conflict. Counsel testified Applicant had been in jail for a while and had several attorneys appointed to represent him.

Counsel testified he was fully prepared to try Applicant's case. Counsel noted that he and Applicant "worked and worked" on his testimony and attempted to prepare Applicant for an aggressive cross-examination. Counsel testified he hired an investigator to interview various witnesses. Counsel explained that many witnesses were reluctant to speak to investigators and were especially skeptical of law enforcement. Counsel testified he had witnesses subpoenaed who were likely to testify that the victim was a bully, had done drive by shootings and shot into homes, and had issued threats to Applicant after previous altercations between the two. Those witnesses were at the courthouse and were ready to testify the day Applicant pled. Counsel believed the witnesses would show the victim terrorized the neighborhood. Counsel testified he considered putting up a self-defense case at trial, but believed that a voluntary manslaughter

conviction would be a best case scenario. Counsel testified the facts in the case were bad. Applicant emptied a pistol into the victim then was reported as saying, "You ain't dead yet, m***** f*****," and then asking for another gun to continue shooting.

Counsel emphasized that he met with the prosecuting solicitors for nearly an hour after a jury had been qualified in an attempt to convince them the case warranted a voluntary manslaughter charge and not a murder charge. The State agreed to a negotiated deal with a sentencing range of fifteen (15) to twenty-five (25) years' imprisonment. Counsel testified he advised Applicant of the offer and that he accepted. Counsel explained the difference in time that Applicant would be required to serve if convicted of murder or manslaughter. Counsel believed this was a favorable plea deal and that he would be fortunate to get this result at trial.

Counsel testified he did not recall whether Applicant asked for a notice of appeal to be filed. He testified he received a letter from Applicant after the time to file had passed that mentioned an appeal. Counsel testified that this was a negotiated plea deal, a contract, and that they worked hard to get it. He also testified he believed any appeal would be frivolous.

III. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the 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, 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, 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 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.

Ineffective Assistance of Counsel

In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). 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).

Counsel's Preparation

This Court finds Applicant failed to meet his burden to prove that counsel's performance was either deficient or ineffective for failing to sufficiently prepare for trial. To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). This Court finds trial counsel's testimony more credible than Applicant's testimony. This Court finds Counsel was thoroughly



prepared to take Applicant's case to trial as a jury was qualified just before Applicant pled guilty. Applicant testified he believed he had witnesses who could testify to his version of events and believed they have been at the courthouse ready to do so. This Court finds Counsel had them at the courthouse ready testify the day Applicant pled guilty. Furthermore, Applicant failed to produce any evidence at the PCR hearing to show what Counsel should have but did not investigate at the PCR hearing, and therefore cannot prove any resulting prejudice. See Frasier v. State, 306 S.C. 158, 160-61, 410 S.E.2d 572, 573 (1991). This allegation is denied and dismissed.

Notice of Appeal

This Court finds Applicant has failed to carry his burden to prove Counsel was ineffective in failing to file a notice of appeal. "[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036, 145 L. Ed. 2d 985 (2000). Here, Counsel believed an appeal would be frivolous. He credibly emphasized that the two worked hard for the plea deal and received what Counsel testified as a near best case scenario in being able to plead to voluntary manslaughter. This Court finds Applicant was advised by the plea court that if he wished to appeal, he would have ten (10) days to do so. This Court also finds Applicant failed to present any evidence showing how he may be prejudiced by this alleged deficiency. See Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). This Court finds there were no objections made at the guilty plea hearing, and Counsel had not reason to file a notice of appeal.



Advice on Self Defense

To the extent Applicant raises an allegation that Counsel failed to advise him on self-defense, this Court finds Applicant failed to meet his burden. Counsel's credible testimony is persuasive on the issue. There was no issue as to whether Applicant killed the victim. There were numerous witnesses to the incident all of which stated Applicant acted unprovoked. Counsel did not believe the facts supported a strong self-defense claim and thought a voluntary manslaughter conviction, rather than a murder conviction, would be beneficial to Applicant. This Court agrees. This Court further finds Applicant was advised of the risks of going to trial and facing a possible murder conviction. He was also advised of the likelihood of success of presenting a self-defense claim. Furthermore, Applicant failed to present any evidence that he would have proceeded to trial but for the alleged deficiency.

It is of significant note that Applicant pleaded guilty and, thus, waived all nonjurisdictional defenses and challenges. "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). This Court finds Applicant failed to meet his burden with regards to the allegations addressed above.

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.

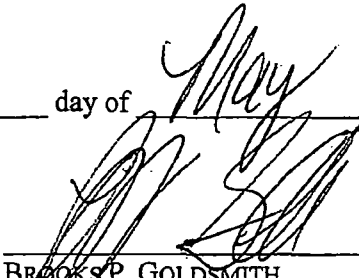
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a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

SCANNED

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 13 day of May, 2015.


BROOKS P. GOLDSMITH
Presiding Judge

 , South Carolina



ALAN WILSON
ATTORNEY GENERAL

May 19, 2015

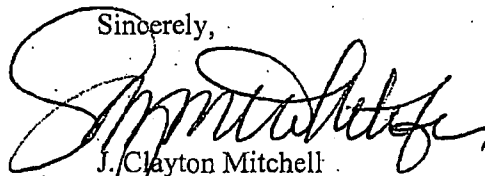
The Honorable Jeanette W. McBride
Clerk of Court, Richland
1701 Main Street
Post Office Box 2766
Columbia, SC 29202

Re: Maurice Kinard, #271081, v. State of South Carolina
2014-CP-40-02212

Dear Ms. McBride:

Enclosed please find the original **Order of Dismissal** signed by the Honorable Brooks P. Goldsmith, in the above-captioned case, for filing in your office. Please forward a **time stamped copy** back to our office for our file.

Sincerely,



J. Clayton Mitchell
Assistant Attorney General

JCM/sbm
Enclosure

cc: Jonathan D. Waller, Esquire

SCANNED

THE GIESE LAW FIRM
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