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**SC SUPREME COURT**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Clarendon County

George C. James, Jr., Circuit Court Judge

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CHARLES JUNIOUS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001498

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**A P P E N D I X**

---

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STATE OF SOUTH CAROLINA )  
 ) COURT OF GENERAL SESSIONS  
COUNTY OF CLARENDON ) 2008-GS-14-0095

State of SC, )  
 ) PLAINTIFF )  
 vs. ) TRANSCRIPT OF RECORD )  
 )  
Charles Junious )  
 ) DEFENDANT )

January 26, 2009  
Manning, South Carolina

B E F O R E:

THE HONORABLE R FERRELL COTHRAN, JR., PRESIDING  
JUDGE.

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

C. KELLY JACKSON, SOLICITOR  
Attorney for the Plaintiff

SHAWN KENT, ESQUIRE  
Attorney for the Defendant

Kathleen Richardson, RPR, CRR  
Official Court Reporter

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
C-1		5	

1           MR. JACKSON: We call indictment 2008-GS-14-95,  
2 State versus Charles Junious, junior. May it please  
3 the Court.

4           THE COURT: Yes, sir.

5           MR. JACKSON: Your Honor, this is indictment  
6 2008-GS-14-95. It's the State versus Charles  
7 Junious, junior. Your Honor, it's a five count  
8 indictment.

9           Count one is murder. Count two is murder.  
10 Count three is burglary in the first degree. Count  
11 four is possession of a firearm during the commission  
12 of a violent crime. And count five is the unlawful  
13 carrying of a pistol.

14           Your Honor, as an administrative matter, count  
15 two, which should be the murder of Teresa Johnson,  
16 the last part of that particular count has the name  
17 Barbara Johnson, and we would like to amend that to  
18 say Teresa instead of Barbara.

19           THE COURT: Any objection?

20           MR. KENT: No objection, Your Honor.

21           THE COURT: All right. It is so amended.

22           MR. JACKSON: So then count one addresses the  
23 murder of Barbara Johnson and count two addresses the  
24 murder of Teresa Johnson which puts the indictment in  
25 order.

1           THE COURT: Okay.

2           MR. JACKSON: Your Honor, it's my understanding  
3 that Mr. Junious wants to enter a plea of guilty to  
4 all counts on the indictment without any negotiation,  
5 without any recommendation. There will be a request  
6 for a life sentence from the State at the appropriate  
7 time.

8           I'd like to introduce some folks to the Court so  
9 that you will know who is here before we get into the  
10 meat of the plea. First of all, Your Honor,  
11 representing law enforcement we have got Sheriff  
12 Randy Garrett, Clarendon County Sheriff's Department,  
13 also investigator Tommy Burgess with the Clarendon  
14 County Sheriff's Department. Representing South  
15 Carolina Law Enforcement Division is Special Agent  
16 Mark Creech.

17           Your Honor, we have got several members of the  
18 victim's family here. At least four of them may want  
19 to address you at an appropriate time. I'm going to  
20 recognize them by name and let you know how they are  
21 kin to the victims in this case.

22           And then, of course, you see we have got several  
23 other folks from the victims' family that is here.  
24 So that you will know, Your Honor, Barbara Johnson  
25 was 49 years old and she was the mother of Teresa

1 Johnson who was 19 years old at the time this crime  
2 took place.

3 Let me introduce four of the folks that are  
4 here. First of all, Mrs. Roberta Norfolk is right  
5 here, Your Honor, where normally the foreman would  
6 sit. She is a cousin of Barbara Johnson.

7 Sitting to her left is Franklin Johnson, junior.  
8 He would be brother to Barbara Johnson. Sitting to  
9 his left is Mrs. Lesteen Bethea. She would be the  
10 sister to Barbara Johnson. And to her left, Your  
11 Honor, is Mr. Franklin Johnson, senior, and he would  
12 be the father of Barbara Johnson, the grandfather of  
13 Teresa Johnson, and he was actually there in the  
14 house and witnessed the crime that took place.

15 First off, Your Honor, I'd ask up -- offer up  
16 Court's Exhibit 1 which is a mental evaluation that  
17 was done when Mrs. Koon-Butcher represented the  
18 defendant. That was an evaluation of criminal  
19 responsibility and capacity to conform which was done  
20 on April the 18th of 2008.

21 They found that he was criminally responsible  
22 and that he was able to conform his conduct to the  
23 law.

24 (Whereupon, Court's Exhibit No. 1 was marked for  
25 identification only.)



1 charges against him, the possible punishment he could  
2 receive as well as his constitutional rights?

3 MR. KENT: I have, Your Honor.

4 THE COURT: He understand those?

5 MR. KENT: He does, Your Honor.

6 THE COURT: He tells you he wants to plead  
7 guilty --

8 MR. KENT: He does, Your Honor.

9 THE COURT: -- to this indictment. Based on  
10 your examination of this case and evaluation of this  
11 evidence, do you concur with his decision?

12 MR. KENT: I do, Your Honor.

13 THE COURT: Mr. Junious?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Your lawyer tells me you want to  
16 plead guilty. Is that right, sir?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You had enough time to talk with him  
19 about this decision?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You satisfied with his  
22 representation?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Any complaints against him?

25 THE DEFENDANT: No, sir. No, sir.

1           *THE COURT:* You have any complaints against law  
2 enforcement, Solicitor's Office or anyone else?

3           *THE DEFENDANT:* Sir?

4           *THE COURT:* You got any complaints against law  
5 enforcement, Solicitor's Office, or anyone else you  
6 want to tell me?

7           *THE DEFENDANT:* No, sir.

8           *THE COURT:* Okay. So you are pleading guilty  
9 free and voluntarily?

10          *THE DEFENDANT:* Yes, sir.

11          *THE COURT:* Nobody's threatened you or promised  
12 you to get you to do this?

13          *THE DEFENDANT:* No, sir.

14          *THE COURT:* All right. Are you today under the  
15 influence of any alcohol or drugs?

16          *THE DEFENDANT:* No, sir.

17          *THE COURT:* You got any mental or physical  
18 infirmities that would keep you from understanding  
19 what you're doing here today?

20          *THE DEFENDANT:* No, sir.

21          *THE COURT:* How far did you go in school?

22          *THE DEFENDANT:* Eleventh grade.

23          *THE COURT:* Okay. You work anywhere since you  
24 been out of school?

25          *THE DEFENDANT:* Yes, sir.

1           *THE COURT:* Where?

2           *THE DEFENDANT:* Worked at Jim Bob's Convenience  
3 Store and I worked at Food Lion Warehouse, and I  
4 worked for two different plumbing companies, Roper  
5 Plumbing and Hill Plumbing in Sumter.

6           *THE COURT:* Okay. When is the last time you  
7 worked?

8           *THE DEFENDANT:* It was...

9           *THE COURT:* Before this incident. How long  
10 before this incident?

11           *THE DEFENDANT:* It was over the summer. I was  
12 working with a guy name -- I don't know his first  
13 name. I know his name was Lee. It was doing the  
14 sidewalk up there in Summerton.

15           *THE COURT:* Okay. By pleading guilty here  
16 before me, you're giving up your constitutional right  
17 to remain silent because you're going to tell me  
18 you're guilty. Do you understand that?

19           *THE DEFENDANT:* Yes, sir.

20           *THE COURT:* You are also giving up your right to  
21 a jury trial on these charges. In that trial you'd  
22 be able to sit there with your attorney and you'd be  
23 able to confront the witnesses that would testify  
24 against you from that witness stand.

25           Your attorney could cross-examine those

1 witnesses. He could even subpoena witnesses to  
2 testify in your own behalf. But when you plead  
3 guilty, you give that up. Do you understand that?

4 *THE DEFENDANT:* Yes, sir.

5 *THE COURT:* You also understand in that trial  
6 that the State would have the burden of proving you  
7 guilty beyond a reasonable doubt to all 12 jurors.  
8 You understand that?

9 *THE DEFENDANT:* Yes, sir.

10 *THE COURT:* You also by this guilty plea you are  
11 giving up any appeal that may come out of the trial  
12 by this plea of guilty. Do you understand that?

13 *THE DEFENDANT:* Yes, sir.

14 *THE COURT:* If you didn't have a trial, you  
15 don't have any legal issues to come out of it to  
16 appeal from. Do you understand that?

17 *THE DEFENDANT:* Yes, sir.

18 *THE COURT:* Now, if you want to appeal this  
19 guilty plea and sentence, you must do so within 10  
20 days of today's date by either you or Mr. Kent filing  
21 it with the Clerk's Office or you lose that right.  
22 Do you understand?

23 *THE DEFENDANT:* Yes, sir.

24 *THE COURT:* You understand that murder carries  
25 from 30 years to life. Do you understand that? The

1 minimum I can give you is 30 years.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: On each count. You understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And burglary first carries up to  
6 life as well with a minimum of 15 years. Do you  
7 understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And possession of a weapon during a  
10 violent crime is five years and carrying a pistol is  
11 one year. Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And this -- the murders and the  
14 burglaries are non-paroleable offense. On the murder  
15 it's going to be day for day for whatever you get.  
16 Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You still want to plead guilty?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you understood everything we,  
21 you and I have talked about here today?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You got any questions you want to  
24 ask me?

25 THE DEFENDANT: Huh-uh. Just one. Ask you can

1 I apologize to the family.

2 *THE COURT:* Well, I'll let you at -- right now  
3 I'm just talking about your rights. We'll get to  
4 that part and I will allow you to tell me whatever  
5 you want to as well as the family. Do you understand  
6 that?

7 *THE DEFENDANT:* Yes, sir.

8 *THE COURT:* All right. Then y'all want to stay  
9 there or you want to have a seat?

10 *MR. KENT:* Going to have a seat if that's all  
11 right...

12 *THE COURT:* I want you -- the Solicitor is going  
13 to give me a rendition of the facts. After I hear  
14 the facts in this case, I'm going to come back and  
15 ask you about them.

16 *THE DEFENDANT:* Yes, sir.

17 *THE COURT:* All right? Now y'all can have a  
18 seat if you want to. I don't know how long this will  
19 take.

20 *MR. JACKSON:* Your Honor, I have asked  
21 Investigator Tommy Burgess with the Clarendon County  
22 Sheriff's Department if he will address the facts.

23 I believe he's got some photographs that will  
24 show you the area of Clarendon County which this  
25 occurred, the home, where the entry occurred into the

1 home.

2 We have got some photographs of the scene where  
3 the ladies were killed. And also we have a 911 tape  
4 that we'd like for the Court to hear at the  
5 appropriate time. And we can pass the photographs up  
6 for Your Honor to review as he talks about them.

7 *THE COURT:* Okay.

8 *OFFICER BURGESS:* If I may, Your Honor.

9 *THE COURT:* Yes, sir.

10 *OFFICER BURGESS:* Your Honor, this incident  
11 really begins to unfold a couple of weeks prior when  
12 the victim, Ms. Teresa Johnson, and the defendant,  
13 Mr. Junious, ended their relationship.

14 At that point from our investigation we found he  
15 began to not so much harass, but he was contacting  
16 her in manners that she didn't wish to be contacted  
17 any further.

18 We interviewed co-workers at Walmart and they  
19 told us about Teresa speaking with them about him  
20 inappropriately coming to her job site. She was not  
21 comfortable with him coming. Spoke with the family.

22 There were numerous phonecalls to the residence  
23 that were unwanted. The actual day of the 28th, Your  
24 Honor, at 6:30 pm Mr. Junious actually steals a  
25 weapon.

1 Takes this weapon, Your Honor, from his cousin,  
2 Sorenso Bowman (phonetic), and this is weapon that he  
3 used in the murder of Mrs. Barbara and Ms. Teresa  
4 Johnson.

5 He actually takes that weapon around 6:30 to 7  
6 pm on the night of the 28th. Unknown to Mr. Bowman,  
7 his cousin, he removed the weapon from the glove box.  
8 He also took five extra rounds out of a box of  
9 ammunition that was in the car and he put those in  
10 his pocket.

11 From there he leaves contact with Mr. Bowman and  
12 he goes to a residence of Mrs. Loretta Green there in  
13 the city limits of Summerton, and he's talking with  
14 her. She was somewhat of a confidante for him.

15 And he began to speak with her about the  
16 problems he was having with his girlfriend. My  
17 understanding from Mrs. Green it was something that  
18 he spoke to her about all of his previous  
19 relationships.

20 During this conversation he actually shows  
21 Loretta Green the weapon and a holster. When I  
22 interviewed Mrs. Green, she said he nonchalantly  
23 showed it on his hip, removed it.

24 And I let her demonstrate in video of my radio,  
25 and she said he just picked it up off of his hip,

1           showed it to her, put it back. Nonchalantly showed  
2           her the weapon.

3                     While speaking with Mrs. Green he tells her, I'm  
4           going to come back later, and if you would take me to  
5           the laundrymat.

6                     Well, at 10:15 that same evening, pm,  
7           Mr. Junious returns to Mrs. Green's house. He knocks  
8           on her window. Mrs. Green is unaware of really what  
9           time it is.

10                    But she relates to law enforcement that she  
11           walks through the living room, she looks at the clock  
12           on the VCR walking through the living room. It is  
13           10:15. She goes to the door and talks to him. At  
14           that point Junious asked her to take him out to the  
15           area where the crime took place.

16                    At this time, Your Honor, I will pass up a  
17           photograph of the area. It's an areal view of a map.  
18           I'm sure you're familiar with the area around Jack's  
19           Creek. It's Clifton Road ends where it comes out on  
20           Old River Road.

21                    That right there shows the overall layout of the  
22           area. And I will get into it further. The crime  
23           scene is actually only 1.89 miles from where he was  
24           arrested. But we'll get into that further, Your  
25           Honor.

1           Mrs. Green takes him out to the residence. And  
2 I'm going to pass up an areal view that we took in  
3 daylight hours. And it shows Richardson Road, which  
4 is just out from Clifton Road.

5           At that point is where Mr. Junious asks  
6 Mrs. Green to let him out of the vehicle. And from  
7 there he walks to her house, to Ms. Teresa and  
8 Mrs. Barbara's house.

9           And Your Honor, that's at 10:15 pm. You need me  
10 to demonstrate where the house is, Your Honor? It's  
11 at the bottom left hand corner -- correction --  
12 bottom right hand corner.

13           *THE COURT:* Right here.

14           *OFFICER BURGESS:* And upper right hand corner is  
15 the green vehicle in the road. That's where the  
16 drop-off point was.

17           *MR. JACKSON:* Drop-off point is about where your  
18 left thumb is, Judge.

19           *THE COURT:* Here?

20           *OFFICER BURGESS:* Yes, sir.

21           *THE COURT:* Okay.

22           *OFFICER BURGESS:* From there he walks to the  
23 Johnson residence. This is a picture taken that  
24 evening of SLED forensics that shows the front of the  
25 house, Your Honor.

1           If you are looking at the house, directly -- you  
2           see the light through the screen porch? That's where  
3           the door had been busted in, Your Honor. The window  
4           to the left where the air conditioner is is in the  
5           living room.

6           The window to the far left of the house where  
7           the bush is, that's where Mr. Franklin Johnson was  
8           sleeping with the child of Ms. Teresa Johnson. I  
9           will pass up another photograph, Your Honor, showing  
10          the same house from a tilt from the left-hand side.

11          It shows the air conditioner of the window right  
12          there. That is actually Ms. Teresa Johnson's  
13          bedroom.

14          Our first contact that we were able to determine  
15          happened around 12:17 pm. At that point Teresa calls  
16          and speaks to Mrs. Rose Riley. That is Junious'  
17          mother. At that point Mrs. Riley tells her to tell  
18          Junious to go home. They called him Peanut. She  
19          said, tell Peanut to go home.

20          From what we determined, she must have done so.  
21          The next contact we know about for certain is at  
22          12:20 am. That's when the 911 call comes in, Your  
23          Honor.

24          That point -- and you will hear the 911 call  
25          shortly -- Ms. Teresa Junious is on the phone and she

1 relates to the dispatcher, my boyfriend is at the  
2 window, I'm scared, he won't go home.

3 From there, Your Honor, all chaos begins to take  
4 place. On the call you will hear her screaming, he's  
5 coming in the house, he's banging in the door, get  
6 somebody here quick. He comes in the door.

7 I'm going to pass up several photographs of the  
8 door facing, Your Honor, and the door jams. It shows  
9 the violence that took place when that door was  
10 kicked in. You see the door frame tore away, door  
11 jam.

12 The next picture I think you see is a picture  
13 knocked off the wall that was right there by the  
14 door. It was hit with enough force that it shook the  
15 walls and knocked pictures down on to the furniture.

16 When I arrived that evening to look into the  
17 house to do my first initial walk-through waiting on  
18 SLED crime scene, this is one of the first pictures I  
19 saw, Your Honor.

20 That's where you walk in the front of the living  
21 room. You look to your left and you see a doorway.  
22 That is into Ms. Teresa Johnson's bedroom. The  
23 closed door on the left-hand side is where  
24 Mr. Franklin Johnson and the baby were asleep.

25 Your Honor, the 911 tape will definitely display

1 the violence that took place in that house that  
2 night. But at this time I'm going to pass up some  
3 photographs of what we found, what law enforcement  
4 saw and what we believe shows the violence that took  
5 place.

6 On the 911 tape you hear, of course, you hear  
7 Teresa sobbing, begging for her life. You hear  
8 Mrs. Barbara doing what any good mother should do,  
9 and that is protect her child.

10 In one of the pictures you're actually going to  
11 see the bodies laying on the floor intertwined.  
12 Mrs. Barbara died protecting her child.

13 Your Honor, the autopsy showed numerous  
14 entrances, exits from the bodies being held together.  
15 Seven projectiles were recovered. And some of the  
16 pictures actually show the closeness of the shots,  
17 one particular of Ms. Teresa Johnson's neck.

18 After that takes place, the shots are over,  
19 Mr. Junious then walks to the bedroom of Mr. Franklin  
20 Johnson, who is of course awakened by all the  
21 commotion, and he says to him, I done done something  
22 bad now.

23 Mr. Franklin tells Peanut to leave. And before  
24 leaving, Junious goes into the mother's bedroom,  
25 Mrs. Barbara's room, looking for the car keys. I

1 will pass up some pictures of this where he tore her  
2 bedroom apart looking for the keys to get to the car  
3 keys to leave the residence.

4 He doesn't find the car keys. He ends up  
5 leaving. He runs out to the end of Clifton Road,  
6 goes down Old River Road. And that first map I  
7 showed you, he travels that direction.

8 He ends up crossing across some fields and ends  
9 up at the residence of Anthony Ragin. He knocks on  
10 Mr. Ragin's house. Mr. Ragin wouldn't answer him at  
11 first. He asked Mr. Ragin for help through the  
12 window.

13 Mr. Ragin ends up calling Mr. Terry Ragin who  
14 comes to the scene, gets law enforcement. Then our  
15 officers go to that residence on Willy Martin Road of  
16 Mr. Anthony Ragin, and they take Charles Junious into  
17 custody. Still has the gun in his hand.

18 Your Honor, even on the way to Mr. Ragin's  
19 house, I initially mentioned the five extra bullets  
20 he took out of the box when he stole the gun out of  
21 Sorenso Bowman's car.

22 In his statement to law enforcement he informs  
23 he actually re-loaded the magazine while he is making  
24 his trip to Mr. Anthony Ragin's house.

25 When we found the gun, it was in a loaded

1 condition, but he was fortunately taken into custody  
2 without incident further.

3 MR. JACKSON: Your Honor, he later gave a  
4 statement to law enforcement admitting to committing  
5 these crimes. What we would ask the Court to do at  
6 this time, Your Honor, is listen to the 911 tape.

7 It has, as described to me, when the 911  
8 recording machine works down at the law enforcement  
9 center, it will record on different tracks. We  
10 actually have a first track which is the entire  
11 conversation.

12 And the voices that you will hear on it are  
13 Charles Junious -- that's the only male voice you  
14 will hear on it. You will hear Mrs. Barbara Johnson.  
15 You will hear Ms. Teresa Johnson. She's mostly  
16 screaming and hollering for help.

17 And you will be able to tell she's in direct  
18 contact with the 911 operator who of course is the  
19 fourth voice.

20 At the end of the first track you hear the  
21 shots. Then the phone is -- is hung up somehow. And  
22 the 911 operator, as trained, calls back. And the  
23 call-back conversation is not on the first track.

24 You will hear the first track. It will stop.  
25 And then it will begin. The second track will play

1 and repeat part of the first one, and then you will  
2 be able to hear the 911 operator calling back and  
3 Mr. Junious answering the phone.

4 And after that, the phone was pulled out of the  
5 wall. And we'd like you to play that at this time,  
6 Your Honor.

7 *THE COURT:* Okay.

8 (Tape played.)

9 *MR. JACKSON:* Your Honor, at this time he's  
10 outside the air conditioner.

11 (Tape playing.)

12 *MR. JACKSON:* This is the second track picking  
13 up, Your Honor.

14 *OFFICER BURGESS:* The last four and a half  
15 minutes of her life in complete terror and turmoil.

16 (Tape played.)

17 *MR. JACKSON:* This is the call back.

18 (Tape played.)

19 *MR. JACKSON:* Your Honor, that's it for the 911  
20 tape. Your Honor, I'd like to point out what the  
21 State considers some of the more aggravating  
22 circumstances of this particular burglary and this  
23 particular murder.

24 First of all, all this was put in play by  
25 choices that Charles Junious made. For whatever

1           reason, he and Teresa broke up two or three weeks  
2           before this.

3           He chose to continue to follow her and to go to  
4           her work place and contact her when she had said I'll  
5           have no more interest in you, this is over. He  
6           couldn't handle it to the point that he chose to  
7           steal a pistol.

8           He didn't have one. For some reason he needed  
9           one. And he stole it that evening from his cousin.  
10          Stole the pistol, stole the clip, stole the  
11          ammunition that he would need to put in the clip to  
12          use the gun without any -- any forewarning to them,  
13          gee, Teresa, I'm coming out tonight, I need to talk  
14          to you, gee, let's sit down and talk about this man  
15          to woman, woman to man. None of that.

16          He conned somebody and deceives them into giving  
17          him a ride out there into that area of Clarendon  
18          County, and he picks the spot where he's let out.  
19          It's not there at the house. It's a secluded area  
20          where nobody knew what he was up to but him.

21          And he got out and he made that way through the  
22          neighborhood. There are several houses out there.  
23          But he made his way through with that gun and snuck  
24          up to that house and went outside the window and  
25          knocked on the window next to the air conditioning

1 unit.

2 And a lot of this we got from his statement.  
3 And that's where he first came in contact with her.  
4 And she calls his mama and says he's out here. And  
5 she says, send Peanut home, and that's what he  
6 trance -- she translates to him.

7 And instead of going home, he comes around and  
8 kicks the door in. That's two completely different  
9 ideas. One is go home, the other one is come out  
10 there at midnight and kick the door in.

11 But he kicks that door in. Your Honor can see  
12 from the pictures what kind of force it must have  
13 taken to splinter the frame of that door and to knock  
14 that dadgum pictures off the wall at the same time.

15 He was coming in one way or another. And when  
16 he came in, he was brandishing a pistol. He had a  
17 assault on Barbara Johnson, hollering at her, yelling  
18 at her. She comes forward to get in between him and  
19 her daughter.

20 Also in the house is Mr. Franklin Johnson,  
21 junior -- I mean senior. Mr. Franklin Johnson,  
22 senior. He's in the side bedroom.

23 In there with him, Your Honor, is a 14 month old  
24 little girl. Her name is Essence Johnson. And she  
25 would be the daughter of Teresa, the granddaughter of

1 Barbara, and the great-granddaughter of Mr. Franklin  
2 Johnson, junior -- senior.

3 She was in that house as well. He assaulted.  
4 Teresa called 911, which is what she should have  
5 done. Barbara tried to get between Charles Junious  
6 and her daughter, and he continued to force his way  
7 in.

8 Mr. Johnson was providing for the safety of the  
9 child as he should have been. And you can hear from  
10 the 911 recording exactly what went on. You hear  
11 them beg for their lives.

12 You hear it one time Mrs. Barbara Johnson  
13 challenging him, what are you going to do with that  
14 gun, shoot me? But he keeps coming on and keeps  
15 coming on.

16 And he gets in the room. And you can hear on  
17 the 911 tape where Mrs. Barbara Johnson says, this is  
18 911. He was standing right there. He knew that the  
19 cops were on the way and he had to finish what he was  
20 going to do before they got there. And he did it.

21 You can see from the pictures, they're on the  
22 floor. They weren't even fighting him. They were  
23 defenseless. It was unjustified. It was unprovoked.  
24 It was senseless. It's an execution-style  
25 elimination of two generations of the Johnson family

1 in three seconds.

2 Your Honor, Mrs. Barbara Johnson, she was shot  
3 in the forehead, she was shot in the face, she was  
4 shot in the arm, she was shot twice in the back. One  
5 bullet was removed from her.

6 Ms. Teresa Johnson, she was shot in the head,  
7 she was shot in the chest, she was shot in the  
8 breast, she was shot in the forearm, she was shot in  
9 the thigh, and she was shot through the hands. She  
10 was shot in the hands in a defensive position that we  
11 have all seen so many times.

12 There were so many bullet holes in her body from  
13 bullets passing through her mother's body who was  
14 trying to protect her and into her as her on to the  
15 floor that they couldn't tell which ones were the  
16 entrance and which ones were the exits.

17 They found as Investigator Burgess told you,  
18 seven projectiles, and they found five cartridge  
19 casings. They removed four bullets from Teresa  
20 Johnson. They removed one from Barbara Johnson.

21 Your Honor, after that, after the murder,  
22 instead of just leaving, he goes and tries to go  
23 through Barbara Johnson's room to get the car keys to  
24 steal her car.

25 And when he can't find them, he leaves. He

1 doesn't leave the gun there. He takes the gun with  
2 him. Not only does he take the gun, but he reloads  
3 it going to wherever he is to get away from law  
4 enforcement.

5 We think, Your Honor, that these particular  
6 facts and how this burglary came about and two  
7 murders in lieu of one, in lieu of any, would justify  
8 a life sentence based on these facts.

9 I have got several members from the victims'  
10 family that would like to address the Court at the  
11 appropriate time. I believe we need to talk with  
12 defense counsel about the facts first, but we would  
13 like to do that at the appropriate time.

14 *THE COURT:* All right. You heard the facts that  
15 the Solicitor gave me, Mr. Junious. Are those  
16 correct?

17 *THE DEFENDANT:* Yes, sir.

18 *THE COURT:* Sir?

19 *THE DEFENDANT:* Yes, sir.

20 *THE COURT:* That's what you did?

21 *THE DEFENDANT:* Yes, sir.

22 *THE COURT:* You murdered both of these women?

23 *THE DEFENDANT:* Yes, sir.

24 *THE COURT:* You broke into that house?

25 *THE DEFENDANT:* Yes, sir.

1           *THE COURT:* And you had that firearm with you  
2 when you went in there?

3           *THE DEFENDANT:* Yes, sir.

4           *THE COURT:* I find there's a substantial factual  
5 basis for your plea. It's freely and voluntarily  
6 entered into, that you have had advice of competent  
7 counsel with whom you tell me you're satisfied with  
8 and I will accept the plea.

9           Now, Mr. Kent, do you want to go next or you  
10 want me to hear from the victims' family next?

11          *MR. KENT:* Your Honor, I would like you to hear  
12 from the victims' family first, Your Honor.

13          *THE COURT:* Okay.

14          *MR. JACKSON:* Your Honor, I will just mention  
15 each of them. If you would state your name for the  
16 record clearly. Tell the Judge what your  
17 relationship to these folks are, and then tell us  
18 what you have to say.

19          *MRS. ROBERTA FALL:* My name is Roberta Fall. My  
20 relationship to Barbara, Barbara was my first cousin  
21 and Teresa was her daughter. I traveled over here  
22 from New York City to talk to you about my cousin.

23                 We grew up in New York. Barbara and Teresa grew  
24 up in Jersey. And both our parents relocated here.  
25 They were sisters and they moved right next door to

1 each other.

2 And I loved my cousin. She was the best cousin  
3 ever. She didn't party. She didn't smoke  
4 cigarettes. She didn't -- she didn't do a lot of  
5 things that, you know, that all of us other girls  
6 did.

7 She went to work every day hard. She stayed  
8 with her father, cooked every day. Never went out.  
9 She was just a home-body person. Whenever I came to  
10 South Carolina, I knew where she was. She was always  
11 home, even in Jersey.

12 Teresa, I remember when she was born in New  
13 York. I used to babysit her. I would take her to  
14 New York with me to Coney Island and different  
15 places. And they were just like the love of our  
16 lives.

17 They were the last of our women family living  
18 here in Clarendon County. I just came to ask you,  
19 Your Honor, please if you could just consider life in  
20 prison without the possibility of parole.

21 I know it's not going to bring my cousins back,  
22 but I just feel some justification in they life  
23 should be done. I thank you for listening to me.

24 *THE COURT:* Thank you, ma'am.

25 *FRANKLIN JOHNSON:* Excuse me. My name is

1 Franklin Johnson. I'm Barbara's -- Johnson's  
2 brother. I'm Teresa's uncle. I'm not a -- I'm just  
3 pleading to you to give this man's life because what  
4 he did just wasn't right.

5 I miss my sister and my niece. If you  
6 understand, I guess that any man that -- who has a  
7 sister or a niece would understand. You know, I got  
8 so much hate. I went through so much hate that I  
9 could just kill this man in my mind a hundred times  
10 being -- being her brother.

11 But I'm going to put it in God's hand. It's --  
12 it's kind of hard for me to sit right here and listen  
13 to the tapes because that's the last word I ever  
14 heard -- heard from them.

15 The last time that I saw my sister and Teresa,  
16 they were at my house in Sumter. We had dinner that  
17 day. We laughed. We talked. Me and my wife, my  
18 family, we just had a good time that day. And plus  
19 I -- we also talked about Christmas, about getting  
20 together.

21 I was going to fry her a turkey, which I  
22 promised her I -- I been owed her a fried turkey. We  
23 used to joke about it a lot, you know. But that's  
24 all I got to say right now. I just miss my -- my  
25 sister and my niece. I can't bring them back.

1           *THE COURT:* I understand. Thank you,  
2 Mr. Johnson.

3           *FRANKLIN JOHNSON, SR.:* Well, Barbara my  
4 daughter. Teresa was my granddaughter. And I miss  
5 them both. And I think about them every day. And I  
6 hope one day see them again.

7           I was talking to my -- I talked to my great  
8 grandchild, Essence, Teresa baby, and the last time  
9 she talked to me -- she only about 28 months old --  
10 and she asked me did I seen her mother. What could I  
11 say? I miss them. I hope one day I see them again.

12           *THE COURT:* Thank you, sir.

13           *SHERIFF:* Your Honor, if it please the Court.

14           *THE COURT:* Yes, sir.

15           *SHERIFF:* Through this entire investigation,  
16 everything we have listened to, we wholeheartedly  
17 agree with the Solicitor's Office that this  
18 individual deserves life in prison.

19           *THE COURT:* Thank you.

20           *MR. JACKSON:* Judge, I know you have been doing  
21 this for a long time. Crimes carry maximum penalties  
22 for a reason. And the worst of the worst deserves  
23 worst.

24           And this burglary resulted in the murder of not  
25 one but two people. We often have burglaries where

1           you break in and steal something or break in and have  
2           a fight or break in and there's a rape.

3           But the worst burglary is one where you break in  
4           and murder somebody. And worse than that is two.  
5           And we think that on the burglary charge that  
6           justifies a life sentence because it's as bad a  
7           burglary as it gets.

8           On the murder charges, Your Honor, I feel the  
9           same way. It's bad when someone does an armed  
10          robbery of a gas station or a stop and shop and  
11          shoots somebody that they have absolutely no idea who  
12          they are nor do they care.

13          But when you have been dating a girl and  
14          supposedly love her and know her family and know the  
15          pain that you will cause if you remove someone's  
16          life, when you know them and still don't care, that's  
17          as bad as it gets.

18          And there's a victim in this case who is 28  
19          months old right now, a little girl that will never  
20          know her mama and never know her grandmama because  
21          Charles Junious took two generations out of her life  
22          in less than three seconds.

23          He sentenced her to a lifetime without her mama  
24          and without her grandmama. And that's as bad as it  
25          gets. And we would ask for a life sentence on both

1 murders, Your Honor. That's all the State has.

2 THE COURT: Thank you, sir. Mr. Kent?

3 MR. KENT: Your Honor, around the midst of last  
4 year I was called to the jail, Mr. Junious' family.  
5 They gave me a cursory review of the facts of what  
6 had happened in this case. Not enough so I could get  
7 a full understanding of the background.

8 My investigator wasn't in the office that day.  
9 It was around 4:00. So I said I'd make my own visit  
10 to the jail to see Mr. Junious myself. Drove down to  
11 the jail. Saw Mr. Junious, had a little scruff on  
12 his face. His affect was very clear.

13 I sat down and talked to him and asked him  
14 exactly what had happened. Having had these meetings  
15 with many a client, many a defendánt, many people  
16 that I have represented, I expect that the general  
17 venal conversation on which there would be at first  
18 denials, there would be the conversation of, I don't  
19 know what happened, there would be a bunch of things  
20 to deal with.

21 He looked at me sternly in the face and he told  
22 me the chilling story I just heard recounted.

23 I asked him the question that everybody in this  
24 courtroom has on their minds right now, that the  
25 family has on their minds, that the Solicitor's

1 Office has on their mind, that you Your Honor has on  
2 your mind. Why.

3 He looked at me. He began to tear up. And his  
4 response was the one that I expected. He had no  
5 understanding. He had no clue why.

6 I told him it was a series of things that we  
7 would need to do in this case, but the first one  
8 would be to find out where he wanted to go with it.

9 I explained to him the avenue of the criminal  
10 justice system. I explained to him about the  
11 potential for a trial, potential for a guilty plea,  
12 and that's where he stopped me there. Was very clear  
13 that this was not a trial.

14 That he had understood what he had done. The  
15 remorse that he had was strickening (sic) is probably  
16 the easiest way to describe it. And he told me that  
17 he would be entering into a guilty plea.

18 And the reason I bring that up, Your Honor, is  
19 as I have mentioned, as everybody in this courtroom  
20 has practiced law before, is generally it takes a  
21 very long time to convince a criminal defendant, an  
22 individual who is accused of a crime, that they need  
23 to plead guilty to something or they need to go to  
24 trial with something.

25 This was not that situation. Now, all of this

1           was done without seeing any of the discovery, without  
2           me having an avenue to talk to him about anything,  
3           without knowing about any statements he had given.  
4           He -- nonetheless, he did not hold off any thought  
5           whatsoever of what was going to happen.

6           Thereafter, Your Honor, I did get the discovery.  
7           I talked to Kelly several times on this case and I  
8           looked at the case in full detail. And I went back  
9           to Mr. Junious yet again and I explained to him  
10          exactly what he would be looking at.

11          Again, without any pause, without hesitation he  
12          explained that he understood what he was doing, he  
13          knew what he had done was wrong, was ready to face  
14          his accuser, face you, Your Honor, face his family  
15          like a man and take what he rightfully deserved.

16          Your Honor, I have handed the Court a binder and  
17          I have given a binder to the Solicitor's Office also.  
18          I think they have had an opportunity to review it. I  
19          don't know if they had, but I think they have had  
20          opportunity.

21          Your Honor, this isn't something that has taken  
22          place on a short period of time. Mr. Jackson and I  
23          have talked since last year and I informed the  
24          Solicitor's Office that this would be a guilty plea.

25          We got paperwork from the Department of Mental

1 Health from which his original attorney who is  
2 sitting in the courtroom, Debra Koon, had him  
3 evaluated.

4 Now, after having -- I got involved after he had  
5 already been evaluated by the Department of Mental  
6 Health. And I will be very candid, Your Honor, upon  
7 hearing the facts, upon listening to the 911 CD,  
8 there was a question of a psychotic break that I was  
9 concerned about because this did not seem the actions  
10 of the person who I had met in the jail, the person  
11 who had looked at me, the person who had talked to me  
12 calmly, talked to me cooley, the person who I have  
13 read the incident from, the person who I had read the  
14 statements. Just did not seem like the same  
15 individual.

16 So upon looking at the evaluation, the first  
17 concern that I had -- very candidly, Your Honor, the  
18 first concern that I had was the evaluation came  
19 back, of course, capacity concern, capacity to  
20 conform to society's morals as well as a clear  
21 understanding of what he did and the difference  
22 between right and wrong.

23 As I explained to you earlier, at no point  
24 during this plea am I belittling anything that  
25 happened. And additionally, at no point during this

1 plea are we seeking a not guilty by reason of  
2 insanity.

3 However, that being said, looking at the mental  
4 evaluation that was done by the Department of Mental  
5 Health, there was a concern that crossed my mind.

6 And that concern, Your Honor, as you go through  
7 the file that I have given to you, the Department of  
8 Mental Health noticed psychiatric episodes in this  
9 individual's life.

10 The Department of Mental Health noticed  
11 psychiatric episodes that had gone back to the early  
12 90's as well as the 80's. The Department of Mental  
13 Health noticed that there was an untreated level of  
14 psychosis that this individual hasn't been taken care  
15 of.

16 There is -- Your Honor, as I start back in  
17 February of 1992 of the incidents that I have sent  
18 you, they indicate in his classwork, severe  
19 behavioral problems, talks out of turn, unable to  
20 control temper, aggressiveness towards classmates and  
21 teachers, problem relating to peers, emotional  
22 problems present, emotional problems present,  
23 problems with anger. April 1998, problems with anger  
24 controls at school, in-school behavior  
25 unsatisfactory.

1           We go even further back, Your Honor. 1991,  
2           trouble inside of St. Paul's Primary School. 1992,  
3           classroom observation, problems in St. Primary -- St.  
4           Paul Primary School, initiates fights, tends to boss  
5           others, throw things, hits classmates. Children are  
6           afraid of him.

7           1993, very uncooperative in class, bumping into  
8           others, refusing to be quiet. 1993, fighting in the  
9           lunchroom, attempting to choke students. 1994, threw  
10          a wooden chair at teachers. Overturned tables.

11          1994, fighting at school. Choked students  
12          severely enough to almost pass out. 1996, define  
13          behaviors. 1997, family conflict.

14          Now, Your Honor, I know the first question would  
15          be why would the defense attorney come up and tell me  
16          this history of transgressions of this individual.

17          The problem, Your Honor, is as I talk to you  
18          about the incidents, what becomes alarming when you  
19          look throughout his prior history is the actions that  
20          were taken by those around him who supposedly care  
21          for him, his family members, the school system.

22          The actions that were taken were not sent to  
23          mental health and not to medicate this individual.

24          The actions that were taken were isolate from the  
25          rest of the classmates, send letter to principal,

1 have student write letter telling what he needs and  
2 what he doesn't need.

3 They would send him many times mental health --  
4 the mental health binder that he has gone through is  
5 exorbitant. There is not a question, judge, whether  
6 or not there is something going on with this young  
7 man.

8 There are two people who I'm dealing with, Your  
9 Honor. And when you hear the 911 tape, I think you  
10 can understand what I mean there are two individuals  
11 that we're dealing with.

12 When you hear the initial part of the 911 tape,  
13 you hear a -- an individual who is in control, an  
14 individual who comes in who is quite scary, an  
15 individual who kicks in the door, an individual who  
16 has basically scared the hell out of everybody inside  
17 of that house.

18 You hear him bossing people around. You hear  
19 him just scaring people. And then if you listen to  
20 that 911 tape, you hear something different. You  
21 hear him saying I'm sorry to Barbara Johnson, please  
22 don't call the cops, please, Mrs. Barbara, please  
23 don't call the police, please don't do this.

24 If you listen, you'd hear this. You hear two  
25 individuals going on. Your Honor, there is no doubt

1 he understood the difference between right and wrong.  
2 There is no doubt he knew what he was doing. There  
3 is no doubt there was a cool planning that went into  
4 this entire matter.

5 However, and I think what we have is something  
6 that's happened in a different way. And I want to  
7 make sure this is clear as I talk to the family and  
8 talk to the courtroom.

9 We are not belittling what happened. There is  
10 no doubt what happened is disgusting and one of the  
11 most chilling things that I have ever heard in my  
12 entire life and we are not saying that there was any  
13 cause or any justification for what Mr. Junious did.

14 What we have though, Your Honor, is we have to  
15 make a decision. And I have told him this is a  
16 dangerous decision that we are going to ask the  
17 Court. And that's why I gave all the information for  
18 the Court to decide.

19 What we are looking at -- and I have been told  
20 this a long time ago by a lot of the attorneys who I  
21 practiced with and a lot of judges that I have been  
22 in front of -- have to make decision if we're dealing  
23 with the truly misguided or the truly wicked, the  
24 truly evil.

25 And we hear the facts and the first thing that

1 we -- everybody in this courtroom could readily say  
2 is what we are dealing with is somebody who is truly  
3 wicked, somebody who cannot be saved.

4 Your Honor, unfortunately I disagree with that  
5 assessment. I think what we are dealing with is  
6 somebody who is truly misguided, somebody who has a  
7 history of psychosis that has gone untreated.

8 And I know it does not raise to the Department  
9 of Mental Health level of, does he know the  
10 difference between right and wrong. However, I do  
11 believe that rising to the level of guilty but  
12 mentally ill such that the point that once sent to  
13 the Department of Corrections, that he is not sent  
14 there for a period of his entire life untreated, that  
15 he is not sent to the Department of Mental Health  
16 without getting help for the psychosis that he  
17 currently possesses, that he is not getting treated  
18 for any demons he has inside of his mind.

19 Your Honor, I am asking and I will ask moreso on  
20 the record for a guilty but mentally ill finding by  
21 this Court. The case law supports the decision that  
22 we do not have to have a therapist present, that we  
23 can let the Court rely on the record since we are not  
24 looking for a not guilty by reason of insanity.

25 And for the Court's assurance, there is

1 functionally no difference between whatever you  
2 sentence him. If he is given a guilty but mentally  
3 ill, he will be sentenced to whatever -- he will  
4 serve whatever sentence that this Court lays down  
5 except for he will spend some period of that sentence  
6 inside of the State Department of Corrections but  
7 will get mental health counseling and mental health  
8 training to help him get over whatever, these demons  
9 that have caused a history of psychosis that has gone  
10 on since the early 80's.

11 Your Honor, there's a lot more that I would like  
12 to add. I think Mr. Junious has told you everything  
13 about his background. I don't think it's necessary  
14 to get into all of his background, where he went to  
15 school. He has told you all of that.

16 I'm not going to spend a long time talking, but  
17 I would like his family to say a couple of words to  
18 you.

19 Your Honor, this isn't the type of person who  
20 does not have support in the community. Usually when  
21 we hear these things, we hear of this individual who  
22 has no support in the community. But that's the  
23 exact opposite of what we are dealing with.

24 Would everyone here who is showing support for  
25 Charles Junious please stand up now. Your Honor,

1           this isn't the situation of an individual who doesn't  
2           have people who are showing support for him, people  
3           who are not showing love for him. They are here to  
4           show him support. Thank you.

5           Before we got to court today -- I know this  
6           court was scheduled to begin at 2:30, and  
7           apologetically we were late. There is no  
8           exaggeration. And I want to make sure this is clear.

9           Mr. Junious is wearing a suit right now. The  
10          suit that he has been wearing for quite some time,  
11          however, is an orange jumpsuit at the Clarendon  
12          County Detention Center.

13          I told him that today is one of the last days  
14          that he is going to feel like a man. And it was my  
15          decision that he be allowed to wear a suit. And I  
16          was not going to begin this plea until he got to wear  
17          this suit and come to this Court and look at this  
18          Court like a man because this is the last time he  
19          will be presumed innocent.

20          And so that is exactly why he is wearing a suit.  
21          I don't want it to be any confusion -- I was trying  
22          to confuse the Court of where he has been. There is  
23          no doubt he has been at the Department of Corrections  
24          or at Clarendon County Detention Center.

25          He is wearing this suit to show respect not only

1 to the Court but to the family, but to -- also to the  
2 fact that he is a man.

3 Your Honor, at this time I'd ask three  
4 individuals just to say a few words to the Court.  
5 The first will be his mother. Start with a friend of  
6 his, Ms. Mcfadden, Brenda McFadden. If you would  
7 come up.

8 Say your name to the Court and spell your name.

9 MR. MCFADDEN: Reginald McFadden,  
10 R-e-g-i-n-a-l-d M-c-f-a-d-d-e-n.

11 MR. KENT: Just tell the Court whatever you have  
12 to say.

13 MR. MCFADDEN: Well, to the family, no shock --  
14 I'm not responsible for anything that took place.  
15 But the thing is we all make mistakes. Some mistakes  
16 are bigger than others, that may be true.

17 But nevertheless, you heard the 911 recording  
18 and had the officer, how the man was running. Today  
19 he is not running no more. Mean, despite everything  
20 that took place, everybody need love and love what  
21 bring a person back regardless.

22 I want to commend y'all because y'all could have  
23 say y'all wanted death, but y'all didn't. So I mean,  
24 God seen fit in y'all say just give him life, and I  
25 appreciate that.

1           And telling y'all from experience, I'm from  
2           Clarendon -- from Clarendon also. We all make  
3           mistakes. I make mistakes. Sometimes those mistakes  
4           break you. We grow up and say, you know what, I make  
5           a difference.

6           Despite the fact what you going through, what  
7           you facing, man, you still got a chance to make a  
8           difference in somebody life whether here or out --  
9           inside you get out. You still can make that  
10          difference.

11          Everything happened for a reason. And my main  
12          thing I want to say, man, in the event you make a  
13          mistake, ask yourself that question, what kind of  
14          forgiveness you want for yourself.

15          MR. KENT: His mother, Rose Riley.

16          MRS. RILEY: Hello. How you doing? My  
17          condolences to the family. My son -- I raised three  
18          children here. Well, have five children, but Charles  
19          was raise not to put a hand on a woman.

20          That was just a no no because I was a parent  
21          that was abused, and I was young. I was 18 with  
22          three children, no husband, and I was abused. So I  
23          bestowed in him never to put his hand on a woman, to  
24          walk away.

25          And this family knows him. He -- this boy would

1 take the clothes off his back. At times, you know,  
2 when days have come when the grandfather, you know,  
3 and Teresa and his mother was -- I mean Barbara was  
4 working, he would take them to do errands.

5 He would do anything for that family, anything.  
6 And if everybody could come out and say Charles was a  
7 good person. What he did was wrong.

8 And I just ask forgiveness for the family on  
9 behalf of myself because I didn't raise a killer. I  
10 raise a person to love everybody, to treat everybody  
11 right. And I just want to say have mercy on, you  
12 know, on him, Judge. Thank you.

13 *THE COURT:* Thank you, ma'am.

14 *MR. KENT:* His sister, Latonya Junious. Your  
15 Honor, one of the reasons we waited to schedule this  
16 plea for this long -- and I appreciate the Solicitor  
17 obliging us -- Ms. Junious serves in the military.  
18 This will be the first time she will be back for  
19 furlough.

20 *THE COURT:* Yes, ma'am.

21 *MS. JUNIOUS:* Good afternoon, Your Honor. My  
22 name is Latonya Junious. And I just want so say on  
23 behalf of the Junious family we are very sorry for  
24 what my brother have done.

25 But granted, my brother is a good man, Your

1 Honor. He is loved in the community. Everybody  
2 knows him as Peanut. He will do anything that he can  
3 do for anybody.

4 Teresa was like a sister to me, you know. Any  
5 time she needed anything, we was right there. Any  
6 time he needed anything, she was right there for him,  
7 Your Honor. And excuse me -- it's hard.

8 My brother loved Teresa and he always told me  
9 anybody that he wanted to marry, it would have been  
10 her. When she came to him, she was four months  
11 pregnant. My brother took Essence -- we call her  
12 Loose (phonetic) as his own.

13 He have a child, but he took Loose as his own  
14 and treat her like her. So not only did she lost a  
15 mother, she lost my brother as a father, too. And I  
16 just want to say that, you know, what he did was  
17 wrong and he deserve to be punished, but he also know  
18 that he's a human and we all make mistakes, and he's,  
19 you know, he deserve a second chance.

20 *MR. KENT:* Judge, he would like to say a few  
21 words to the Court and the family.

22 *THE COURT:* Yes, sir.

23 *THE DEFENDANT:* First off, I just want to  
24 apologize from the bottom of my heart. I know the  
25 victim, you know, cause no chaos, no kind of trouble

1 at all... (crying).

2 MR. KENT: Your Honor, I have talked with  
3 Mr. Junious about this day and we prepared and we  
4 have talked, and I told him there is no worse feeling  
5 to realize that you have had the personal hand of  
6 taking away the person you love the most.

7 That is a feeling that he will live with for as  
8 long as he is in prison, for as long as anything goes  
9 on with his life. We have all talked to this family  
10 and we commend them.

11 I don't know if there is a family with such the  
12 character who would not have gone to the Solicitor's  
13 Office and not sought the death penalty. I am  
14 gracious for that. And generally I am not the type  
15 of person who gills the lilly.

16 I told the family that whatever this Court does  
17 is an appropriate sentence in this situation.

18 Your Honor, I'd ask again -- as I mentioned I'd  
19 ask later for a guilty but mentally ill finding in  
20 this case so that when he is sent to the Department  
21 of Corrections, he can get whatever mental health  
22 that he so needs.

23 And if, Your Honor, and understanding the  
24 chilling nature of the facts, and not belittling the  
25 facts at all, there is any chance of seeking anything

1 less than a life sentence, I would ask the Court.  
2 However, I understand the Court's position. That  
3 would be the extent.

4 *THE COURT:* The State have a position on the  
5 defense's request for guilty but mentally ill?

6 *MR. JACKSON:* Your Honor, we rely on the  
7 doctor's report that was rendered to the Court during  
8 the Blair hearing. He is pleading straight up and he  
9 should not be considered guilty but mentally ill.

10 *THE COURT:* The -- is that report in this book?

11 *MR. KENT:* I think the Solicitor handed you that  
12 report initially -- was the first thing that he gave,  
13 the copy. That's the first thing he handed you was a  
14 copy of the report.

15 *MR. JACKSON:* Should be Court's Exhibit 1, Your  
16 Honor.

17 *THE COURT:* Okay.

18 *MR. JACKSON:* I believe several of the items of  
19 information in the report that --

20 *THE COURT:* I got it.

21 *MR. JACKSON:* -- Mr. Kent handed up are -- were  
22 included in the doctor's decision.

23 *MR. KENT:* If I may, Your Honor. The -- as you  
24 understand, when sent to the Department of Mental  
25 Health, if we read the report, the report does find

1           mental illness.

2           It's not a question if they find any mental  
3           illness. What they are looking for is whether or not  
4           he's not guilty by reason of insanity. So they are  
5           not saying that this individual is not guilty. They  
6           are not saying that that individual could not conform  
7           to society's norms.

8           What they are saying is there is a history of  
9           illness. Your Honor, for that history of illness and  
10          in an abundance of caution, to make sure if we do  
11          sentence an individual to life in prison, we are not  
12          sending an individual who may have psychosis while  
13          he's in prison and have trouble conforming in prison.

14          So Your Honor, and again, for the record and I  
15          will be happy to forward the guilty but mentally ill  
16          statute, there is no functional difference.

17          If anything, Your Honor, if he's sentenced right  
18          now to 50 years, a hundred years of life, that is the  
19          sentence that he will serve even under a guilty but  
20          mentally ill.

21          All he will do is he will go under the  
22          Department of Mental Health still inside the  
23          Department of Corrections.

24          And once they find him, they could find him up  
25          there, Your Honor, I could -- he could be sent

1 tomorrow. Once he's sent to the Department of Mental  
2 Health, they could say, look, there's nothing wrong  
3 with this man at all, and then he gets sent to the  
4 general population to fill out the rest of the  
5 sentence.

6 *THE COURT:* Okay.

7 *MR. KENT:* And just so I can clarify the record,  
8 Your Honor. There was a question about a Blair  
9 hearing. I make that very clear. No Blair hearing  
10 was held during this guilty plea -- just if a later  
11 court is reading it. And we did not request one.

12 *THE COURT:* Well, the report dated May of 2008.  
13 The conclusion says, similarly we do not find any  
14 evidence or -- to indicate that he was suffering from  
15 a mental illness or defect the time of his charges  
16 which would have impaired his capacity to conform his  
17 conduct to the requirements of the law.

18 It is therefore our opinion that he would not --  
19 requirements of the law -- the alleged actions on or  
20 about November the 29th. Then they say, and he does  
21 not need acute psychiatric hospitalization. And they  
22 recommend periodic follow-up by mental health.

23 *MR. KENT:* And that's what my position will be,  
24 Your Honor. They do recommend that he needs some  
25 mental health. But there's something there. Your

1 Honor, even if he's there for 30 minutes, that's --  
2 all that's going to matter is as long as he gets  
3 there, will get his treatment.

4 And if the Department of Mental Health or if the  
5 jail says he doesn't need it, what's the harm? Worst  
6 case scenario if he gets there and they say, look, he  
7 doesn't need anything at all and they send him back  
8 to general population or if he needs any  
9 hospitalization at all, they will make the decision.

10 *THE COURT:* But if I send him in the general  
11 population, they won't -- if he has mental episodes,  
12 they won't pick up on that--

13 *MR. KENT:* I don't know, Your Honor. I never  
14 spent time in the Department of Corrections. That  
15 would be my fear. How would they know?

16 *THE COURT:* My problem is you want me to make a  
17 finding that he's guilty but mentally ill so I'm  
18 making some type of judicial finding that he's  
19 mentally ill and I have nothing to base that on based  
20 on what I have before me.

21 *MR. KENT:* Your Honor, the statutes, the cases  
22 all allow, as long as there's enough evidence in the  
23 record -- and that's why I have given you that  
24 brochure in that packet as well as this -- that  
25 says -- that goes through the history of his mental

1 illness that he has suffered as well as, Your Honor,  
2 this at all saying he needs some mental -- if there  
3 was no mental illness at all, the last line of his  
4 recommendation would not say, we recommend that he  
5 should be periodically followed up by a mental health  
6 professional at the jail.

7 They wouldn't have made that suggestion if they  
8 thought -- if they thought he was 100 percent there's  
9 nothing wrong with him, they wouldn't have put that  
10 line inside.

11 *THE COURT:* All right. This is a terrible case.  
12 And it's a senseless murder of these two victims.  
13 And I heard the 911 tape like everyone else. And my  
14 concern, like the Solicitor said, this -- you planned  
15 this.

16 It wasn't like you went to his girlfriend's  
17 house and lost his cool. He got a weapon. He was  
18 put out away from the house. He walked to the house.

19 And many times in a criminal act of a murder  
20 case, we don't know what happened right at the last  
21 few minutes of someone's life. But because of the  
22 911 tape, we do know in this case.

23 So on count one, murder, the Sentence of the  
24 Court is he's committed the State Department of  
25 Corrections for a term of his natural life.



FORM 5

209-CP-14-574

STATE OF SOUTH CAROLINA )  
 )  
County of Clarendon )  
 )  
Charles Junious, #332874 )  
Full name and prison number (if any) of Applicant )

IN THE COURT OF COMMON PLEAS

CERTIFIED TRUE COPY  
OF ORIGINAL FILED IN THIS OFFICE  
DATE 10/6/09  
Brenda S. Roberts  
CLERK OF COURT  
CLARENDON COUNTY, SC

APPLICATION FOR

v.  
State of South Carolina

POST-CONVICTION RELIEF

2009 OCT -5 PM 9:20

DEPT. OF CORRECTIONS  
CLERK OF COURT  
CLARENDON COUNTY, SC

**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Perry Correctional Institution

---

2. Name and location of Court which imposed sentence General Sessions Court for Clarendon County, S.C.
3. Name(s) of co-defendant(s) (if any) N/A

---

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) Burglary First Degree (2) counts Murder
  - (b) Possession of Firearm or Knife during Commission of Violent Crime

- (c) \_\_\_\_\_
- 5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) \_\_\_\_\_
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty  \_\_\_\_\_
  - (b) after a plea of not guilty \_\_\_\_\_
  - (c) after a plea of nolo contendere \_\_\_\_\_
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?  
N/A
- 8. If you answered "yes" to (7), list:
  - (a) the name of each Court to which you appealed:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (b) the result in each such Court to which you appealed:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (c) the date of each such result:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) Applicant was not advised of the right to an appeal
  - (b) \_\_\_\_\_

(c) \_\_\_\_\_

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

(a) Ineffective Assistance of Counsel

(b) Mental incompetent

(c) \_\_\_\_\_

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

(a) See Attachment

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

(a) any petition in a State Court under South Carolina Law? N/A

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A

(d) any other petitions, motions or applications in this or any other Court? N/A

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

(a) the specific nature thereof:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

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

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- (a) This is the first petition/application that has been  
 (b) filed concerning this conviction and sentence  
 (c) \_\_\_\_\_

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

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

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. Chandler Ray, Esq.  
Coffey and Chandler, P.A.  
 ii. P.O. Box 1292  
Manning S.C. 29102-1292  
 iii. \_\_\_\_\_  
 \_\_\_\_\_  
 (b) the proceedings at which each such attorney represented you:  
 i. plea  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_

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

remand for new trial

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

None

STATE OF SOUTH CAROLINA )  
 )  
County of Clarendon )

VERIFICATION

I, Charles Junious, 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.

*Charles Junious*

SWORN to and subscribed before me this 3rd  
day of Sept, 2009.

*[Signature]* (L.S.)  
Notary Public

My Commission Expires: May 12th 2014

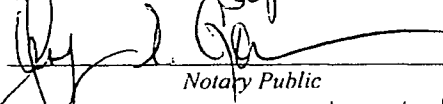
APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF

I, Charles Junious, 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.

  
 \_\_\_\_\_  
 Applicant

SWORN or affirmed to and subscribed before me this 12th day of Sept, 2014.

  
 \_\_\_\_\_  
 Notary Public

My Commission Expires: May 12th 2014

STATE OF SOUTH CAROLINA  
COUNTY OF CLARENDON

CHARLES JUNIOUS, #332874,  
Applicant,

vs.

STATE OF SOUTH CAROLINA,  
Respondent.

IN THE COURT OF COMMON PLEAS

Case No. \_\_\_\_\_

MEMORANDUM OF LAW IN SUPPORT  
POST-CONVICTION RELIEF

2009 OCT -6 PM 1:21

CLERK OF COURT  
CLARENDON COUNTY  
COURT HOUSE  
100 N. MARKET ST.  
COLUMBIA, SC 29201  
803.732.1234

To Respondents:

Now comes the Applicant before this Honorable Court for a Post-Conviction Relief.

Applicant was denied due process of law under the Federal Constitution and South Carolina Constitution and the Fourteenth Amendment, when he plead guilty while being mentally incompetent.

Applicant was mentally incompetent at the time of the two counts of Murder S.C. Code Ann. §16-3-10, and Burglary First Degree S.C. Code Ann. §16-11-311, also Possession of Firearm or Knife during Commission of, or Attempt to Commit, Violent Crime in year of 2007 and at the time of the guilty plea in 2009 and was allowed to plead guilty in violation of the South Carolina Constitution and the Federal Constitution under the Fourteenth Amendment Due Process Clause. Incorporated into to allegation is that Applicant was denied effective assistance of counsel and due process of law at his 2009, guilty plea for two counts of Murder and Burglary First and Possession of Firearm or Knife to Commit, Violent Crimes in 2007 and at the 2009 guilty plea.

ARGUMENT

Due Process 4 prohibits the conviction of a person who is mentally incompetent. Bishop v. United States, 350 U.S. 981, 76 S.Ct. 440, 100 L.Ed. 835 (1956), "This constitutional right cannot be waived by the incompetent by guilty plea or otherwise." Carroll v. Beto, 421 F.2d 1065,1067 (5th Cir. 1970).

While a guilty plea may only be attacked on the basis that it was not knowing and voluntary, [I]t is contradictory to argue that and a defendant may be incompetent, 'waive' his right[s]... Pate v. Robison, 383 U.S. 375,384, 86 S.Ct. 836,841, 15 L.Ed.2d 815 (1966). Makes it clear that the conviction of an accused person who is not mentally competent to stand trial violates due process. This Constitutional right cannot be waived by the incompetent by guilty plea or otherwise and thus it must be protected by adequate state procedures.

When a prisoner, either State or Federal, seeking Post-Conviction Relief, asserts with substantial facts to back up his allegation, that at the time of the guilty plea he was not mentally competent to stand trial, and that there was no resolution of that precise issue before he was tried, convicted and sentenced, the protection of the Fourteenth Amendment to the Constitution requires that such conviction and sentence be set aside unless upon adequate hearing it is shown that he was mentally competent to stand trial. (386 F.2d at 105), See Adams v. Wainwright, 764 F.2d 1356. As a matter of procedural due process criminal defendants is entitled to an evidentiary hearing on claims of mental incompetency if he present clear and convincing evidence to create a real, substantial and legitimate doubt as to his mental capacity to meaningfully participate and cooperate with counsel.

Petitioner's claims of incompetency to stand trial, insanity at time of act, and an unknowing and involuntary guilty plea were not barred by the procedural default rule of Wainwright v. Sykes, cited at Morace v. Wainwright, 781 F.2d 1558 (11th Cir. 1986).

The Petitioner argues his counsel was ineffective for failing to request a mental examination which may have formed the basis of an insanity he was not competent to stand trial. Cite at Jeter v. State cite as 417 S.E.2d 594 (S.C. 1992).

Under Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), applicable to guilty pleas under Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366,98 both deficient performance and prejudice to prevail on an ineffective assistance of counsel claim.

INEFFECTIVE ASSISTANCE OF COUNSEL

Counsel was ineffective when he failed to file the Notice for a Direct Appeal.

A criminal defendant has a Constitutional Right to be fully aware of the steps necessary to perfect an appeal. Moreover, in the absence of an intelligent waiver by the defendant to pursue an appeal in his behalf a belated appeal should be granted, in which the statute of limitation does not apply. Garner v. State, 536 S.E.2d 860 (2006).

The Fourth Circuit of Appeals has held that an attorney has a duty in all cases to advise of the right to appeal after a guilty plea. It has also recognize that extraordinary circumstances might establish that the omission of advice actually denied a defendant due process of law. Carzy v. Leverette, 605 F.2d 745 (4th Cir. 1979).

Furthermore, the United States Supreme Court provides better practice is for counsel routinely to consult with defendant regarding possibility of appeal.

CONCLUSION

Wherefore, the Applicant 14th Amendment right to Due Process and the 6th Amendment of ineffective assistance counsel under the standard of Strickland v. Washington and a evidentiary hearing should be held.

Respectfully Submitted,

Date: \_\_\_\_\_, 2009

Charles Junio, #332874

Applicant,

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	
	)	
	)	2009-CP-14-0574
	)	
Charles Junious, #332874,	)	
	)	
Applicant,	)	
	)	
v.	)	<b>RETURN</b>
	)	(Appointment of Counsel Requested)
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed October 6, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. The Applicant was indicted at the March 2008 term of the Clarendon County Grand Jury for (1) Murder, (2) Murder, (3) Burglary First Degree, (4) Possession of a Firearm During Commission of Violent Crime, and (5) Unlawful Carrying of a Pistol (2008-GS-14-0095). Applicant was represented by Shaun Kent, Esquire. On January 26, 2009, the Applicant pled guilty but mentally ill before the Honorable R. Ferrell Cothran, Jr. Applicant was sentenced to life imprisonment for each count of Murder, life imprisonment for Burglary First Degree, five (5) years imprisonment for Possession of a Firearm During Commission of Violent Crime, and one (1) year imprisonment for Unlawful Carrying of a Pistol. Applicant did not appeal his conviction and sentence.

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

## II.

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

1. "Ineffective assistance of counsel."
2. "Mental incompetent."
3. "Counsel was ineffective when he failed to file the Notice for a Direct Appeal."

Any claims not specifically enumerated in the PCR application or amendments 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. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCF.

## III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. 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, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the 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.

Respectfully submitted,

HENRY D. McMASTER  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

MARY S. WILLIAMS  
Assistant Attorney General

By: Mary S. Williams  
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

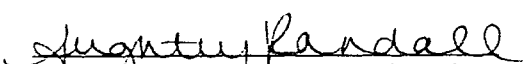
January 11, 2010.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	
	)	
	)	2009-CP-14-0574
	)	
CHARLES JUNIOUS, 332874	)	
	)	
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:

**William H. Johnson, Esquire**  
**Johnson & Robinson, LLC**  
**2 North Brooks Street**  
**Manning SC 29102**

DATED this 14th day of January, 2010.

  
 Aughtin E. K. Randall, Legal Assistant  
 For Respondent

State of South Carolina	)	
	)	In the Circuit Court
County of Clarendon	)	
	)	
Charles Junious,	)	
	)	
Plaintiff,	)	2013-CP-14-00507
	)	
versus	)	
	)	
State of South Carolina	)	TRANSCRIPT OF PCR
	)	
Defendant.	)	
	)	

March 19, 2012

BEFORE:

The Honorable William Jeffrey Young, Presiding

APPEARANCES:

William Johnson, Esquire  
Attorney for Charles Junious

Mary Williams, Assistant Attorney General  
Attorney for The State of South Carolina

Melissa R. Singletary  
Certified Verbatim Reporter

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EXHIBITS

(No exhibits were marked to this proceeding.)

Charles Junious vs. The State of South Carolina 3

1 MS. WILLIAMS: May it please the Court, Charles  
2 Junious. Mr. Junious was charged with murder, two counts  
3 of murder, burglary first degree, possession of a firearm  
4 during the commission of a violent crime and unlawful  
5 carrying of a pistol.

6 He entered a guilty plea before Judge Cothran  
7 and sentenced to life imprisonment. He's represented  
8 today by William Johnson. His plea attorney was Shaun  
9 Kent. He's alleged ineffective assistance of counsel,  
10 mental incompetence and failure to file appeal.

11 THE COURT: Are you ready to proceed, Mr. Johnson?

12 MR. JOHNSON: Well, Your Honor, we did have one  
13 matter to bring up on the error.

14 THE COURT: Yes, sir.

15 MR. JOHNSON: Mr. Junious has asked that I request -  
16 - move for a continuance in this matter. He has not --  
17 Your Honor, he was unaware that today was -- he was  
18 coming here for his PCR. He has not had the chance to  
19 make the preparations that he had intended to make so we  
20 request that this matter be continued until the next  
21 term.

22 THE COURT: Ms. Williams, when was he notified that  
23 he would have this PCR hearing?

24 MS. WILLIAMS: Your Honor, we would have notified  
25 the attorneys. We would not have had any contact with

Charles Junious vs. The State of South Carolina

4

1 the applicants themselves.

2 THE COURT: When was Mr. Johnson notified?

3 MS. WILLIAMS: I apologize. I thought I had the  
4 cover letter that goes out with the whole roster in my  
5 file with me, but usually it's approximately a month or  
6 give or take, so I'm sorry. I don't have the cover  
7 letter that went out. I apologize.

8 THE COURT: Mr. Johnson, do you show the dates?

9 MR. JOHNSON: It looks like I received notice  
10 February 15th.

11 THE COURT: That's sufficient notice.

12 MR. JOHNSON: All right, sir. Okay. Yes, sir, we  
13 are ready to proceed if that is denied.

14 THE COURT: All right. You may call you first  
15 witness.

16 MR. JOHNSON: We would call Mr. Junious to the  
17 stand.

18 Bailiff Bradley: Place your left hand on the Bible,  
19 raise your right hand, please.

20 (Witness complies)

21 Bailiff Bradley: Do you solemnly swear or affirm  
22 your testimony to this court will be the truth, the whole  
23 truth and nothing but the truth, so help you God?

24 Mr. Junious: Yes, sir.

25 Bailiff Bradley: Thank you. Have a seat.

1 (Witness complies)

2 Bailiff Bradley: Please state your full name and  
3 spell your last name for the record.

4 THE WITNESS: Charles Edward Junious, J-U-N-I-O-U-S.

5 Mr. Junious - Examination by Mr. Johnson:

6 Q Mr. Junious, you're here today seeking a new trial  
7 on these charges; correct?

8 A Yes, sir.

9 Q And your grounds are -- you have three particular  
10 grounds. First of all, is ineffective assistance of  
11 counsel. Also you contend that you were mentally  
12 incompetent both at the time of the crime and of the  
13 plea; is that right?

14 A Yes, sir.

15 Q And finally you contend that you were not advised of  
16 your rights to appeal; is that correct?

17 A Yes, sir.

18 Q Okay. First of all, in regard to your ineffective  
19 assistance of counsel claim, Mr. Shaun Kent was your  
20 attorney at the time of the plea; is that correct?

21 A Yes, sir.

22 Q All right. What do you contend that he did not do  
23 that he should have done or that he did that he  
24 should not have done?

25 A I feel that he should have broken down all of it to

Charles Junious vs. The State of South Carolina 6

1 me about the appeal, you know, this being my first  
2 time going through this type of situation I had.

3 Q Okay. You mentioned the appeal. Let's talk about  
4 that. Did he ever tell you that you had the right  
5 to appeal your sentence?

6 A I really don't remember him telling me that.

7 Q Okay. How about as far as representation prior to  
8 the day you got to Court? Was there anything that -  
9 - any complaint you have about his representation up  
10 to that point?

11 A I really -- not really, you know.

12 Q One of the bases of your claim is a claim that you  
13 were not competent, you were mentally incompetent;  
14 is that right?

15 A Yes, sir.

16 Q Now, you did undergo an evaluation by the South  
17 Carolina Department of Mental Health; is that  
18 correct?

19 A Yes, sir.

20 Q And that evaluation rendered an opinion that you  
21 were, in fact, competent; is that right?

22 A Yes, sir.

23 Q Did you discuss this with Mr. Kent?

24 A No, sir.

25 Q Okay. Did you -- were you under the impression that

1           there was going to be another evaluation?

2           A       That's what I thought.

3           Q       Okay. Why -- why did you think there was going to  
4           be another evaluation?

5           A       I really don't know to tell you the truth.

6           Q       Do you believe that a different evaluation would  
7           have rendered a different opinion?

8           A       I believe so.

9           Q       Why do you believe that you were not competent to  
10          stand trial?

11          A       Just really wasn't.

12          Q       All right. Okay. Was there anything else that Mr.  
13          Kent did not do that you can think of or that you  
14          recall?

15          A       No, sir, that's all.

16               MR. JOHNSON: Okay. Thank you, sir. Answer any  
17          questions the District Attorney may have.

18               THE COURT: Ms. Williams?

19          MR. JUNIOUS CROSS BY MS. WILLIAMS:

20          Q       Mr. James, as you told Judge Cothran, you had enough  
21          time with Mr. Kent and you were pretty satisfied  
22          with him?

23          A       Yes, ma'am.

24          Q       Okay. And you told Judge Cothran that you didn't  
25          have any mental infirmity that would prevent you

Charles Junious vs. The State of South Carolina 8

1 from understanding what you were doing; is that  
2 correct?

3 A I really don't remember, to tell you the truth.

4 Q Okay. Did you ask Mr. Kent to file an appeal for  
5 you?

6 A No, ma'am, I didn't know nothing about an appeal.

7 Q All right. And you agreed with the facts that the  
8 Solicitor stated as to what happened that day?

9 A They played it back.

10 Q Did you talk to Mr. Kent about possible sentence of  
11 guilty but mentally ill plea?

12 A I don't remember, to tell you the truth.

13 Q Do you remember at your plea hearing you talked  
14 about a guilty but mentally ill plea for you?

15 A I don't remember to tell you the truth.

16 Q You don't remember anything about your guilty plea?

17 A One thing that came they came and brought the papers  
18 to the prison, but to the county jail. They told  
19 me, you know, they'd take the death penalty off and  
20 I could plea to life.

21 Q And you understand what you're doing today; is that  
22 correct?

23 A Not --- not fully aware.

24 Q Is it about the same as when you pled guilty today?

25 A Ma'am?

1 Q You feel the same as when you pled guilty?

2 A Kind of.

3 MS. WILLIAMS: Nothing further.

4 THE COURT: Any redirect?

5 MR. JOHNSON: Nothing further, Your Honor.

6 THE COURT: Thank you. You may step down.

7 MR. JOHNSON: Your Honor, we call Mr. Kent.

8 THE COURT: All right.

9 Bailiff Bradley: Place your left hand on the Bible,  
10 raise your right hand.

11 (Witness complies)

12 Bailiff Bradley: State your name, please.

13 Witness: Shaun Kent.

14 Bailiff Bradley: Solemely swear or affirm the  
15 testimony to the Court shall be the truth, the whole  
16 truth and nothing but the truth, so help you God?

17 Mr. Kent: I do.

18 Bailiff Bradley: Thank you, sir. Have a seat up  
19 here, please.

20 (Witness complies)

21 Bailiff Bradley: Please state your full name and  
22 spell your last name for the record.

23 Witness: Shaun Kent. Last name K-E-N-T.

24 THE COURT: Ready to proceed?

25 MR. JOHNSON: Yes, Your Honor. Thank you, Your

1 Honor.

2 Mr. Kent - Examination by Mr. Johnson:

3 Q Mr. Kent, you recall this case?

4 A I do.

5 Q Was his mental competency an issue?

6 A It definitely was. Yes, it was.

7 Q Okay. And what did you do to address that issue?

8 A William when I got the case, I went to the jail  
9 immediately to see Mr. Junious and I talked with the  
10 family. Based upon basically the facts of the case  
11 and, of course, mental illness always becomes an  
12 issue, we immediately met with him. I discussed it  
13 with the Solicitor that we might need to get him  
14 evaluated by the State of South Carolina first  
15 because you understand the first evaluation is free.  
16 It's easiest to describe the family had limited  
17 means and we wanted to get an evaluation from the  
18 State. When he was seen by MH the findings came  
19 back and it showed that there was a mental illness  
20 there, but not mental illness that he couldn't  
21 control his actions, so talking to him, talking to  
22 his family, I felt as though that a second  
23 evaluation that would cost more money, that it would  
24 cost more money wasn't prudent at this point in  
25 time. I thought there was some psychosis there but

1 it wasn't the level of psychosis that rose to the  
2 level that would differentiate the difference  
3 between right and wrong. The psychosis that just  
4 made him mentally ill. So honestly, what I did was  
5 I went and talked to the Solicitor and at that time  
6 based on what I had along with the fact that there  
7 was some mental illness and actually there was DNA  
8 found on one of the axes, but there was some illness  
9 but it didn't raise to the level of -- I mean to  
10 control right and wrong. So what we did was I went  
11 and talked to the Solicitor who at the time was  
12 Kelly Jackson and took all the information that I  
13 had and honestly, basically convinced him to take  
14 the death penalty off of the table and actually to  
15 allow him to plead straight up, not with a  
16 negotiated life sentence. So I went to the  
17 Solicitor and based upon what we had got the death  
18 penalty taken off of the table. Didn't really  
19 continue to challenge the finding of the Department  
20 of Mental Health because based upon my experience, I  
21 thought they were good findings. That was a long  
22 answer to your question, I apologize.

23 Q And that was the reason there was no additional  
24 evaluation?

25 A That decision was based upon my experience. I

**Charles Junious vs. The State of South Carolina** 12

1 thought it was necessary not to get an additional  
2 evaluation. I thought the cost prohibited it and I  
3 thought realistically if I got a second evaluation  
4 that would confirm what MH already said and there's  
5 two evaluations that there was a chance the death  
6 penalty could have been a factor so ...

7 Q On the issue of appeal, did you discuss with Mr.  
8 Junious his appeal rights.

9 A William, I looked through my file in full detail, I  
10 don't see anything where I informed him about this  
11 appeal rights candidly. I don't have any  
12 independent knowledge of telling him of his appeal  
13 rights, so. As an officer of the court and to the  
14 best of my knowledge I don't think I informed him of  
15 his appeal rights. Some times I don't do that  
16 because the judge usually informs them of their  
17 appellant rights on the record. As far as me  
18 independently telling him about his appeal rights, I  
19 can't say that I did. To answer your question, no I  
20 did not.

21 Mr. Johnson: Okay. No further questions.

22 The Court: Ms. Williams.

23 **Mr. Kent - Cross Examination by Mr. Kent:**

24 Q Mr. Kent, you had an opportunity to talk to Mr.  
25 Junious during the course of the representation of

1 him?

2 A I did.

3 Q Did he appear lucid to you and was able to talk to  
4 you about what happened?

5 A He was able to talk to me and he appeared lucid but  
6 as far as preparation for the case he didn't  
7 remember anything or that's what he told me. Same  
8 thing he told you today. We talked but he didn't  
9 actually remember what had happened. As far as  
10 conversation, we could have conversations but we  
11 couldn't have conversations about what happened. He  
12 just couldn't remember.

13 Q Did you discuss with him, you went through the  
14 discovery, all the evidence to be presented against  
15 him?

16 A We went through the discovery, we talked about the  
17 potential for a trial. Ms. Williams, the major  
18 concern I had, as I stated when I talked to William  
19 was, the death penalty and I discussed that with him  
20 and the family that I thought that it was a chance  
21 it was a death penalty case and we discussed that in  
22 detail that it was a chance it was a death penalty.  
23 We did talk about the 911 tape because unfortunately  
24 you could hear the entire murders taking place on  
25 tape. You could hear his voice on tape. You could

Charles Junious vs. The State of South Carolina 14

1 hear the victim begging for mercy. That's what I  
2 discussed with him in more detail almost as if I  
3 didn't talk to him as if he were a defendant, I  
4 talked to him as a person listening and saying these  
5 are the type of acts that can get you convicted. We  
6 need to plea, we need to take advantage of the  
7 State's plea.

8 Q Would you describe his affect during the  
9 representation was he similar as he was today?

10 A His affect is very similar as been described right  
11 now, a very cold affect. That's why I pressed the  
12 court to give us a guilty but mentally ill plea  
13 because I thought there was some psychosis there. I  
14 thought it would help him while he was at the  
15 Department of Corrections get some treatment for his  
16 psychosis.

17 Ms. Williams: I believe that's all I have.

18 The Court: Any redirect?

19 Mr. Johnson: Nothing further, Your Honor.

20 The Court: Thank you. Does the State object to Mr.

21 Kent being excused?

22 Ms. Williams: Oh certainly.

23 The Court: Mr. Johnson?

24 Mr. Johnson: No objection.

25 The Court: Thank you.

1 Mr. Johnson: Your Honor, we don't have anything  
2 further other than I would point out that the copy of the  
3 transcript that I have and it may not be complete but  
4 there is no reference to the court discussing ...

5 The Court: I had noticed that, Mr. Johnson, as well.

6 Mr. Johnson: Okay. Thank you.

7 The Court: Ms. Williams?

8 Ms. Williams: There is nothing further from the  
9 State, Your Honor.

10 The Court: I'll take this under advisement and I'll  
11 let you know.

12 Ms. Williams: Okay.

13 Mr. Johnson: Thank you, Your Honor.

14 (End of PCR)

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**CERTIFICATE**

This is to certify that the transcript in the matter of Charles Junious vs. State of South Carolina, consisting of Fifteen (15) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 29th day of July, 2015.

Melissa R. Singletary

Melissa R. Singletary  
Certified Court Reporter

1

2 State of South Carolina

3

4 County of Clarendon

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6 Charles Junious,  
7 Plaintiff

PCR Hearing  
2013-CP-14-00507

8 vs.

9 The State of South Carolina,  
10 Defendant

April 13, 2015  
Sumter, S.C.

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Before the Honorable George C. James, Jr.,

15 Judge.

16

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

18 Ms. Helen D. Seamour,  
19 Attorney for Plaintiff

20

21 Mr. Daniel F. Gourley, II  
22 Attorney for Defendants

23

Margaret T. Sullivan,  
Court Reporter

24

25

1 THE COURT: Mr. Gourley.

2 MR. GOURLEY: This is Charles Junious  
3 versus the State of South Carolina. Docket No.  
4 2013-CP-14-507. Presently confined in the South  
5 Carolina Department of Corrections pursuant to  
6 orders of commitment from the Clarendon County Clerk  
7 of Court. He was indicted in the March of 2008 term  
8 of the Clarendon County Grand Jury, for two counts  
9 of murder, burglary in the first degree, possession  
10 of a firearm during the commission of a violent  
11 crime, and an unlawful carrying of a pistol.

12 He was represented by Mr. Kent. And on  
13 January 26th 2009, he pled guilty but mentally ill  
14 before the Honorable R. Ferrell Cothran, Jr. He was  
15 sentenced to life imprisonment for each count of  
16 murder. Life imprisonment for the burglary in the  
17 first degree. Five years imprisonment for  
18 possession of a firearm during the commission of  
19 violent crime. And one year imprisonment for  
20 unlawful carrying of a pistol.

21 He did not appeal his conviction or  
22 sentence. He subsequently filed for a  
23 post-conviction relief on October 6th 2009. And  
24 that was Docket No. 2009-CP-14-0574. In his  
25 application, he asserts claims of ineffective

1 assistance of counsel and mental incompetency. An  
2 evidentiary hearing was convened on March 19th 2012,  
3 at the Sumter County courthouse before the Honorable  
4 W. Jeffrey Young. He was present at the hearing and  
5 represented by Mr. Johnson. And by written order  
6 filed July 31st 2012, Judge Young denied and  
7 dismissed this application for post-conviction  
8 relief.

9 THE COURT: So it was heard on the merits.

10 MR. GOURLEY: Yes, sir.

11 THE COURT: Just like today.

12 MR. GOURLEY: Yes, sir. And he thereafter  
13 filed a pro se Notice of Appeal which was dismissed  
14 by the South Carolina Supreme Court for failure to  
15 timely serve and file. His remittitur was issued on  
16 January 9th 2014. He filed a second application for  
17 post-conviction relief on December 13th 2013,  
18 alleging that he did not knowingly and intelligently  
19 waive his right to appeal the denial of PCR.

20 Your Honor, I have spoken with Ms. Seamour  
21 and Mr. Johnson. Based on all our discussions, we  
22 agree that Mr. Junious attempted to file his Notice  
23 of Appeal, and did not knowingly and intelligently  
24 waive his right. Appealed the denial of his PRC,  
25 and therefore, we would consent to the Austin

1 appeal.

2 THE COURT: Ms. Seamour, I assume you  
3 don't want to argue against that.

4 MS. SEAMOUR: No. No objection, Your  
5 Honor.

6 THE COURT: Does someone want to -- so  
7 there was no indication in the transcript that he  
8 was advised even by the court that he had the right  
9 to appeal?

10 MR. GOURLEY: No, Your Honor. Not that  
11 I'm aware of. Obviously Mr. Johnson was still his  
12 attorney at the time, and had to advise Mr. Junious  
13 of the right to appeal. And based off of my  
14 discussions with Mr. Johnson, it doesn't seem that  
15 it was done.

16 THE COURT: You want to send me an order?

17 MR. GOURLEY: Yes, sir. I certainly will.

18 THE COURT: And, Mr. Johnson, is just a  
19 witness so he doesn't need to be heard, does it?

20 MR. GOURLEY: No, sir. Unless he wants to  
21 put anything on the record.

22 MR. JOHNSON: Nothing, Your Honor.

23 THE COURT: Thank you.

24 MS. SEAMOUR: Thank you, Your Honor.

25 THE COURT: And I will turn this back over

1 to you all.

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C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced on April 15, 2015 in Common Pleas Nonjury Court for Sumter County, Sumter, South Carolina.

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

9/23/15  
DATE

Margaret T. Sullivan  
COURT REPORTER  
My Commission expires: 9/7/2021

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CLARENDON )  
 )  
 Charles Junious, #332874, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

2009-CP-14-0574

~~ORDER OF DISMISSAL~~ COPY  
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Beverly H. Roberts  
 CLERK OF COURT  
 CLARENDON COUNTY, SC

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This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 6, 2009. An evidentiary hearing into the matter was convened on March 19, 2012, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by William H. Johnson, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying Shaun Kent, Esquire ("Counsel"). This Court had before it the records of the Clarendon County Clerk of Court, the guilty plea transcript, and the Applicant's records from the South Carolina Department of Corrections.

**PROCEDURAL HISTORY**

The records before this Court indicate that The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. The Applicant was indicted at the March 2008 term of the Clarendon County Grand Jury for (1) Murder, (2) Murder, (3) Burglary First Degree, (4) Possession of a Firearm During Commission of Violent Crime, and (5) Unlawful Carrying of a Pistol (2008-GS-14-0095). Applicant

was represented by Shaun Kent, Esquire. On January 26, 2009, the Applicant pled guilty but mentally ill before the Honorable R. Ferrell Cothran, Jr. Applicant was sentenced to life imprisonment for each count of Murder, life imprisonment for Burglary First Degree, five (5) years imprisonment for Possession of a Firearm During Commission of Violent Crime, and one (1) year imprisonment for Unlawful Carrying of a Pistol. Applicant did not appeal his conviction and sentence.

In his application for post-conviction relief (PCR), Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel."
2. "Mental incompetent."
3. "Counsel was ineffective when he failed to file the Notice for a Direct Appeal."

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

#### **Ineffective Assistance of Counsel**

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove



that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied 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 v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland). With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

*Failure to Advise of Direct Appeal*

Applicant alleges that Counsel was ineffective in failing to consult with him about an appeal. Counsel confirmed that he did not discuss an appeal with Applicant and did not file an appeal on his behalf. The plea judge informed Applicant that if he wished to file an appeal he would need to do so within ten days of his plea. (Tr. p. 10, lines 18-23.)

When the question is whether counsel was ineffective in failing to file a direct appeal from following a guilty plea, the United States Supreme Court has held that counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to 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, 120 S.Ct. 1029 (2000). “By ‘consult,’ the Court means advising the defendant about the advantages and disadvantages of taking an appeal and making a reasonable effort to discover the defendant's wishes.” Id. at 471. Applicant’s “bare assertion that he was not advised of appellate rights is insufficient to grant relief.” Rolen v. State, 384 S.C. 409, 415, 683 S.E.2d 471, 475 (2009). I find no evidence that Applicant inquired about an appeal, even after advised of such right by the plea court. I further find no extraordinary circumstance for counsel to believe that a rational defendant would want to appeal such as a potentially meritorious issue preserved for appeal. I therefore find that Applicant is not entitled to a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

*Competence*

Applicant further asserts that he was incompetent at the time of his plea. Counsel testified



that Applicant was evaluated by the Department of Mental Health and found to be competent and criminally responsible. The evaluation was entered into evidence at Applicant's plea. (Tr. p. 5, line 15 – p. 6, line 13.) Counsel recalled that he discussed an additional evaluation with Applicant's family and that it had been decided that an additional evaluation was not worth the additional expense. Based on his interactions with Applicant, Counsel felt that Applicant may have some mental health issue but that it did not rise to the level of incompetence. Counsel added that he had been able to convince the solicitor not to pursue the death penalty and to allow Applicant to plead "straight up" to murder. Counsel felt that it was important to seize the opportunity to avoid the death penalty, making procurement of a likely fruitless second evaluation even less appealing. Though Applicant now claims a lack of memory of his plea, a review of the plea transcript reveals that Applicant provided appropriate responses throughout. Applicant specifically denied any physical or mental infirmity that would prevent his understanding what he was doing at the time of his plea. (Tr. p. 8, lines 17-20.)

In a PCR action, the applicant bears the burden of proof to show by a preponderance of the evidence that he was incompetent when he entered his plea. Jeter v. State, 308 S.C. 230, 232-234, 417 S.E.2d 594, 595-596 (1992). Petitioner presented no medical evidence, and the plea transcript and Counsel's testimony support that Petitioner was in fact competent at the time of his plea. I therefore find that Applicant has failed to meet his burden of proving that he was incompetent at the time of his plea.

I further find that Applicant has failed to demonstrate that Counsel was ineffective in failing to procure a second evaluation in further effort to form an insanity defense or show that he was



incompetent to stand trial. One evaluation had already been done and did not support an insanity defense or incompetence. The evaluation was supported by Counsel's own observations that Applicant was not impaired to the level of incompetence. Moreover, Applicant has failed to demonstrate a reasonable probability that he was either insane at the time of the murders or incompetent at the time of his pleas. Id. I therefore find that Counsel was not ineffective in this regard.

#### **Other Allegations**

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

#### **CONCLUSION**


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

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

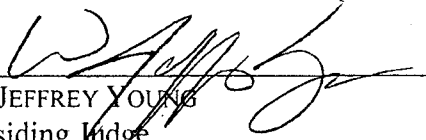
#### **IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

*[Signature on next page.]*

A handwritten signature in black ink, appearing to be 'WJG', is located at the bottom left of the page.

AND IT IS SO ORDERED this 11 day of May, 2012

  
\_\_\_\_\_  
W. JEFFREY YOUNG  
Presiding Judge  
Third Judicial Circuit

Durham, South Carolina.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CLARENDON )

IN THE COURT OF COMMON PLEAS

Charles Junious, 332874,  
 Plaintiff

**CERTIFIED TRUE COPY  
OF ORIGINAL FILED IN THIS OFFICE**

CASE NO.  
2009-CP-14-0574

DATE 7/2/12

v.

Paula B. Roberts MOTION AND ORDER INFORMATION  
CLERK OF COURT FORM AND COVER SHEET  
CLARENDON COUNTY, SC

State Of South Carolina  
 Defendant.

Plaintiff's Attorney: William H. Johnson, Bar No. Address: Post Office Box 137 Manning, SC 29102 phone: (803) 435-0909 fax: e-mail: other:	Defendant's Attorney: David Spencer, Bar No. Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
<u>[Signature]</u> Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	<u>May 7, 2012</u> Date submitted
<b>SECTION III: Motion Fee</b>	
<input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	<u>W. Jeffrey Young</u> JUDGE CODE: <u>2156</u> Date: <u>5-11-12</u>
<b>CLERK'S VERIFICATION</b>	
Date Filed: _____ Collected by: _____ <input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

DOCKET NO. 2008-GS-14- 0095  
The State of South Carolina  
County of CLARENDON

COURT OF GENERAL SESSIONS

MARCH TERM 2008

THE STATE  
vs.

CHARLES EDWARD JUNIOUS

ARREST WARRANT NUMBER

J124448 J124447

J124449 J124450

ACTION OF GRAND JURY

*Aue Bell*

*Christina L Bell*

Foreperson of Grand Jury

Date: *3/16/08*

VERDICT

Indictment for

MURDER (2 COUNTS); BURGLARY FIRST  
DEGREE; POSSESSION OF FIREARM DURING  
COMMISSION OF VIOLENT CRIME; UNLAWFUL  
CARRYING OF A PISTOL

C. KELLY JACKSON, SOLICITOR

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CLARENDON ) INDICTMENT FOR  
 MURDER (2 COUNTS); BURGLARY FIRST DEGREE;  
 POSSESSION OF FIREARM DURING COMMISSION OF  
 VIOLENT CRIME; UNLAWFUL CARRYING OF A PISTOL

At a Court of General Sessions, convened on March 6, 2008, the Grand Jurors of CLARENDON COUNTY present upon their oath:

**COUNT ONE - MURDER**

That CHARLES EDWARD JUNIOUS did in Clarendon County on or about November 29, 2007, feloniously, willfully and with malice aforethought, either expressed or implied, kill one Barbara Johnson by means of shooting her multiple times with a Hi-point ACP 380 caliber pistol, and that the said Barbara Johnson did die as a proximate result thereof.

**COUNT TWO - MURDER**

That CHARLES EDWARD JUNIOUS did in Clarendon County on or about November 29, 2007, feloniously, willfully and with malice aforethought, either expressed or implied, kill one Theresa Johnson by means of shooting her multiple times with a Hi-point ACP 380 caliber pistol, and that the said ~~Barbara~~ Johnson did die as a proximate result thereof.

*Theresa*

**COUNT THREE - BURGLARY FIRST DEGREE**

That CHARLES EDWARD JUNIOUS did in Clarendon County on or about November 29, 2007, enter the dwelling of Franklin, Barbara, and Theresa Johnson while armed with a deadly weapon, to wit: a Hi-point ACP 380 caliber pistol which he not only displayed but used to cause physical injury and death to Barbara and Theresa Johnson, who were not participants in the crime, and the entering or remaining occurred in the nighttime, in violation of Section 16-11-311(A)(1)(a), (b), (c), (d), or (A)(2), South Carolina Code of Laws (1976), as amended.

**COUNT FOUR - POSSESSION OF FIREARM DURING COMMISSION OF VIOLENT CRIME**

That CHARLES EDWARD JUNIOUS in Clarendon County on or about November 29, 2007, was in possession of and did visibly display a firearm during the commission of two violent crimes, Murder and Burglary First Degree, as defined in Section 16-1-60, to-wit: a Hi-point ACP 380 caliber pistol, in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

**COUNT FIVE - UNLAWFUL CARRYING OF A PISTOL**

That CHARLES EDWARD JUNIOUS did in Clarendon County on or about November 29, 2007 unlawfully carry about the person a pistol, in violation of Section 16-23-20, 50(A)(2), of the Code of Laws of South Carolina, (1976), as amended.

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

*C. Kelly Jacobson*  
 \_\_\_\_\_  
 SOLICITOR