

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

SC Court of Appeals

Honorable Judge Eugene C. Griffith, Jr., Common Pleas Court Judge

2012-CP-04-02369

The State,

Respondent

v.

John Bradley Turner,

Appellant

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

John Bradley Turner, #239626

2012-CP-04-02369

Petitioner,

Robert X. Kiley
CLERK OF COURT

ORDER DENYING PETITION
FOR WRIT OF MANDAMUS

The Honorable J.C. Nicholson,

Respondent.

COMMON PLEAS AND
GENERAL SESSIONS

2015 JUL 10 AM 10:47

FILED-CLERK'S OFFICE
ANDERSON SC

This matter comes before the Court by way of a document filed on or about July 3, 2012, captioned "Writ of Mandamus Petition." Respondent filed a Return and Motion to Dismiss Petition for Writ of Mandamus.

PROCEDURAL HISTORY

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Anderson County. Petitioner was indicted at the September 2002 term of the Anderson County Grand Jury for murder (2002-GS-04-2531).¹ He was represented by Richard Harold Warder, Esquire. On February 3, 2003, Petitioner pled guilty to each charge as indicted. Petitioner was sentenced by the Honorable J.C. Nicholson, Jr., to confinement for a period of thirty (30) years for murder.²

First PCR Application (2003-CP-04-2715)

Petitioner subsequently filed an application for post-conviction relief (PCR) on September 4, 2003, in which he alleged he was being held in custody unlawfully for the following reasons:

¹ Petitioner was also indicted for possession of a firearm during the commission of a violent crime (2002-GS-04-2530); and at the July 2002 term of the Anderson County Grand Jury for trafficking methamphetamine (2002-GS-04-1907), and manufacturing methamphetamine (2002-GS-04-1908). Petitioner waived presentment to the grand jury on an additional charge of manufacturing methamphetamine (2002-GS-04-0416). These indictments (and subsequent guilty pleas) are not contested or challenged in the current Petition.

² Judge Nicholson ordered Petitioner's sentence for murder be run concurrently with his additional sentences for violation of the weapons provision and drug charges. Applicant's aggregate sentence is thirty (30) years.

- JUL 17 2015 02:20 PM FROM: 864 231 7429 FAX NO: 001 251 1729 11:00/022
1. Ineffective assistance of counsel; and
 2. Involuntary guilty plea.

Respondent made its Return. An evidentiary hearing was convened on February 6, 2006, at the Anderson County Courthouse. Petitioner was present and represented by Theo Mitchell, Esquire. Respondent was represented by Daniel Grigg, of the South Carolina Office of Attorney General.

The Honorable Alexander S. Macaulay denied and dismissed Petitioner's application by written Order on March 24, 2006. Petitioner subsequently filed a motion for reconsideration pursuant to SCRPC Rule 59(e), which was denied by Order dated December 19, 2006. Petitioner filed a timely Notice of Appeal, and on October 18, 2007, the South Carolina Supreme Court denied Petitioner's appeal. The Remittitur was issued on November 6, 2007.

Second PCR Application (2007-CP-04-3661)

Petitioner then filed a second application for post-conviction relief on November 16, 2007, where alleged the following grounds for relief:

1. Ineffective assistance of counsel;
2. Due Process violation, Judge gave incorrect sentence information; and
3. Newly discovered evidence or prosecutor misconduct.

Respondent subsequently filed a Return and Motion to Dismiss. On December 4, 2007, a conditional order of dismissal was issued by the Honorable J. Cordell Maddox, Jr. Petitioner made his response. On March 17, 2008, the Honorable Alexander S. Macaulay issued an Order denying the application. Petitioner filed a Notice of Appeal. On October 7, 2009, the South Carolina Supreme Court dismissed Petitioner's appeal. The Remittitur was issued on October 23, 2009.

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Third PCR Application (2009-CP-04-4709)

Petitioner filed his third application for post-conviction relief on December 2, 2009, where he alleged the following grounds for relief:

1. Ineffective assistance of PCR Counsel;
2. Newly discovered evidence of prosecutor misconduct;
3. Trial Judge gave incorrect sentence information.

Respondent subsequently filed a Return and Motion to Dismiss. On March 3, 2010, the Honorable Alexander S. Macaulay issued a conditional order, provisionally denying Petitioner's application. Petitioner made his response. On June 17, 2010, the Honorable R. Lawton McIntosh issued a final order denying the application. Petitioner filed a Notice of Appeal. On August 11, 2010, the South Carolina Supreme Court dismissed Petitioner's appeal. The Remittitur was issued on May 4, 2010.

Federal Habeas Corpus Petition (1:10-cv-02433-TMC)

Petitioner subsequently filed a Petition for Habeas Corpus on February 9, 2011, in Federal District Court in the Federal District of South Carolina. On January 17, 2012, the Honorable Timothy M. Cain dismissed the petition. In April, 2012, the Fourth Circuit Court of Appeals dismissed the subsequent appeal. Turner v. Warden of Perry Correctional Institute, No. 12-6171, Mandate and Judgment, Case No. 1:10-2433-TMC, Dkt.#s 60, 60-1 (4th Cir. April 25, 2012).

Current Petition for Writ of Mandamus

Petitioner most recently submitted this petition on or about July 3, 2012, captioned "Writ of Mandamus Petition." Petitioner requests this Court compel the Honorable J.C. Nicholson, Jr., who presided over his guilty plea, to issue an order "correcting" his term of imprisonment to

eighty-five percent (85%) of his current sentence. In the alternative, Petitioner seeks to have his pleas withdrawn, sentences vacated, and a new trial granted.

A hearing was convened on June 3, 2015, at the Anderson County Courthouse, before the Honorable Eugene C. Griffith, Jr. Petitioner was present and represented by Robert Lusk, Esquire. Respondent was represented by Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office. At the hearing, Petitioner stated that Judge Nicholson informed him prior to his guilty plea that he would only serve eighty-five percent of his thirty (30) year sentence for murder. Petitioner sought to enforce what he alleged to be an oral promise by Judge Nicholson. Petitioner also stated that Judge Nicholson wrote a letter to him saying he misspoke regarding the eighty-five percent (85%) language. Finally, Petitioner contended that he never got to introduce evidence of his incorrect sentence in prior post-conviction relief proceedings and never got his full "bite at the apple."

Standard of Review

A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Rule 12(b)(6) SCRPC; Ashley River Properties I, LLC v. Ashley River Properties II, LLC, 374 S.C. 271, 277, 648 S.E.2d 295, 298 (Ct. App. 2007); Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct.App.2001). Dismissal of a complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure is appropriate where, as here, the allegations set forth on the face of the complaint and inferences reasonably deducible therefrom, even when viewed in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, fail to state any valid claim for relief. Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874

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(2006); Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999); Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999).

Discussion

I.

This Court finds Petitioner's claim is entirely without merit. First, a Writ of Mandamus is an inappropriate vehicle for Petitioner's claim. Instead, these allegations fall under the Uniform Post-Conviction Procedure Act (PCR Act). S.C. Code Ann. §§ 17-27-10 to -160 (2014). The PCR Act "comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence," and "shall be used exclusively in place of them." § 17-27-20(B); see also Simpson v. State, 329 S.C. 43, 46-47, 495 S.E.2d 429, 430-31 (1998) (holding state habeas corpus petition was properly dismissed where the allegations were clearly cognizable under the PCR Act). Petitioner's claims are clearly cognizable under the PCR Act, as evidenced in part by their inclusion in several of Petitioner's prior PCR applications. Moreover, his claim that his guilty plea was involuntary based on misrepresentations by Judge Nicholson, as well as his plea counsel, are clearly cognizable under the PCR Act. § 17-27-20(A)(1) (Including claims that "the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State."). Accordingly, this claim is not properly before this Court as a Writ of Mandamus.

II.

Further, after examining the merits of Petitioner's allegations, this Court finds that Petitioner has failed to state a claim upon which relief may be granted.

A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the

plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Rule 12(b)(6), SCRCP; see also Ashley River Properties, I, LLC, v. Ashley River Properties II, LLC, 374 S.C. 271, 277, 648 S.E.2d 295, 298 (Ct. App. 2007); Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). Dismissal of a complaint pursuant to Rule 12(b)(6) is appropriate where, as here, the allegations set forth on the face of the complaint and inferences reasonably deducible therefrom, even when viewed in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, fail to state any valid claim for relief. Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006); Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999); Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999).

This Court finds that this Petition is entirely without merit, and is nothing more than an attempt to circumvent the well established procedures for challenging a conviction or sentence by direct appeal, or post-conviction relief. The action fails to state facts sufficient to constitute a cause of action, and must be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

1. Failure to State Facts Sufficient to Alter Sentencing

Petitioner's claim seeks relief that is not authorized by law and outside of this Court's authority to grant. Murder is a no-parole offense with a "mandatory minimum term of imprisonment for thirty years to life." S.C. Code Ann. §§ 24-13-100, 16-1-10(D), 16-3-20(A). "[A]n inmate convicted of a 'no parole' offense . . . is not eligible for early release, discharge, or community supervision as provided in § 24-1-560, until the inmate has served at least eighty-five percent (85%) of the actual term of imprisonment." S.C. Code Ann. § 24-13-150(A). Furthermore, inmates convicted of murder are not eligible for work release, early release, discharge, or community supervision. Id.

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Judge Nicholson sentenced Petitioner to thirty (30) years imprisonment for murder. Petitioner argues that he was misinformed and led to believe that he would only have to serve eighty-five (85%) of his sentence. However, under the current law of South Carolina, Petitioner received the *absolute minimum* sentence for murder. Additionally, because murder is a “no-parole” offense, he is not eligible for work release, early release, discharge, or community supervision, as a matter of law, and thus is statutorily required to serve the entire sentence. Even assuming this Court was able (and willing) to issue an order requiring Judge Nicholson to alter Petitioner’s sentence, such an alteration below the minimum sentence is not within the power and authority vested with a Circuit Court Judge.³

2. Failure to State Facts Sufficient to Grant a Writ of Mandamus

“The writ of mandamus is the highest judicial writ known to the law and according to long approved and well established authorities, only issue in cases where there is a specific legal right to be enforced or where there is a positive duty to be performed.

A mandamus will be issued only to compel a public official to perform a mandatory duty. State v. Ansel, 76 S.C. 395, 414, 57 S.E. 185 (1906); Lombard Iron Works v. Town of Allendale, 187 S.C. 89, 196 S.E. 513 (1938). The primary purpose of a writ of mandamus is to enforce an established right, and to enforce a corresponding imperative duty created or imposed by law. Charleston County School District v. Charleston County Election Commission, 336 S.C. 174, 519 S.E.2d 567 (1999). To obtain a writ of mandamus requiring performance of an act, a Petitioner must show that the opposing party has an indisputable and plainly defined duty to perform the act, the ministerial nature of the act, the opposing party’s specific legal right for

³ Nor would Judge Nicholson have jurisdiction to alter Petitioner’s sentence. See State v. Campbell, 376 S.C. 212, 215, 656 S.E.2d 371, 373 (2008) (noting the “long-standing rule of law that a trial judge is without jurisdiction to consider a criminal matter once the term of court during which judgment was entered expires,” except for post-trial motions filed within ten days pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure).

which discharge of the duty is necessary, and the lack of other legal remedy. Id. at 282. The writ of mandamus lies solely within the discretion of the court of which it is requested. In Interest of Lyde, 284 S.C. 419, 327 S.E. 70 (1985). Moreover, mandamus is unavailable where the legal right is doubtful. Id.

This Court finds Petitioner has failed to show the required elements necessary to consider the issuance of a Writ of Mandamus. Specifically, as stated above, Petitioner has no right to a reduction in sentence where he has already received the mandatory minimum term of imprisonment for his offense. It also does not appear that the Respondent – Judge Nicholson – has either the duty *or even the power* to take the action requested by Petitioner. Finally, there are well-established methods for challenging a conviction or sentence, through direct appeal and post-conviction relief. Petitioner also has Federal avenues for relief, where he may be able to raise claims that are procedurally barred in State court. See Martinez v. Ryan, 132 S.Ct. 1309, 182 L.Ed.2d 272 (2012) (“Where, under state law, claims of ineffective assistance of trial counsel must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective.”).

[Signature block on following page]

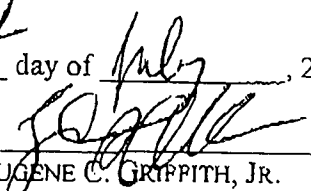
See 8/19

Conclusion

Accordingly, the petition is dismissed because it is not supported by the facts alleged by Petitioner and fails to support the requested relief.

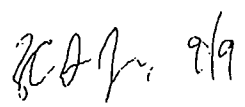
IT IS THEREFORE ORDERED that the "Writ of Mandamus Petition" must be denied and dismissed with prejudice.

AND IT IS SO ORDERED this 7th day of July, 2015.


EUGENE C. GRIFFITH, JR.
Presiding Judge

, South Carolina

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GENERAL SESSIONS



10

11

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

FILED-CLERK'S OFFICE JUDGMENT IN A CIVIL CASE
ANDERSON SC CASE NUMBER 2012CP0402369

John Bradley Turner

2015 JUN - 5 South Carolina State Of

COMMON PLEAS AND
GENERAL SESSIONS

A TRUE COPY

JUN - 5 2015

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: JPruitt/Docket

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: Writ of Mandamus denied; Mr. Schmeckpeper to provide supplemental order to the Court.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. There is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2154

6/3/2015

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on 6-3-15
attorney's box on 6-5-15

, and a copy mailed first class or placed in the appropriate
to attorneys of record or to parties (when appearing pro se) as follows:

John Bradley Turner #290521 Tyger River Correctional
Institution 200 Prison Road Enoree, SC 29335-9308

John Walter Whitmire PO Box 11549 Columbia, SC
29211-1549

Floy Kenyon Anderson PO Box 1286 Anderson, SC 29622

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Richard A. Shirley

Court Reporter: Vivian Cross

Richard A. Shirley - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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John Bradley Turner #290521

WRIT OF MANDAMUS

V.

PETITION

State of South Carolina

Defendant.

IN RE : John Bradley Turner

Plaintiff petitions this Circuit Court for this case to be heard by Honorable Judge J.C. "Buddy" Nicholson Jr. for reasons, that Judge Nicholson has Jurisdiction to hear this petition, for he was the sentencing Judge at plaintiff's trial.

Plaintiff seeks relief that this Court will correct his sentence, and or withdraw plaintiff's guilty plea and vacate his sentence and allow him his due process rights of The Fourteenth Amendment of The United States Constitution in order for plaintiff to defend himself in a New Trial against a sentence of thirty (30) years day for day, in which plaintiff has never been afforded the due process to do so.

Plaintiff presents the Issue following : That plaintiff pled guilty at the advice of his attorney Richard Warder. Attorney told plaintiff that he would only serve eighty five (85%) percent of whatever sentence the Judge gave. Judge Nicholson clearly stated on record that plaintiff would only serve 85 percent of the sentence, he would give plaintiff. (See Exhibit One-page 11 out of Trial Transcript.)

After entering the Department of Corrections at plaintiff's classifications review he found out he would have to serve his sentence day for day instead of the 85% percent that he was promised by Judge Nicholson. Immediately plaintiff wrote the Judge asking him to correct his sentence with the classifications of the Department of Corrections (See Exhibit Two-an answer to his letter from the office of the Judge.)

Copy

Plaintiff will have to serve four and a half more years than what he agreed to at the time of his plea. Therefore, had plaintiff known this fact he would have never pled guilty, but would have insisted on going to a jury trial.

The record clearly reflects that Judge Nicholson and Trial Attorney for plaintiff both stated to him if he would plead guilty he would serve only 85% percent of whatever sentence plaintiff got, and with the after trial changing facts that instead he would have to serve thirty (30) years day for day, which is a substantial amount of time more than he agreed to. Therefore, this Court clearly has to correct this violation of plaintiff's due process rights.

ARGUMENT

The sentencing Judge has Jurisdiction to correct this sentence for plaintiff and should so in a fair and just way.

It's Fundamental that every Court has the power and duty to determine whether or not it has jurisdiction of a cause presented to it for determination. Bridges v. Wyandotted Worsted Co. 243 S.C. 1, 8, 132 S.E.2d 18, 21 (1962).

In a series of cases, perhaps lead by the U.S. Supreme Court decision in Santobello v. New York (1971) 404 U.S. 257, 92 S.Ct. 495 30 L.Ed. 2d 427, Negotiated pleas and the issue of compliance of same have been determined to be Mandatory.... When a plea rest in any significant degree on a promise or agreement of the Judge, Lawyer, or Prosecutor, so that it can be said to be a part of the inducement or consideration such a promise MUST be fulfilled (Emphasis added) Santobello v. New York (Supra) at 262.

Direct consequences of a plea must be known for a plea to be Valid. Once a defendant enters a guilty plea, and the plea is accepted by the Court, Due Process requires the plea bargain to be honored U.S.C.A. Const. Amend. 14, Reed v. Becca 511 S.E.2d. 396, 333 S.C. 676 (S.C. app. 1999).

A guilty plea is Knowing and Voluntary when entered with an awareness of its consequences. Boykin v. Alabama 395 U.S. 238, 89 S.Ct. 1709 (1969). Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991)

C 9/4

FACTS

To obtain a Writ of Mandamus requiring the performance of an act, an applicant must and does show.

1. Plaintiff shows a duty of Judge Nicholson to perform the act.
2. It's clearly the Judge's responsibility to correct his wrong.
3. This is necessary in order to give plaintiff his due process.
4. There is no other legal remedy for plaintiff to get his amount of time to serve corrected.

Judge Nicholson has a duty to perform this specific act and the plaintiff is asking this Court to direct. It is clear the trial judge cannot promise a specific amount of time that plaintiff must serve and later plaintiff finds out he has to serve four and a half more years than he was promised by the judge prior to his agreeing to plead guilty.

Had plaintiff known he was serving thirty (30) years day for day, he would have insisted on a jury trial.

For these reasons and facts above mentioned,
THE WRIT SHOULD ISSUE.

S _____

Date : _____

Copy

STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT

Writ of Mandamus to Anderson County

Honorable J.C."Buddy"Nicholson Jr.

Circuit Court Judge

John Bradley Turner #290521

Plaintiff

v.

State of South Carolina

Respondent

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for Writ of Mandamus in this case has been served to Anderson County Clerk of Court, also a copy was sent to Honorable Judge J.C."Buddy"Nicholson Jr. This _____ day of March 2012.

s/ _____

John Bradley Turner #290521
Q 1 B 216 Perry Corr.Inst.
430 Oaklawn Rd.
Pelzer, SC 29669

Sworn To Before Me This _____ day of March 2012.

Notary Public For South Carolina

My Commission Expires : _____

State of South Carolina
County of Anderson

COPY

VERIFICATIONS

I _____, Being Duly Sworn upon My Oath, Depose and say that I have subscribed to the foregoing petition, That I know the contents thereof, that it includes every ground known to me for vacating, setting aside or correcting my sentence attacked in this petition, and that matters and facts therein set forth are true.

s/ _____

Application to proceed without prepayment
of cost and affidavit in support thereof.

I _____, Hereby apply for leave to proceed in this action without prepayment of fee's or cost or security therefor. In support of my application I declare under penalty of perjury that the following facts are true :

1. I am the Plaintiff in this action and I believe I am entitled Redress :
2. Because of my poverty I am unable to pay cost of said proceeding or give security thereof.

s/ _____

Sworn or Affirmed to and Subscribed Before Me This _____ day
of March 2012.

Notary Public For South Carolina

My Commission Expires : _____

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17

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	CASE NO.: 2012-CP-04-02369
	)	
John Bradley Turner, #290521,	)	
	)	
Plaintiff,	)	
	)	
v.	)	MOTION TO DISMISS
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
_____	)	

TO: FLOY KENYON ANDERSON, ESQUIRE, ATTORNEY FOR THE PLAINTIFF

PLEASE TAKE NOTICE THAT the Defendant, by and through its undersigned counsel, will move before this Court within ten (10) days of the date hereof (or at such other time and place as the Court determines) for an Order dismissing this action, pursuant to Rule 12(b) of the South Carolina Rules of Civil Procedure. For the reasons set forth herein, the State of South Carolina respectfully submits that this action should be dismissed with prejudice.

Plaintiff filed this action, captioned as a "Writ of Mandamus Petition," on or about July 3, 2012. He alleges that he pleaded guilty to murder, trafficking methamphetamine, manufacturing methamphetamine, and possession of a firearm during the commission of a violent crime, only after alleged representations were made by his counsel and the Honorable J.C. Nicholson, Jr. that he would only be required to serve eighty-five percent (85%) of his sentence. Through this action, Plaintiff seeks "correction" of his sentence, or, in the alternative, to have his pleas withdrawn, sentences vacated, and a new trial.

I. Procedural Background

Plaintiff is a prisoner in the custody of the South Carolina Department of Corrections. On or about February 3, 2003, Plaintiff pleaded guilty and the Honorable J.C. Nicholson, Jr., sentenced him to thirty (30) years for murder; twenty-five (25) years and a \$50,000 fine for trafficking methamphetamine; fifteen (15) years and a \$15,000 fine for each of the two manufacturing methamphetamine conviction; and five (5) years for possession of a firearm during the commission of a violent crime, all sentences concurrent. *Turner v. Warden of Perry Correctional Instit.*, Ret. and Mem. of Law in Supp. of Mot. for Summ. Judg., Case No. 1:10-2433-TMC, Dkt.#32 at 2 (D.S.C. May 16, 2011).

There was no direct appeal, but the Plaintiff has filed three (3) applications for post-conviction relief (PCR) alleging, collectively, (1) involuntary guilty plea as a result of ineffective assistance of counsel, (2) ineffective assistance of PCR counsel, (3) a due process violation, (4) incorrect sentence information by the judge, and (5) newly discovered evidence of prosecutorial misconduct. The Plaintiff also filed a Petition for Writ of Habeas Corpus in the United States District Court for the District of South Carolina, alleging ineffective assistance of counsel, prosecutorial misconduct and involuntary plea. All three (3) PCR applications and the Petition for Writ of Habeas Corpus were dismissed.

A. PCR Applications (1 through 3)

Plaintiff filed his *first* PCR application on September 4, 2003, in which he alleged involuntary guilty plea as a result of ineffective assistance of counsel. *Turner v. Warden of Perry Correctional Instit.*, Ret. and Mem. of Law in Supp. of Mot. for Summ. Judg., Case No. 1:10-2433-TMC, Dkt.#32 at 5 (D.S.C. May 16, 2011). A PCR evidentiary hearing was held before the Honorable Alexander S. Macaulay on February 6, 2006, at which Plaintiff and his counsel

appeared. *Id.* The court issued an order of dismissal and denied Plaintiff's application for post-conviction relief with prejudice and Plaintiff, through counsel, timely appealed on March 27, 2006. *Id.* at 9-10. Plaintiff filed a petition for writ of certiorari on June 5, 2006, as amended on November 6, 2006. *Id.* The South Carolina Supreme Court denied the petition on October 18, 2007 and the remittitur was issued on November 5, 2007. *Id.* at 12.

On April 5, 2006, Plaintiff filed a *pro se* 59(e) motion based upon alleged newly-discovered evidence. *Id.* at 9. On August 7, 2006, Judge Macaulay filed an Order of Recusal, based upon his receipt of extrajudicial communication regarding appeal pending in Plaintiff's case. *Id.* On December 19, 2006, the Honorable J. Cordell Maddox, Jr. entered an Order denying Plaintiff's 59(e) motion. *Id.* at 9-10.

Plaintiff filed a *second* PCR application on November 16, 2007, alleging ineffective assistance of counsel, a due process violation, incorrect sentence information by the judge, and newly discovered evidence of prosecutorial misconduct. *Id.* On December 6, 2007, Judge Maddox entered a Conditional Order of Dismissal in the second PCR action because it was successive to a prior PCR application. *Id.* On March 18, 2008, Judge Macaulay filed a Final Order that made final the Conditional Order of Dismissal. *Id.* at 14. Petitioner timely filed and served a Notice of Appeal on March 25, 2008. *Id.* at 16. Petitioner's appeal was perfected with the filing of a Petition for Writ of Certiorari. *Id.* On October 7, 2009 the South Carolina Supreme Court denied the petition and the remittitur was issued on October 23, 2009. *Id.*

Plaintiff filed a *third* PCR application on December 2, 2009, alleging ineffective assistance of PCR counsel, newly discovered evidence of prosecutorial misconduct, incorrect sentence information by the judge, and Fourteenth Amendment violations. *Id.* On March 3, 2010, Judge Macaulay entered a Conditional Order of Dismissal in the third PCR action because it was

successive to a prior PCR application. *Id.* at 17. On June 18, 2010, the Honorable R. Lawton McIntosh entered a Final Order of Dismissal of Petitioner's third PCR application. *Id.* at 20. Plaintiff appealed the denial of his third PCR application on March 22, 2010. *Id.* at 22. The South Carolina Supreme Court dismissed the petition on August 11, 2010 and the remittitur was issued on August 30, 2010. *Id.*

B. Petition for Writ of Habeas Corpus

Plaintiff filed a Petition for Writ of Habeas Corpus in the United States District Court for the District of South Carolina on September 14, 2010, alleging ineffective assistance of counsel, prosecutorial misconduct and involuntary plea. On January 17, 2012 the Honorable Timothy M. Cain dismissed the Plaintiff's petition. *Turner v. Ozmint*, Case No. 1:10-2433-TMC, Dkt.# 46, Order (D.S.C. Jan. 17, 2012). In April 2012, the Fourth Circuit Court of Appeals dismissed the subsequent appeal. *Turner v. Warden of Perry Correctional Instit.*, No. 12-6171, Mandate and Judgment, Case No. 1:10-2433-TMC, Dkt.#s 60, 60-1 (4th Cir. April 25, 2012).

II. Discussion

A. Lack of Subject-Matter Jurisdiction, Rule 12(b)(1), SCRCF

Lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court. *State v. Guthrie*, 352 S.C. 103, 107, 572 S.E.2d 309, 311-12 (Ct. App. 2002) (citing *State v. Brown*, 351 S.C. 522, 570 S.E.2d 559 (Ct. App. 2002)). Furthermore, lack of subject matter jurisdiction may not be waived, even by consent of the parties. *Id.* (citing *State v. Brown*, 343 S.C. 342, 346, 540 S.E.2d 846,848 (2001)). "The acts of a court with respect to a matter as to which it has no jurisdiction are void." *Id.*

1. This action would have normally been filed as a PCR application since the Plaintiff attempts to collaterally attack his sentence by seeking a "correction;" however, the Plaintiff has exhausted all of his remedies.

"The character of an action is not necessarily determined by such recitation in the pleadings. Rather, it is the nature of the issues and the remedies which are sought that is determinative." *South Carolina v. Yelsen Land Co.*, 257 S.C. 401, 403, 185 S.E.2d 897, 898 (1972).

"PCR is a proper avenue of relief *only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence* as authorized by Section 17-27-20(a)." *Al-Shabazz v. State*, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000) (emphasis in original). A PCR application filed pursuant to S.C. Code Ann. § 17-27-45(A) (2013), must be filed within one (1) year after the entry of a judgment of conviction or within one (1) year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

All applicants are entitled to a full and fair opportunity to present claims in *one* PCR application. *Odom v. State*, 337 S.C. 256, 523 S.E.2d 753 (1999). "Successive PCR applications and appeals are generally disfavored because they allow an applicant to receive more than 'one bite at the apple as it were.'" *Id.*, 337 S.C. at 261, 523 S.E.2d at 752. "A successive PCR application is one that raises grounds not raised in a prior application, raises grounds previously heard and determined, or raises grounds waived in prior proceedings." *Id.* Filing a successive PCR application is only permissible if the applicant establishes that the grounds raised in the subsequent application could not have been raised in the previous application. *Id.*

In this case, the Plaintiff seeks "correction" of his sentence, or, in the alternative, to have his pleas withdrawn, sentences vacated, and a new trial. Therefore, the nature of this action is not

a Writ for Mandamus, but a collateral attack and “correction” of sentencing under § 17-27-20(A). Moreover, the Plaintiff has exhausted all his remedies by (1) failing to directly appeal; (2) filing three (3) PCR applications, which all were dismissed; (3) appealing all three PCR orders; and (4) filing a Petition for Writ of Habeas Corpus. Accordingly, this Court lacks subject-matter jurisdiction.

2. To the extent the Plaintiff alleges a sentence miscalculation, the Court still lacks subject-matter jurisdiction.

Prior to *Al-Shabazz*, courts allowed inmates to raise claims regarding sentence-related credits in a PCR proceeding because calculating those credits potentially affect the duration of a sentence. 338 S.C. at 368, 527 S.E.2d at 749. Post *Al-Shabazz*, the PCR process is restricted to collateral attacks challenging the validity of a conviction or sentence, except for two non-collateral matters specifically list in the PCR Act. Credit-related issues and *other conditions of imprisonment* are administrative matters. *Id.* These administrative matters typically arise in two ways: (1) when an inmate is disciplined and punishment is imposed and (2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits, or custody status. *Id.* “The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment’s protection of liberty and property.” *Id.* (citing *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569 (1972)). The statutory right to sentence-related credits is a protected “liberty” interest under the Fourteenth Amendment, entitling an inmate to minimal due process to ensure the state-created right was not arbitrarily abrogated. *Id.* (citing *Wolff v. McDonnell*, 418 U.S. 539 (1974)).

The Administrative Law Court (“ALC”) has subject matter jurisdiction under the Administrative Procedures Act (APA) to hear properly perfected appeals from the South Carolina Department of Corrections’ final orders in administrative or non-collateral matters.

Slezak v. S.C. Dep't of Corr., 361 S.C. 327, 331, 605 S.E.2d 506, 507 (2004). The Supreme Court further clarified the ALC's jurisdiction in *Howard v. SC Dep't of Corr.*, 399 S.C. 618, 630, 733 S.E.2d 211, 218 (2012) stating that:

the ALC may summarily dismiss an inmate appeal that involves *only* the loss of the opportunity to earn sentence-related credits. However, a matter is reviewable by the ALC where an inmate's appeal *also* implicates a state-created liberty or property interest, such as the loss of accrued sentence-related credits. Stated another way, the ALC may not summarily decline to hear an inmate appeal solely on the ground that it involves the loss of the opportunity to earn-sentence related credits.

Ultimately, the Plaintiff claims that he is only required to serve eighty-five percent (85%) of his sentence. The proper venue for the Plaintiff is before the South Carolina Department of Corrections. Accordingly, this Court lacks subject-matter jurisdiction and this action should be dismissed.

B. Failure to State Facts Sufficient to Constitute a Cause of Action, Rule 12(b)(6), SCRPC.

This Court also lacks jurisdiction under Rule 12(b)(6) as the Plaintiff fails to state facts sufficient to constitute a cause of action.

A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Rule 12(b)(6), SCRPC; *see Ashley River Properties I, LLC v. Ashley River Properties II, LLC*, 374 S.C. 271, 277, 648 S.E.2d 295, 298 (Ct. App. 2007); *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). Dismissal of a complaint pursuant to Rule 12(b)(6) is appropriate where, as here, the allegations set forth on the face of the complaint and inferences reasonably deducible therefrom, even when viewed in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, fail to state any valid claim for relief.

Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006); *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999).

The Defendant respectfully submits that the action is completely lacking in merit, and is nothing more than an attempt to circumvent the well established procedures for challenging a conviction or sentence by direct appeal, or post-conviction relief. The action fails to state facts sufficient to constitute a cause of action, and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

1. Failure to State Facts Sufficient to Alter Sentencing

Murder is a no-parole offense with a “mandatory minimum term of imprisonment for thirty years to life.” S.C. Code Ann. §§ 24-13-100, 16-1-10(D), 16-3-20(A). “[A]n inmate convicted of a ‘no parole’ offense ... is not eligible for early release, discharge, or community supervision as provided in § 24-21-560, until the inmate has served at least eighty-five percent (85%) of the actual term of imprisonment imposed.” S.C. Code Ann. § 24-13-150(A). Furthermore, inmates convicted of murder are not eligible for work release, early release, discharge, or community supervision. *Id.*

The Honorable J.C. Nicholson, Jr., sentenced the Plaintiff to 30 years for murder; 25 years and a \$50,000 fine for trafficking methamphetamine; 15 years and a \$15,000 fine for each of the two manufacturing methamphetamine conviction; and 5 years for possession of a firearm during the commission of a violent crime, all sentences concurrent. *Id.* at 2. The Plaintiff argues that he was misinformed and led to believe that he would only have to serve eighty-five percent (85%) of his sentence. *See* Plaintiff’s Writ of Mandamus. However, under the current law, the Plaintiff received the minimum sentence of thirty (30) years for murder. Additionally, because murder is a “no-parole” offense, he is not eligible for work release, early release, discharge, or

community supervision, as a matter of law, and thus is statutorily required to serve the entire sentence. Accordingly, the Plaintiff's Petition for a Writ of Mandamus to alter the sentence has no merit and cannot stand as a matter of law.

2. Failure to State Facts Sufficient to Grant a Writ of Mandamus

"The writ of mandamus is the highest judicial writ known to the law and according to long approved and well established authorities, only issues in cases where there is a specific legal right to be enforced or where there is a positive duty to be performed, and there is no other specific remedy." *Willimon v. City of Greenville*, 243 S.C. 82, 86, 132 S.E.2d 169, 170 (1963). The primary purpose or function of the writ of mandamus "is to command and execute, and not to inquire and adjudicate; therefore, it is not the purpose of the writ to *establish* a legal right but to *enforce* one which has already been established." *Id.*, 243 S.C. at 86-87, 561 S.E.2d at 171 (citing 55 C.J.S. *Mandamus* § 51). "When the legal right is doubtful, or when the performance of the duty rests in discretion, or when there is other adequate remedy, a writ of mandamus cannot rightfully issue." *City of Rock Hill v. Thompson*, 349 S.C. 197, 200, 563 S.E.2d 101, 102 (2002). The burden upon a party seeking a writ of mandamus must show: (1) a duty of the respondent to act; (2) the ministerial nature of the act; (3) the petitioner's specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy. *Holden v. Cribb*, 349 S.C. 132, 136, 561 S.E.2d 634, 637 (Ct. App. 2002).

Here, the Plaintiff has no legal right to a reduction of his sentence. Moreover, there are well-established methods for challenging a conviction or sentence, though direct appeal and post-conviction relief. Having foregone a direct appeal, and having unsuccessfully sought post-conviction relief three times, the Plaintiff now improperly seeks a writ of mandamus. The plain language of the Plaintiff's Petition fails to allege support for each of the requisite elements to

maintain a writ of mandamus. Accordingly, the Plaintiff's Petition for a Writ of Mandamus cannot stand and must be dismissed.

3. Lack of Justiciable Controversy

"A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as opposed to a dispute or difference of a contingent, hypothetical, or abstract character." *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004) (quoting *Power v. McNair*, 255 S.C. at 154, 177 S.E.2d at 553); *Graham v. State Farm Mutual Automobile Ins. Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995); *Holden v. Cribb*, 349 S.C. 132, 137, 561 S.E.2d 634, 637 (Ct. App. 2002). "The concept of justiciability encompasses the doctrines of ripeness, mootness, and standing." *Sloan v. Greenville County*, 356 S.C. 531, 547, 590 S.E.2d 338, 346 (Ct. App. 2003) (citing *Holden v. Cribb*, 349 S.C. 132, 137, 561 S.E.2d 634, 637 (Ct. App. 2002)). "No justiciable controversy is presented unless plaintiff has standing to maintain action." *Brock*, 313 S.C. at 519, 442 S.E.2d at 413. The Plaintiff carries the burden of demonstrating each of the three elements of standing: (1) an injury in fact which is (a) concrete and particularized and (b) actual or imminent, and not conjectural or hypothetical; (2) a causal connection between the injury and the conduct complained of; and (3) it must be likely, and not merely speculative, that the injury will be redressed by a favorable decision. *Charleston Trident Home Builders, Inc. v. Town Council of Town of Summerville*, 632 S.E.2d 864 (2006).

The Plaintiff cannot satisfy the elements of standing. Specifically, the Plaintiff cannot establish that it is likely that a favorable decision will redress the alleged injury. Essentially, Plaintiff seeks "correction" of his sentence, or in the alternative, to have his pleas withdrawn, sentences vacated, and a new trial. But the Plaintiff pleaded guilty. Because the Plaintiff's

sentence of murder, as a no-parole offense, has a mandatory minimum term of imprisonment of thirty years to life, his sentencing could not have been reduced and thus no "correction" is legally available under the statute. S.C. Code Ann. §§ 24-13-100, 16-1-10(D), 16-3-20(A). Furthermore, inmates convicted of murder are not eligible for work release, early release, discharge, or community supervision. S.C. Code Ann. § 24-13-150(A). Thus, the relief sought (i.e., a "correction" of the sentence) would not redress the facts relied upon by the Circuit Court Judge; in accepting the guilty plea and sentencing. Accordingly, the Plaintiff lacks standing and the Complaint should be dismissed.

In conclusion, based upon the foregoing, Plaintiff's "Writ of Mandamus Petition" should be dismissed with prejudice.

Respectfully Submitted,

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Attorney General

JOHN WALTER WHITMORE
Assistant Attorney General

COURTNEY E. LOWELL
Assistant Attorney General

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ATTORNEYS FOR THE STATE OF SOUTH CAROLINA

COLUMBIA, SOUTH CAROLINA
JULY 23, 2014



State of South Carolina
The Circuit Court of the Tenth Judicial Circuit

J. C. "BUDDY" NICHOLSON, JR.
JUDGE

100 SOUTH MAIN STREET
POST OFFICE BOX 0002
ANDERSON, SOUTH CAROLINA 29622-0002
TELEPHONE (864) 260-4059
FAX (864) 224-6320
E-MAIL: jnicholsonj@scjd.state.sc.us

August 2, 2007

John Turner, #290521
Perry Correctional Institute
Q4 B-203
430 Oaklawn Rd.
Pelzer, SC 29669

Dear Mr. Turner:

Judge Nicholson is in receipt of your letter dated July 6, 2007, in which you state that Judge Nicholson told you, prior to your guilty plea, that you would serve only 85% of your sentence. Pursuant to state law, anyone convicted of murder must serve 100% of the sentence or, in other words, serve the sentence day for day. Anyone who told you that you would serve 85% of your sentence for murder misspoke; as mandated by state law, you must serve 100% of the thirty-year sentence. Should you have any further questions or concerns, please contact your attorney. Good luck.

Sincerely,

Law Clerk
The Honorable J.C. Nicholson, Jr.

X 29

29

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF ANDERSON)

COURT OF GENERAL SESSIONS

3

4

5 STATE OF SOUTH CAROLINA,)
6 PLAINTIFF,)

7 VERSUS)

TRANSCRIPT OF RECORD
2002-GS-04-2530/2531

8 JEFFREY BRADLEY TURNER,)
9 DEFENDANT.)

10

FEBRUARY 3, 2003
ANDERSON, SOUTH CAROLINA

11

12

13

14 B E F O R E:

15 THE HONORABLE J.C. NICHOLSON, JR., JUDGE

16

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

18 DRUANNE D. WHITE, SOLICITOR
19 ATTORNEY FOR THE STATE

20 RICHARD W. WARDER, ESQUIRE
21 ATTORNEY FOR THE DEFENDANT

22

23

24

25

DONNA M. BRADY
CIRCUIT COURT REPORTER

1 MONDAY, FEBRUARY 3, 2002

2 (WHEREUPON, COURT CONVENED WITH ALL PARTIES
3 PRESENT, WHEN THE FOLLOWING PROCEEDINGS WERE HAD OUTSIDE THE
4 PRESENCE OF THE JURY VENIRE:)

5 MS. WHITE: JUDGE, THIS IS 2002-GS-04-2531, THE
6 STATE VERSUS JOHN BRADLEY TURNER, INDICTMENT FOR MURDER. IT
7 HAS BEEN TO THE GRAND JURY, IT HAS BEEN INDICTED. AND
8 2002-GS-04-2530, INDICTMENT FOR POSSESSION OF A FIREARM
9 DURING THE COMMISSION OF A VIOLENT CRIME. THE MURDER
10 HOLDS ANYWHERE FROM 30 YEARS TO LIFE. THE POSSESSION OF A
11 FIREARM DURING THE COMMISSION OF A VIOLENT CRIME HOLDS FIVE
12 YEARS.

13 YOUR HONOR, 2002-1908, WHICH IS INDICTMENT FOR
14 MANUFACTURING METH, THAT HOLDS 15 YEARS AND \$25,000;
15 2002-1907, TRAFFICKING METH, THAT'S 7 TO 25 YEARS AND
16 \$50,000. THESE TWO THAT I JUST CALLED OUT, YOUR HONOR, HAVE
17 NOT BEEN TO THE GRAND JURY. THE FIRST TWO HAVE. 2003-416
18 IS MANUFACTURING METH, 15 YEARS AND \$25,000. THAT HAS NOT
19 BEEN TO THE GRAND JURY. 2003-415, POSSESSION OF METH, WHICH
20 IS FIVE YEARS AND \$5,000. AND THAT'S -- YOUR HONOR, I'M
21 GOING TO TIC THIS.

22 THE COURT: OKAY.

23 MS. WHITE: I'M GOING TO TIC THAT ONE.

24 THE COURT: MR. TURNER, RAISE YOUR RIGHT HAND,
25 PLEASE, SIR.

1 JEFFREY BRADLEY TURNER, BEING
2 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

3 THE COURT: HOW OLD ARE YOU, MR. TURNER?

4 THE DEFENDANT: TWENTY-SEVEN.

5 THE COURT: TWENTY-SEVEN. WHAT'S YOUR DATE OF
6 BIRTH?

7 THE DEFENDANT:

8 THE COURT: AND YOUR SOCIAL SECURITY NUMBER?

9 THE DEFENDANT:

10 THE COURT: ARE YOU MARRIED?

11 THE DEFENDANT: NO, SIR.

12 THE COURT: HAVE YOU EVER BEEN MARRIED?

13 THE DEFENDANT: NO, SIR.

14 THE COURT: HOW FAR DID YOU GO IN SCHOOL?

15 THE DEFENDANT: TENTH GRADE.

16 THE COURT: TENTH GRADE?

17 THE DEFENDANT: YES, SIR.

18 THE COURT: WHEN DID YOU FINISH THE 10TH GRADE?

19 THE DEFENDANT: I GUESS IN '92.

20 THE COURT: NINETY-TWO. HAVE YOU BEEN WORKING
21 ANYWHERE OR DONE ANY TYPE OF WORK SINCE '92?

22 THE DEFENDANT: YES, SIR.

23 THE COURT: WHAT TYPE OF WORK HAVE YOU DONE?

24 THE DEFENDANT: PLUMBING AND TRACTOR TRAILER
25 TIRES.

1 THE COURT: PARDON?

2 THE DEFENDANT: PLUMBING AND TRACTOR TRAILER
3 TIRES.

4 THE COURT: DO YOU HAVE ANY CHILDREN?

5 THE DEFENDANT: YES, SIR.

6 THE COURT: HOW MANY?

7 THE DEFENDANT: ONE.

8 THE COURT: HOW OLD?

9 THE DEFENDANT: TEN.

10 THE COURT: TEN?

11 THE DEFENDANT: YES, SIR.

12 THE COURT: HAVE YOU HAD ANY DRUGS OR ALCOHOL IN
13 THE LAST 24 HOURS?

14 THE DEFENDANT: NO, SIR.

15 THE COURT: ARE YOU TAKING ANY KIND OF
16 PRESCRIPTION MEDICATION?

17 THE DEFENDANT: NO, SIR.

18 THE COURT: ALL RIGHT. DO YOU UNDERSTAND ON THE
19 MURDER YOU COULD GET ANYWHERE FROM 30 YEARS TO LIFE? DO YOU
20 UNDERSTAND?

21 THE DEFENDANT: YES, SIR.

22 THE COURT: ON THE POSSESSION OF A FIREARM DURING
23 THE COMMISSION OF A CRIME YOU COULD GET UP TO FIVE YEARS.
24 DO YOU UNDERSTAND?

25 THE DEFENDANT: YES, SIR.

1 THE COURT: AND ON THE MANUFACTURING
2 METHAMPHETAMINES YOU CAN GET UP TO 15 YEARS. DO YOU
3 UNDERSTAND?

4 THE DEFENDANT: YES.

5 THE COURT: AND A \$25,000 FINE. ON THE
6 TRAFFICKING METHAMPHETAMINES YOU CAN GET UP TO 25 YEARS AND
7 A \$50,000 FINE WITH A MINIMUM SENTENCE OF SEVEN YEARS. DO
8 YOU UNDERSTAND?

9 THE DEFENDANT: YES, SIR.

10 THE COURT: ON THE MANUFACTURING METHAMPHETAMINES
11 YOU CAN GET UP TO 15 YEARS. YOU'VE GOT TWO OF THOSE. DO
12 YOU UNDERSTAND?

13 THE DEFENDANT: YES, SIR.

14 THE COURT: YOU HAVE ANY QUESTIONS ABOUT IT?

15 THE DEFENDANT: NO, SIR.

16 THE COURT: YOU HAVE ANY QUESTIONS ABOUT WHAT
17 YOU'RE CHARGED WITH OR THE MAXIMUM TIME YOU COULD RECEIVE ON
18 EACH ONE?

19 THE DEFENDANT: NO, SIR.

20 THE COURT: NOW, THESE LAST THREE, THE TWO
21 MANUFACTURING METHAMPHETAMINES, AND THE TRAFFICKING
22 METHAMPHETAMINES HAVE NOT BEEN TO THE GRAND JURY. DO YOU
23 UNDERSTAND? THEY HAVE NOT BEEN TO THE GRAND JURY. DO YOU
24 UNDERSTAND?

25 THE DEFENDANT: YES, SIR.

1 THE COURT: NOW, DURING THIS PROCESS IF YOU DON'T
2 UNDERSTAND A QUESTION, PLEASE TELL ME YOU DON'T UNDERSTAND
3 IT OR TELL ME YOU WANT TO DISCUSS IT WITH YOUR ATTORNEY.
4 YOU MAY STOP AT ANY TIME DURING THE PROCESS AND ASK THE
5 COURT A QUESTION OR ASK YOUR ATTORNEY A QUESTION. DO YOU
6 UNDERSTAND?

7 THE DEFENDANT: YES, SIR. I GOT A QUESTION RIGHT
8 NOW.

9 THE COURT: ALL RIGHT. WHAT'S YOUR QUESTION?

10 THE DEFENDANT: THEM RIGHT THERE HAVEN'T BEEN TO
11 THE GRAND JURY, THAT INCLUDES THIS 30 YEARS, DON'T IT?

12 THE COURT: WHAT, NOW?

13 MS. WHITE: YOUR HONOR, HE'S ASKING IF WE'RE
14 RECOMMENDING THEY RUN CONCURRENT.

15 THE COURT: I HAVEN'T GOT TO THE RECOMMENDATION.
16 THEY'RE RECOMMENDING ANYTHING YOU GET ON THE ONE TRAFFICKING
17 AND THE TWO POSSESSIONS TO RUN CONCURRENT. THAT'S WHAT THE
18 STATE IS GOING TO RECOMMEND, DO YOU UNDERSTAND?

19 THE DEFENDANT: YES, SIR.

20 THE COURT: AND CONCURRENT MEANS IT WILL RUN AT
21 THE SAME TIME ON THE TIME YOU GET WITH THE MURDER CHARGE.
22 DO YOU UNDERSTAND?

23 THE DEFENDANT: YES, SIR.

24 THE COURT: DOES THAT ANSWER YOUR QUESTION?

25 THE DEFENDANT: YES, SIR.

1 THE COURT: ALL RIGHT. AS I SAID BEFORE, I'M
2 GOING TO ASK YOU CERTAIN QUESTIONS AND IF YOU HAVE A
3 QUESTION PLEASE TELL ME OR IF YOU WANT TO TALK TO YOUR
4 ATTORNEY DURING THIS PROCESS, PLEASE TELL ME; AND I WILL
5 ALLOW YOU TO DO THAT. DO YOU UNDERSTAND?

6 THE DEFENDANT: YES, SIR.

7 THE COURT: WILL YOU DO THAT?

8 THE DEFENDANT: YES, SIR.

9 THE COURT: I'M GOING TO ALSO ASK YOU TO ANSWER
10 THESE QUESTIONS TRUTHFULLY AND CORRECTLY. WILL YOU DO THAT?

11 THE DEFENDANT: YES.

12 THE COURT: NOW, THE GRAND JURY IS A PROCESS
13 WHEREBY THE STATE PRESENTS THE INDICTMENTS TO THE GRAND
14 JURY. THERE'S 18 MEMBERS TO THE GRAND JURY. IT TAKES 12 OF
15 THE 18 TO VOTE TO HAVE AN INDICTMENT. THESE THREE
16 INDICTMENTS, 1907, 1908 AND 416 HAVE NOT BEEN PRESENTED TO
17 THE GRAND JURY. YOU HAVE SIGNED WAIVING PRESENTMENT TO THE
18 GRAND JURY. NOW, YOU'RE ENTITLED TO HAVE THESE SUBMITTED TO
19 THE GRAND JURY. DO YOU UNDERSTAND?

20 THE DEFENDANT: YES, SIR.

21 THE COURT: NOW, DO YOU WANT TO WAIVE PRESENTMENT
22 OF THESE THREE INDICTMENTS TO THE GRAND JURY AND GET RID OF
23 THESE CASES TODAY? WHICH DO YOU WANT TO DO?

24 THE DEFENDANT: YES, SIR.

25 THE COURT: YOU WANT TO WAIVE THEM?

1 THE DEFENDANT: YES, SIR.

2 THE COURT: IS THAT CORRECT?

3 THE DEFENDANT: YES.

4 THE COURT: YOU WANT TO GET RID OF THEM TODAY. IS
5 THAT CORRECT?

6 THE DEFENDANT: YES.

7 THE COURT: DO YOU HAVE ANY QUESTIONS ABOUT THE
8 GRAND JURY PROCESS?

9 THE DEFENDANT: NO, SIR.

10 THE COURT: ALL RIGHT. MR. WARDER, I UNDERSTAND
11 YOU REPRESENT MR. JOHN TURNER. IS THAT CORRECT?

12 MR. WARDER: I DO, YOUR HONOR.

13 THE COURT: HOW LONG HAVE YOU BEEN REPRESENTING
14 HIM?

15 MR. WARDER: ABOUT SIX MONTHS I THINK, YOUR HONOR.

16 THE COURT: ALL RIGHT. HAVE YOU HAD AMPLE
17 OPPORTUNITY TO DISCUSS THE CASE WITH YOUR CLIENT?

18 MR. WARDER: YES, SIR, I HAVE.

19 THE COURT: AND HAS HE EXPLAINED TO YOUR
20 SATISFACTION THE FACTS FROM HIS PERSPECTIVE IN THE FOUR
21 CHARGES OR FIVE CHARGES?

22 MR. WARDER: HE HAS, YOUR HONOR.

23 THE COURT: AND HAVE YOU EXPLAINED TO HIM THE
24 ELEMENTS OF EACH CHARGE?

25 MR. WARDER: I HAVE, SIR.

1 THE COURT: HAVE YOU EXPLAINED TO HIM THE
2 SENTENCES AND THE CHARGES THAT ARE AGAINST HIM?

3 MR. WARDER: I HAVE DONE THAT, YOUR HONOR.

4 THE COURT: DOES HE APPEAR TO UNDERSTAND THOSE?

5 MR. WARDER: I'M CONVINCED HE DOES.

6 THE COURT: AND HAVE YOU EXPLAINED TO HIM THE
7 GRAND JURY PROCESS?

8 MR. WARDER: YES, SIR.

9 THE COURT: AND IN YOUR OPINION DOES HE UNDERSTAND
10 WHEN HE'S WAIVING PRESENTMENT OF THE THREE INDICTMENTS TO
11 THE GRAND JURY?

12 MR. WARDER: YES, SIR. IN MY OPINION HE DOES.

13 THE COURT: HOW DOES HE WISH TO PLEAD?

14 MR. WARDER: HE INFORMS ME HE WISHES TO TENDER HIS
15 PLEA OF GUILTY.

16 THE COURT: DO YOU AGREE WITH HIS DECISION TO
17 ENTER A GUILTY PLEA?

18 MR. WARDER: I DO, SIR.

19 THE COURT: FROM YOUR INVESTIGATION OF THE FACTS
20 AND CIRCUMSTANCES IN THIS CASE, DO YOU FEEL THE STATE COULD
21 PRODUCE SUFFICIENT EVIDENCE TO CONVINCE A JURY OF THE
22 DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT; AND IF THE
23 DEFENDANT WERE TO STAND TRIAL, HIS CONVICTION WOULD BE
24 PROBABLE?

25 MR. WARDER: I DO FEEL THAT WAY, YOUR HONOR.

1 THE COURT: ALL RIGHT. HAS THE DEFENDANT BEEN
2 ORDERED TO SUBMIT TO A MENTAL EVALUATION?

3 MR. WARDER: NO. THERE'S NEVER BEEN A QUESTION
4 ABOUT HIS COMPETENCY.

5 THE COURT: HE FULLY, IN YOUR OPINION, HE'S BEEN
6 ABLE TO COMMUNICATE WITH YOU AND DEAL WITH YOU AND EXPLAIN
7 HIS CASE TO YOU?

8 THE DEFENDANT: YES, SIR.

9 THE COURT: YOU'VE NEVER HAD ANY DIFFICULTY IN
10 DEALING WITH HIM

11 MR. WARDER: NO DIFFICULTY, YOUR HONOR.

12 THE COURT: ALL RIGHT, SIR. MR. TURNER.

13 THE DEFENDANT: YES, SIR.

14 THE COURT: THE STATE HAS MADE A RECOMMENDATION
15 THAT THE SENTENCES BE RUN CONCURRENT. THERE'S NO
16 RECOMMENDATION AS TO TIME. IS THAT CORRECT, SOLICITOR?

17 MS. WHITE: THAT'S CORRECT, YOUR HONOR.

18 THE COURT: IS THAT CORRECT, MR. WARDER?

19 MR. WARDER: YES, SIR.

20 THE COURT: NOW, ARE THERE ANY OTHER
21 RECOMMENDATIONS OR ANY NEGOTIATIONS OTHER THAN THE THREE
22 DRUG CHARGES AND THE FIREARM WOULD RUN CONCURRENT WITH
23 WHATEVER HE RECEIVES ON THE MURDER CHARGE? ANY OTHER
24 NEGOTIATIONS, SOLICITOR?

25 MS. WHITE: NO, SIR.

1 THE COURT: ANYTHING ELSE, MR. WARDER?

2 MR. WARDER: NO, SIR. IT'S MY UNDERSTANDING THIS
3 CLEARS HIM UP WITH EVERYTHING.

4 MS. WHITE: YEAH, WE JUST TIC'D---

5 THE COURT: THE SOLICITOR JUST SAID SHE'D NOLL
6 PROSS ONE CASE. IS THAT CORRECT?

7 MS. WHITE: YES, SIR. THAT CLEARS UP EVERYTHING I
8 KNOW IS PENDING.

9 THE COURT: THERE'S NOTHING ELSE PENDING AGAINST
10 HIM?

11 MS. WHITE: NOT THAT I KNOW OF, YOUR HONOR.

12 THE COURT: ALL RIGHT. MR. TURNER, DO YOU
13 UNDERSTAND THAT THE STATE MAKES A RECOMMENDATION TO THE
14 COURT, THE COURT CAN ACCEPT IT OR REJECT IT. IN THIS
15 PARTICULAR CASE I'LL TELL YOU NOW I WILL ACCEPT THE
16 RECOMMENDATION OF A CONCURRENT SENTENCE. DO YOU UNDERSTAND?

17 THE DEFENDANT: YES, SIR.

18 THE COURT: I'LL TELL YOU THAT UP FRONT. OKAY?
19 DO YOU ALSO UNDERSTAND THAT YOU WILL HAVE TO SERVE 85
20 PERCENT OF WHATEVER SENTENCE YOU RECEIVE UNLESS YOU RECEIVE
21 LIFE FOR THE MURDER. YOU COULD RECEIVE ANYWHERE FROM 30
22 YEARS TO LIFE FOR MURDER. DO YOU UNDERSTAND?

23 THE DEFENDANT: YES, SIR.

24 THE COURT: AND IF YOU RECEIVE SOMETHING LESS THAN
25 LIFE FOR MURDER, YOU'LL HAVE TO SERVE 85 PERCENT OF IT. DO

1 YOU UNDERSTAND?

2 THE DEFENDANT: YES, SIR.

3 THE COURT: THERE'S NO PAROLE FOR THAT CHARGE. DO
4 YOU UNDERSTAND?

5 THE DEFENDANT: YES, SIR.

6 THE COURT: AND THERE'S NO PAROLE FOR THE
7 TRAFFICKING EITHER. DO YOU UNDERSTAND?

8 THE DEFENDANT: YES, SIR.

9 THE COURT: SO, THOSE TWO IT'S 85 PERCENT. DO YOU
10 UNDERSTAND?

11 THE DEFENDANT: YES, SIR.

12 THE COURT: DO YOU HAVE ANY QUESTIONS ABOUT IT?

13 THE DEFENDANT: NO, SIR.

14 THE COURT: ARE YOU SATISFIED WITH THE SERVICES OF
15 YOUR ATTORNEY?

16 THE DEFENDANT: YES, SIR.

17 THE COURT: HAVE YOU HAD ENOUGH TIME WITH YOUR
18 ATTORNEY TO TELL HIM YOUR SIDE OF YOUR CASES?

19 THE DEFENDANT: YES, SIR.

20 THE COURT: HAS HE EXPLAINED THE LAW TO YOU?

21 THE DEFENDANT: YES, SIR.

22 THE COURT: DO YOU HAVE ANY OTHER QUESTIONS
23 WITH YOUR ATTORNEY?

24 THE DEFENDANT: NO, SIR.

25 THE COURT: ARE YOU READY TO ENTER A PLEA?

1 ENOUGH, ON ENOUGH OCCASIONS, FOR HIM TO COMPLETELY
2 UNDERSTAND YOUR SIDE?

3 THE DEFENDANT: YES.

4 THE COURT: DO YOU NEED TO SPEND ANY MORE TIME
5 WITH YOUR ATTORNEY?

6 THE DEFENDANT: NO, SIR.

7 THE COURT: HAVE YOU UNDERSTOOD EVERYTHING YOUR
8 ATTORNEY HAS TOLD YOU?

9 THE DEFENDANT: YES, SIR.

10 THE COURT: HAS YOUR ATTORNEY DONE ANYTHING IN
11 THIS CASE THAT YOU FEEL HE OR SHE SHOULD NOT HAVE DONE?

12 THE DEFENDANT: NO, SIR.

13 THE COURT: HAS YOUR ATTORNEY DONE EVERYTHING THAT
14 YOU FEEL LIKE HE SHOULD HAVE DONE?

15 THE DEFENDANT: YES, SIR.

16 THE COURT: DO YOU HAVE ANY COMPLAINT YOU WANT TO
17 MAKE AGAINST YOUR ATTORNEY, THE SOLICITOR'S OFFICE, POLICE
18 OFFICERS; OR HAS ANYONE MISTREATED YOU IN ANY WAY?

19 THE DEFENDANT: NO, SIR.

20 THE COURT: DO YOU UNDERSTAND BY PLEADING GUILTY
21 YOU'RE GIVING UP CERTAIN LEGAL RIGHTS?

22 THE DEFENDANT: YES, SIR.

23 THE COURT: YOU HAVE THE RIGHT TO REMAIN SILENT
24 UNDER THE FIFTH AMENDMENT. NO ONE CAN MAKE YOU TESTIFY
25 AGAINST YOURSELF. DO YOU UNDERSTAND?

1 THE DEFENDANT: YES, SIR.

2 THE COURT: BY PLEADING GUILTY YOU WILL TESTIFY
3 AGAINST YOURSELF.

4 THE DEFENDANT: YES, SIR.

5 THE COURT: ARE YOU WILLING TO DO THAT?

6 THE DEFENDANT: YES, SIR.

7 THE COURT: DO YOU UNDERSTAND THAT YOU'RE ENTITLED
8 TO A JURY TRIAL?

9 THE DEFENDANT: YES, SIR.

10 THE COURT: NOW, AT A JURY TRIAL YOUR ATTORNEY
11 COULD CROSS EXAMINATION THE STATE'S WITNESSES, COULD
12 CHALLENGE ANY WITNESSES THE STATE INTRODUCES AGAINST YOU.
13 YOU COULD PRESENT WITNESSES ON YOUR BEHALF. AND IT WOULD
14 TAKE ALL 12 MEMBERS OF THE JURY TO FIND YOU GUILTY. DO YOU
15 UNDERSTAND?

16 THE DEFENDANT: YES, SIR.

17 THE COURT: THE STATE WOULD BE REQUIRED TO PROVE
18 YOU GUILTY BEYOND A REASONABLE DOUBT. AND YOU'RE PRESUMED
19 INNOCENT UNTIL A JURY HAS FOUND YOU GUILTY. DO YOU
20 UNDERSTAND?

21 THE DEFENDANT: YES, SIR.

22 THE COURT: DO YOU ALSO UNDERSTAND THAT YOUR
23 ATTORNEY COULD MAKE MOTIONS TO SUPPRESS EVIDENCE IF HE FELT
24 LIKE IT WAS APPROPRIATE IN RELATION TO A JURY TRIAL?

25 THE DEFENDANT: YES, SIR.

1 THE COURT: NOW, KNOWING THAT ABOUT A JURY TRIAL,
2 DO YOU WANT A JURY TRIAL?

3 THE DEFENDANT: NO, SIR.

4 THE COURT: ALL RIGHT. DO YOU UNDERSTAND YOU HAVE
5 THE RIGHT TO APPEAL THIS GUILTY PLEA WITHIN TEN DAYS FROM
6 TODAY?

7 THE DEFENDANT: YES, SIR.

8 THE COURT: NOW, HAS ANYBODY PROMISED YOU ANYTHING
9 IN ORDER TO GET YOU TO PLEAD GUILTY OTHER THAN THE
10 RECOMMENDATION THAT THE SENTENCES RUN CONCURRENT?

11 THE DEFENDANT: NO, SIR.

12 THE COURT: HAVE YOU HAD ENOUGH TIME TO MAKE YOUR
13 DECISION TO PLEAD GUILTY?

14 THE DEFENDANT: YES, SIR.

15 THE COURT: HAS ANYBODY COERCED YOU, INTIMIDATED
16 YOU, OR THREATENED YOU IN ORDER TO GET YOU TO PLEAD GUILTY?

17 THE DEFENDANT: NO, SIR.

18 THE COURT: ARE YOU PLEADING GUILTY OF YOUR OWN
19 FREE WILL AND ACCORD?

20 THE DEFENDANT: YES, SIR.

21 THE COURT: HAVE YOU UNDERSTOOD MY QUESTIONS?

22 THE DEFENDANT: YES, SIR.

23 THE COURT: HAVE YOU ANSWERED THOSE QUESTIONS
24 TRUTHFULLY AND CORRECTLY?

25 THE DEFENDANT: YES, SIR.

1 THE COURT: DO YOU HAVE ANY QUESTIONS YOU WANT TO
2 ASK THE COURT?

3 THE DEFENDANT: NO, SIR.

4 THE COURT: YOU HAVE ANY QUESTIONS YOU WANT TO ASK
5 YOUR ATTORNEY?

6 THE DEFENDANT: NO, SIR.

7 THE COURT: HOW DO YOU WISH TO PLEAD?

8 THE DEFENDANT: GUILTY.

9 THE COURT: ARE YOU GUILTY?

10 THE DEFENDANT: YES, SIR.

11 THE COURT: ON THE MURDER INDICTMENT I AM GOING TO
12 ASK THE SOLICITOR TO GIVE ME THE FACTS IN THE CASE. OKAY?
13 NOW, YOU LISTEN TO THESE FACTS AS THE SOLICITOR TELLS ME THE
14 FACTS. AND IF YOU, AFTER SHE FINISHES TELLING ME THESE
15 FACTS, I'M GOING TO ASK YOU, "DO YOU AGREE WITH THE FACTS OR
16 DO YOU DISAGREE?"

17 AND IF YOU DISAGREE WITH ANY OF THE FACTS, PLEASE
18 TELL ME WHAT FACTS YOU DISAGREE WITH. DO YOU UNDERSTAND?

19 THE DEFENDANT: YES.

20 THE COURT: AND I'M ALSO GOING TO GET HER TO TELL
21 ME, THE SOLICITOR OR ASSISTANT SOLICITOR, TO TELL ME ABOUT
22 THE TRAFFICKING AND THE POSSESSION. YOU LISTEN TO THAT
23 ALSO. OKAY?

24 THE DEFENDANT: YES.

25 THE COURT: SOLICITOR.

1 MS. WHITE: YOUR HONOR, I'M GOING TO ADDRESS THE
2 MURDER CASE. THE DEFENDANT THOUGHT THAT THE VICTIM HAD
3 BROKEN INTO HIS HOUSE AND TAKEN SOME METHAMPHETAMINE AND
4 SOME MONEY AND A COUPLE OF OTHER ITEMS FROM HIS HOUSE.
5 WHETHER HE DID OR NOT, I DON'T KNOW; BUT AT ANY RATE THE
6 DEFENDANT CALLED OVER TO SOMEONE'S HOUSE AND SAID THAT HE
7 WAS GOING TO KILL THIS VICTIM AND HE WAS COMING TO GET HIM.
8 HE THEN CALLED AND LEFT A MESSAGE ON AN ANSWERING MACHINE
9 SAYING, "I'M ON MY WAY OVER THERE. YOU'RE GOING TO DIE
10 TONIGHT." ET CETERA.

11 THE DEFENDANT GOT IN HIS CAR, WENT OVER TO THE
12 VICTIM'S RESIDENCE. THE VICTIM CAME OUT THE DOOR. THE
13 DEFENDANT ENDED UP, HE HAD A STICK IN HIS HAND, IT'S
14 DEBATABLE WHETHER THE VICTIM HAD A STICK OR NOT. THE PEOPLE
15 THERE CLAIM HE DID NOT. THE DEFENDANT IN HIS STATEMENT SAID
16 HE DID. AT ANY RATE, THE DEFENDANT WENT, TURNED AROUND AND
17 WENT BACK TO HIS CAR, GOT A .32 CALIBER REVOLVER OUT AND
18 CAME BACK AND SHOT THE VICTIM ONCE. THE VICTIM BEGAN
19 RUNNING BEHIND THE TRAILER TO GET AWAY FROM HIM. THE
20 DEFENDANT CHASED HIM TO THE BACK AND THE VICTIM ENDED UP
21 DYING.

22 YOUR HONOR, AS TO THE DRUG CHARGES, DAVID ROSS IS
23 GOING TO GIVE THE FACTS. HOWEVER, I WOULD LIKE TO PUT ON
24 THE RECORD THAT WE DID NOTIFY THE VICTIM'S FAMILY THAT WE
25 WOULD BE DRAWING A JURY TODAY. THEY DID NOT COME. TABITHA,

1 OUR VICTIM WITNESS ASSISTANT, CALLED THEM SHORTLY BEFORE WE
2 DID THIS PLEA. THEY SAID TO GO AHEAD AND DO IT, GO AHEAD
3 AND TAKE THE PLEA, EVEN THOUGH THEY AREN'T HERE, AND TO CALL
4 THEM AFTERWARDS.

5 THE COURT: MR. ROSS, I SAID WE WERE GOING TO DO
6 THEM ALL. LET ME ASK ABOUT THE MURDER FIRST.

7 MR. TURNER, DO YOU AGREE WITH WHAT THE SOLICITOR
8 TOLD US ABOUT THE MURDER CHARGE AND THE CHARGE OF POSSESSION
9 OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME?

10 THE DEFENDANT: YES, SIR.

11 THE COURT: ARE THERE ANY OF THOSE FACTS THAT YOU
12 DISAGREE WITH?

13 THE DEFENDANT: NO, SIR.

14 THE COURT: ALL RIGHT. NOW, I'M GOING TO ASK
15 SOLICITOR ROSS TO TELL ME ABOUT THE TRAFFICKING AND
16 MANUFACTURING. YOU LISTEN TO THOSE FACTS. OKAY?

17 MR. ROSS: YOUR HONOR, TWO OF THE CHARGES AROSE
18 MAY 22, 2002. IT WAS AT IN PIEDMONT.
19 AN UNDERCOVER OPERATIVE WORKING FOR THE NARCOTICS AGENTS
20 WITH THE COUNTY, HAD MADE A BUY FROM MR. TURNER FOR ABOUT A
21 HALF OUNCE OF METHAMPHETAMINE. HE WAS ARRESTED, GAVE
22 VOLUNTARY CONSENT TO SEARCH OF HIS RESIDENCE AND SHOP, WHERE
23 THEY FOUND MORE METHAMPHETAMINE IN THE SHOP AND ALSO
24 CHEMICALS AND LEFTOVER BYPRODUCTS WHERE METHAMPHETAMINE HAD
25 BEEN MADE THERE ON THE PROPERTY.

1 THE SECOND MANUFACTURING CHARGE WAS FROM NOVEMBER
2 26TH OF 2002. THE DEFENDANT WAS ARRESTED AS A RESULT OF A
3 TRAFFIC STOP AND HAD METHAMPHETAMINE FOUND. HE WAS ARRESTED
4 FOR THAT, AND GAVE CONSENT TO SEARCH OF HIS RESIDENCE AND
5 AGAIN FOUND CHEMICALS AND MATERIALS THAT YOU COULD USE TO
6 MAKE METHAMPHETAMINE, WHERE METHAMPHETAMINE HAD BEEN MADE.

7 THE COURT: MR. TURNER, DO YOU AGREE WITH THOSE
8 FACTS?

9 THE DEFENDANT: YES, SIR.

10 THE COURT: ANY OF THOSE FACTS YOU DISAGREE WITH?

11 THE DEFENDANT: NO.

12 THE COURT: THANK YOU, SIR. HAVE YOU EVER BEEN
13 DIAGNOSED WITH ANY MENTAL ILLNESS OR ABUSING ALCOHOL?

14 THE DEFENDANT: NO, SIR.

15 THE COURT: MR. TURNER, I MAY HAVE ASKED YOU THIS
16 QUESTION. I ASK YOU AGAIN. DO YOU UNDERSTAND YOU HAVE A
17 RIGHT TO APPEAL THIS GUILTY PLEA TEN DAYS FROM TODAY?

18 THE DEFENDANT: YES, SIR.

19 THE COURT: YOU DO NOT HAVE TO APPEAL IT, BUT YOU
20 HAVE THAT RIGHT. DO YOU UNDERSTAND?

21 THE DEFENDANT: YES, SIR.

22 THE COURT: ALL RIGHT. I FIND THERE IS A FACTUAL
23 BASIS FOR THE PLEA AND THE DEFENDANT HAS FREELY,
24 VOLUNTARILY, KNOWINGLY, AND INTELLIGENTLY MADE A DECISION TO
25 PLEAD GUILTY WITH THE ADVICE OF HIS ATTORNEY, AND ALL

1 ELEMENTS OF THE CHARGE HAVE BEEN MET FACTUALLY.

2 SOLICITOR, ANYTHING YOU WANT TO ADD?

3 MS. WHITE: NO, SIR.

4 THE COURT: MR. WARDER, I'LL BE GLAD TO HEAR FROM
5 YOU OR ANYBODY WHO WANTS TO SPEAK ON MR. TURNER'S BEHALF.

6 MR. WARDER: ON BEHALF OF MY CLIENT, HE'S 27 YEARS
7 OF AGE, YOUR HONOR. HE HAS NO SIGNIFICANT CRIMINAL RECORD
8 OUTSIDE OF THE CURRENT EPISODES. HE GOT INVOLVED WITH DRUGS
9 AND THINGS WENT DOWNHILL, AND ALL THIS TROUBLE HAS KIND OF
10 ARISEN OUT OF THE PERIOD OF TIME SINCE THEN.

11 YOUR HONOR, HE TOLD ME, QUITE FRANKLY, WE WERE UP
12 HERE ON A BOND MATTER AND HE GOT HIS BOND REVOKED; AND WHEN
13 HE GOT PUT BACK IN JAIL, IT HELPED STRAIGHTEN HIM OUT.
14 HE'S AFFIRMED THAT HE'S NOT GOING TO USE DRUGS AGAIN, HE'S
15 NOT GOING TO GET INVOLVED. HE HAS A STRONG FAMILY UNIT
16 WILLING TO STAND BEHIND HIM TO HELP HIM. I THINK IF YOUR
17 HONOR GIVES HIM A MINIMUM SENTENCE, IT WOULD BE A LENGTHY
18 SENTENCE, 85 PERCENT WITH A PERIOD OF SUPERVISION THAT
19 WOULD FOLLOW IT. HIS FAMILY WILL BE WITH HIM AND SUPPORT
20 HIM THROUGH THAT TIME. OF COURSE, THEY'LL LOOK FORWARD TO
21 THE DAY HE CAN GET BACK OUT, YOUR HONOR, AND THEY CAN HELP
22 HIM.

23 OBVIOUSLY, HE'LL BE A SIGNIFICANTLY DIFFERENT
24 INDIVIDUAL BECAUSE OF THE PASSAGE OF TIME. I WOULD URGE YOU
25 IN THIS PARTICULAR CASE TO CONSIDER THE MINIMUM SENTENCE.

1 UNDER ALL CIRCUMSTANCES THAT WOULD BE A LENGTHY SENTENCE,
2 YOUR HONOR. IT WOULD STILL GIVE HIM SOME CHANCE TO HAVE
3 SOME LIFE AT THE END OF IT. BY OUR CALCULATIONS HE WOULD BE
4 IN HIS 50'S EVEN UNDER A MINIMUM SENTENCE. STATISTICALLY,
5 PEOPLE COMMIT VERY FEW CRIMES AFTER THAT AGE. WITH A STRONG
6 FAMILY UNIT, CHANCES OF REHABILITATION ARE AS GOOD AS WOULD
7 EVER BE, YOUR HONOR. I WOULD ASK YOU TO GIVE THE MINIMUM
8 SENTENCE IN THIS CASE.

9 THE COURT: SOLICITOR, DO YOU KNOW HOW MUCH TIME
10 HE HAS SPENT IN JAIL? DO YOU HAVE ANY IDEA?

11 MS. WHITE: YOUR HONOR, IT WAS THE DAY THAT HE HAD
12 THAT REVOCATION HEARING, WHICH WOULD HAVE BEEN SOMETIME
13 AFTER THE NOVEMBER INCIDENT. I SHOULD HAVE THAT DATE WITH
14 ME.

15 THE COURT: I THINK I REMEMBER THE REVOCATION
16 HEARING, BECAUSE I THINK I HEARD IT.

17 MS. WHITE: WE HAVE THAT, YOUR HONOR. SHERRY IS
18 PULLING IT OUT.

19 THE DEFENDANT: DECEMBER THE 12TH.

20 THE COURT: DECEMBER 12TH?

21 THE DEFENDANT: YES, SIR.

22 THE COURT: SO, YOU'VE BEEN IN JAIL SINCE DECEMBER
23 12TH, 2001? EXCUSE ME, 2002?

24 MR. WARDER: 2002, YOUR HONOR.

25 MS. WHITE: SHERRY'S NODDING IN AGREEMENT, YOUR

1 HONOR. SHE FOUND THE ORDER.

2 THE COURT: OKAY. THAT'S FINE. MR. TURNER,
3 ANYTHING YOU WOULD LIKE TO SAY OR ADD? OR ANY MEMBERS OF
4 YOUR FAMILY? I'LL BE GLAD TO HEAR FROM YOU. ANYTHING YOU
5 WOULD LIKE TO SAY?

6 THE DEFENDANT: NO, SIR.

7 THE COURT: PARDON?

8 THE DEFENDANT: NO, SIR.

9 THE COURT: ANY MEMBERS OF YOUR FAMILY?

10 MR. WARDER: YES, SIR.

11 THE COURT: IS THIS YOUR MOTHER?

12 MR. WARDER: HIS GRANDMOTHER IS HERE.

13 THE COURT: YOUR GRANDMOTHER, YOUR MOTHER, AND I
14 ASSUME YOUR GIRLFRIEND?

15 MS. KIMBERLY SPEARMAN: WE HAVE A DAUGHTER
16 TOGETHER.

17 THE COURT: I'LL BE GLAD TO HEAR FROM ANYBODY IF
18 THEY WANT TO SAY ANYTHING.

19 MS. SPEARMAN: BRAD IS A REALLY GOOD PERSON, HE
20 NEEDS A CHANCE TO BE WITH HIS DAUGHTER.

21 THE COURT: OKAY. MRS. TURNER, IF YOU -- YOU GO
22 BY MRS. TURNER? ANYTHING YOU WOULD LIKE TO SAY?

23 MRS. TURNER: NO, I THINK BRAD HAS LEARNED FROM
24 THIS AND HE WILL BE A LOT BETTER PERSON ONCE HE GETS OUT.

25 THE COURT: DO YOU UNDERSTAND IT'S GOING TO BE A

1 LONG TIME?

2 MRS. TURNER: YES, SIR.

3 THE COURT: BECAUSE THE MINIMUM SENTENCE I CAN
4 GIVE HIM IS 30 YEARS.

5 MRS. TURNER: YES, I UNDERSTAND.

6 THE COURT: THANK YOU VERY MUCH.

7 MR. TURNER, I WANT TO EXPLAIN ONE THING TO YOU I
8 DID NOT EXPLAIN BEFORE WE FINALIZED THIS PLEA. IF YOU HAVE
9 ANY QUESTIONS ABOUT IT, PLEASE ASK ME. ON THE MURDER
10 CHARGE, WHICH THAT'S A MOST SERIOUS OFFENSE, THE TRAFFICKING
11 COCAINE IS A SERIOUS OFFENSE. OKAY?

12 THE DEFENDANT: (NODS HEAD UP AND DOWN)

13 THE COURT: NOW, IN SOUTH CAROLINA IF YOU HAVE
14 THREE SERIOUS OFFENSES, YOU CAN BE SENTENCED TO LIFE WITHOUT
15 PAROLE. DO YOU UNDERSTAND?

16 THE DEFENDANT: YES, SIR.

17 THE COURT: OR IF YOU HAVE TWO MOST SERIOUS
18 OFFENSES, YOU CAN BE SENTENCED TO LIFE WITHOUT PAROLE. NOW,
19 IN MY OPINION I THINK IT'S STILL UP IN THE AIR AS TO WHETHER
20 TODAY YOU'RE GOING TO HAVE A MOST SERIOUS AND A SERIOUS OR
21 IF THESE WILL BE THE FIRST. BUT UNDER ANY CIRCUMSTANCES,
22 FOR PURPOSES TODAY, IF YOU GET ONE MORE SERIOUS OFFENSE WHEN
23 YOU GET OUT, THEN YOU COULD GO BACK TO JAIL FOR LIFE WITHOUT
24 PAROLE. DO YOU UNDERSTAND?

25 THE DEFENDANT: YES, SIR.

1 THE COURT: SO, FOR PURPOSES OF THIS SENTENCING
2 TODAY I'M TELLING YOU, YOU GOT ONE MOST SERIOUS AND ONE
3 SERIOUS. AND A THIRD SERIOUS, YOU WILL GO TO JAIL FOR LIFE
4 WITHOUT PAROLE. DO YOU UNDERSTAND?

5 THE DEFENDANT: YES, SIR.

6 THE COURT: DO YOU HAVE ANY QUESTIONS ABOUT THAT?

7 THE DEFENDANT: NO, SIR.

8 THE COURT: DOES THAT AFFECT YOUR PLEA IN ANY
9 MANNER WHATSOEVER?

10 THE DEFENDANT: NO, SIR.

11 THE COURT: I APOLOGIZE FOR NOT HAVING EXPLAINED
12 IT TO YOU BEFORE. IT JUST SLIPPED MY MIND, OKAY?

13 THE DEFENDANT: ALL RIGHT.

14 THE COURT: NOW, DO YOU HAVE ANY QUESTIONS OF YOUR
15 ATTORNEY OR THE COURT?

16 THE DEFENDANT: NO, SIR.

17 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

18 ON INDICTMENT NUMBER 2531, MURDER, YOU'RE
19 SENTENCED TO THE STATE DEPARTMENT OF CORRECTIONS A
20 PERIOD OF 30 YEARS. THAT'S CONCURRENT WITH THE OTHER FOUR
21 INDICTMENTS. I'LL GIVE YOU CREDIT FOR JAIL TIME SINCE
22 DECEMBER 12TH, 2002. INDICTMENT NUMBER 1907, THAT'S
23 TRAFFICKING METHAMPHETAMINES, SENTENCED TO THE STATE
24 DEPARTMENT OF CORRECTIONS A PERIOD OF 25 YEARS, PAY A
25 \$50,000 FINE. THAT'S CONCURRENT WITH THE OTHER

1 INDICTMENTS. GIVE YOU CREDIT FOR JAIL TIME SINCE DECEMBER
2 12TH, 2002.

3 INDICTMENT NUMBER 416, THAT'S MANUFACTURING
4 METHAMPHETAMINES, SENTENCED TO THE STATE DEPARTMENT OF
5 CORRECTIONS A PERIOD OF 15 YEARS; PAY A \$25,000 FINE, GIVE
6 YOU CREDIT FOR JAIL TIME SINCE DECEMBER THE 12TH, 2002.

7 INDICTMENT NUMBER 2530, SENTENCED -- THAT'S THE POSSESSION
8 OF FIREARM, SENTENCED TO THE STATE DEPARTMENT OF CORRECTIONS
9 FOR A PERIOD OF FIVE YEARS. GIVE YOU CREDIT FOR JAIL TIME
10 SINCE DECEMBER 12TH, 2002. AND ALL OF THESE INDICTMENTS I'M
11 READING ARE CONCURRENT WITH EACH OTHER. THAT MEANS THEY RUN
12 TOGETHER. DO YOU UNDERSTAND?

13 THE DEFENDANT: YES, SIR.

14 THE COURT: INDICTMENT NUMBER 1908, THAT'S
15 MANUFACTURING, YOU'RE SENTENCED TO THE STATE DEPARTMENT OF
16 CORRECTIONS FOR A PERIOD OF 15 YEARS, PAY A \$25,000 FINE.
17 THAT'S CONCURRENT WITH THE OTHER FOUR INDICTMENTS. GIVE YOU
18 CREDIT FOR JAIL TIME SINCE DECEMBER THE 12TH, 2002.

19 DO YOU HAVE ANY QUESTIONS?

20 THE DEFENDANT: NO, SIR.

21 THE COURT: YOU GOT 30 YEARS.

22 THE DEFENDANT: (NODS HEAD UP AND DOWN)

23 THE COURT: YOU UNDERSTAND?

24 THE DEFENDANT: YES, SIR.

25 THE COURT: ALL RIGHT. GOOD LUCK TO YOU.

1 THE DEFENDANT: THANK YOU, SIR.

2 MR. ROSS: THANK YOU, YOUR HONOR.

3 * * * * * END OF REQUESTED TRANSCRIPT OF RECORD * * * * *

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1 STATE OF SOUTH CAROLINA)
) CERTIFICATE OF REPORTER
2 COUNTY OF ANDERSON)

3

4 I, THE UNDERSIGNED, DONNA M. BRADY, OFFICIAL COURT
5 REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF
6 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
7 TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
8 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE
9 CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL
10 SESSIONS FOR ANDERSON COUNTY, SOUTH CAROLINA ON THE 3RD
11 DAY OF FEBRUARY, 2003.

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

14

15

16

Donna M. Brady
DONNA M. BRADY

17

18

1/21/04
DATE

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FORM 5

STATE OF SOUTH CAROLINA)

County of Anderson)

IN THE COURT OF COMMON PLEAS

John B. Turner, #290521)

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

v.)

State of South Carolina,)

Respondent.)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make 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, 430 Oaklawn Rd.
Pelzer, South Carolina 29669
2. Name and location of Court which imposed sentence General Sessions Court,
Anderson County Courthouse, Anderson, South Carolina.
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 02-GS-04-2530/02-GS-04-2531/02-GS-04-1907/02-GS-04-1908
02-GS-04-416

[Handwritten signature]

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FORM 5

STATE OF SOUTH CAROLINA)

County of Anderson)

IN THE COURT OF COMMON PLEAS

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

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4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) G2-GS-04-2530/02-GS-04-2531/02-GS-04-1907/02-GS-04-1908
02-GS-04-416

(b)

(c)

5 The date upon which sentence was imposed and the terms of the sentence:

(a) February 3, 2003 - 30 years.

(b)

(c)

6 Check whether a finding of guilty was made:

(a) after a plea of guilty yes.

(b) after a plea of not guilty

(c) after a plea of nolo contendere

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

no.

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) No one advised me of my right to appeal.

- (b) _____
 (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 (a) Please see additional page 3(a).
 (b) _____
 (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 (a) Please see additional page 3(a).
 (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? no
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
 (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
 (a) the specific nature thereof:
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. _____
 ii. _____
 iii. _____

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Allegations.

(10). The Applicant was denied his Sixth and Fourteenth Amendment rights guaranteed by the United States Constitution and Constitution of the State of South Carolina Article 1, §3 and Article 1, §14 because Applicant's guilty plea was not entered knowingly, intelligently, or voluntarily because of ineffective assistance of counsel.

Supporting Facts.

(11). The Applicant will submit to this Court that his guilty plea was not entered knowingly, intelligently, or voluntarily and that he received inter alia ineffective assistance of counsel prior to and during his guilty plea before this Court on February 3, 2003. The Applicant will submit the following facts:

(1). Applicant's guilty plea was not entered knowingly, intelligently, or voluntarily, inasmuch as my lawyer ~~failed to advise me that if I exercise my right to a jury trial I could challenge my statement made to the police by way of Jackson v. Denno hearing to show that the statement was involuntarily made~~ and but for my lawyer's unprofessional errors, I would not have pled guilty but would have insisted on my jury trial.

(2). Applicant's guilty plea was not entered knowingly, intelligently, or voluntarily, inasmuch as my lawyer ~~failed to properly investigate the warrants, search warrants, indictments~~ and prepare Applicant's case for trial but instead convinced Applicant to plead guilty and but for my lawyer's unprofessional errors, I would not have pled guilty but would have insisted on my jury trial.

(3). Applicant's guilty plea was not entered knowingly, intelligently, or voluntarily, inasmuch as my lawyer ~~failed to properly investigate the SLED reports that showed that the prints did not match but "was inconclusive due to a lack of sufficient corresponding marks of value"~~ and but for my lawyer's unprofessional errors, I would not have pled guilty but would have insisted on my jury trial.

(4). Applicant's guilty plea was not entered knowingly,

intelligently, or voluntarily, inasmuch as my lawyer lied to me and my family in order to induce me to plead guilty. ~~He told me and my family that prison was like motel six I would have my own keys and I could come and go anytime I pleased and he told my family I would never see them again if I didn't plead guilty. But for my lawyer's unprofessional errors, I would not have pled guilty but would have insisted on my jury trial.~~

(5). Applicant's guilty plea was not entered knowingly, intelligently, or voluntarily, inasmuch as my lawyer failed to spend time with me to ~~explain fully all the material in the Rule (5) Brady, motion material~~ because I did not know about all the ~~hearsay statements or the ballistic reports~~ failing to match or how my ~~statement had been changed~~ or that I could challenge my statement but for my lawyer's unprofessional errors, I would not have pled guilty but would have insisted on my jury trial.

(6). Applicant's guilty plea was not entered knowingly, intelligently, or voluntarily, inasmuch my lawyer failed to fully advise me of the ~~witnesses and evidence the state had~~ available to present at trial to prove my guilt and but for my lawyer's unprofessional errors, I would not have pled guilty but would have insisted on my jury trial.

(7). Applicant's guilty plea was not entered knowingly, intelligently, or voluntarily, inasmuch as my lawyer ~~failed to discuss with me any possible legal defense or mitigation~~ issues that might be available to me should I go to trial and but for my lawyer's unprofessional errors, I would not have pled guilty but would have insisted on my jury trial.

(8). Applicant's guilty plea was not entered knowingly, intelligently, or voluntarily, inasmuch my lawyer failed to object to the Solicitor manipulating my trial in order to put pressure on me to plead guilty because ~~the Solicitor skillfully but unfairly removed my case away from Judge Madden and forced me to plead guilty before Judge Nicholson~~ and but for my lawyer's unprofessional errors, I would have not pled guilty but would have insisted on my jury trial.

(9). Applicant's guilty plea was not entered knowingly, intelligently, or voluntarily, inasmuch my lawyer failed to file an affidavit with the Clerk of Court and motion the Court for a ~~change of venue~~ but instead my lawyer persuaded me to plead

John B. Turner, #290521

PCR additional page 3(a) continues

guilty and waive all my rights to my jury trial and but for my lawyer's unprofessional errors, I would not have pled guilty but would have insisted on my jury trial.

(10). Applicant's guilty plea was not entered knowingly, intelligently, or voluntarily, inasmuch as my lawyer ~~failed to do~~ a proper ~~investigation of the facts and law~~ where he misadvised me ~~concerning my rights to separate jury trials~~ by telling me and my family I could not have separate trials therefore coercing or inducing me to waive my rights to my jury trials and plead guilty and but for my lawyer's unprofessional errors, I would not have pled guilty but would have insisted on my jury trial.

(11). Applicant's guilty plea was not entered knowingly, intelligently, or voluntarily, inasmuch as my lawyer failed to ~~investigate the witnesses or summaries of what they would say, no case law, no outline or strategy for conduct of the case~~ for trial; no outlines or notes for examinations of witnesses; no summaries of evidence; no copies of photographs; There were no witnesses to the shooting; and but for my lawyer's unprofessional errors, I would not have pled guilty but would have insisted on my jury trial.

(12). Applicant's guilty plea was not entered knowingly, intelligently, or voluntarily, inasmuch as my lawyer misadvised me concerning my sentence and the amount of time I would have to do. ~~My lawyer told me I would do 85% of my sentence~~ but the law states that I have to do 30 years day for day and nothing I can do to reduce my sentence, and but for my lawyer's unprofessional errors, I would not have pled guilty but would have insisted on my jury trial. S.C. Code §16-3-20.

(13). Applicant's guilty plea was not entered knowingly, intelligently, or voluntarily, inasmuch as my lawyer failed to object to the Court misadvising me concerning my sentence. ~~The Court told me that I would do 85% of my sentence when in fact the law says that I have to do 30 years day for day~~ and nothing I can do to reduce my sentence, and but for my lawyer's unprofessional errors, I would not have pled guilty but would have insisted on my jury trial. S.C. Code §16-3-20.

Applicant leaves this application open so he may amend after appointment of counsel or by leave of the Court.



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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF ANDERSON

NO. 200³~~4~~-CP-04-2715

JOHN B. TURNER,

APPLICANT,

VS.

STATE OF SOUTH CAROLINA,

DEFENDANT.

:
:
:
:
: TRANSCRIPT OF RECORD
: POST-CONVICTION RELIEF
: HEARING
:
:
:
:

FEBRUARY 6, 2006
ANDERSON, SOUTH CAROLINA

B E F O R E:

HONORABLE ALEXANDER S. MACAULAY, JUDGE

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

THEO W. MITCHELL
ATTORNEY FOR THE APPLICANT

DANIEL E. GRIGG
ATTORNEY FOR THE RESPONDENT

ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER
POST OFFICE BOX 9
WALHALLA, SC 29691

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23 E X H I B I T S

24 NO EXHIBITS WERE INTRODUCED.

25

1 ***** START OF REQUESTED TRANSCRIPT *****

2 THE COURT: YOU MAY PROCEED.

3 MR. GRIGG: YES, YOUR HONOR. YOUR HONOR,
4 MR. MITCHELL REPRESENTS MR. TURNER, THIS IS THE MATTER
5 OF *JOHN TURNER V. STATE*. MR. MITCHELL IS SIMPLY
6 ASKING THAT MR. TURNER WOULD LIKE TO FLIP THROUGH SOME
7 OF HIS DOCUMENTS.

8 THE COURT: OKAY, VERY WELL.

9 MR. MITCHELL: THANK YOU, YOUR HONOR. HE
10 NEEDS THAT LEFT HAND.

11 THE COURT: ALL RIGHT. GO AHEAD.

12 (DEPUTY UNLOCKS HANDCUFFS.)

13 (OFF-THE-RECORD DISCUSSION.)

14 THE COURT: LET'S WAIT UNTIL HE HAS AN
15 OPPORTUNITY TO PROCEED. I'LL CALL THE CASE NOW.
16 THANK YOU. WHEN YOU ARE READY TO PROCEED.

17 MR. MITCHELL: THANK YOU, YOUR HONOR, MAY
18 IT PLEASE THE COURT.

19 THE COURT: LET ME CALL THE CASE. *JOHN*
20 *BRADLEY TURNER V. THE STATE*, 2003-CP-04-2715.

21 MR. MITCHELL REPRESENTS THE APPLICANT, MR. GRIGG
22 REPRESENTS THE STATE.

23 MR. MITCHELL?

24 MR. MITCHELL: THANK YOU VERY MUCH, YOUR
25 HONOR, MAY IT PLEASE THE HONORABLE COURT.

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1 WE WOULD CALL AT THIS TIME MR. JOHN
2 BRADLEY TURNER AS THE PETITIONER IN A CASE IN WHICH HE
3 SEEKS TO HAVE THE PCR PETITION GRANTED SO THAT HE CAN
4 COME TO TRIAL ON EVIDENCE THAT VERY CERTAINLY, HE
5 FEELS, WOULD HAVE BEEN EXCULPATORY IN REGARDS TO HIS
6 CASE BUT WAS ---

7 THE COURT: ALL RIGHT. WHAT ARE THE
8 GROUNDS, MR. MITCHELL, AS FAR AS SEEKING A TRIAL?

9 MR. MITCHELL: MISREPRESENTATION BY
10 COUNSEL.

11 THE COURT: THAT'S INEFFECTIVE ASSISTANCE
12 OF COUNSEL?

13 MR. MITCHELL: YES, SIR. INEFFECTIVE
14 ASSISTANCE OF COUNSEL ---

15 THE COURT: AND WHAT DID THE COUNSEL
16 MISREPRESENT?

17 MR. MITCHELL: COUNSEL MISREPRESENTED AT
18 THE LAST MINUTE THAT THERE HAD BEEN SOME -- NOT
19 NEGOTIATIONS, BUT THERE HAD BEEN SOME AMENDMENTS MADE
20 BY THE SOLICITOR THAT THAT WOULD BE A LIFE SENTENCE
21 SOUGHT IF HE DID NOT PLEAD GUILTY. HE WAS HERE WITH
22 WITNESSES. HE HAD PEOPLE WHO HAD KNOWLEDGE OF THE
23 INCIDENT THAT OCCURRED.

24 THE COUNSEL OF RECORD AT THAT TIME TOOK IT
25 UPON HIMSELF TO PLEAD HIM TO PLEAD HIM ALSO -- WELL,

1 HE PLEADED HIM TO MURDER -- TO DRUG CHARGES IN WHICH
2 COUNSEL OF RECORD DID NOT HAVE KNOWLEDGE OF, NEITHER
3 HAD BEEN RETAINED, NOR WAS THE OTHER ATTORNEY THAT
4 WENT INTO THE RECORD, AND, AS SUCH, WAS TOLD AT THE
5 LAST MINUTE THAT HE HAD TO PROVE -- THAT HE HAD TO
6 PLEAD.

7 AND THAT HE WAS ALSO TOLD NOT TO SAY
8 ANYTHING WHEN HE WAS ASKED QUESTIONS -- I BELIEVE THE
9 HONORABLE JUDGE NICHOLSON WAS THE JUDGE AT THAT
10 TIME -- WHEN QUESTIONS WERE ASKED IN REGARDS TO
11 WHETHER HE KNOWINGLY, INTELLIGENTLY, AND WITH THE
12 INTERROGATION, KNEW WHAT HE WAS DOING, WAIVED HIS
13 RIGHTS, WAS TOLD, BE QUIET AND ANSWER THE QUESTIONS
14 AND I'LL TELL YOU -- OR I'LL ASK THE QUESTIONS, OR
15 SOMETHING TO THAT EFFECT, YOUR HONOR.

16 THE COURT: ALL RIGHT, SIR.

17 MR. MITCHELL: BUT IN ESSENCE IT WAS A
18 SITUATION IN WHICH MY CLIENT HAD RETAINED COUNSEL OF
19 RECORD FOR A TRIAL, WITH WITNESSES, AND WAS HERE --
20 WHO WERE HERE PRESENT AND HAD PAID GOOD MONEY. AND HE
21 WILL TESTIFY TO, BEFORE THE TRIAL, UNTIL ABOUT 15
22 MINUTES PRIOR TO IT, THAT HE WAS TOLD HE HAD TO PLEAD
23 GUILTY.

24 AND HE WAS TOLD IN THE CONFERENCE ROOM THE
25 TIME HAD LAPSED. THE BAILIFF CAME, KNOCKED ON THE

1 DOOR, BROUGHT HIM OUT, AND HE STOOD BEFORE THE COURT
2 AND ENTERED HIS PLEA UNDER DURESS, STRESS, AND
3 CERTAINLY WITHOUT INTELLIGENTLY KNOWING THE
4 CIRCUMSTANCES.

5 THESE ARE THE ALLEGATIONS MY CLIENT HAS
6 RAISED, AND THESE ARE ALLEGATIONS WITH WHICH WE SEEK
7 TO PRESENT TO THE COURT.

8 **THE COURT:** ALL RIGHT. MR. MITCHELL, AS I
9 UNDERSTAND IT, THE GROUNDS FOR THE RELIEF SOUGHT IS
10 INEFFECTIVE ASSISTANCE OF COUNSEL BASED ON
11 MISREPRESENTATION BY COUNSEL OF A COMMITMENT BY THE
12 SOLICITOR TO SEEK A LIFE SENTENCE IF NO PLEA; AND
13 SECOND, THAT HE WAS TOLD NOT TO SAY ANYTHING IN REGARD
14 TO THE VOLUNTARINESS OF THE PLEA OR TO SUGGEST IT WAS
15 NOT FREELY, VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY
16 MADE; AND THREE, THAT THE RETAINED COUNSEL FOR TRIAL
17 FAILED TO PROSECUTE THE TRIAL?

18 **MR. MITCHELL:** THAT IS CORRECT, YOUR
19 HONOR.

20 **THE COURT:** VERY GOOD. EXCUSE ME.

21 (OFF-THE-RECORD DISCUSSION.)

22 **MR. MITCHELL:** OH. AND WE MAY HAVE
23 MENTIONED ALSO, YOUR HONOR, THERE SEEMINGLY WAS
24 INADEQUACY WITH REGARD TO INVESTIGATION AND
25 WITHHOLDING OF EVIDENCE WHICH THE SOLICITOR'S OFFICE

1 IS INVOLVED IN.

2 THE COURT: ALL RIGHT. THE MATTER OF
3 INVESTIGATION OF EVIDENCE AND PROSECUTORIAL
4 MISCONDUCT?

5 MR. MITCHELL: YES, SIR.

6 THE COURT: WELL, LET ME JUST ASK TO BE
7 SURE: IS THERE ANYTHING ELSE?

8 (OFF-THE-RECORD DISCUSSION.)

9 MR. MITCHELL: THAT'S ALL, YOUR HONOR.

10 THE COURT: ALL RIGHT. THOSE ARE THE
11 GROUNDS, IS THAT CORRECT, MR. MITCHELL?

12 MR. MITCHELL: YES, SIR, YOUR HONOR.

13 THE COURT: ALL RIGHT. MR. TURNER; IS
14 THAT CORRECT?

15 THE DEFENDANT: YES, YOUR HONOR.

16 THE COURT: ALL RIGHT. VERY GOOD. YOU
17 MAY COME AROUND.

18 (WHEREUPON, THE WITNESS WAS SWORN BY THE
19 CLERK.)

20 THE CLERK: PLEASE HAVE A SEAT ON THE
21 WITNESS STAND AND PLEASE STATE YOUR FULL NAME AND
22 SPELL YOUR LAST NAME FOR THE RECORD.

23 THE WITNESS: JOHN BRADLEY TURNER.

24 THE COURT: ALL RIGHT, YOU MAY PROCEED.
25 THANK YOU.

1 MR. MITCHELL: MAY IT PLEASE THE COURT?

2 THE COURT: YES, SIR.

3 WHEREUPON,

4 JOHN TURNER,

5 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS

6 FOLLOWS:

7 DIRECT EXAMINATION BY MR. MITCHELL:

8 Q. YOU ARE JOHN BRADLEY TURNER, ARE YOU NOT?

9 A. YES, I AM.

10 Q. MR. TURNER, WOULD YOU TELL THIS COURT

11 WHERE YOU ARE CURRENTLY INCARCERATED?

12 A. PERRY CORRECTIONAL INSTITUTION.

13 Q. AND YOU ARE SERVING A SENTENCE OF HOW MUCH

14 TIME?

15 A. I'M DOING A 30-YEAR AT 85 PERCENT.

16 Q. YOU ARE DOING 30 YEARS. WOULD YOU TELL

17 THIS COURT WHY ARE YOU DOING THE SENTENCE?

18 A. WELL, I'M DOING IT ON ACCOUNT OF ERRONEOUS

19 INFORMATION OF RICHARD WARDER IS WHY I'M DOING IT, ON

20 MY GUILTY PLEA.

21 Q. YOU ENTERED A GUILTY PLEA ON WHAT DATE?

22 A. FEBRUARY 3RD, 2003.

23 Q. THAT WAS IN ANDERSON COUNTY ---

24 A. YES, SIR.

25 Q. --- COURT, I BELIEVE?

1 A. YES, SIR.

2 Q. THE HONORABLE J.C. NICHOLSON, JUNIOR, WAS
3 THE PRESIDING JUDGE, WAS HE NOT?

4 A. YES, SIR.

5 Q. AT THAT TIME SOLICITOR DRUANNE WHITE WAS
6 THE PROSECUTOR?

7 A. YES, SIR.

8 Q. DID SHE PERSONALLY PROSECUTE THIS CASE?

9 A. YES, SHE DID.

10 Q. OKAY. WHAT WERE THE CHARGES ON YOU?

11 A. I HAD A MURDER CHARGE AND A POSSESSION OF
12 A FIREARM DURING A VIOLENT CRIME, AND I HAD A
13 TRAFFICKING CHARGE AND A MANUFACTURING CHARGE.

14 Q. OKAY. WHO WAS REPRESENTING YOU ON THOSE
15 CHARGES?

16 A. CALHOUN PRUITT, WHICH I HAVE HIS AFFIDAVIT
17 RIGHT HERE, CALHOUN PRUITT REPRESENTED ME ON THE
18 TRAFFICKING AND THE MANUFACTURING; AND RICHARD WARDER
19 REPRESENTED ME ON THE MURDER CHARGE.

20 Q. WAS MR. WARDER RETAINED?

21 A. YES, HE WAS.

22 Q. OKAY. AND YOUR PEOPLE RETAINED HIM, YOUR
23 FAMILY?

24 A. YES, THEY DID.

25 Q. ALL RIGHT. ON THE MURDER CHARGE ONLY?

1 A. THAT'S IT, ON THE MURDER CHARGE.

2 Q. OKAY. IN REGARDS TO THE DATE IN WHICH YOU
3 STOOD BEFORE JUDGE NICHOLSON, HAD YOU BEEN PREPARED TO
4 GO TO TRIAL?

5 A. ON THE...

6 Q. THE MURDER CHARGE.

7 A. NO, SIR, WE WAS NOT PREPARED TO GO TO
8 TRIAL.

9 Q. WELL, YOU DID RETAIN MR. WARDER TO TRY THE
10 CASE BEFORE A JURY?

11 A. OH, YES, WE DID. AND THAT WAS -- THAT WAS
12 TO -- UP TO THAT MORNING THAT'S WHAT IT WAS. IT WAS
13 ALWAYS 99.9 PERCENT SELF-DEFENSE FROM THE DAY THAT WE
14 PAID MR. WARDER.

15 Q. HOW MUCH DID YOU PAY TO MR. WARDER?

16 A. WE PAID MR. WARDER \$25,000 FOR THE MURDER
17 TRIAL. AND I ALSO HAD A MANUFACTURING CHARGE, WHICH
18 WASN'T THE TRAFFICKING MANUFACTURING CHARGE, I PAID
19 HIM \$10,000 FOR. THAT WAS AFTER THE MURDER CHARGE. I
20 RETAINED MR. WARDER FOR THAT CHARGE.

21 BUT I WOULD LIKE TO ADD, THOUGH, THAT THE
22 ARRESTING OFFICER THAT ARRESTED ME ON THAT CHARGE, HE
23 TOLD MR. WARDER DURING THE PRELIMINARY HEARING THAT HE
24 WOULD HELP ME ON THAT. BASICALLY WHAT HE WAS SAYING
25 WAS THE CHARGE WOULD BE, YOU KNOW, DROPPED DOWN

1 BECAUSE THERE WAS NOTHING NEVER FOUND. DO YOU
2 UNDERSTAND? IT WASN'T NOTHING BUT A TRAFFIC
3 VIOLATION.

4 BUT BASED ON WHAT I'M TRYING TO GET AT IS,
5 THAT ARRESTING OFFICER IS NO LONGER A POLICE NO MORE.
6 HE IS -- I BELIEVE HE IS INCARCERATED, AS A MATTER OF
7 FACT, MACK KERN (PHONETIC) I BELIEVE IS HIS NAME.

8 Q. THE OFFICER WHO MADE THE CASE AGAINST YOU?

9 A. THAT'S RIGHT.

10 Q. ALL RIGHT. THAT WAS A SUBSEQUENT CASE
11 THAT MR. WARDER WAS RETAINED FROM?

12 A. YES, SIR.

13 Q. OTHER THAN THE MURDER CHARGE?

14 A. YES, SIR.

15 Q. AND YOU WERE HERE ON THE DATE IN QUESTION
16 WITH WITNESSES FOR YOUR DEFENSE IN THAT MURDER CASE?

17 A. YES, SIR, WE WAS. IT WAS -- I BELIEVE
18 THEY WAS -- THERE WAS THREE WITNESSES HERE. TWO --
19 ALL THREE OF THEM WERE AT THE SCENE OF THE CRIME THAT
20 NIGHT.

21 Q. AND WAS IT YOUR UNDERSTANDING THAT THIS
22 CASE WOULD GO BEFORE 12 PEOPLE SITTING OVER HERE?

23 A. THAT WAS MY UNDERSTANDING, THAT WHEN WE
24 HIRED HIM IT WAS SUPPOSED TO BE A JURY TRIAL.

25 Q. IN REGARDS TO THE DATE IN QUESTION IN

1 WHICH YOU REPORTED FOR TRIAL, WHAT, IF ANYTHING,
2 OCCURRED? WOULD YOU TELL THE JUDGE THAT?

3 A. I DON'T UNDERSTAND WHAT YOU MEAN.

4 Q. OKAY. DID MR. WARDER MEET WITH YOUR
5 FAMILY?

6 A. OH, YES, SIR. BUT THAT MORNING OF TRIAL,
7 WE WAS SUPPOSED TO GO THROUGH THE HEARING AND PULL A
8 JURY. WELL, MR. WARDER CAME TO MY FAMILY AND TOLD MY
9 FAMILY THAT WHENEVER WE GET BACK FROM DINNER, WE'RE
10 GONNA PULL A JURY AND WE'RE GONNA GO BEAT THIS MURDER
11 CHARGE. WE'LL WORRY ABOUT THE DRUG CHARGES LATER.

12 WELL, HE WENT AND ATE DINNER. AND HE CAME
13 BACK AND HE WENT TO MR. NICHOLSON AND PREPARED A
14 MEETING IN A ROOM WITH MY FAMILY. AND HE TOLD MY
15 FAMILY, HE SAID, LOOK, HE SAID, YOU'D BETTER TALK JOHN
16 INTO TAKING 30 YEARS, HE SAID, BECAUSE IF NOT, HE'S
17 GONNA GET A LIFE SENTENCE FOR THE DRUG CHARGE.

18 Q. FOR THE DRUG CHARGE?

19 A. FOR THE DRUG CHARGE.

20 Q. NOT THE MURDER CHARGE?

21 A. NOT THE MURDER CHARGE, THE DRUG CHARGE.

22 Q. OKAY.

23 A. THAT'S WHAT MR. WARDER TOLD ME. BUT
24 MR. WARDER HAD NO RIGHT TO TELL ME THAT BECAUSE
25 MR. WARDER WAS NOT MY REPRESENTING ATTORNEY. HE HAD

1 NO EVIDENCE, NO FACTS OF NO DRUG CASE -- YOU SEE WHAT
2 I'M SAYING -- TO SAY THAT I WOULD GET THIS. AND LATER
3 ON, WHEN WE GET THROUGH THIS ---

4 Q. MR. PRUITT WAS REPRESENTING YOU ---

5 A. YES, HE WAS.

6 Q. --- FOR THE DRUG CHARGES?

7 A. YES, HE WAS.

8 Q. OR AT LEAST THE METHAMPHETAMINE CHARGES?

9 A. YES, SIR.

10 Q. GO AHEAD.

11 A. THE CHARGES THAT -- WELL, ON MY FIRST --
12 IF YOU DON'T MIND, I WOULD LIKE TO GO THROUGH -- I
13 HAVE SOME FACTS RIGHT HERE, DOCUMENTS FROM THE COURT
14 THAT'S TRUE-BILL STAMPED, THAT SHOWS THE
15 INEFFECTIVENESS OF MR. WARDER. AND IF IT'LL BE ALL
16 RIGHT, I WOULD LIKE TO...

17 MR. MITCHELL: IT'S UP TO THE JUDGE.

18 THE COURT: GO AHEAD.

19 THE WITNESS: ALL RIGHTY.

20 THE COURT: IF YOU HAVE ANY QUESTION ABOUT
21 HOW YOU ARE PROCEEDING, I CERTAINLY WOULD RECOMMEND
22 THAT YOU CONSULT WITH MR. MITCHELL BEFORE.

23 MR. MITCHELL: THANK YOU, YOUR HONOR.

24 BY MR. MITCHELL:

25 Q. GO AHEAD, SIR.

1 A. ALL RIGHT. IN MY ALLEGATIONS, I'M GONNA
2 GO TO MY NUMBER TWO ALLEGATION. MR. WARDER SAID IN MY
3 TRANSCRIPT THAT HE WENT OVER INDICTMENTS WITH ME. ON
4 PAGE TWO, LINE 13 THROUGH 21, THE SOLICITOR SAYS THEY
5 HAVE NEVER BEEN TO THE GRAND JURY. BUT MR. WARDER
6 TOLD THE JUDGE HE WENT OVER THEM WITH ME, BUT THERE'S
7 NO WAY BECAUSE THERE WAS NONE. HE FAILED TO DO A
8 PROPER INVESTIGATION ON THESE INDICTMENTS.

9 I WOULD LIKE TO ADD, TOO, THAT MR. WARDER,
10 LIKE I SAID BEFORE, WAS NOT MY REPRESENTING ATTORNEY
11 ON MY DRUG CHARGE.

12 ON PAGE NINE, LINE 19 THROUGH 25 OF THE
13 TRANSCRIPT, MR. WARDER SAID THAT FROM HIS
14 INVESTIGATION OF THE FACTS AND CIRCUMSTANCES OF THE
15 CASE, HE FEELS I WOULD BE CONVICTED OF A CHARGE
16 AGAINST ME IF I WENT TO A JURY TRIAL.

17 LIKE I SAID, HE HAD NO FACTS OR EVIDENCE.

18 Q. HAVING TO DO WITH THE DRUG CHARGE?

19 A. AS TO THE DRUG CHARGE.

20 Q. WAS HE THE ONE THAT WAS REPRESENTING YOU?

21 A. NO, SIR, HE WAS NOT. BUT HE WENT AHEAD
22 AND ADVISED ME TO PLEAD GUILTY. AND ALSO, I WOULD
23 LIKE TO ADD THAT THE DAY OF TRIAL I HAVE RIGHT HERE IN
24 MY HAND A SUPPLEMENTAL THAT MR. WARDER FILED THE DAY
25 OF TRIAL ON MY BRADY 5 MATERIAL THAT HE INSPECTED -- I

1 MEAN, THAT THEY HAND-DELIVERED, WHICH IS MY
2 SUPPLEMENTAL, WHICH IS A BRADY 5, WHICH Y'ALL KNOW
3 WHAT IT IS, IT'S MATERIAL THAT SHOWS EITHER MY
4 INNOCENCE OR MY GUILT, WHAT THE STATE HAS AGAINST ME.

5 Q. AND HE FILED THAT ON THE DAY OF THE TRIAL?

6 A. HE FILED THAT ON THE DAY OF TRIAL. AND I
7 HAVE IT RIGHT HERE, YOU KNOW, IF YOU NEED IT.

8 Q. GO RIGHT HEAD, MR. TURNER.

9 A. ALL RIGHT. AND I WOULD LIKE TO GO TO
10 NUMBER THREE, WHERE MR. WARDER FAILED TO DO THE
11 BALLISTICS REPORT FROM SLED TO SHOW THE BALLISTICS WAS
12 INCONCLUSIVE -- TO THE MURDER CHARGE -- INCONCLUSIVE
13 DUE TO THE LACK OF CORRESPONDING MARKS OF VALUE:
14 BULLETS MAY NOT HAVE COME FROM FIREARM RECEIVED FROM
15 ME.

16 AND MR. WARDER ALSO FAILED TO INVESTIGATE
17 THE CRIME SCENE. IF HE WOULD HAVE, PIECES FROM THE
18 CRIME SCENE AND THE PIECES THAT THE POLICE HAVE AT THE
19 STATION, WHICH THEY GIVE MR. WARDER IN MY BRADY 5
20 MATERIAL SHOWING THAT THEY HAD THE CRIME SCENE
21 PICTURES TOOK OF, AND EVERYTHING, WHICH IS THE BULLET
22 HOLE IN THE SIDE OF THE HOUSE AND THE WINDOW, WHICH I
23 HAVE RIGHT HERE.

24 AND IF THE BULLETS DIDN'T MATCH THAT COME
25 FROM THE FIREARM THAT WAS MINE, AND IF THEY WOULD HAVE

1 WENT TO THIS HOUSE AND MR. WARDER HAD DONE A PROPER
2 INVESTIGATION AND TOOK THESE BULLETS OUT FROM THIS
3 HOUSE, AND IT MIGHT HAVE SHOWED THAT THE FIREARM -- I
4 MEAN, THAT THE BULLET IN THE HOUSE IS THE ONE THAT
5 COME FROM MY FIREARM. YOU SEE? AND I WOULD BE
6 CLEARED OF THIS CHARGE.

7 BUT INSTEAD MR. WARDER ADVISED ME TO TAKE
8 THIS GUILTY PLEA, I MEAN, KNOWING ALL THIS EVIDENCE
9 WAS FAVORABLE TO ME.

10 ALL RIGHT. NOW I WOULD LIKE TO GO TO
11 NUMBER FOUR. WE'VE COVERED A LITTLE BIT OF THIS. BUT
12 IT GOES TO WHERE MR. WARDER LIED TO ME AND MY FAMILY
13 AND TOLD THEM ABOUT THE LIFE SENTENCE I WAS GONNA
14 RECEIVE FOR A DRUG CHARGE; WHERE HE PREPARED A MEETING
15 IN THE ROOM, AND ACTUALLY WHAT HE DONE WAS HE SCARED
16 MY FAMILY UP AND THEN TOLD MY FAMILY THAT THEY NEEDED
17 TO TALK ME INTO TAKING THIS GUILTY PLEA.

18 ALL RIGHT.

19 Q. AND THAT WAS ABOUT 15 OR SO MINUTES
20 BEFORE ---

21 A. THAT WAS FIVE MINUTES.

22 Q. FIVE MINUTES BEFORE TRIAL?

23 A. I DIDN'T -- I MEAN, I DIDN'T EVEN HAVE
24 FIVE MINUTES TO DECIDE WHAT I WANTED TO DO. THE
25 BAILIFF COME IN AND SAID, WE GOT TO GO. SO THEY

1 JERKED ME OUT AND PUT ME IN FRONT OF THE JUDGE.

2 LIKE I SAID, I'D NEVER BEEN IN NO TROUBLE
3 BEFORE, NEVER. I DIDN'T KNOW WHAT WAS HAPPENING.
4 THAT'S WHAT I HIRED MR. WARDER FOR. BUT, YOU KNOW, I
5 MEAN -- BUT, LIKE I SAID, RICHARD WARDER USED THIS
6 DRUG CHARGE AS A LEVERAGE AGAINST ME TO TAKE THIS
7 GUILTY PLEA WHERE HE LIED TO MY FAMILY.

8 AND ALSO, IF I'D HAVE WENT TO TRIAL THE
9 DAY -- ON THAT DAY THAT MR. WARDER SAID THEY WAS GONNA
10 RUN THE DRUGS AND THE MURDER TOGETHER IN FRONT OF THE
11 SAME JURY, THERE'S NO WAY THAT WE COULD HAVE WIN
12 [SIC]. BECAUSE HE WAS -- PEGGY DAVIS (PHONETIC) AND
13 JIMMY WIGGENHOSS (PHONETIC) HAD TURNED, ALSO, AND THAT
14 MEANS THEY WOULD HAVE TESTIFIED AGAINST ME, AND THEY
15 COULD NOT HAVE TESTIFIED AGAINST ME, AND RICHARD
16 WARDER REPRESENTED ALL THREE OF US.

17 Q. SO THERE WAS A POSSIBLE CONFLICT OF
18 INTEREST?

19 A. THAT'S RIGHT. THAT WOULD BE A CONFLICT OF
20 INTEREST.

21 Q. GO RIGHT AHEAD.

22 A. AND, LET'S SEE. I WOULD LIKE TO GO TO
23 NUMBER FIVE, WHERE MR. WARDER FAILED TO ADVISE ME OF
24 ALL FAVORABLE EVIDENCE AVAILABLE TO ME. MR. WARDER
25 ALSO FAILED TO HAVE IN HIS POSSESSION ALL EVIDENCE

1 AVAILABLE TO ME. LIKE I SAID BEFORE, WHICH IS RIGHT
2 HERE WHERE HE FILED A SUPPLEMENTAL FROM MY BRADY 5
3 MATERIAL, WHICH SHOWED HIM TO BE INEFFECTIVE BECAUSE
4 HE HAD NO EVIDENCE OBTAINING [SIC] TO MY -- ALL
5 EVIDENCE OBTAINING [SIC] TO MY CASE TO HAVE A DEFENSE
6 STRATEGY THAT WE NEEDED.

7 ALL RIGHT. IF MR. WARDER HAD HAVE
8 INTERVIEWED WITNESSES AND GOT THE VICTIM'S BACKGROUND,
9 I MEAN, EVERY WITNESS THAT GIVE STATEMENTS WAS -- HAD
10 EITHER FIVE OR SIX PENDING CHARGES, AND THE VICTIM
11 THAT DIED, I MEAN, YOU KNOW, THAT GOT KILLED IN THIS
12 INCIDENT, I MEAN, HE'S A FUGITIVE FROM THE STATE OF
13 NORTH CAROLINA, YOU KNOW, ON THE MOST WANTED.

14 BUT -- SO NOBODY NEVER BROUGHT NONE OF
15 THIS UP, THEY NEVER BROUGHT IT TO NO COURT'S
16 ATTENTION. INSTEAD MR. WARDER SAYS -- JUST KEPT ALL
17 THIS EVIDENCE BACK FOR HISSELF [SIC] AND ADVISED ME TO
18 TAKE A GUILTY PLEA. I MEAN, LIKE I SAID BEFORE, I
19 DIDN'T UNDERSTAND WHAT WAS HAPPENING.

20 ALL RIGHT. I WOULD LIKE TO DO NUMBER SIX.

21 Q. GO AHEAD.

22 A. NO, SIR. I'M GONNA GO TO NUMBER SEVEN.
23 SIX I BASICALLY COVERED. IT'S ABOUT -- IT'S ALSO
24 ABOUT THE WITNESSES, IT'S LOOKING AT TIME AND OF
25 SUPPLEMENTAL. SO I'VE DONE COVERED THAT SO THERE

1 AIN'T NO NEED FOR ME TO REPEAT MYSELF.

2 Q. OKAY, GO RIGHT AHEAD.

3 A. ALL RIGHT. I'M GOING TO NUMBER SEVEN.

4 MR. WARDER NEVER DISCUSSED ANY POSSIBLE LEGAL DEFENSE
5 OR MITIGATION ISSUES AVAILABLE TO ME. WHEN WE -- WHEN
6 MY GRANDMOTHER CALLED MR. WARDER AND HE COME TO MEET
7 ME AT THE ANDERSON COUNTY DETENTION CENTER, AND WHEN
8 HE WALKED OUT THE DOOR MY GRANNY SAID, WHAT DO YOU
9 THINK? AND MR. WARDER SAID 99.9 PERCENT SELF-DEFENSE.
10 I NEVER HEARD NO JUSTIFIABLE HOMICIDE, INVOLUNTARY
11 MANSLAUGHTER, MANSLAUGHTER, OR NONE OF THE ABOVE.

12 AND ALSO I'D LIKE TO ADD THAT THE DOCTOR
13 SAID THAT THE VICTIM WAS IN A GESTURING POSITION, AS
14 IF SWINGING A BIG STICK THAT THEY FOUND AT THE SCENE
15 OF THE CRIME, AT ME, WHEN HE WAS SHOT IN THE ARM.
16 WITNESSES SAID THE VICTIM WAS SWINGING WHEN HE WAS
17 SHOT. THE DOCTOR'S AN EXPERT WITNESS, IS HE NOT?

18 Q. WOULD HE HAVE BEEN CALLED?

19 A. HE WOULD HAVE BEEN CALLED IF MR. WARDER
20 HAD PROPERLY INVESTIGATED ALL THIS EVIDENCE THAT WAS
21 COMING BEFORE HIM.

22 AND THE MORNING OF TRIAL, LIKE I SAID,
23 MR. WARDER SAID I HAD NO CHOICE EXCEPT TO PLEAD GUILTY
24 TO MURDER. THERE WAS ENOUGH FAVORABLE EVIDENCE TO
25 PROVE IT WAS NOT MURDER JUST BY THE DOCTOR'S EXPERT

1 TESTIMONY HISSELF [SIC].

2 AND, LIKE I SAID BEFORE, YOU KNOW,
3 MR. WARDER MUST NOT HAVE -- I MEAN, I DON'T
4 UNDERSTAND, BUT HE MUST NOT HAVE WENT OVER NONE OF
5 THIS EVIDENCE, OR I KNOW NOTHING ABOUT IT, ANYWAY.

6 NUMBER EIGHT. THIS IS WHERE MR. WARDER
7 TOLD ME THAT MY JUDGE WOULD BE MR. MADDOX BEFORE WE
8 WENT TO TRIAL THAT DAY. MY TRIAL WAS SET FOR
9 9:30 A.M. THE SOLICITOR SKILLFULLY BUT UNFAIRLY
10 REMOVED MY CASE AWAY FROM MR. MADDOX AND FORCED ME TO
11 GO IN FRONT OF MR. NICHOLSON, WHO HAD DONE HEARD ALL
12 FOUR HEARINGS, YOU KNOW, WHICH I'M PRETTY SURE THAT --
13 I KNOW THAT I HAD A BOND REDUCTION HEARING ON A BOGUS
14 CHARGE THAT I GOT WHEN MATT DURHAM (PHONETIC) PULLED
15 ME OVER IN MY PICKUP TRUCK.

16 MR. WARDER FAILED TO OBJECT TO THIS. I
17 WAS ALREADY SCARED. THIS MADE IT EVEN WORSE. I MEAN,
18 MY TRIAL HAD DONE BEING MOVED A WEEK TO PUT ME IN
19 FRONT OF THIS JUDGE. EVERYBODY, LIKE I SAID, WHENEVER
20 WE PICKED THIS JURY THAT MORNING, CALLED MS. WHITE BY
21 THEIR FIRST NAME. YOU KNOW, I MEAN, THEY CALLED HER
22 BY DRUANNE, I MEAN, THEY EITHER CUT HER GRASS OR LIVED
23 IN HER NEIGHBORHOOD OR SOMETHING.

24 AND THEN I HAD TO GO IN FRONT OF
25 MR. NICHOLSON. AND THE WAY MR. WARDER WAS TALKING, HE

1 WAS TALKING LIKE, YOU KNOW, I MEAN, THERE AIN'T
2 NOTHING I CAN DO. YOU KNOW, YOU'D BETTER TAKE THIS
3 GUILTY PLEA. SO, I MEAN, I WAS SCARED, I DIDN'T KNOW
4 WHAT TO DO.

5 BUT HE HAD FAILED TO OBJECT TO THIS. HE
6 HAD FAILED TO -- EVERYTHING I ASKED MR. WARDER TO DO,
7 MR. WARDER SAID HE COULDN'T DO. I MEAN, I ASKED HIM
8 TO ASK, YOU KNOW, THE COURT TO PUT ME AT A
9 CONTINUANCE. LIKE I PROVED JUST, YOU KNOW, A WHILE
10 AGO THAT BY THE SUPPLEMENTAL HE WASN'T READY.

11 HE COULD HAVE SHOWED THAT TO THE JUDGE AND
12 THAT WOULD HAVE BEEN A CONTINUANCE, YOU KNOW, OR HE
13 COULD HAVE FILED AN AFFIDAVIT AND IT WOULD HAVE GAVE
14 US A LITTLE TIME AT LEAST TO GET ME OUT FROM IN FRONT
15 OF MR. NICHOLSON OR THE JURY POOL, BECAUSE HE SAID
16 HIMSELF, YOU KNOW, THE JURY DON'T LOOK GOOD.

17 NUMBER NINE. WELL, WE AIN'T EVEN GONNA
18 WORRY ABOUT NINE; I JUST BASICALLY COVERED IT.

19 WE'LL DO NUMBER TEN ON MY FIRST AMENDMENT.
20 MR. WARDER TOLD MY FAMILY THE SOLICITOR WAS GONNA RUN
21 BOTH TRIALS TOGETHER. THE CHARGES WAS TWO SEPARATE
22 INCIDENTS, THEY WAS -- THEY WAS MONTHS APART.

23 ACCORDING TO LAW, EVERY INDICTMENT THAT
24 YOU HAVE, YOU ARE ENTITLED TO A JURY. I BELIEVE I'M
25 CORRECT THERE. THAT'S WHAT THE BOOK SAYS, ANYWAY.

1 OKAY. MR. WARDER SAID THEY GONNA RUN THEM
2 ALL TOGETHER. SO I COULD NOT HAVE WENT TO TRIAL ON
3 FEBRUARY THE 3RD. IF MR. WARDER HAD HAVE PROPERLY
4 INVESTIGATED THE INDICTMENTS, HE WOULD HAVE SEEN THAT
5 THERE WAS NO INDICTMENT. INSTEAD, HE TOLD MY FAMILY
6 THEY NEED TO TALK ME INTO PLEADING GUILTY. WHICH I
7 DONE SAID THAT AND I'M SORRY FOR REPEATING MYSELF.

8 MR. WARDER EVEN TOLD THE JUDGE HE WENT
9 OVER THE INDICTMENTS; HE COULD NOT HAVE. AND STILL HE
10 SAID THAT IT WAS UP TO THE SOLICITOR. I PAID
11 MR. WARDER FOR HIS KNOWLEDGE. I TRUSTED MR. WARDER
12 WOULD DO WHAT I PAID HIM TO DO. BUT APPARENTLY
13 MR. WARDER -- I MEAN, HE WASN'T WORKING FOR ME. I
14 MEAN, NOT THAT I COULD SEE.

15 AND THEN -- WELL, I DONE COVERED THE PART
16 WHERE HE WASN'T MY DRUG ATTORNEY. AND I WOULD LIKE TO
17 SAY THAT -- THAT I HAD -- YOU KNOW, HE TOLD ME THAT
18 THEY WAS GONNA DO THE BOTH TRIALS IN FRONT OF THE SAME
19 JURY, THAT I HAD BETTER TAKE THIS GUILTY PLEA.

20 WELL, ACCORDING TO MR. ROSS, IN MY
21 TRANSCRIPT MR. ROSS SAYS THAT I WAS IN POSSESSION OF
22 14 GRAMS OF METHAMPHETAMINES. 14 GRAMS OF
23 METHAMPHETAMINES IS NOT ENOUGH FOR A TRAFFICKING
24 CHARGE. THEREFORE, IT WOULD HAVE BEEN A POSSESSION
25 WITH INTENT.

1 BUT I HAVE A LETTER RIGHT HERE THAT SLED
2 SENT ME NOT LONG AGO TELLING ME: MR. TURNER, WE HAVE
3 SEARCHED OUR DATABASE ON THE INFORMATION PROVIDED IN
4 YOUR LETTER DATED JANUARY THE 7TH, 2005, AND WE ARE
5 UNABLE TO LOCATE ANY LABORATORY FILES CONCERNING YOUR
6 2002 DRUG BUST.

7 IT SAYS: YOU MAY WISH TO CONTACT THE
8 ARRESTING AGENCY FOR ANY INFORMATION YOU MAY HAVE.

9 WELL, I WROTE THE COUNTY AND I'VE DONE
10 EVERYTHING. NOBODY SEEMS TO HAVE NO EVIDENCE. WELL,
11 IF MR. WARDER HAD SAID THERE WAS NO EVIDENCE, I MEAN,
12 FROM MY UNDERSTANDING, THERE WOULD NEVER HAVE BEEN NO
13 TRIAL. SO, I MEAN, AND MR. WARDER, HE ALREADY WASN'T
14 MY ATTORNEY, SO HE JUST TOOK IT UPON HISSELF [SIC] TO
15 PLEAD ME OUT ON THESE CHARGES.

16 I WOULD LIKE TO GO TO 11. WHEN I HIRED
17 MR. WARDER, THE AGREEMENT WAS THAT HE WOULD QUESTION
18 WITNESSES, COLLECT EVIDENCE, AND PREPARE MY CASE FOR
19 TRIAL TO HIS BEST ABILITY. EVERY WITNESS THAT
20 MR. WARDER QUESTIONED, MY GRANDMOTHER -- HE MADE NO
21 EFFORT TO DO NOTHING, TO GO TO NO WITNESS. MY
22 GRANDMOTHER TOOK EVERYBODY TO MR. WARDER.

23 MR. WARDER TALKED TO THEM AND TOLD THEM
24 STUFF THAT WOULD HELP ME. WHEN MY GRANDMOTHER AND
25 THEM WENT BACK AFTER I DONE TOOK THIS GUILTY PLEA AND

1 ASKED MR. WARDER ABOUT, YOU KNOW, EITHER SOME MONEY
2 BACK OR SOMETHING LIKE THAT, MR. WARDER SAID -- SAID
3 THEY ASKED WHERE THE STATEMENTS WAS, BECAUSE MY GRANNY
4 WAS IN THE ROOM WHENEVER THE STATEMENTS WAS MADE.
5 MR. WARDER SAID, I DON'T WRITE THEM DOWN, I KEEP THEM
6 IN MY HEAD. THAT'S WHAT MR. WARDER SAID.

7 AND LIKE, YOU KNOW, AND THEN THEY ASKED
8 ABOUT THE BALLISTICS, AND THEY SAID YOU BEEN WATCHING
9 TOO MUCH T.V., THAT'S WHAT THEY TOLD MY FAMILY.

10 Q. WHEN YOU SAY "THEY," NOW, WHO IS "THEY"?

11 A. RICHARD WARDER. AND I GUESS, YOU KNOW,
12 THAT'S WHAT HE TOLD MY FAMILY. HE SAID: Y'ALL HAVE
13 BEEN WATCHING TOO MUCH T.V. Y'ALL HAVE A NICE DAY.
14 THAT'S WHAT HE TOLD MY FAMILY, BASICALLY, YOU KNOW.

15 AND I WOULD LIKE TO ADD THAT I DID FILE A
16 BAR ASSOCIATION CLAIM ON MR. WARDER, BUT THAT CLAIM
17 WAS DISMISSED BECAUSE HE SAID THE VICTIM WAS SHOT IN
18 THE BACK AS HE WAS FLEEING. I HAVE THIS PAPER RIGHT
19 HERE, IT'S IN BLACK AND WHITE, YOU KNOW, IF Y'ALL
20 WOULD LIKE TO READ IT.

21 Q. HE WAS SHOT IN THE ARM?

22 A. HE WAS SHOT IN THE ARM, AND I HAVE A
23 DOCTOR'S STATEMENT RIGHT HERE TO PROVE THAT HE WAS
24 SHOT IN THE ARM. BUT, YOU KNOW, I MEAN, WHY HE TOLD
25 IT WAS IN THE BACK OR HE WAS SHOT IN THE BACK, I DON'T

1 KNOW. BUT THAT MADE ME MISS MY CLAIM FOR THAT IS WHAT
2 THEY DONE.

3 IF MR. WARDER HAD PROPERLY INVESTIGATED
4 THE WITNESSES AND EVIDENCE, HE WOULD HAVE SEEN THEY
5 WAS ALL FOR THE DEFENDANT. ALL WITNESSES WERE LOOKING
6 AT TIME. SOME TOLD HIM THEY WOULD HELP ME, BUT IF
7 THEY DIDN'T, THEY HAD TO DO WHAT THEY HAD TO DO
8 BECAUSE THEY HAD CHARGES THEIRSELF [SIC].

9 BUT, I MEAN, AND IF MR. WARDER -- IF
10 MR. WARDER WOULD HAVE SEEN THE BULLET HOLE IN THE SIDE
11 OF THE HOUSE, WHICH I DONE SAID, YOU KNOW, THIS MIGHT
12 SHOW WHY BALLISTICS DID NOT MATCH. BUT NO ONE
13 PROPERLY INVESTIGATED NOTHING.

14 IT TOOK ME HIRING YOU, MR. MITCHELL, TO
15 GET THESE PICTURES THAT WE HAVE FROM THIS HOUSE, ALL
16 THE EVIDENCE THAT WE HAVE NOW, SO I CAN AT LEAST TRY
17 TO GET THIS, YOU KNOW, THIS GUILTY PLEA VACATED,
18 BECAUSE I KNOW NOTHING ABOUT NONE OF THIS. I MEAN,
19 EVERYBODY SAID THAT THE MAN IN THE TRUCK WAS CHASING
20 ME WITH A WEAPON.

21 AND WE'LL GET TO THE WEAPONS, YOU KNOW,
22 RIGHT NOW IN JUST A MINUTE ON MY SECOND AMENDMENT.

23 Q. GO AHEAD.

24 A. NUMBER 12. MR. WARDER, THE SOLICITOR AND
25 JUDGE ALL THREE MISADVISED ME CONCERNING MY SENTENCE

1 AND THE AMOUNT OF TIME I WOULD DO. MR. WARDER TOLD ME
2 I WOULD DO 25 YEARS AND A HALF IF I TOOK A 30-YEAR
3 PLEA. THE LAW STATES IN CODE 16-3-20: A PERSON
4 CONVICTED OF MURDER OR PLEADS GUILTY TO MURDER MUST BE
5 PUNISHED BY DEATH, BY IMPRISONMENT BY LIFE WITH NO
6 PAROLE, OR A MANDATORY MINIMUM TERM OF IMPRISONMENT
7 FOR 30 YEARS.

8 ALL RIGHT. IF MR. WARDER HAD PROPERLY
9 RESEARCHED THE LAWS, HE WOULD HAVE SEEN THE SENTENCE I
10 RECEIVED WAS NOT RIGHT. IF MR. WARDER HAD HAVE NOT
11 MISADVISED ME ABOUT RECEIVING A LIFE SENTENCE FOR
12 DRUGS, I WOULD NOT HAVE PLED GUILTY TO THE MURDER.
13 BUT FOR MR. -- BY MR. WARDER'S UNPROFESSIONAL ERRORS,
14 I HAD NO CHOICE. I RELIED ON HIM, I RELIED ON
15 MR. WARDER.

16 BUT LET'S GO TO 13. THIS IS THE LAST ONE
17 IN THIS ONE RIGHT HERE. ALL RIGHT. THIS IS WHERE HE
18 FAILED TO OBJECT. I HIRED MR. WARDER FOR HIS
19 PROFESSIONAL KNOWLEDGE OF THE LAW. WHEN I WAS
20 SENTENCED, I RECEIVED A SENTENCE THAT DOES NOT EXIST.
21 ACCORDING TO THE SOUTH CAROLINA DEPARTMENT OF
22 CORRECTIONS, I HAVE TO DO A DAY-FOR-DAY SENTENCE.

23 THAT IS NOT WHAT I AGREED TO. THE
24 SENTENCE I AGREED -- WELL, I DIDN'T ACTUALLY AGREE. I
25 WAS COERCED INTO TAKING THAT SENTENCE IS WHAT I WAS.

1 BUT IT'S A 30-YEAR, 85 PERCENT, NICHOLSON STATED IT
2 FIVE TIMES IN MY TRANSCRIPT.

3 BUT THEY -- BY THE ERRONEOUS ADVICE OF MY
4 ATTORNEY, HE PLED ME OUT ON THE SENTENCE THAT DON'T
5 EXIST. I MEAN, LIKE I JUST SAID, HE MISADVISED ME
6 CONCERNING MY SENTENCE. I DIDN'T AGREE TO NO 30 YEARS
7 DAY-FOR-DAY IS WHAT I DIDN'T AGREE TO. BUT, LIKE I
8 SAID, LAW 16-3-20 STATES IT'S A DAY-FOR-DAY SENTENCE.

9 ALL RIGHT, MR. MITCHELL, IF YOU WOULD
10 LIKE, YOU CAN GO ON TO THAT SECOND AMENDMENT.

11 Q. OKAY. I WANT TO ASK YOU THIS, MR. TURNER.

12 MR. MITCHELL: AND, YOUR HONOR, WE ARE
13 WINDING IT UP.

14 BY MR. MITCHELL:

15 Q. IN REGARDS TO THE AMENDMENT THAT YOU HAD
16 FILED, YOU ALLEGE PROSECUTORIAL MISCONDUCT AND NEWLY
17 DISCOVERED EVIDENCE.

18 A. YES, SIR.

19 Q. WOULD YOU TELL THE COURT ABOUT IT?

20 A. OKAY. A WITNESS NAMED BILLY ROBINSON AND
21 MYSELF, THAT SAID THE VICTIM THAT NIGHT HAD WEAPONS IN
22 HAND, OKAY?

23 SOLICITOR SAID IN TRANSCRIPT, PAGE 17,
24 LINE 12 THROUGH 16: IT IS DEBATABLE WHETHER OR NOT
25 THE VICTIM HAD A STICK OR NOT. THE PEOPLE THERE CLAIM

1 HE DID NOT. THE DEFENDANT IN HIS STATEMENT SAID HE
2 DID.

3 THE SOLICITOR KNEW VICTIM HAD WEAPONS. I
4 HAVE A SIGNED, NOTARIZED AFFIDAVIT STATING SOLICITOR
5 WAS TOLD VICTIM HAD A WEAPON. SOLICITOR COVERED UP
6 AND GAVE FALSE STATEMENT TO THE COURT. SOLICITOR TOLD
7 WITNESSES, IF HE WITHHOLDS EVIDENCE AND WOULD TESTIFY
8 FOR HER, SHE WOULD SPEAK UP FOR HIM AT HIS TRIAL.

9 IF MS. WHITE HAD GAVE THIS EVIDENCE TO MY
10 LAWYER, AND IF MR. WARDER HAD HAVE INTERVIEWED
11 WITNESSES, THIS WOULD HAVE BEEN AND STILL CAN BE A
12 GREAT DEFENSE TO GET THIS MURDER CHARGE TO A LESSER
13 DEFENSE, TO, I MEAN, A LESSER CHARGE; OR EVEN MAYBE A
14 SELF-DEFENSE, BECAUSE IT MEETS THE FULL REQUIREMENTS
15 MET FOR SELF-DEFENSE.

16 BUT, I MEAN, IT WAS NEVER DONE. I MEAN,
17 THE SOLICITOR -- THE WAY I SEEN IT, THE SOLICITOR
18 UNFAIRLY AND SKILLFULLY TOOK THIS OUT OF MY BRADY 5
19 MATERIAL, AND MR. WARDER HAD MY BRADY 5 MATERIAL IN
20 HAND, AND HE KNOWED [SIC] THAT THE VICTIM HAD WEAPONS
21 THAT NIGHT. HE'S BEEN TOLD BY THREE OR FOUR PEOPLE
22 THAT WHEN I PULLED UP TO THIS HOUSE, I GOT OUT TO GET
23 MY MONEY, I WAS CHARGED, I WAS CHARGED BY A WANTED
24 FUGITIVE WITH A SIX-FOOT STICK IN HIS HAND IS WHAT I
25 WAS CHARGED WITH.

1 Q. AND YOU DEFENDED YOURSELF?

2 A. AND I -- THAT'S ALL I COULD DO WAS DEFEND
3 MYSELF.

4 Q. AND YOU RETREATED?

5 A. I RETREATED. I DIDN'T HAVE NO PISTOL IN
6 MY HAND. IF IT WAS MURDER, I WOULD HAVE GOT OUT OF MY
7 PICKUP TRUCK AND KILLED THIS MAN. YOU SEE? THAT IS
8 MURDER. BUT I HAD NO STICK IN MY HAND. I WAS CHASED
9 ALL THE WAY BACK TO MY PICKUP TRUCK. WHEN I GOT TO MY
10 PICKUP TRUCK, THERE WAS NOTHING I COULD DO. I FIRED.
11 I DON'T KNOW WHERE THE MAN WAS HIT, EVEN IF THE MAN
12 WAS HIT, BUT IT SAYS THAT THE BULLETS DOES NOT MATCH.

13 BUT WHAT I'M TRYING TO SAY IS, EVEN IF IT
14 WAS THE BULLET THAT COME FROM MY REVOLVER, I'M TRYING
15 TO -- WHAT I'M STATING IS I HAD NO CHOICE. THE
16 DOCTORS DONE SAID THE MAN WAS IN A GESTURING POSITION,
17 WHICH I HAVE THAT RIGHT HERE, TOO, THE DOCTOR SAID HE
18 WAS IN A GESTURING POSITION WHEN HE GOT SHOT, AND THAT
19 WOULD BE SWINGING A STICK.

20 IT WENT THROUGH THE TRICEP OUT THE BICEP
21 IN THE LEFT TOP CHEST. AND THEY SAID THAT THE MAN
22 WOULD NOT HAVE BLED TO DEATH IF SOMEBODY HAD CALLED
23 THE AMBULANCE.

24 Q. WOULD THAT HAVE BEEN PART OF YOUR DEFENSE?

25 A. YES, SIR, THAT WOULD HAVE BEEN AN

1 EXCELLENT DEFENSE. THAT WOULD HAVE -- I MEAN, I WOULD
2 NOT -- WHY WOULD I HAVE TO TAKE A GUILTY PLEA IF YOU
3 GOT A FUGITIVE, YOU GOT A MAN THAT'S NEVER BEEN IN NO
4 TROUBLE, YOU GOT FOUR EYEWITNESSES SAYING THIS MAN WAS
5 SWINGING A STICK BEFORE MR. TURNER EVER GOT TO THIS
6 HOUSE, THIS MAN HAD DONE TOOK HIS JEWELRY OFF AND WENT
7 OUTSIDE AND WAS WAITING ON MR. TURNER.

8 I MEAN, SEE, RICHARD WARDER, DETECTIVE
9 DANNY (PHONETIC) IS THE ONE THAT TOOK THIS STATEMENT.
10 IT WAS FROM ERIKA O'SHIELDS (PHONETIC). BUT WHEN I --
11 WHEN HE SENT ME MY MATERIAL, THERE'S NONE OF THIS IN
12 THERE. SEE, LIKE I SAID, I HAD TO GET YOU,
13 MR. MITCHELL, TO GO TALK TO THESE WITNESSES AND GET
14 ALL OF THIS INFORMATION.

15 Q. NOW, MR. TURNER I'M GONNA ASK YOU JUST A
16 COUPLE MORE QUESTIONS AND THEN WE'RE GONNA TURN YOU
17 OVER TO THE ATTORNEY GENERAL.

18 NOW, WHEN YOU TOOK THE PLEA, YOU KNOW THAT
19 THE JUDGE ASKED YOU CERTAIN QUESTIONS. WHEN YOU STOOD
20 BEFORE HIM -- YOU HAVE A COPY OF THE TRANSCRIPT -- HE
21 ASKED YOU IF YOU WERE GIVING A VOLUNTARY PLEA; IS THAT
22 CORRECT?

23 A. YES, HE DID.

24 Q. IF ANY PROMISES HAD BEEN MADE TO YOU?

25 A. YES, HE DID.

JOHN TURNER -- DIRECT BY MR. MITCHELL

1 Q. IF YOU UNDERSTOOD THE NATURE OF YOUR PLEA?

2 A. ACTUALLY, NO, SIR, I DID NOT UNDERSTAND
3 THE NATURE OF NOTHING, REALLY, 'CAUSE I HAD NEVER BEEN
4 IN TROUBLE WITH THE LAW, AND TO THIS DAY, EVEN AFTER I
5 GOT THIS CHARGE I'VE NEVER BEEN IN TROUBLE.

6 Q. I UNDERSTAND. BUT NOW WHILE STANDING
7 THERE DID YOU HAVE ANY CONVERSATION WITH MR. WARDER?

8 A. OH, YES, SIR. WHEN THE JUDGE STARTED, THE
9 JUDGE SAID, MR. TURNER, IF YOU HAVE ANY QUESTIONS
10 WHATSOEVER, STOP ME AT ANY TIME AND ASK YOUR ATTORNEY
11 OR YOU ASK ME ANYTHING.

12 AND I SAID I GOT A QUESTION RIGHT NOW. I
13 SAID CONCURRENT. I SAID THAT THEM CHARGES HERE, ARE
14 THEY GONNA BE -- YOU KNOW, I KNOW CONCURRENT RUNS
15 TOGETHER. SO I SAID, ARE THEY GONNA BE --

16 AND THE SOLICITOR SPOKE UP. SHE SAID,
17 WHAT HE'S TRYING TO SAY IS, YOU KNOW -- AND THEN
18 MR. WARDER SAID, MR. TURNER, LOOK AT ME. HE SAYS,
19 YOU'VE GOT TO ANSWER THESE QUESTIONS LIKE I TELL YOU.
20 IF YOU DO NOT ANSWER THESE QUESTIONS, THEY WILL NOT
21 ACCEPT YOUR GUILTY PLEA.

22 DO YOU SEE WHAT I'M SAYING? I DID NOT
23 UNDERSTAND NOTHING. MR. WARDER TOLD ME TO LOOK AT HIM
24 AND DO AS HE TELLS ME TO DO. LIKE I SAID BEFORE, I
25 PAID MR. WARDER, AND THAT'S EXACTLY WHAT I DONE.

1 Q. YOU PAID MR. WARDER FOR A TRIAL?

2 A. THAT'S RIGHT, I PAID HIM FOR A TRIAL. AND
3 HE SAID, LOOK, THERE AIN'T NOTHING WE CAN DO RIGHT
4 NOW. TALK YOUR GRANDSON INTO TAKING THIS GUILTY PLEA
5 UNTIL WE CAN FIND OUT SOMETHING.

6 AND I HAVE NEVER HEARD FROM MR. WARDER
7 SINCE, UNTIL I GOT THAT DISMISSAL NOTICE WHERE HE LIED
8 ON ME AND SAID THAT I SHOT THE VICTIM IN THE BACK AS
9 THE VICTIM WAS FLEEING AWAY. THAT'S THE LAST TIME
10 I'VE HEARD FROM MR. WARDER.

11 MR. MITCHELL: THANK YOU. ANSWER ANY
12 QUESTIONS FROM THE COURT OR/AND MR. GRIGG.

13 THE COURT: CROSS-EXAMINATION.

14 CROSS-EXAMINATION BY MR. GRIGG:

15 Q. MR. TURNER, WHEN WAS YOUR GUILTY PLEA, DO
16 YOU RECALL THE DATE?

17 A. FEBRUARY 3RD, 2003.

18 Q. DO YOU RECALL TAKING AN OATH SIMILAR TO
19 THE ONE YOU TOOK TODAY?

20 A. I DON'T EVER RECALL MUCH OF NOTHING THAT
21 DAY REALLY EXCEPT, YOU KNOW, WHAT -- I MEAN, LIKE WHAT
22 I'VE TOLD YOU. I MEAN, THAT WAS ALL -- I'VE NEVER
23 BEEN IN TROUBLE, AND THAT WAS ALL -- I MEAN, ALL OF
24 THEM PEOPLE, ALL OF THEM, JUDGE, THE COURT, IT JUST
25 SCARED ME TO DEATH, MAN.

1 Q. DO YOU HAVE A COPY OF YOUR TRANSCRIPT,
2 SIR?

3 A. YES, I DO.

4 Q. WOULD YOU TAKE A LOOK AT PAGE TWO, LINE
5 24, THROUGH PAGE THREE, LINE TWO, AND TELL ME IF THAT
6 HELPS YOUR RECOLLECTION AS TO WHETHER YOU WERE SWORN
7 IN TO TELL THE TRUTH.

8 A. OH, I REMEMBER -- I MEAN, I REMEMBER THAT.
9 YOU ARE TALKING ABOUT SWORN IN?

10 Q. YES, SIR. YOU TOOK AN OATH SIMILAR TO THE
11 ONE WHEN YOU JUST RAISED YOUR RIGHT HAND ON THIS BIBLE
12 RIGHT HERE, YOU DID SOMETHING VERY SIMILAR TO THAT
13 BACK IN FEBRUARY OF '03; IS THAT CORRECT?

14 A. YES, I DID.

15 Q. AND YOU SWORE TO TELL THE TRUTH JUST LIKE
16 YOU DID TODAY; IS THAT CORRECT?

17 A. THAT'S RIGHT. BUT LET ME ASK -- LET ME
18 ASK YOU SOMETHING. BACK THEN, LIKE I DONE STATED
19 BEFORE, I HAD NO RUN-INS WITH THE LAW. I DIDN'T KNOW
20 NOTHING ABOUT NO LAW. BUT NOW THAT I'VE BEEN THE
21 DEPARTMENT OF CORRECTIONS AND I HAVE ACCESS TO LAW
22 BOOKS AND STUFF LIKE THAT, I KNOW A LITTLE BIT MORE
23 TODAY THAN WHAT I KNOWED [SIC] BACK THEN.

24 Q. BUT YOU WOULD AGREE, WOULD YOU NOT, THAT
25 KNOWING THE LAW IS DIFFERENT FROM TELLING THE TRUTH.

1 WE AS HUMANS TELL THE TRUTH; IS THAT CORRECT?

2 A. THAT'S RIGHT.

3 Q. WE KNOW TRUTH FROM UNTRUTH, DO WE NOT?

4 A. THAT'S RIGHT.

5 Q. BACK IN FEBRUARY OF 2003 DID YOU KNOW
6 TRUTH FROM UNTRUTH?

7 A. I DID.

8 Q. AND YOU KNOW TRUTH FROM UNTRUTH TODAY?

9 A. I DO.

10 Q. AND YOU ARE TELLING US THE TRUTH TODAY?

11 A. I'M TELLING YOU THE TRUTH TODAY.

12 Q. DID YOU TELL US THE TRUTH BACK THEN OR DID
13 YOU TELL JUDGE NICHOLSON THE TRUTH BACK THEN?

14 A. WHAT I TOLD YOU BACK THEN IS WHAT
15 MR. WARDER TOLD ME HE TO TELL YOU BACK THEN. I DON'T
16 KNOW ---

17 Q. DID YOU SAY ---

18 A. --- THERE IS NO WAY THAT YOU CAN ANSWER
19 THAT QUESTION WITHOUT ME CONTRADICTING MYSELF IS WHAT
20 I'M TRYING TO SAY.

21 **THE COURT:** JUST A MOMENT, SIR, LET HIM
22 FINISH HIS ANSWER.

23 A. THERE IS NO WAY THAT I CAN ANSWER THAT
24 QUESTION WITHOUT ME CONTRADICTING MYSELF. WHAT I'M
25 SAYING IS I TOOK THE ERRONEOUS ADVICE OF RICHARD

1 WARDER, AND I ANSWERED THEM QUESTIONS THAT DAY UNDER
2 WHAT HE TOLD ME TO SAY. BUT TODAY I'M ANSWERING THESE
3 QUESTIONS ON MY OWN FREE WILL BECAUSE I KNOW WHAT'S
4 HAPPENING.

5 BY MR. GRIGG:

6 Q. YOU TOLD THE JUDGE BACK IN FEBRUARY OF '03
7 THAT YOU WERE ANSWERING THE QUESTIONS THEN OF YOUR OWN
8 FREE WILL, DID YOU NOT?

9 A. THAT I DID.

10 Q. WERE YOU TELLING THE TRUTH?

11 A. I WAS SAYING WHAT HE TOLD ME TO SAY.

12 Q. IT'S A YES-OR-NO QUESTION, SIR. WERE YOU
13 TELLING THE TRUTH?

14 **THE COURT:** LET'S DO THIS. ANSWER THE
15 QUESTION, IF YOU CAN, AND THEN YOU WILL BE ABLE TO
16 EXPLAIN YOUR ANSWER.

17 RESTATE YOUR QUESTION.

18 BY MR. GRIGG:

19 Q. DID YOU TELL THE JUDGE BACK THEN THAT YOU
20 WERE TELLING THE TRUTH?

21 A. I DID TELL THE JUDGE I WAS TELLING THE
22 TRUTH. BUT, LIKE I SAID BEFORE, THE FIRST THING THE
23 JUDGE SAID TO ME WAS, IF YOU HAVE ANY QUESTIONS, AND
24 THAT'S WHEN I STOPPED HIM. I ASKED THAT QUESTION,
25 THAT'S WHEN RICHARD WARDER TOLD ME TO LOOK AT HIM AND

1 TO SAY WHAT HE SAID AND THAT'S EXACTLY WHAT I DONE.
2 SO, IF YOU'RE ASKING ME DID I TELL THE TRUTH THAT DAY,
3 I SAID WHAT HE TOLD ME TO SAY. BUT, IF YOU'RE ASKING
4 ME IF I'M TELLING THE TRUTH TODAY, YES, I AM TELLING
5 THE TRUTH TODAY.

6 Q. DID THE JUDGE ASK YOU IF YOU WERE GUILTY,
7 SIR?

8 A. YES, HE DID.

9 Q. WHAT DID YOU SAY?

10 A. I SAID YES.

11 Q. DID THE JUDGE ASK YOU IF YOU HAD BEEN
12 PROMISED OR COERCED INTO TELLING THE TRUTH TODAY AND
13 INTO PLEADING GUILTY THAT DAY?

14 A. I BELIEVE HE SAID, HAS THERE BEEN ANY
15 COERCION? I BELIEVE IT SAYS SOMETHING LIKE THAT IN
16 HERE, DOESN'T IT?

17 Q. THE JUDGE ASKED YOU IF YOU WERE COERCED,
18 IF YOU WERE THREATENED, OR IF YOU WERE PROMISED
19 ANYTHING. DO YOU RECALL THAT?

20 A. I DON'T RECALL IT. BUT, I MEAN, FROM
21 READING WHAT, YOU KNOW -- I MEAN, I CAN'T RECALL IF
22 HE -- WHAT THE EXACT WORDS HE SAID, BUT I'M SURE HE
23 ASKED ME SOMETHING LIKE THAT.

24 Q. I BELIEVE IT'S PAGE 15, LINE EIGHT, I WANT
25 TO ADDRESS THAT PAGE IF YOU WANT TO TAKE A MINUTE AND

1 LOOK AT THAT.

2 A. ALL RIGHT.

3 Q. DOES THAT HELP REFRESH YOUR MEMORY? DID
4 THE JUDGE ASK IF YOU WERE PROMISED ANYTHING IN RETURN
5 FOR YOUR PLEA OF GUILTY?

6 WHAT DID YOU SAY, SIR?

7 A. I SAID, NO, SIR.

8 Q. DID THE JUDGE ASK IF YOUR PLEA HAD BEEN
9 COERCED OR IF YOU HAD BEEN INTIMIDATED OR THREATENED?

10 DO YOU SEE THAT THERE?

11 A. LINE 15, HE DID.

12 Q. WHAT WAS YOUR RESPONSE, SIR?

13 A. I SAID, NO, SIR.

14 Q. DID THE JUDGE GO ON THEN TO ASK YOU IF YOU
15 WERE PLEADING GUILTY OF YOUR OWN FREE WILL AND ACCORD?

16 A. YES, HE DID.

17 Q. WHAT DID YOU SAY, SIR?

18 A. I SAID, YES, SIR. BUT THEM LAST THREE
19 QUESTIONS THAT YOU SAID, THAT YOU JUST ASKED ME, I
20 SAID IT UNDER HIS ERRONEOUS ADVICE.

21 Q. IS THAT IN THE TRANSCRIPT?

22 A. THAT'S IN THE TRANSCRIPT. BUT LIKE I'M
23 TELLING YOU, THOUGH, I ANSWERED ---

24 Q. NO. THIS ERRONEOUS ADVICE, IS THAT IN THE
25 TRANSCRIPT?

1 A. OH, NO, IT'S NOT.

2 Q. DID YOU MENTION THAT TO THE JUDGE AT ANY
3 POINT DURING THIS HEARING?

4 A. THAT'S BECAUSE WHEN YOU HIRE A LAWYER, THE
5 LAWYER IS SUPPOSED TO -- LET'S SEE ---

6 **MR. GRIGG:** YOUR HONOR, PLEASE ASK HIM TO
7 ANSWER THE QUESTION.

8 **THE COURT:** JUST A MINUTE.

9 A. THE LAWYER IS SUPPOSED TO REPRESENT YOU TO
10 HIS UTMOST ABILITY, DO YOU UNDERSTAND? I MEAN, I DONE
11 PAID THOUSANDS AND THOUSANDS OF DOLLARS FOR A JURY
12 TRIAL; THAT'S WHAT I WENT FOR, THAT JURY TRIAL. BUT
13 WHEN I GET THERE, HE SAYS I GOT TO TAKE THIS 30-YEAR
14 PLEA.

15 YOU SEE, I DONE WHAT HE TOLD ME TO DO
16 BECAUSE I KNOW NO BETTER. BUT NOW THIS EVIDENCE THAT
17 I SHOWED YOU, TRUE-BILL STAMPED, SHOWED YOU HE WAS
18 INEFFECTIVE.

19 **MR. GRIGG:** YOUR HONOR, MAY I ASK THAT THE
20 WITNESS ANSWER MY QUESTION?

21 **THE COURT:** WELL, HE JUST ANSWERED IT.
22 JUST MOVE ON, PLEASE.

23 **MR. GRIGG:** HE ACTUALLY DIDN'T ANSWER,
24 YOUR HONOR.

25 **THE COURT:** WELL, THEN ASK HIM AGAIN.

1 THIS TIME ANSWER THE QUESTION BEFORE YOU
2 EXPLAIN IT, ALL RIGHT?

3 **THE WITNESS:** ALL RIGHTY.

4 **MR. GRIGG:** WELL, LET ME PRESENT THIS
5 ANOTHER WAY, YOUR HONOR.

6 **THE COURT:** VERY GOOD.

7 **MR. GRIGG:** I'LL TRY TO PUT IT IN A FORM
8 THAT HE'LL UNDERSTAND.
9 BY MR. GRIGG:

10 Q. DID THE JUDGE ASK IF YOU WERE SATISFIED
11 WITH MR. WARDER'S SERVICES?

12 A. THAT'S WHAT HE ASKED ME.

13 Q. WHAT DID YOU TELL HIM?

14 **THE COURT:** NO, JUST -- OKAY, HE ASKED YOU
15 THAT. GO AHEAD.
16 BY MR. GRIGG:

17 Q. WHAT DID YOU TELL HIM?

18 A. I TOLD HIM, YES, SIR.

19 Q. AND, BACK TO MY PREVIOUS QUESTION, AND IN
20 AN ATTEMPT TO MOVE ON, DID YOU BRING ANY OF THIS UP
21 THAT YOU ARE TELLING ME NOW AT ANY POINT DURING THAT
22 QUESTIONING BY THE JUDGE?

23 A. NO, I DID NOT.

24 Q. OKAY. THANK YOU FOR ANSWERING THE
25 QUESTION.

1 **THE COURT:** LET'S HAVE NO EDITORIAL
2 COMMENTS. JUST ASK AND ANSWER QUESTIONS.

3 **THE WITNESS:** OKAY. BUT NOW ---

4 **THE COURT:** JUST A MINUTE.

5 **THE WITNESS:** OKAY, I'M SORRY.

6 **MR. GRIGG:** I DIDN'T MEAN TO EDITORIALIZE,
7 YOUR HONOR, I APOLOGIZE.

8 **THE COURT:** THAT'S ALL RIGHT. NOW ASK A
9 QUESTION.

10 WAIT A MINUTE. DO YOU HAVE SOMETHING YOU
11 WANT TO SAY?

12 **THE WITNESS:** WELL, WHAT I WAS GONNA SAY
13 IS BASICALLY WHAT I'VE BEEN SAYING.

14 **THE COURT:** WELL, ALL RIGHT. LET'S GO
15 AHEAD, LET'S MOVE ON.

16 **MR. GRIGG:** I'LL MOVE ON, YOUR HONOR,
17 THANK YOU.

18 **THE COURT:** PLEASE.

19 BY MR. GRIGG:

20 Q. MR. TURNER, DO YOU RECALL BEING ADVISED OF
21 YOUR RIGHTS AT YOUR GUILTY PLEA HEARING?

22 A. YOU MEAN READ MY RIGHT TO REMAIN SILENT OR
23 WHATEVER?

24 Q. NO. I BELIEVE THE JUDGE ASKED YOU IF YOU
25 WERE AWARE OF YOUR RIGHT TO APPEAL, YOU ARE AWARE OF

1 YOUR RIGHT TO CONFRONT YOUR ACCUSERS, IF YOU WERE
2 AWARE THAT THE ---

3 A. YES.

4 Q. --- STATE HAS TO PROVE THE CASE AGAINST
5 YOU? DO YOU RECALL THE JUDGE ASKED YOU THAT?

6 A. HE ASKED ME THAT.

7 Q. OKAY. IF I'M UNDERSTANDING THE TRANSCRIPT
8 CORRECTLY -- AND YOU CORRECT ME IF I'M WRONG -- BUT
9 DID YOU TELL THE JUDGE THAT YOU UNDERSTOOD THOSE
10 RIGHTS?

11 A. I TOLD HIM.

12 Q. DID YOU TELL THE JUDGE YOU WISHED TO WAIVE
13 THOSE RIGHTS?

14 A. THAT'S WHAT I SAID. BUT NOW I WANT TO
15 EXPLAIN THIS.

16 **THE WITNESS:** IS THAT ALL RIGHT, YOUR
17 HONOR?

18 **THE COURT:** YES, SIR.

19 A. THE REASON IS, I SAID IT. I MEAN, YOU SEE
20 YOURSELF, NOW YOU TURN BACK IN THE TRANSCRIPT AND I'LL
21 SHOW YOU WHAT MS. WHITE SAID. ON PAGE FIVE, LINE 22,
22 WOULD YOU READ THAT? HAVE NOT BEEN TO THE GRAND JURY.
23 THEY HAVE NOT BEEN TO THE GRAND JURY.

24 I DID NOT UNDERSTAND GRAND JURY
25 PROCEDURES. BUT IF THERE WAS NO INDICTMENTS, WHY

1 WOULD I HAVE TO GO TO A JURY TRIAL THAT DAY? WHY
2 WOULD THEY EVEN GO TO TRIAL? DOES THAT ANSWER YOUR
3 QUESTION?

4 BY MR. GRIGG:

5 Q. MR. TURNER, WOULD YOU PLEASE CONTINUE
6 FORWARD ON TO PAGE SEVEN, LINE 12 THROUGH 19.

7 A. THAT'S RIGHT.

8 Q. DO YOU RECALL WAIVING PRESENTMENT WITH
9 REGARD TO THOSE THREE INDICTMENTS?

10 A. I MEAN, I SEE HERE WHERE THEY SAID YOU
11 HAVE SIGNED WAIVING PRESENTMENT TO THE GRAND JURY. I
12 DON'T REMEMBER, YOU KNOW, SIGNING NO WAIVER.

13 Q. DO YOU SEE IT ON PAGE SEVEN, LINE 21,
14 WHERE THE JUDGE ASKED IF YOU WANT TO WAIVE PRESENTMENT
15 TO THESE THREE INDICTMENTS TO THE GRAND JURY AND GET
16 RID OF THESE CASES TODAY, WHICH DO YOU WANT TO DO?

17 A. I SEE THAT. AND I ANSWERED, YES, SIR.
18 BUT I DON'T BELIEVE THAT AN ORAL WAIVER IS
19 PRESENTABLE. IS THAT NOT RIGHT? AN ORAL WAIVER IS
20 NOT PRESENTABLE ON YOUR GRAND JURIES.

21 Q. I BELIEVE THE CASE LAW WOULD DISAGREE WITH
22 THAT.

23 THE COURT: LEAVE THE LAW TO ME, PLEASE.

24 MR. GRIGG: THAT'S WHAT I WAS ABOUT TO
25 SAY, YOUR HONOR.

1 THE COURT: VERY GOOD.

2 MR. GRIGG: I WOULD LEAVE THAT TO THE
3 COURT AND LET YOU DECIDE THAT.

4 THE COURT: THANK YOU, SIR.

5 BY MR. GRIGG:

6 Q. ARE YOU ALSO AWARE, MR. TURNER, THAT YOUR
7 INDICTMENT 2003, THE LAST THREE NUMBERS 415, WAS
8 DROPPED, WERE YOU AWARE THAT THAT WAS DISMISSED?

9 A. THE ONE THAT'S TIC?

10 Q. YES, SIR.

11 A. THAT'S BECAUSE THEY DIDN'T CATCH ME -- I'M
12 AWARE OF IT -- BUT THAT'S BECAUSE THEY NEVER CAUGHT ME
13 WITH NO DRUGS TO GIVE ME NO POSSESSION CHARGE. JUST
14 LIKE SLED HAS TOLD YOU: WE HAVE NO EVIDENCE TO
15 PERTAIN TO YOUR DRUG CHARGES OF 2002.

16 THERE WAS NO EVIDENCE, AND IF MR. WARDER
17 HAD HAVE LOOKED AT THIS, HE WOULD HAVE SEEN THIS. I
18 MEAN, THERE WOULD HAVE BEEN NO NEED OF NO GUILTY PLEA,
19 BECAUSE WE COULD HAVE WENT TO TRIAL AND WE COULD HAVE
20 BEAT IT BECAUSE THEY HAD NOTHING. I MEAN, THAT'S THE
21 WAY I SEE IT.

22 ALL RIGHT. NOW YOU GO AHEAD.

23 OH, I'M SORRY.

24 MR. GRIGG: YOUR HONOR, I'LL SAVE THE
25 COURT TIME. IF THE COURT WILL JUST REVIEW THE

1 TRANSCRIPT, I'LL REFRAIN FROM ASKING ANY FURTHER
2 QUESTIONS.

3 THE COURT: REEXAM?

4 MR. MITCHELL: YOUR HONOR, COULD I ASK A
5 COUPLE QUESTIONS OF MY CLIENT, PLEASE?

6 THE COURT: CERTAINLY.

7 REDIRECT EXAMINATION BY MR. MITCHELL:

8 Q. MR. TURNER?

9 A. YES, SIR.

10 Q. WERE YOU TOLD THAT IF YOU DIDN'T ANSWER
11 THESE QUESTIONS IN THE AFFIRMATIVE, THAT THE JUDGE
12 WOULD NOT OR COULD NOT, OR MAYBE WOULDN'T TAKE YOUR
13 PLEA?

14 A. I WAS TOLD IF I DIDN'T ANSWER THESE
15 QUESTIONS THE WAY THAT RICHARD WARDER TOLD ME TO
16 ANSWER THESE QUESTIONS, THAT MY GUILTY PLEA WOULD NOT
17 BE TOOKEN [SIC] AND I WOULD BE -- I WOULD GET A LIFE
18 SENTENCE, NO PAROLE, NEVER SEE MY FAMILY AGAIN, NEVER
19 NOTHING. THAT IS WHAT I WAS TOLD.

20 Q. MR. WARDER TOLD YOU THAT?

21 A. THAT'S WHAT MR. WARDER TOLD ME THAT.

22 MR. MITCHELL: THANK YOU. THANK YOU, YOUR
23 HONOR.

24 THE COURT: RECROSS?

25 MR. GRIGG: NO, YOUR HONOR.

1 **THE COURT:** ALL RIGHT, VERY GOOD.

2 THANK YOU, SIR, YOU MAY STEP DOWN.

3 (WHEREUPON, THE WITNESS WAS EXCUSED.)

4 **MR. MITCHELL:** MAY IT PLEASE THE COURT,

5 YOUR HONOR?

6 **THE COURT:** YES, SIR.

7 **MR. MITCHELL:** MS. THELMA WILSON, PLEASE.

8 (WHEREUPON, THE WITNESS WAS SWORN BY THE
9 CLERK.)

10 **THE CLERK:** HAVE A SEAT ON THE WITNESS
11 STAND, PLEASE. PLEASE STATE YOUR FULL NAME AND SPELL
12 YOUR LAST NAME FOR THE RECORD.

13 **THE WITNESS:** THELMA WILSON, W-I-L-S-O-N.

14 WHEREUPON,

15 THELMA WILSON,

16 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS

17 FOLLOWS:

18 DIRECT EXAMINATION BY MR. MITCHELL:

19 Q. MRS. WILSON, WILL YOU TELL THE COURT AND
20 COUNSEL AND ALL, WHERE DO YOU LIVE?

21 A. WHERE DO I LIVE?

22 Q. YES, MA'AM.

23 A. PIEDMONT; I LIVE AT

24

25 Q. ALL RIGHT. AND I BELIEVE THAT JOHN

1 BRADLEY TURNER IS YOUR GRANDSON?

2 A. THAT'S RIGHT.

3 Q. ALL RIGHT. YOU ARE AWARE OF THE CHARGES
4 THAT BROUGHT HIM INTO THIS COURT THE FIRST TIME, ARE
5 YOU NOT?

6 A. YES.

7 Q. AND I BELIEVE THAT WAS CHARGES OF DEALING
8 WITH A MURDER?

9 A. YES.

10 Q. WERE YOU HERE WHEN HE ENTERED HIS PLEA?

11 A. YES, I WAS.

12 Q. DID YOU HAVE THE OPPORTUNITY TO MEET WITH
13 YOUR GRANDSON?

14 A. ABOUT FIVE OR TEN MINUTES BEFORE THEY WAS
15 GETTING READY TO CALL THE JURORS.

16 Q. WERE YOU HERE ALONG WITH SOME OTHER
17 WITNESSES IN THE CASE?

18 A. YES, I WAS.

19 Q. WITNESSES WHO COULD HAVE GIVEN SOME
20 FAVORABLE TESTIMONY ON BEHALF OF YOUR GRANDSON?

21 A. YES.

22 Q. WITNESSES WHO WERE AT THE SCENE AND SAW
23 WHAT INCIDENT OCCURRED?

24 A. YES, SIR.

25 Q. NOW, MRS. TURNER, YOU, I BELIEVE --

THELMA WILSON -- DIRECT BY MR. MITCHELL

1 WILSON, I'M SORRY, CORRECT ME, PLEASE -- YOU RETAINED,
2 I BELIEVE, ATTORNEY RICHARD WARDER FROM GREENVILLE ---

3 A. YES, I DID.

4 Q. --- TO REPRESENT HIM ---

5 A. YES, SIR.

6 Q. --- IN THE MURDER CHARGE?

7 A. YES, SIR.

8 Q. AND I BELIEVE THAT MR. WARDER, AFTER BEING
9 TOLD THE CIRCUMSTANCES, DISCUSSED A FEE?

10 A. YES, SIR.

11 Q. WHAT WAS THAT FEE?

12 A. IT WAS \$25,000 FOR MURDER AND \$10,000 FOR
13 DRUGS, THE LAST DRUGS.

14 Q. THE LAST COUNT OF DRUGS?

15 A. YES.

16 Q. OKAY. WERE YOU HERE WHEN HE ENTERED THIS
17 PLEA THAT INCLUDED DRUG CHARGES THAT MR. CALHOUN
18 PRUITT WAS REPRESENTING HIM ON?

19 A. YES, I WAS.

20 Q. WERE YOU-ALL HERE TO BE ABLE TO HAVE
21 TESTIMONY GIVEN TO 12 PEOPLE IN THE JURY-BOX? TO GO
22 TO TRIAL, IN OTHER WORDS.

23 A. YES, SIR; YES, SIR.

24 Q. WERE YOU LED TO BELIEVE ALL ALONG THAT
25 THIS CASE WAS GONNA BE TRIED BY A JURY?

1 A. YES, SIR.

2 Q. WHO ENCOURAGED -- I MEAN, WHO GAVE YOU
3 THIS CONFIDENCE?

4 A. MR. WARDER.

5 Q. WOULD YOU TELL US, IF YOU CAN, IF YOU MET
6 WITH MR. WARDER SHORTLY BEFORE THE JURY WAS TO HAVE
7 BEEN SELECTED?

8 A. ABOUT TEN OR 15 MINUTES BEFORE THEY WAS
9 GETTING READY TO DRAW THE JURORS.

10 Q. OKAY. WOULD YOU TELL HIS HONOR WHAT IT IS
11 THAT WAS DISCUSSED, YOU AND OTHER MEMBERS OF YOUR
12 FAMILY, WITH MR. WARDER?

13 A. HE WANTED BRAD TO PLEAD GUILTY; SAID THAT
14 IF HE PLEADED GUILTY HE WOULD GET 30 YEARS, AND IF HE
15 PLEADED NOT GUILTY HE WOULD GET A LIFE SENTENCE
16 WITHOUT PAROLE.

17 Q. DID HE SAY WHY WHAT HE WOULD GET THE LIFE
18 SENTENCE ON, WHAT CHARGE?

19 A. THE MURDER AND DRUGS, THEY WAS GONNA RUN
20 IT CONCURRENTLY.

21 Q. MURDER AND DRUGS?

22 A. (NODDED HEAD.)

23 Q. HAD BRAD MAINTAINED ALL ALONG THAT HE DID
24 NOT MURDER THIS GUY?

25 A. HE DIDN'T KNOW HE DID. HE DIDN'T KNOW IT

///

||

1 HIT HIM. HE DIDN'T KNOW IF ---

2 Q. HE DID NOT KNOW HE HAD SHOT HIM?

3 A. NO, HE DIDN'T KNOW HE HAD -- HE SHOT, BUT
4 HE DIDN'T KNOW IT HIT THE BOY.

5 Q. I SEE. IN REGARDS TO THE DATE OF TRIAL,
6 WAS BRAD CONFUSED AFTER BEING TOLD HE HAD TO PLEAD
7 GUILTY?

8 MR. GRIGG: OBJECTION, YOUR HONOR; I DON'T
9 BELIEVE SHE CAN TESTIFY AS TO HIS STATE OF MIND.

10 THE COURT: RESTATE YOUR QUESTION WHEN YOU
11 ASK HER ABOUT WHAT HER IMPRESSION WAS.

12 MR. MITCHELL: THANK YOU, YOUR HONOR.
13 BY MR. MITCHELL:

14 Q. WOULD YOU GIVE US THE IMPRESSION YOU HAD
15 AFTER YOU HAD MET WITH MR. WARDER AND THEN MET WITH
16 YOUR GRANDSON? WHAT WAS HIS DEMEANOR? HOW DID HE
17 ACT?

18 A. OH, HE WAS JUST SCARED. HE HADN'T NEVER
19 BEEN IN NO TROUBLE BEFORE; THIS WAS THE FIRST HE HAD
20 EVER BEEN IN. AND WE DIDN'T KNOW WHAT TO DO AND WE
21 HAD MR. WARDER TO -- WE THOUGHT THAT HE KNEW WHAT TO
22 DO, AND HE'D ALWAYS SAY HE WOULD -- IT WAS
23 SELF-DEFENSE.

24 Q. UP UNTIL THE DATE OF TRIAL?

25 A. YES, SIR. I WAS OVER THERE AT THE

1 DETENTION CENTER THE FIRST TIME HE WENT TO SEE BRAD,
2 AND HE SAID IT WAS SELF-DEFENSE, AND THAT'S ALL HE
3 SAID FROM THEN ON ---

4 Q. DO YOU KNOW IF MR. WARDER INVESTIGATED THE
5 WITNESSES OR INTERROGATED THEM OR TALKED TO THEM?

6 A. I CARRIED SOME UP THERE. HE GOT THE
7 TESTIMONY, STATEMENT FROM THEM.

8 Q. AND UNDER CERTAINTY, DO YOU RECALL HIM
9 EVER WRITING ANYTHING DOWN?

10 A. NO. I DID -- I TALKED TO DANNY, HIS
11 ASSOCIATE, MORE THAN I DID MR. WARDER.

12 Q. DID YOU-ALL PAY MR. WARDER FOR A JURY
13 TRIAL?

14 A. YES, WE DID.

15 Q. AND DID YOU THINK, AFTER TALKING WITH YOUR
16 GRANDSON, THAT THAT WOULD BE A JURY TRIAL?

17 A. YES, SIR, WE DID.

18 Q. AND IS THIS WHAT YOU WERE EXPECTING ON THE
19 DATE WHEN YOU WERE HERE ---

20 A. YES. THEY WAS READY TO DRAW THE JURORS.

21 Q. AND THEN ALL OF A SUDDEN ---

22 A. WE WENT TO LUNCH, COME BACK, AND HE CALLED
23 US IN A ROOM AND WE MET WITH HIM. HE WANTED HIM TO
24 PLEAD GUILTY.

25 Q. AND WHAT WAS THE Demeanor OF YOUR GRANDSON

1 WHEN YOU LEARNED THAT MR. WARDER WANTED HIM TO PLEAD
2 GUILTY?

3 A. YES, SIR.

4 Q. WHAT WAS HIS DEMEANOR?

5 A. WHAT WAS...

6 Q. WHAT WAS HIS DEMEANOR?

7 A. OH. HE DIDN'T KNOW WHAT TO DO. HE WAS
8 SCARED 'CAUSE HE HADN'T NEVER BEEN IN ANY TROUBLE
9 BEFORE. AND HE DIDN'T KNOW WHAT TO DO, JUST TO GET
10 THAT SHORT OF A NOTICE TO PLEAD GUILTY OR NOT PLEAD
11 GUILTY, AND HE DIDN'T KNOW WHAT TO DO TILL MR. WARDER
12 TOLD HIM TO PLEAD GUILTY.

13 MR. MITCHELL: THANK YOU, MA'AM.

14 THE COURT: CROSS-EXAMINATION?

15 MR. GRIGG: NO QUESTIONS, YOUR HONOR.

16 THE COURT: YOU MAY STEP DOWN. THANK YOU,
17 MA'AM.

18 (WHEREUPON, THE WITNESS WAS EXCUSED.)

19 MR. MITCHELL: MAY IT PLEASE THE COURT,
20 YOUR HONOR, THAT'S OUR CASE.

21 THE COURT: ALL RIGHT. VERY WELL.
22 ANYTHING FROM THE STATE?

23 MR. GRIGG: YES, YOUR HONOR. THE STATE
24 WOULD CALL RICHARD WARDER TO THE STAND, PLEASE.

25 (WHEREUPON, THE WITNESS WAS SWORN BY THE

1 CLERK.)

2 THE CLERK: PLEASE HAVE A SEAT ON THE
3 WITNESS STAND AND PLEASE STATE YOUR FULL NAME AND
4 SPELL YOUR LAST NAME FOR THE RECORD.

5 THE WITNESS: MY NAME IS RICHARD HAROLD
6 WARDER, MY LAST NAME IS SPELLED W-A-R-D-E-R.
7 WHEREUPON,

8 RICHARD WARDER,
9 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
10 FOLLOWS:

11 DIRECT EXAMINATION BY MR. GRIGG:

12 Q. THANK YOU, MR. WARDER. MR. WARDER, DO YOU
13 RECALL YOUR REPRESENTATION OF MR. TURNER?

14 A. I REPRESENTED HIM, YES, SIR.

15 Q. DO YOU RECALL THAT REPRESENTATION?

16 A. I MEAN, OBVIOUSLY I RECALL THE
17 REPRESENTATION. I -- I RECALL PART OF IT. I'M SURE
18 THERE'S EVENTS I DON'T RECALL.

19 Q. DO YOU RECALL ABOUT WHEN YOU FIRST BEGAN
20 REPRESENTING MR. TURNER?

21 A. I WANT TO SAY IT WAS AROUND DECEMBER OF
22 2002. BUT THAT WAS ON THE -- I'M NOT SURE. THAT
23 MIGHT HAVE BEEN THE DRUG CHARGE. I DON'T REALLY
24 RECALL. I HAVE IT SOMEWHERE IN MY NOTES, BUT I DON'T
25 SEE EXACTLY WHEN WE STARTED ON THE MURDER CHARGE.

1 Q. WILL YOU EXPLAIN TO THE COURT EXACTLY WHAT
2 YOU REPRESENTED MR. TURNER FOR?

3 A. I REPRESENTED HIM FOR A MURDER AND THERE
4 MIGHT HAVE BEEN OTHER -- THERE MIGHT HAVE BEEN CHARGES
5 WITH THAT. I CAN'T REMEMBER WHETHER THERE WAS -- I
6 THINK THERE WAS A WEAPONS CHARGE, AND THEN I
7 REPRESENTED HIM FOR AN INCIDENT, TRAFFICKING
8 METHAMPHETAMINE. THERE MIGHT HAVE BEEN ANOTHER
9 SEPARATE METHAMPHETAMINE CHARGE.

10 Q. WAS ALL OF THAT PART OF HIS GUILTY PLEA?

11 A. YES. I BELIEVE WE CLEANED HIM UP IS WHAT
12 OUR INTENTION WAS.

13 Q. I'M SORRY?

14 A. OUR INTENTION WAS TO CLEAN UP ALL THE
15 CHARGES.

16 Q. I BELIEVE YOU HEARD MR. TURNER TESTIFY TO
17 ANOTHER ATTORNEY REPRESENTING HIM, A MR. PRUITT?

18 A. CALHOUN PRUITT.

19 Q. DO YOU KNOW CALHOUN PRUITT?

20 A. YES, SIR.

21 Q. DO YOU KNOW WHAT HIS INVOLVEMENT WITH
22 REGARDS TO THESE CHARGES WAS?

23 A. ONE GROUP OF METHAMPHETAMINE PREDATED THE
24 MURDER, AND HE HAD RETAINED MR. PRUITT INITIALLY ON
25 THOSE CHARGES; THAT OCCURRED BEFORE THE MURDER.

1 Q. BUT IS IT FAIR TO SAY THAT THOSE CHARGES
2 WERE DIFFERENT THAN THE SET YOU REPRESENTED HIM ON?

3 A. YES, THEY HAPPENED ON TWO SEPARATE
4 INCIDENT DATES.

5 Q. AND THE ONES THAT YOU REPRESENTED HIM ON,
6 IS IT CORRECT THAT HE PLED GUILTY ON FEBRUARY 3RD 2003
7 TO THE ONES YOU REPRESENTED HIM ON?

8 A. THEY OCCURRED WHILE HE WAS ON BOND, YES,
9 SIR.

10 Q. DID YOU HAVE AN OPPORTUNITY TO MEET WITH
11 MR. TURNER PRIOR TO THAT GUILTY PLEA?

12 A. WE MET -- YES, SIR. IT WAS NOT A LONG
13 TIME. MR. PRUITT SAID IT WAS 15 MINUTES. I'M NOT
14 SURE. BUT WE MET SHORTLY BEFORE, AND IT WAS IN THE
15 30-MINUTE TO 15-MINUTE PROBABLY RANGE.

16 Q. DID YOU MEET WITH HIM AT ANY POINT PRIOR
17 TO THAT DATE?

18 A. YES, SIR. WE HAD MET WITH HIM THE VERY
19 NEXT DATE. WE WERE READY TO GO TO TRIAL. WE HAD
20 SUBPOENAED OUR WITNESSES, WE WERE HERE FOR A TRIAL.

21 Q. HAD YOU INVESTIGATED THE CHARGES AGAINST
22 MR. TURNER?

23 A. YES, SIR. I HAD HAD AN INVESTIGATOR THAT
24 WORKED ON IT ALMOST CONSTANTLY SINCE WE HAD TAKEN IT
25 IN. WE TALKED TO ALL THE WITNESSES. WE HAD WENT OUT

1 AND PREPARED -- WE WOULD VISIT THE SCENE. WE WERE
2 READY.

3 Q. WOULD YOU TAKE THE COURT BRIEFLY THROUGH
4 WHAT LED UP TO THE DECISION TO PLEAD GUILTY? BECAUSE
5 IF I'M UNDERSTANDING YOU CORRECTLY, YOU WENT THAT
6 DAY -- AND I BELIEVE MR. TURNER TESTIFIED TO THAT AS
7 WELL -- YOU WENT THAT DAY PREPARED TO GO TO TRIAL; IS
8 THAT CORRECT?

9 A. YES, SIR.

10 Q. IF YOU WILL TELL THE COURT WHAT LED UP TO
11 THE CHANGE IN THAT DECISION.

12 A. I WAS APPROACHED BY THE SOLICITOR, WHO
13 INFORMED ME THAT HER VICTIMS HAD SAID FOR THE FIRST
14 TIME THAT SHE COULD ACCEPT A PLEA TO A 30-YEAR RATHER
15 THAN A LIFE, AND WE TALKED BRIEFLY AND SHE AGREED TO
16 WIND EVERYTHING INTO IT. AND SO I THEN TALKED TO MY
17 CLIENT TO SEE WHAT DIRECTION HE WANTED ME TO GO.

18 THIS WAS A CASE THAT MIGHT NOT HAVE EVER
19 BEEN PREPARED FOR TRIAL IF THERE HAD EVER BEEN
20 ANYTHING ON THE TABLE EXCEPT A PLEA TO LIFE. THERE
21 NEVER WAS. THIS WAS A CASE WHERE JOHN HAD CONFESSED
22 INITIALLY, WHERE THERE WAS WITNESSES AT THE SCENE THAT
23 HAD ALL GIVEN STATEMENTS.

24 THE SELF-DEFENSE WAS WEAK, AND WHAT MADE
25 IT MORE COMPLICATED WAS THAT JOHN HAD CALLED UP THE

1 VICTIM SHORTLY BEFORE HE CAME OVER THERE AND SHOT HIM
2 AND TOLD HIM HE WAS COMING TO KILL HIM. SO IT HAD A
3 LOT OF BAD ELEMENTS. BUT WE COULDN'T GET ANYTHING,
4 ANY DEAL BEFORE THAT.

5 AND INITIALLY JOHN HAD TOLD ME THAT -- HE
6 ACCOUNTED FOR THE TAPE RECORDING OF HIS VOICE BY
7 SAYING THAT THERE WAS A MACHINE THAT SOMEBODY HAD THAT
8 WOULD TAKE HIS VOICE AND MAKE IT SAY ANYTHING. A DAY
9 OR TWO BEFORE THAT THEY HAD GIVEN ME THE MACHINE, AND
10 IT WAS SIMPLY A CHEAP TAPE RECORDER THAT WAS FOR A
11 LITTLE KID, IT WAS CALLED A TALK BOY AND ---

12 Q. AND -- I DIDN'T MEAN TO INTERRUPT. I
13 APOLOGIZE.

14 A. SO WHEN THE OFFER WAS THERE, IT WASN'T
15 LIKE IT WAS -- WAS SOMETHING WE SHOULDN'T CONSIDER,
16 AND I WANTED TO CONSIDER IT WITH JOHN AND I CONSIDERED
17 IT WITH HIS FAMILY.

18 Q. AND DID YOU HAVE AN OPPORTUNITY TO DO
19 THAT, DID YOU DISCUSS IT WITH MR. TURNER?

20 A. YES, SIR. AND JOHN SAID IT WAS BRIEF, AND
21 IT WAS, I MEAN, IN THE SENSE THAT WE MADE THIS
22 IMPORTANT DECISION IN ABOUT 30 MINUTES. BUT IT WAS A
23 DECISION THAT I RECOMMENDED THAT DAY AND I WOULD
24 RECOMMEND TODAY.

25 Q. DID YOU AT ANY POINT FORCE HIM TO TAKE

1 THAT?

2 A. NO. I TRIED TO AS FAIRLY AS I COULD
3 PRESENT THE PROS AND THE CONS.

4 Q. IN YOUR OPINION, WHOSE DECISION WAS IT TO
5 ENTER A GUILTY PLEA?

6 A. I'M SORRY? I HAVE A LITTLE TROUBLE
7 HEARING.

8 Q. I'M SORRY. SOMETIMES I MUMBLE.
9 IN YOUR OPINION, WHOSE DECISION WAS IT TO
10 ENTER THAT GUILTY PLEA?

11 A. IT WAS JOHN'S DECISION, IT WAS JOHN'S AND
12 HIS FAMILY. WE...

13 Q. NOW, YOU HEARD MR. TURNER TESTIFY THAT YOU
14 FAILED TO INVESTIGATE THE CRIME SCENE. BUT AM I
15 CORRECT YOU JUST TESTIFIED PREVIOUSLY THAT YOU DID, IN
16 FACT, VISIT THE SCENE?

17 A. YES, SIR. IT -- AND WE -- WE CHECKED --
18 JOHN WOULD CALL US, HE CALLED US FROM THE JAIL AND
19 TELL US ABOUT THINGS HE HAD HEARD IN THE JAIL AND
20 POTENTIAL WITNESSES, AND THAT -- DANNY HIOTT
21 (PHONETIC) WAS AN INVESTIGATOR THAT WORKED WITH ME
22 FULL-TIME THEN -- AND THAT HE WOULD FOLLOW UP ON
23 NEARLY EVERYTHING THAT WE WERE TOLD. WE'D -- WE'D
24 DONE EVERYTHING THAT WE KNEW TO DO.

25 Q. DO YOU RECALL THE ORIGINAL PLAN BEING FOR

1 THIS CASE WOULD GO BEFORE JUDGE MADDOX?

2 A. I DON'T RECALL. AND I'M JUST NOT SURE.

3 JOHN MENTIONED THAT THERE WAS A CHANGE, AND THAT SEEMS
4 KIND OF VAGUELY LIKE THERE WAS SOME REASON THAT THE
5 PLEA COULD BE DONE RIGHT AWAY IN FRONT OF JUDGE
6 NICHOLSON. BUT I'M NOT SURE THAT'S TRUE. I'M JUST --
7 I'M NOT SURE WHETHER I'M CONFUSED WITH ANOTHER CASE OR
8 WHETHER THERE WAS A PLEA THAT CHANGED.

9 Q. AND WAS IT YOUR TESTIMONY PREVIOUSLY THAT
10 YOU DID, IN FACT, INTERVIEW THE WITNESSES?

11 A. YES, SIR. IN FACT, I THINK WE HAD -- WE
12 HAD WITNESSES SUBPOENAED, WE HAD PEOPLE THERE THAT
13 DAY. WE HAD THE WITNESSES WE WERE GONNA USE AT TRIAL.

14 Q. WHERE DID YOU COME UP WITH THAT LIST OF
15 WITNESSES?

16 A. WELL, OF COURSE, THROUGH OUR CLIENT,
17 THROUGH HIS FAMILY TO SOME DEGREE; BUT WE ALSO HAD THE
18 DISCOVERY OF THE STATE, AND I'M NOT SURE.

19 Q. DID YOU HAVE AN OPPORTUNITY TO GO THROUGH
20 THAT DISCOVERY WITH YOUR CLIENT?

21 A. YES; HE WAS -- HE WAS VERY FAMILIAR WITH
22 IT.

23 Q. LET ME JUST ASK YOU THIS: DID YOU AT ANY
24 POINT THREATEN OR COERCE MR. TURNER INTO PLEADING
25 GUILTY?

RICHARD WARDER -- DIRECT BY MR. GRIGG

1 A. I DON'T -- I DON'T THINK I'VE THREATENED A
2 CLIENT EVER, BUT I CERTAINLY NEVER THREATENED JOHN
3 TURNER. I GAVE HIM MY BEST ADVICE, WHAT I BELIEVED
4 WAS THE MOST RIGHT -- THE BEST THING FOR HIM TO DO
5 FACED WITH THE EVIDENCE.

6 THE DIFFERENCE WAS HE WOULD DO A VERY
7 LENGTHY SENTENCE AND GET OUT WHEN -- JOHN WAS 27 OR
8 '8, HE WOULD GET OUT BEFORE HE WAS 60. HE MIGHT NOT
9 EVER HAVE GOTTEN OUT.

10 Q. TO YOUR KNOWLEDGE DID ANYONE EVER THREATEN
11 OR COERCE HIM INTO PLEADING GUILTY?

12 A. NO. I DON'T THINK JOHN IS THE KIND OF
13 FELLOW THAT WOULD TAKE THREATENING VERY GOOD.

14 **MR. GRIGG:** BEG THE COURT'S INDULGENCE,
15 YOUR HONOR.

16 (THERE WAS A PAUSE IN THE PROCEEDINGS.)
17 BY MR. GRIGG:

18 Q. MR. WARDER, DID YOU FEEL THAT YOUR CLIENT
19 UNDERSTOOD THE GUILTY PLEA PROCEEDING THAT HE WAS
20 GOING THROUGH?

21 A. YES, SIR, I WAS CONVINCED THAT HE
22 UNDERSTOOD, AND I WAS CONVINCED THAT HE AND HIS FAMILY
23 UNDERSTOOD.

24 Q. TO YOUR KNOWLEDGE DID MR. TURNER HAVE
25 ANY -- WAS HE ON ANY MEDICATIONS OR HAVE ANY MEDICAL

1 REASONS THAT HE MAY NOT HAVE UNDERSTOOD WHAT WAS GOING
2 ON THAT DAY?

3 A. YOUR QUESTION IS -- I'M SORRY, I'M HAVING
4 A HARD TIME HEARING.

5 Q. TO YOUR KNOWLEDGE, I KNOW THE JUDGE ASKS
6 THESE QUESTIONS IN THE TRANSCRIPT, BUT I'M JUST ASKING
7 FROM YOUR POINT OF VIEW, TO YOUR KNOWLEDGE WAS
8 MR. TURNER ON ANY DRUGS OR ANY MEDICATIONS THAT DAY
9 THAT WOULD PREVENT HIM FROM UNDERSTANDING WHAT HE WAS
10 DOING?

11 A. NO, SIR. HE WAS INCARCERATED AT THAT
12 TIME, AND, I MEAN, I KNOW THAT -- I HAVE NO REASON TO
13 BELIEVE HE WAS ON ANYTHING.

14 Q. DID MR. TURNER AT ANY POINT DISCUSS WITH
15 YOU THAT HE THOUGHT THAT THE SOLICITOR WAS HANDLING
16 THINGS INAPPROPRIATELY?

17 A. I'M SURE THAT HE FELT THE STATE WAS
18 SOMEHOW BEING TOO HARD ON HIM AND NOT -- NOT DOING
19 WHAT WE WANTED. BUT I DON'T THINK THAT THERE WAS EVER
20 ANY EVIDENCE THAT I HAD, AND WE NEVER DISCUSSED ANY
21 MISCONDUCT BY THE SOLICITOR'S OFFICE. THEY JUST HAD
22 TAKEN A VERY HARD LINE AND WERE HARD TO DEAL WITH.

23 MR. GRIGG: I HAVE NOTHING FURTHER, YOUR
24 HONOR.

25 THE COURT: CROSS-EXAMINATION?

1 MR. MITCHELL: THANK YOU, YOUR HONOR.

2 CROSS-EXAMINATION BY MR. MITCHELL:

3 Q. MR. WARDER, IN REGARDS TO YOUR INITIAL
4 CONTACT WITH THE FAMILY, I BELIEVE YOU MET WITH
5 MRS. WILSON INITIALLY WHEN SHE CALLED YOU ABOUT HER
6 GRANDSON BEING IN PRISON, IN JAIL; IS THAT CORRECT?

7 A. DID I MEET WITH THESE -- WITH HIS
8 GRANDMOTHER?

9 Q. WELL, I KNOW YOU MET WITH HER.

10 A. I'M SORRY, I DON'T UNDERSTAND THE
11 QUESTION.

12 Q. WHEN MR. TURNER WAS ARRESTED, YOU WERE
13 CONTACTED BY HIS GRANDMOTHER, MRS. WILSON, WERE YOU
14 NOT?

15 A. HIS FAMILY CONTACTED ME, YES, SIR; I DO
16 NOT REMEMBER WHO MADE THE INITIAL CALL.

17 Q. OKAY. THEY GAVE YOU SOME OVERVIEW AS TO
18 WHAT ALLEGEDLY HAD BEEN TOLD OCCURRED, DID THEY NOT?

19 A. YES, SIR.

20 Q. ALL RIGHT. AND I BELIEVE THAT SOME OF
21 THAT CAME DOWN TO WHAT WAS DESCRIBED AS THE DEFENSE OF
22 SELF-DEFENSE?

23 A. YES, SIR. THE FIRST STORY THAT I WAS
24 TOLD, THERE WAS NO DOUBT IT WAS AN EXCELLENT
25 SELF-DEFENSE CASE.

1 Q. OKAY. AND I BELIEVE YOU TOLD THEM AT SOME
2 POINT THAT THEY HAD A 99.9 PERCENT CHANCE OF HIM
3 ACTUALLY GETTING A JURY TO ACCEPT THAT AS A DEFENSE?

4 A. NO, SIR. I'VE NEVER HAD AN OPINION THERE
5 WAS A 99.9 PERCENT CHANCE OF A JURY DOING ANYTHING.

6 Q. DID YOU GIVE THEM A PERCENTAGE?

7 A. HUH?

8 Q. DID YOU GIVE THEM ANY TYPE OF A
9 PERCENTAGE?

10 A. NO.

11 Q. DID YOU FIND IN YOUR INVESTIGATION THAT
12 THE CORONER'S REPORT SAID THE MAN WAS SHOT THROUGH THE
13 ARM RATHER THAN IN THE BACK?

14 A. HE WAS SHOT -- I THINK IT HIT THE SHOULDER
15 BLADE, AND I THINK THAT CHANGED THE COURSE OF THE
16 BULLET.

17 Q. ALL RIGHT. DID YOU AT ANY POINT TELL MY
18 CLIENT AND HIS FAMILY THAT HE WAS SHOT IN THE BACK --
19 THE VICTIM WAS SHOT IN THE BACK?

20 A. NO. I THINK HE WAS ONLY SHOT IN THE
21 SHOULDER.

22 Q. NOW, DID YOU FIND ALSO THAT THERE WAS A
23 STICK SOME SIX FEET OR SO LONG THEY CALL "WALKING
24 TALL," TAPED AT THE END, THAT DRUANNE WHITE HAD, THAT
25 THE VICTIM HAD IN ATTACKING YOUR CLIENT AT THAT TIME?

1 A. I DON'T BELIEVE THAT -- THERE WAS A STICK
2 THAT WAS -- BUT I DON'T THINK IT EVER MATCHED WITH THE
3 DESCRIPTION. AND THERE WERE SEVERAL DESCRIPTIONS OF
4 THE STICK. AS I REMEMBER, THE INITIAL WAS THE STICK
5 INVOLVED WAS THAT JOHN GOT OUT WITH A STICK FIRST, AND
6 THE VICTIM PICKED UP A STICK, AND THEN JOHN RETREATED
7 TO THE CAR AND GOT A GUN, AND THEN THE VICTIM WAS SHOT
8 AND RAN AROUND BEHIND THE HOUSE AND JOHN CHASED HIM.

9 Q. DID YOU ALSO FIND OUT THAT THERE WERE
10 WITNESSES THAT MRS. WILSON, AND I BELIEVE YOU SAID
11 YOUR INVESTIGATION SHOWED THAT YOU MET WITH, THAT GAVE
12 A JUSTIFIABLE DEFENSE TO MR. TURNER?

13 A. MR. MITCHELL, THE PROBLEMS WITH
14 SELF-DEFENSE ALWAYS REMAIN THE INITIAL THREAT TO COME
15 AND KILL HIM. BUT THE PROBLEM THAT OCCURRED AT THE
16 VICTIM'S HOUSE WAS SOMEWHAT A TROUBLE BECAUSE IT WAS
17 STRICTLY A DUTY TO RETREAT. THE FACT THAT HE WENT TO
18 THE CAR AND GOT THE GUN OUT OF THE CAR, RATHER THAN
19 STARTING IT UP AND LEAVING, CLOUDED THE DUTY TO
20 RETREAT, AND THE FACT THAT THE VICTIM WAS ARMED WITH A
21 STICK RATHER THAN A GUN MADE IT SOMEWHAT QUESTIONABLE.

22 SO THERE WAS ALWAYS PROBLEMS WITH IT.
23 NOW, THERE WAS NO WITNESS THAT TOOK AWAY ALL OF THOSE
24 PROBLEMS, AND THERE WAS NO WITNESS THAT TOOK AWAY ALL
25 OF THOSE PROBLEMS EVEN IF YOU DISCOUNTED THE PRIOR

1 THREATS, SO THERE WAS NO WITNESS THAT MADE US AN
2 EXCELLENT SELF-DEFENSE.

3 Q. OKAY. DID YOU FIND THAT HE WENT OUT DOWN
4 THERE TO COLLECT SOME MONEY FROM THIS VICTIM?

5 A. NO, SIR. HE WENT THERE BECAUSE HE
6 BELIEVED THE VICTIM HAD BROKE INTO HIS HOUSE AND STOLE
7 SOME STUFF, AND HE WAS GONNA CONFRONT THE FELLA HE
8 BELIEVED WAS A BURGLAR OF HIS OWN RESIDENCE, I THINK.

9 Q. OKAY. AND THEN WHEN HE GOT THERE, NOW
10 THAT'S WHEN THIS FELLA, FROM WHAT YOU WERE TOLD -- I
11 WASN'T THERE -- YOU WERE TOLD HE WAS ATTACKED BY THIS
12 VICTIM, IS THAT NOT CORRECT?

13 A. I INITIALLY WAS TOLD HE ATTACKED THE
14 VICTIM. BUT THROUGH JOHN'S OWN STATEMENT, WHEN I GOT
15 A COPY OF IT, AND THEN WHEN I COMPARED IT WITH THE
16 COPY OF THE STATEMENT BY THE PERSON THAT WAS IN THE
17 TRUCK RIDING WITH HIM, AND THEN THE STATEMENT OF THE
18 PEOPLE THAT WERE AT THE HOUSE WHERE THE SHOOTING TOOK
19 PLACE, THE EVIDENCE -- THE GREAT PREPONDERANCE OF
20 TRIAL EVIDENCE WOULD HAVE BEEN THAT THE FACTS WERE AS
21 I DESCRIBED THEM.

22 Q. DID THE CORONER'S REPORT EVER SHOW THAT
23 THERE WAS A BALLISTIC INCONSISTENCY ON THAT WHICH
24 KILLED THE VICTIM AND THE CALIBER OF GUN AND THE
25 BALLISTIC TESTING OF MR. TURNER?

1 A. AS I SAW THE CASE, THERE WAS NEVER A
2 QUESTION OF WHERE THE BULLET CAME FROM. JOHN SAID HE
3 SHOT HIM. ALL THE WITNESSES SAID HE SHOT HIM. THIS
4 IS NOT A WHO-DONE-IT WHERE WE'RE TRYING TO DECIDE WHO
5 SHOT HIM. WE KNOW WHO SHOT HIM. THAT'S ONE OF THE
6 GIVENS AT THE TRIAL.

7 Q. DID YOU GO DOWN AND SEE A BULLET HOLE IN
8 THE MOBILE HOME?

9 A. NO, I DID NOT SEE A BULLET HOLE.

10 Q. YOU DID NOT?

11 A. I'M NOT SAYING IT WASN'T THERE, I'M JUST
12 SAYING I DIDN'T SEE IT.

13 Q. ALL RIGHT. I UNDERSTAND.

14 MR. WARDER, ON THE DATE OF TRIAL YOU FILED
15 A SUPPLEMENT TO YOUR BRADY MOTION, YOUR RULE 5, I
16 BELIEVE?

17 A. I'M NOT SURE. I'M NOT -- I DON'T REMEMBER
18 THAT. I WOULDN'T DENY THAT I DID THAT. I JUST DON'T
19 REMEMBER WHETHER I FILED SOMETHING THAT MORNING OR
20 NOT.

21 Q. IN REGARDS TO THE CORONER'S REPORT, DID
22 YOU FIND THAT HE FOUND THAT THE INDIVIDUAL IN A
23 JUXTAPOSE POSITION, AS THOUGH HE WAS GOING TO HIT
24 SOMEONE?

25 A. I DON'T REMEMBER THAT SPECIFICALLY. BUT I

1 DON'T THINK THAT ANY CORONER CAN TELL EXACTLY WHAT
2 POSITION PARTIES WERE IN, HE CAN JUST TELL THE
3 DIRECTION OF THE BULLET. I MEAN, THE POSITION WOULD
4 DEPEND ON EXACTLY KNOWING WHERE EACH OF THE PARTIES
5 WERE, AND THEN SOMEHOW PREDICTING WHAT THE PATH OF THE
6 BULLET, IF IT WASN'T DEFLECTED, WAS.

7 Q. MR. WARDER, IN REGARDS TO THE DRUG CHARGES
8 NOW, YOU SAID YOU WANTED TO CLEAR ALL OF THEM, BUT YOU
9 WERE NOT KNOWLEDGEABLE OF CHARGES THAT MR. CALHOUN
10 PRUITT HAD BEEN RETAINED FOR, WERE YOU?

11 A. NO. MR. PRUITT WAS STILL ATTORNEY OF
12 RECORD, I BELIEVE, ON THAT ONE DRUG CHARGE.

13 Q. BUT YOU DID PLEAD HIM GUILTY TO THAT --
14 ON TWO CHARGES?

15 A. YES, SIR. WE ---

16 Q. METHAMPHETAMINES AND, I BELIEVE,
17 TRAFFICKING AND MANUFACTURING, WITHOUT HAVING BEEN
18 INDICTED?

19 A. OH, YEAH, YEAH. I WAS RETAINED ON THOSE.
20 THOSE WE HAD DONE, WENT THROUGH PRELIMINARY HEARINGS
21 ON THOSE. THE FACT THAT THEY WEREN'T INDICTED, IT
22 MADE NO SENSE NOT TO GO AHEAD AND PLEAD ON THEM EVEN
23 BEFORE THE INDICTMENTS WERE PRESENTED, BECAUSE THEY
24 WERE GONNA RUN CONCURRENT, THAT WAS PART OF IT.

25 Q. MR. WARDER, IN REGARDS TO MEETING WITH THE

1 FAMILY, IN DISCUSSING THE PLEA YOU HAD MR. TURNER
2 ENTER, YOU MET WITH THE FAMILY ABSENT HIS PRESENCE, I
3 BELIEVE, DID YOU NOT?

4 A. YES, SIR. HE WAS STILL IN CUSTODY. IT
5 WAS -- YOU KNOW, I HAD -- I HAD -- THE FAMILY I
6 COULD -- I COULD MEET WITH, BUT I HAD TO GET THE
7 BAILIFF TO MEET WITH HIM. SO, I MEAN, WHEN I TALKED
8 TO THE FAMILY, YOU KNOW, WE MET THERE AND I SAID, THIS
9 IS WHAT THEY HAVE OFFERED AND THIS IS WHAT I NEED TO
10 TALK TO HIM, I'M GONNA RECOMMEND AND I WANT YOU TO
11 UNDERSTAND, AND THEN I WENT AND TALKED TO HIM AND TOLD
12 HIM ESSENTIALLY WHAT I TOLD THE FAMILY.

13 Q. ABOUT HOW MUCH TIME DID YOU SPEND WITH
14 MR. TURNER?

15 A. I DON'T KNOW. I WOULD JUST BE GUESSING.

16 Q. THE BAILIFF DID GO INTO THE CONFERENCE
17 ROOM AND MET, AND PULLED HIM BACK -- BROUGHT HIM BACK
18 INTO THE COURT OR BROUGHT HIM INTO THE COURT, DID HE,
19 THE BAILIFF, NOT?

20 A. DID I TALK TO HIM ABOUT HAVING HIM BROUGHT
21 IN THE COURT?

22 Q. NO. THE BAILIFF, AFTER YOU WERE TALKING
23 WITH HIM, THE BAILIFF IN A MATTER OF MINUTES CAME TO
24 THE CONFERENCE ROOM AND BROUGHT HIM IN THE COURT, DID
25 THAT NOT OCCUR?

1 A. I THINK THAT'S RIGHT, AND I HAVE NO
2 RECOLLECTION, I HAVE NO INDEPENDENT RECOLLECTION OF
3 THE PROCEEDING OF HOW LONG IT WAS WHEN THE BAILIFF
4 BROUGHT HIM IN OR HOW WE GOT IN THE COURTROOM.

5 Q. DO YOU THINK, MR. WARDER, THAT YOU SPENT
6 SUFFICIENT TIME EXPLAINING ALL OF HIS RIGHTS,
7 DEFENSES, NOTWITHSTANDING CONSEQUENCES AND
8 CIRCUMSTANCES AS FAR AS THE CHARGES AGAINST HIM WERE
9 CONCERNED? DO YOU THINK YOU SPENT ENOUGH TIME WITH
10 HIM, TO ENTER THAT KIND OF PLEA?

11 A. MR. MITCHELL, PLEASE UNDERSTAND THAT,
12 FIRST OF ALL, AS TO THE DEFENSES AND STUFF, WE HAD
13 BEEN TALKING ABOUT POSSIBLE DEFENSES AS LONG AS WE HAD
14 BEEN WORKING ON THE CASES. WE TALKED ABOUT
15 SELF-DEFENSE, WE TALKED ABOUT EVERYTHING THAT WE COULD
16 COME UP WITH THAT WOULD KEEP HIM FROM GETTING
17 CONVICTED, BECAUSE THIS CASE WAS A TRIAL. AND WE
18 DISCUSSED EVERYTHING.

19 NOW -- NOW, WHEN IT COME DOWN TO THE
20 OPPORTUNITY TO PLEAD, IT CERTAINLY WAS -- THERE WERE
21 TIME CONSTRAINTS AND HE HAD TO MAKE A HARD DECISION IN
22 A REASONABLY QUICK TIME. BUT WE HAD -- WE SPENT MOST
23 OF OUR TIME PROBABLY TALKING ON THAT OCCASION ABOUT
24 THE OPTIONS PRESENTED AND WHAT WERE THE ADVANTAGES OF
25 TAKING A 30-YEAR DEAL AS OPPOSED TO GAMBLING WITH THE

1 JURY TRIAL THAT WE WERE PREPARED TO.

2 Q. BUT YOU WERE PAID FOR A TRIAL BY 12
3 PEOPLE, WERE YOU NOT?

4 A. NO, I WAS NOT, MR. MITCHELL. I WAS PAID
5 TO HANDLE THIS CASE. I WAS PAID ON A FLAT-FEE
6 RETAINER CONTRACT THAT PROVIDED WHETHER THE CASE WAS
7 SETTLED OR TRIED THE FEE WAS THE SAME.

8 Q. MR. TURNER DENIED COMMITTING A
9 PREMEDITATED HOMICIDE, DIDN'T HE?

10 A. MR. TURNER CONFESSED TO A PREMEDITATED
11 HOMICIDE, THOUGH HE DIDN'T REALIZE ALL OF HIS
12 CONFESSION.

13 Q. BUT NOTWITHSTANDING THE FACT HE HAD A
14 PLAUSIBLE DEFENSE, DID HE NOT?

15 A. NO, SIR. THAT'S WHAT -- THAT'S WHAT I'VE
16 TRIED TO TELL YOU. IT HAD A SELF-DEFENSE THAT WAS
17 PROBABLY THE ONLY DEFENSE, BUT A VERY WEAK ONE. WE
18 HAD THREATENED THE VICTIM TO COME AND KILL HIM MINUTES
19 BEFORE WE CAME TO KILL HIM.

20 Q. BUT DID YOU HEAR THE TAPE?

21 A. YES.

22 Q. AND WERE THEY AUDIBLE?

23 A. YES.

24 Q. DID DRUANNE WHITE GIVE YOU A COPY OF IT
25 UNDER YOUR BRADY MOTION?

1 A. I DON'T KNOW THAT.

2 Q. BEFORE THE CASE WAS BROUGHT BEFORE THE
3 COURT? YOU DIDN'T GET ONE?

4 A. I DON'T REMEMBER WHETHER WE GOT ONE OR
5 NOT.

6 Q. IN OTHER WORDS, THIS TAPE WAS NEVER GIVEN
7 AN ANALYSIS AS TO WHETHER OR NOT MY CLIENT CALLED DOWN
8 OR CALLED UP THERE AND MADE ANY KIND OF INTIMIDATING
9 CONVERSATION OR THREATS AGAINST THE DECEASED?

10 A. THE QUESTION WAS IT WAS NEVER GIVEN A
11 WHAT?

12 Q. IT WAS NEVER ANALYZED.

13 A. WAS THE TAPE FORENSICALLY ANALYZED? NO.

14 Q. OKAY.

15 **MR. MITCHELL:** THANK YOU.

16 **THE COURT:** REEXAM?

17 **MR. GRIGG:** NOTHING FROM THE STATE, YOUR
18 HONOR.

19 **THE COURT:** ALL RIGHT. YOU MAY STEP DOWN.

20 (WHEREUPON, THE WITNESS WAS EXCUSED.)

21 **THE COURT:** YOU MAY CALL YOUR NEXT
22 WITNESS.

23 **MR. GRIGG:** THAT'S IT FROM THE STATE, YOUR
24 HONOR.

25 **THE COURT:** ALL RIGHT. ANY REPLY?

1 MR. MITCHELL: NO, SIR.

2 THE COURT: ANY ARGUMENT? ANY ARGUMENT
3 FROM THE APPLICANT?

4 MR. MITCHELL: YES, YOUR HONOR.
5 CLOSING ARGUMENT ON BEHALF OF THE APPLICANT:

6 MR. MITCHELL: YOUR HONOR, WE CERTAINLY
7 FEEL THAT THE TESTIMONY THAT HAS BEEN GIVEN IN THIS
8 CASE IS SOMETHING THAT WAS GIVEN AT THE LAST MINUTE
9 WITHOUT MY CLIENT KNOWING THE CONSEQUENCES, NOT
10 UNDERSTANDING THE -- IN THE SHORT PERIOD OF TIME, PUT
11 HIMSELF IN A SITUATION WITH HIS FAMILY, PAID FOR WHAT
12 THEY HAD CALLED FOR A JURY TRIAL. HE HAD WHAT WE
13 CALLED A PLAUSIBLE DEFENSE.

14 CERTAINLY WE FEEL THAT SOME INVESTIGATION,
15 CERTAINLY MORE COULD HAVE BEEN DONE IN REGARD TO THE
16 CASE. WE CERTAINLY FEEL THAT HE ENTERED A PLEA AT A
17 MOMENT IN WHICH HE DID NOT HAVE AN OPPORTUNITY TO
18 WEIGH THE CIRCUMSTANCES. AND WE FEEL, HE FEEL, FAMILY
19 FEELS HE WAS MISLED BY HIS ATTORNEY, AND UNDER THE
20 CIRCUMSTANCES ALREADY GOT 30 YEARS.

21 WE BELIEVE TESTIMONY WAS GIVEN IN THE
22 TRANSCRIPT, IT DOESN'T NECESSARILY REFLECT ANYTHING
23 EXCEPT THE FACT IS THAT THE COURT WILL NOT ACCEPT A
24 PLEA FROM SOMEONE WHO ACTUALLY IS NOT VOLUNTARILY,
25 KNOWLEDGEABLE AND WHAT HAVE YOU IN TENDERING A PLEA.

1 THOSE ARE DIRECTIVES THE SUPREME COURT HANDED DOWN
2 YEARS AGO.

3 AND CONSEQUENTLY HE WAS TOLD, BASED ON HIS
4 TESTIMONY, TO FOLLOW WHAT MR. WARDER TOLD HIM. AND HE
5 DID. HE GAVE UP HIS RIGHTS. MR. WARDER EVEN HIMSELF
6 TESTIFIED THAT, IN FACT, THAT THERE APPEARED TO HAVE
7 BEEN SOME DEFENSE. I DON'T KNOW HOW MANY LAWYERS EVER
8 COME IN COURT FOR THE DEFENDANT IN A CRIMINAL CASE
9 THAT DON'T ROLL THE DICE WHEN YOU'RE GOING BEFORE A
10 JURY, OR A PLAINTIFF IN A CIVIL CASE WHEN YOU GO
11 BEFORE A JURY.

12 THESE ARE THINGS WHICH ARE ACCEPTED, AS
13 YOUR HONOR KNOWS, HAVING BEEN SITTING MANY YEARS AND
14 PRACTICING MANY YEARS, IT'S UP OR DOWN. HE HAD A
15 PLAUSIBLE DEFENSE THAT SHOULD HAVE BEEN GIVEN, AND
16 CERTAINLY SHOULD HAVE BEEN GIVEN THE BENEFIT OF THE
17 DOUBT BASED ON TESTIMONY OF WITNESSES THAT HAVE BEEN
18 HERE, WHO WERE HERE ON HIS BEHALF UNTIL AFTER LUNCH AT
19 THE LAST MINUTE.

20 THEN THINGS FELL APART. HE'S GIVEN A
21 MANNER OF A FEW MINUTES TO MAKE UP HIS MIND TO PLEAD
22 TO MURDER, NOTWITHSTANDING THE FACT THAT MR. WARDER
23 DIDN'T REPRESENT HIM ON THE DRUG CHARGES, BUT TOOK IT
24 UPON HIMSELF TO INCORPORATE ALL OF THE CHARGES. HE
25 HADN'T BEEN RETAINED, KNEW NO FACTS. THE SOLICITOR,

1 DRUANNE WHITE, ALLEGEDLY, WITHOUT GIVING MY CLIENT
2 TIME TO ABSORB ANYTHING, HE PUT AND WAIVED HIS RIGHTS,
3 UNINTELLIGENTLY, WAIVED HIS RIGHT TO A JURY TRIAL,
4 WAIVED HIS RIGHTS TO A PLAUSIBLE DEFENSE, WAIVED HIS
5 RIGHT TO CALL WITNESSES WHO WERE IN THE HALL, AND GOT
6 30 YEARS.

7 WE ARE ASKING THE COURT THAT HE -- AND,
8 LIKE I SAY, HE HAD NEVER BEEN IN COURT BEFORE, NEVER
9 HAD ANY PROBLEM. AND TO HAVE THE SOLICITOR'S OFFICE
10 NOT COMPLY WITH THE RULE 5 MOTION OR UNDER BRADY, AND
11 THEN AN AUDIBLE TAPE THAT WASN'T ANALYZED AS TO
12 WHETHER OR NOT IT WAS MY CLIENT, WENT DOWN THERE
13 BECAUSE OF WHAT HE FELT WAS AN INFRACTION ON HIS HOME.

14 WE DON'T THINK THE CASE WAS PROPERLY
15 INVESTIGATED AND WE CERTAINLY DON'T FEEL THAT ALL THE
16 WORK THAT SHOULD HAVE BEEN DONE WAS DONE FOR HIM TO
17 ENTER THE PLEA, AND WE WOULD ASK THE COURT TO SET IT
18 ASIDE.

19 MR. GRIGG: THANK YOU, YOUR HONOR.
20 CLOSING ARGUMENT ON BEHALF OF RESPONDENT:

21 MR. GRIGG: YOUR HONOR, MR. WARDER GOT UP
22 AND TESTIFIED THAT HE FELT ALL HE HAD WAS A VERY WEAK
23 SELF-DEFENSE, I BELIEVE. IN FACT, I BELIEVE HE STATED
24 HE DIDN'T BELIEVE IT WAS VERY PLAUSIBLE BASED ON THE
25 FACTS AND ALL THE WITNESSES AND INVESTIGATION THAT HE

1 DID DO, AND I BELIEVE THE TESTIMONY SHOWS HE DID
2 THOROUGHLY. HE SHOWED THIS WASN'T A WHO-DONE-IT, AS I
3 BELIEVE MR. WARDER SAID IT. EVERYBODY KNEW WHO SHOT
4 WHOM AND GAVE STATEMENTS ACCORDINGLY. MR. TURNER ALSO
5 GAVE A CONFESSION, I BELIEVE, ACCORDING TO
6 MR. WARDER'S TESTIMONY.

7 MR. WARDER IS AN ATTORNEY AND A
8 PROFESSIONAL OF THIS STATE AND WAS HIRED TO REPRESENT
9 MR. TURNER AND HELP HIM RESOLVE THIS IN THE BEST
10 MANNER BASED ON THE FACTS THAT HE HAD THAT'S
11 REASONABLY POSSIBLE, AND IT IS WITHIN THE STANDARDS OF
12 BEING A CRIMINAL ATTORNEY IN THIS CASE, AND THERE HAS
13 BEEN NO SHOWING HERE TODAY THAT HE DID ANYTHING LESS
14 THAN THAT.

15 THERE'S BEEN ABSOLUTELY NO EVIDENCE TO
16 SHOW THAT HIS INVESTIGATION, HIS DISCUSSION WITH
17 WITNESSES, HIS DISCUSSION WITH HIS CLIENT, HIS
18 ATTEMPTS AND EFFORTS TO KEEP HIS CLIENT FULLY INFORMED
19 FELL BELOW THE STANDARDS OF A CRIMINAL DEFENSE
20 ATTORNEY IN THIS STATE. THERE'S BEEN ALLEGATIONS, BUT
21 THERE'S BEEN ABSOLUTELY NO MERIT GIVEN TO THOSE
22 ALLEGATIONS.

23 SO THE STATE WOULD SUBMIT TO THE COURT
24 THAT MR. TURNER HAS FAILED TO EVEN REACH PRONG ONE OF
25 THE STRICKLAND STANDARD, YOUR HONOR, MUCH LESS PRONG

1 TWO OF IT.

2 FURTHERMORE, YOUR HONOR, AN ACCUSED PARTY
3 HAS A RIGHT IN THIS STATE, UNDER RALSTON V. STATE AND
4 UNDER ANDERSON V. STATE, TO PLEAD GUILTY, FOR
5 ARGUMENT'S SAKE, IF HE WAS NOT GUILTY HE HAS A RIGHT
6 TO PLEAD GUILTY IF HE FEELS THAT HE IS DERIVING A
7 BENEFIT. YOU KNOW, THE TRANSCRIPT SPEAKS FOR ITSELF
8 AND I WILL SIMPLY LET THE COURT COME TO ITS OWN
9 CONCLUSION AS FAR AS HOW TO INTERPRET THE TRANSCRIPT.

10 BUT HE MADE THE DECISION TO PLEAD GUILTY,
11 HE MADE THE DECISION TO TELL THE JUDGE, I'M ADMITTING
12 GUILT, I'M TELLING YOU THIS TRUTHFULLY. HE MADE THE
13 DECISION TO TELL THE JUDGE, I'M SATISFIED WITH THE
14 SERVICES OF MY ATTORNEY. AND HE MADE THE DECISION
15 WITH HIS FAMILY, WITH THE ADVICE, WHICH IS WHAT
16 MR. WARDER WAS HIRED TO DO, BUT WITH THE ADVICE OF
17 MR. WARDER. MR. WARDER NEVER FORCED HIM, THERE'S BEEN
18 NO SHOWING OF COERCION OR THREAT OR ANY UNDUE
19 INFLUENCE ON THE PART OF MR. WARDER.

20 SIMPLY, YOUR HONOR, THERE'S A LOT OF
21 ALLEGATIONS BUT NO SUBSTANCE. BETWEEN THE TESTIMONY
22 HERE TODAY AND THE TRANSCRIPT AND THE CASES I'VE
23 CITED, AND I WILL IF I MAY, YOUR HONOR, REFER THE
24 COURT TO A FEW OTHER CASES. MR. TURNER TESTIFIED THAT
25 HE RECEIVED ERRONEOUS ADVICE. I WOULD DIRECT THE

1 COURT'S ATTENTION TO ROSCOE V. STATE OF SOUTH
2 CAROLINA, AND I'LL BE GLAD TO GIVE THE COURT COPIES OR
3 CASE CITES, WHICHEVER THE COURT PREFERENCES. AND ALSO ---

4 THE COURT: 345 S.C. 16.

5 MR. GRIGG: YES, SIR, YOU HAVE IT. THANK
6 YOU.

7 YOU KNOW, ACCORDING TO THESE CASES AND
8 ALSO GRIFFIN V. MARTIN, WHICH I'M SURE YOUR HONOR
9 KNOWS AS WELL AND KNOWS AS WELL, IT'S NOT ENOUGH TO
10 SIMPLY SHOW THERE MAY HAVE BEEN ERRONEOUS ADVICE. I
11 DON'T BELIEVE HE'S EVEN SHOWN THAT. BUT FOR
12 ARGUMENT'S SAKE, IF HE HAS, HE CERTAINLY HASN'T SHOWN
13 PREJUDICE.

14 THE STATE WOULD SIMPLY ASK THAT THIS
15 APPLICATION BE DENIED BASED ON THE FACTS PRESENTED IN
16 THE TRANSCRIPT OF RECORD, YOUR HONOR.

17 THE COURT: MR. MITCHELL, ANYTHING
18 FURTHER?

19 MR. MITCHELL: YOUR HONOR, MAY IT PLEASE
20 THE COURT.

21 FURTHER CLOSING ARGUMENT ON BEHALF OF APPLICANT:

22 MR. MITCHELL: I JUST CAN'T HELP BUT JOIN
23 IN ONE THING. MY GOOD FRIEND FROM COLUMBIA SAID HE
24 CAN'T SHOW WHERE THERE'S PREJUDICE. 30 YEARS IS A
25 WHOLE LOT OF PREJUDICE, NO MATTER HOW YOU LOOK AT IT.

1 SOMETIMES YOU'RE ROLLING THE DICE. SOME PEOPLE FACE
2 THE ELECTRIC CHAIR, THE GAS CHAMBER, OR THE OLD
3 GURNEY, AND SOME WAY OR ANOTHER A DEFENSE THAT THEY
4 HAD THAT WAS PLAUSIBLE GOT HIM OUT OF IT. WE
5 CERTAINLY FEEL THAT WE HAVE PROVEN OUR CASE, SIR, THAT
6 HE HAS BEEN SUBSTANTIALLY PREJUDICED. WE FEEL 30
7 YEARS, I WON'T BE AROUND THAT LONG.

8 FURTHER CLOSING ARGUMENT ON BEHALF OF RESPONDENT:

9 MR. GRIGG: YOUR HONOR, THE ONLY THING I
10 MAY ADD TO THAT, 30 YEARS OF A SENTENCE IS A
11 PREJUDICE, IF IT IS A PREJUDICE, IT'S CAUSED BY OUR
12 LEGISLATURE. MR. WARDER DIDN'T IMPOSE THAT SENTENCE.
13 THE ISSUE HERE TODAY IS WHETHER MR. WARDER DID
14 SOMETHING THAT CAUSED HIM TO BE PREJUDICED.

15 THERE HAS BEEN NO SHOWING TO SUGGEST THAT
16 HE WOULD HAVE NOT PLED GUILTY BASED ON THESE FACTS.
17 HE MADE THE DECISION. IF HE REGRETS THAT DECISION,
18 THEN I THINK WE ALL FEEL FOR HIM IN THAT MANNER. BUT
19 THERE'S BEEN NO SHOWING THAT IT WAS NOT HIS DECISION,
20 THAT IT WAS NOT HIS VOLUNTARY DECISION TO ENTER THIS
21 GUILTY PLEA.

22 THE COURT: ALL RIGHT. ANYTHING ELSE?

23 MR. MITCHELL: NO, SIR, YOUR HONOR.

24 THE COURT'S RULING:

25 THE COURT: ALL RIGHT. THE COURT HAS

1 CAREFULLY REVIEWED THE RECORD AND HEARD THE TESTIMONY
2 AND EVIDENCE TODAY. AND IN REACHING A DECISION IN
3 SUCH CASES THE COURT IS CONCERNED NOT ONLY WITH THAT
4 THERE WAS ERROR; WHAT PREJUDICE, IF ANY, THAT ERROR
5 CAUSED.

6 AND I THINK THAT, AS WE ALL KNOW, A COURT
7 IS LIMITED IN POST-CONVICTION RELIEF CASES IN THE
8 RELIEF THAT CAN BE GRANTED, WHICH IS ONLY TO GRANT A
9 NEW TRIAL, WHICH, AS THE COUNSEL FOR THE APPLICANT HAS
10 NOTED, THAT IS WHAT THE APPLICANT SEEKS.

11 AND I'VE GONE THROUGH THE RECORD AND
12 LOOKING AT THE INDICTMENTS. AND WHEN WE SAY
13 INDICTMENTS, WE'RE TALKING ABOUT THE INSTRUMENT THAT
14 IS PRESENTED, MR. TURNER, NOT NECESSARILY WHETHER IT
15 HAS BEEN PRESENTED TO THE GRAND JURY; IN OTHER WORDS,
16 IT'S ONLY AFTER IT HAS BEEN PRESENTED TO THE GRAND
17 JURY THAT A TRUE BILL IS SHOWN ON THE BACK. IF THERE
18 IS AN INDICTMENT IN THE CASE OF 2003-GS-04-416,
19 MANUFACTURING METHAMPHETAMINE, CRANK, THAT IS AN
20 INDICTMENT, IT JUST HAS NOT BEEN PRESENTED TO THE
21 GRAND JURY. SO THAT COULD BE SOME OF THE CONFUSION.

22 BUT THE POINT IS THE COURT HAS GONE
23 THROUGH EACH OF THE INDICTMENTS, THOSE THAT WERE
24 PRESENTED TO THE GRAND JURY WITH A TRUE BILL RETURNED.
25 AND, OF COURSE, THE MURDER, 2002-2531, IS 30 YEARS TO

1 LIFE. USE OF A FIREARM IN COMMISSION OF A VIOLENT
2 CRIME IS FIVE YEARS, TRAFFICKING METHAMPHETAMINE --
3 THAT'S 2002-2530 -- TRAFFICKING OF METHAMPHETAMINE,
4 2002-1907 IS 25 YEARS OR SEVEN YEARS TO 25 YEARS;
5 MANUFACTURING METHAMPHETAMINE, 2002-1908, IS 15 YEARS.
6 MANUFACTURING METHAMPHETAMINE IS 15 YEARS.

7 AND ON INDICTMENT 2003-415, THE SOLICITOR
8 DISMISSED THAT CASE AS A PART OF THE PLEA. THAT WOULD
9 HAVE BEEN FIVE YEARS. SO THE TOTAL THAT YOU WERE
10 FACING WAS LIFE PLUS 65 YEARS, LIFE PLUS 65 YEARS,
11 WHEREAS UNDER THE PLEA, YOU RECEIVED A 30-YEAR
12 SENTENCE. SO IF YOU WERE GRANTED YOUR RELIEF, YOU
13 PROBABLY WOULD BE LOOKING AT LIFE PLUS 65 YEARS ON A
14 RETRIAL BECAUSE, OF COURSE, WHAT IS IT, ALL THE
15 INDICTMENTS COULD THEN BE PRESENTED.

16 HOWEVER, THE MOST IMPORTANT INDICTMENT
17 APPARENTLY IS -- AND THE ONE THAT WAS ADDRESSED MOSTLY
18 HERE WAS THE ONE ON MURDER. AND THERE'S BEEN NO
19 SHOWING OF WHAT TESTIMONY OR EVIDENCE WOULD HAVE BEEN
20 DIFFERENT AS TO THE GUILT ON THE MURDER CHARGE. AND I
21 DO THIS BY LOOKING AT THE UNCONTROVERTED, IT SEEMS,
22 EVIDENCE, AND THAT IS THAT IT WAS THE VICTIM'S
23 RESIDENCE AT WHICH THIS ALTERCATION OCCURRED; THERE
24 HAD BEEN A CONFRONTATION, AND TAKING IT IN THE LIGHT
25 MOST FAVORABLE TO YOU, THAT THE FELLA HAD A -- THE

1 VICTIM HAD A BIG STICK. BUT APPARENTLY YOU RETREATED
2 TO THE TRUCK AND RETURNED WITH A PISTOL. AND JUST AS
3 ONE WITNESS SAID, HE SHOT BUT HE DID NOT KNOW THAT HE
4 HIT THE BODY.

5 MURDER IS PUTTING INTO A SET OF EVENTS
6 THAT COULD AND NATURALLY TENDED TO OR NATURALLY COULD
7 RESULT IN FATAL INJURIES AND, OF COURSE, THAT'S WHAT
8 OCCURRED IN THIS CASE.

9 NOW, CONSIDERING ALL THOSE, THE COURT
10 FINDS THAT -- AND I DO NOT FIND THAT THERE WAS ANY
11 ERROR. I FIND THAT, WHAT IS IT, AN EXPERIENCED
12 ATTORNEY HAD TO MAKE DECISIONS AS TO WHAT WOULD BE IN
13 THE BEST INTERESTS AND TO RECOMMEND THOSE MATTERS TO
14 THE -- HIS CLIENT AND TO THE CLIENT'S FAMILY. AND
15 UNDER THE CIRCUMSTANCES, A 30-YEAR SENTENCE FOR A
16 POTENTIAL LIFE PLUS 65 YEARS, AND UNDER THE FACTS OF
17 THIS PARTICULAR CASE, THE COURT FIND NO PREJUDICE.
18 AND THE FACT THAT, IF ANYTHING, YOUR ATTORNEY TODAY
19 HAS PRESENTED YOUR CASE IN THE BEST LIGHT POSSIBLE,
20 MR. WARDER APPARENTLY ATTEMPTED TO PRESENT AND DELIVER
21 THE BEST RESULT.

22 AND SO WITH THAT I'M GONNA HAVE TO DENY
23 THE APPLICATION AND ASK THE ASSISTANT ATTORNEY GENERAL
24 TO PREPARE THE ORDER.

25 MR. MITCHELL: THANK YOU VERY MUCH, YOUR

1 HONOR.

2 MR. GRIGG: THANK YOU, YOUR HONOR.

3 (WHEREUPON, THE FOREGOING POST-CONVICTION

4 RELIEF HEARING WAS CONCLUDED.)

5 ***** END OF REQUESTED TRANSCRIPT *****

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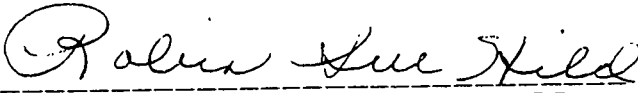
25

CERTIFICATE OF COURT REPORTER

I, THE UNDERSIGNED, ROBIN SUE HILD, FCRR, RPR,
OFFICIAL COURT REPORTER FOR THE TENTH 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 THE
EVIDENCE INTRODUCED IN THE POST-CONVICTION RELIEF
HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN
THE COURT OF COMMON PLEAS FOR ANDERSON COUNTY, SOUTH
CAROLINA, ON THE 6TH DAY OF FEBRUARY, 2006.

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

APRIL 10, 2006

 6/28/08

ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER

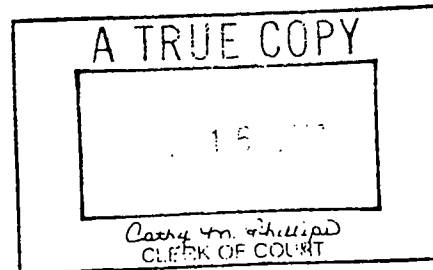
STATE OF SOUTH CAROLINA)
ANDERSON)
COUNTY OF _____)

INDICTMENT FOR
DISTRIBUTION OF CRACK
COCAINE - 2ND
44-53-0375(B)(2)[0113]

At a Court of General Sessions, convened on FEBRUARY 26, 2002,
the Grand Jurors of ANDERSON County present upon their oath:

DISTRIBUTION OF CRACK COCAINE - 2ND

THAT GRANT JOSEPH BAXTER DID IN ANDERSON COUNTY ON OR ABOUT AUGUST 31, 2001, DISTRIBUTE TO ONE UNDERCOVER OPERATIVE A QUANTITY OF CRACK COCAINE, A CONTROLLED SUBSTANCE UNDER PROVISIONS OF 44-53-110, *et seq.* Code of Laws of South Carolina (1976), AS AMENDED, SUCH DISTRIBUTION NOT HAVING BEEN AUTHORIZED BY LAW.



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

SOLICITOR

146

146

WITNESSES

BPD/J. FOSTER

REST WARRANT NO. F-660283

ACTION OF GRAND JURY

TRUE BILL

DATE 2-26-02

man of Grand Jury

VERDICT

of Petit Jury

Date:

DOCKET NO 2002-GS-04-416

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

FEBRUARY 26

TERM

2002

WHD

THE STATE

VS.

GRANT JOSEPH BAXTER

B/W 6-20-02

Indictment for

DISTRIBUTION OF CRACK COCAINE - 2ND

44-53-0375-(B)(2)[0113]

147

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STATE OF SOUTH CAROLINA)
ANDERSON)
COUNTY OF _____)

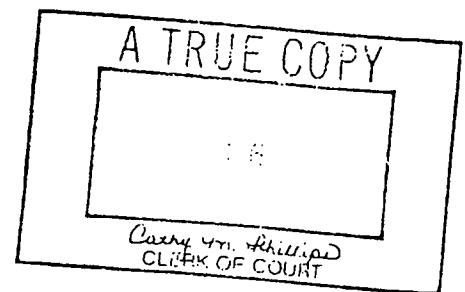
INDICTMENT FOR
MURDER
16-3-10/16-3-20 [0116]

SEPTEMBER 24, 2002

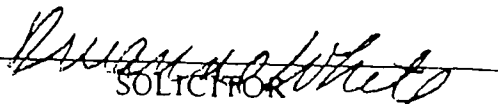
At a Court of General Sessions, convened on _____,
the Grand Jurors of ANDERSON County present upon their oath:

MURDER

THAT JOHN BRADLEY TURNER DID IN ANDERSON COUNTY, SOUTH CAROLINA,
ON OR ABOUT JULY 25, 2002, FELONIOUSLY, WILFULLY AND WITH MALICE
AFORETHOUGHT, KILL ONE JAMES SNYDER BY MEANS OF SHOOTING HIM AND
THE SAID VICTIM DIED AS A PROXIMATE RESULT THEREOF.



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


SOLICITOR

DOCKET NO. 2002-GS-04-2531

The State of South Carolina,
ANDERSON

County of _____

COURT OF GENERAL SESSIONS
SEPTEMBER _____ 2002
_____ TERM _____

DDW

THE STATE

vs.

JOHN BRADLEY TURNER

WITNESSES

CHAD PUCKHABER, ACSO

ARREST WARRANT NO. G-869590

ACTION OF GRAND JURY

Commitment

2-03-03


Foreman of Grand Jury

TRUE BILL

DATE 9-24-02

VERDICT

Indictment for
MURDER

16-3-10-16-3-20 [0116]

6471

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STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

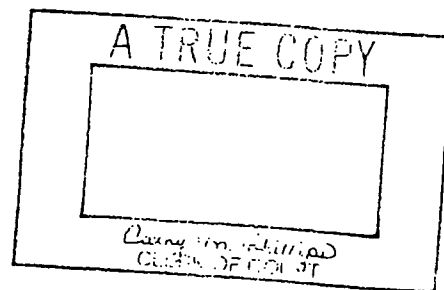
INDICTMENT FOR
POSSESSION OF A FIREARM
DURING THE COMMISSION OF A
VIOLENT CRIME

16-23-0490 [0549]

At a Court of General Sessions, convened on _____,
the Grand Jurors of ANDERSON County present upon their oath:

POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

That John Bradley Turner did in Anderson County on or about July 25, 2002,
possess a firearm during the commission of a violent crime, to wit: Murder, in violation
of Code Section 16-23-490, 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.

Dwayne White

SOLICITOR

WITNESSES

Inv. Chad Puckhaber, ACSO

DOCKET NO. 2002-GS-04-2530

The State of South Carolina,

County of Anderson

COURT OF GENERAL SESSIONS

September TERM 2002

DDW

THE STATE

vs.

John Bradley Turner

ARREST WARRANT NO. G-869591

ACTION OF GRAND JURY

Commitment

2-3-03

TRUE BILL

DATE 9-14-02

Foreman of Grand Jury

Indictment for

Possession of a Firearm During
the Commission of a Violent Crime
16-23-490 (0549)

VERDICT

151

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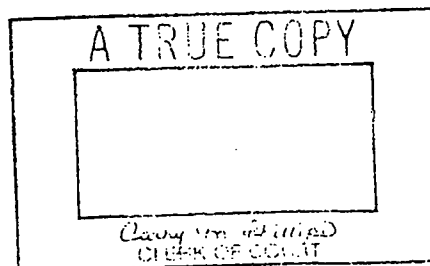
STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

INDICTMENT FOR
MANUFACTURING METHAMPHETAMINE (CRANK)
44-53-375(B)(1)[0112]

At a Court of General Sessions, convened on JUL 23 2002,
the Grand Jurors of ANDERSON County present upon their oath:

MANUFACTURING METHAMPHETAMINE (CRANK)

That John Bradley Turner did in Anderson County, South Carolina on or between
May 1, 2002 and May 22, 2002, conspire with another to manufacture a quantity of
Methamphetamine (Crank).



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

[Handwritten signature]

SOLICITOR

WITNESSES

ACSD - MCGUIRE

REST WARRANT NO. G870071

ACTION OF GRAND JURY

Commitment

2-3-03

TRUE BILL

DATE 7-23-02

eman of Grand Jury

VERDICT

DOCKET NO. 2002-GS-04-1908

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

JUL 23 2002
TERM

ROS

THE STATE

vs.

JOHN BARDLEY TURNER

Indictment for

MANUFACTURING METHAMPHETAMINE (CRANK)

44-53-0375(B)(1) [0112]

153

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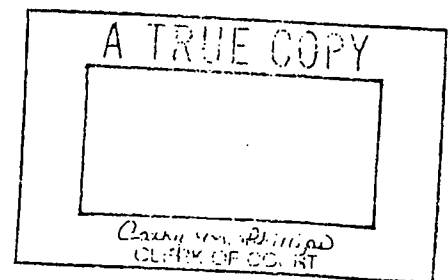
STATE OF SOUTH CAROLINA)
 ANDERSON)
COUNTY OF _____)

INDICTMENT FOR
TRAFFICKING METHAMPHETAMINE(CRANK)
44-53-0375(C)(2)(a)[0392]

At a Court of General Sessions, convened on JUL 23 2002,
the Grand Jurors of ANDERSON County present upon their oath:

TRAFFICKING METHAMPHETAMINE(CRANK)

THAT JOHN BRADLEY TURNER DID IN ANDERSON COUNTY ON OR
ABOUT MAY 22, 2002 HAVE IN HIS POSSESSION 28 GRAMS OR MORE OF
METHAMPHETAMINE(CRANK) BUT LESS THAN 100 GRAMS OF
METHAMPHETAMINE(CRANK).



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

Dianne White

SOLICITOR

WITNESSES

ACSD - MCGUIRE

REST WARRANT NO. G870072

ACTION OF GRAND JURY

Commitment

2-3-03

TRUE BILL

DATE 7-23-02

remman of Grand Jury

VERDICT

DOCKET NO. 2002-GS-D4-1901

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

JUL 23 2002
TERM

ROS

THE STATE

vs.

JOHN BARDLEY TURNER

Indictment for

TRAFFICKING METHAMPHETAMINE (CRANK)

44-53-0375(C)(2)(a) [0392]

155

55

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

RECEIVED

MAR 21 2016

SC Court of Appeals

March 17th, 2016

William G. Yarborough

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(864) 331-1612
SC Bar# 10271
Attorney for Appellant