

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

RECEIVED
APR 26 2016
SC SUPREME COURT

FREDERICK VAN ANDERSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000050

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

ALAN WILSON
Attorney General

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

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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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FORM 5

STATE OF SOUTH CAROLINA)

County of Greenville)

IN THE COURT OF COMMON PLEAS

Frederick Anderson #344239)

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

v.)

State of South Carolina)

APPLICATION FOR)

POST-CONVICTION RELIEF)

2011-CP-23- 08447

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention Perry Correctional Institution
2. Name and location of Court which imposed sentence Greenville County
Courthouse, Greenville South Carolina
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2009GS2305748, 2009GS230548

(b) 2009GS230549(c) 2009GS230550

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

(a) December 22, 2010 2009GS2305748, Life(b) 2009GS2305749, 30 years(c) 2009GS2305750, 10 years

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO

8. If you answered Ayes@ to (7), list:

(a) the name of each Court to which you appealed:

i. N/A

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 Ano@ to (7), state your reasons for not so appealing:

(a) My Counsel never explained to me on how a appeal works.

- (b) Counsel failed to appeal my case after I was sentence,
 (c) Counsel never tried any kind of strategy to help defendant.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Perjury and Subornation of perjury
 (b) Counsel forcing defendant
 (c) Prejudice
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Arguments continue on: Attach pages A1-b
 (b) Counsel misleading defendant: Continue on ^{Attach} pages B1-7
 (c) Unprofessional; Argument Continue on Attach pages C1-3
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 Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
 ii. _____
 iii. _____
 iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
 ii. _____
 iii. _____

- iv. _____
- (c) the disposition thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

No

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

- (a) which grounds have been presented:
- i. N/A
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. _____
- iii. _____

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

(a) _____
 (b) _____
 (c) _____

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

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

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

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

i. John I Mauldin 13th Circuit Public Defender Office
Greenville County Courthouse 305 East North Street, Room
 ii. 123 Greenville S.C 29601

iii. Frank Epps: Assistance
Same Address as above

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

i. Guilty Plea

ii. Sentencing December 22, 2010

iii. _____

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

Seeking for relief for a new trial and to have my sentence in
like manner with parole and probation parole on condition
he is of good behavior with GPS meter and a curfew.

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Frederick Anderson, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

[Signature]

SWORN to and subscribed before me this 1st
 day of December, 2011.

[Signature] (L.S.)
 Notary Public

My Commission Expires: January 7, 2016

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

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

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


Applicant

SWORN or affirmed to and subscribed before me this

1st day of December, 2011.


Notary Public

My Commission Expires: December 7, 2016

Applicant contend and can show that his conviction and sentence was in violation of the U.S. constitution, S.C. Constitution and the Laws of this state.

The applicant is asserting a 4th, 5th and 6th and 14th Amendment violation which sets forth a prima facie violations of his constitutional rights.

The applicant grounds are constitutional dimensions. The fundamental defects alleged are standards that require establishment of a complete miscarriage of justice and a commission inconsistent with the rudimentary demands of fair procedure. It would be a denial of due process not to give the applicant an evidentiary hearing on the state and Federal constitutional claims.

Petitioner alleges that he made self incrimination statements which were induced by the investigating officer's promise. Assert that trial counsel was ineffective for failure to inform petitioner prior to his guilt plea that his statements may have been made involuntarily, and if so would be inadmissible at trial. Prejudices because insisted on going to trial to challenge charges grounded on his allegedly involuntary statements. See *Shirley V. State*

In evaluating post-trial *Brady* claims, the applicant can show that (1) prosecution and attorney suppress/hidden evidence (2) the evidence would have been favorable to the accused, and (3) the suppressed/hidden evidence is material. The *Brady* disclosure rule requires the prosecution/attorney to provide to the defendant any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment. See *Brady v. U.S.*, 397 U.S. 742 at 756, 757 [90 S.Ct. 1463, 1473] 25 L.Ed. 2d [747 at 760, 761]. *State v. Kennerly*, 503 S.E.2d 214, *Brady v. Maryland*, 83 S.Ct. 1194. *United State v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed. 2d 481 (1985).

Here in this matter, Applicant Frederick Anderson is arguing that Deputy Solicitor Paul B. Wickensimer of Greenville County Committed Perjury and Prosecutor misconduct while under oath.

First; By consenting to a document (Indictment). State that a Court of General Sessions, was convened on July 28, 2009. The Grand Jurors of Greenville County Present upon their oath. When there was no Court of General Session held in Greenville County on July 28, 2009 of my case.

Accordingly to the South Carolina Court Administration "Certified true" copy of the S.C. Judicial Department Calendar of Circuit Court terms for Greenville County. Second; Also by preparing and Processing some illegal documents (Indictment), return "True bill" and Forcing Frederick Anderson to stand trial on some indictments returned by an illegal

Constituted grand jury of the Laws of the state, because the Deputy Solicitor Paul B. Wickensimer is responsible for Preparing and Processing the documents (Indictment). And also is held to the highest standards of Professional ethics, to see that justice is done. But instead of the Deputy Solicitor Paul B. Wickensimer wilfully caused false information to be printed and published in Frederick Anderson

state indictment and thereby violated the Provisions of Section §16-9-10.

Committing an act of Perjury against Public Justice, just to get a lawful conviction against Frederick Anderson of Greenville County. But clearly such unlawful act would constitute gross Prosecutorial Misconduct. Because a criminal defendant in this state of South Carolina has a constitutional and statutory right to have an indictment returned by a legally constituted grand jury. In keeping with the mandatory Provisions of the Fourteenth Amendment, We are forced to review the laws that governs the grand jury Procedure for South Carolina state court. S.C. General Assembly has enacted S.C Code Ann §17-19-10, Which mandates as follows:

..No Person shall be held to answer in any court for an alleged crime or offense, unless upon an indictment by a grand jury, except when a Prosecution by information is expressly authorized by statute...

If Frederick Anderson conviction is not based on lawfully Sworn-to-indictments. Which is tantamount to Aggravated Kidnapping. It is a bar to all Prosecution, in accordance to the Constitution of the United States,

Third: For quite some time now it has been common knowledge in this states of South Carolina judicial Circle that the County Solicitor are utilizing an irregular and improper Indictment Process which allows "True billed" indictments to be returned at such an astronomical rate of return that. Precludes any meaningful evidence review, or consideration by the grand jury. We inmates of South Carolina, can prove that a pattern of both Perjury and gross Prosecutorial misconduct, have been going on in South Carolina. And now it is, "time to bring this matter before the Public Interest, True bill" return from Grand jury not signed.

Title 16

§16-9-10 Perjury and subornation of perjury A)(1. It is unlawful of a person to wilfully give false, misleading, or incomplete incomplete testimony under oath in any Court of record, judicial, administrative, or regulatory proceeding in the state.

2). It is unlawful for a person to wilfully give false misleading, or incomplete information on a document, record, report, or form required by the laws of this state.

B)(1. A person who violates the provisions of subsection (A1) is guilty of a felony and upon conviction, must be

fined in the discretion of the court or imprisoned not more than five years or both. 2). A person who violates the provisions of subsection (A) 2) is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months or fined not less than one hundred dollars, or both.

C). A person may be convicted under this section if he induces, procures or persuades another person to commit perjury or if he perjury by his own act, consent, or agreement.

Counsel gave me no alternative options but to plea guilty to the charges.

Counsel said that I have no other way but to plea guilty. So that the state and solicitor Robert Ariail will not have a chance at the death sentencing. And to save myself by doing a guilty plea. On December 22, 2010 I plead guilty to the charges *Edmonds v. Lewis*, 546 F.2d 569. The petitioner, a state prisoner, who plead guilty to secret assault, discharging a firearm into an occupied dwelling, and murder in the second degree and who received a sentence of 28-30 years imprisonment pursuant to a plea bargain. It is elementary that order for a defendant to knowingly and voluntarily plea guilty, he must have a full understanding of the consequences of his plea. *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed. 2d 274 (1969). Upon the facts in the case appellants plea was not knowing because it was entered without an understanding of the mandatory punishment for the offense to which she was pleading. Here, petitioner guilty plea were given involuntarily because he was not adequately advised of sentencing consequences of his plea.

Petitioner's guilty plea were given involuntarily in violation of *Boykin V. Alabama*, 395 U.S. 238 (1969), and the Fifth and Sixth Amendments to the United States Constitution and article I, §12 and §14 of the South Carolina State Constitution.

Trial Counsel was ineffective in failing to fully apprise petitioner of the sentencing consequences of his guilty plea.

Counsel was ineffective for failure to insure that defendant waived the three (3) main constitutional rights. The U.S. Supreme Court has held that before a court can accept a guilty plea. A defendant must be advised of the constitutional rights he is waiving. Specifically a defendant must be aware of the Privilege against self incrimination that rights to a jury trial and the right to confront accusers. In addition to the requirement of Boykin a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense max and min and the nature of the constitutional rights being waived. Applicant did not understand the nature of the constitutional rights being waived. Defendant must be advised of any lesser included offense which the jury would be instructed on if he went to trial.

17-25-130 Accepted Plea of Guilty as equivalent of jury recommendation of mercy of sentencing purpose.

In all cases where by law the punishment is affected by the jury recommending the accused to the mercy of the court, and a plea of guilty is accepted with the approval of the court, the accused shall be sentenced in like manner as if the jury in a trial had recommended him to the mercy of the court. In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the nature of the charges and the consequences of his plea. *State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980); *Edmonds v. Lewis*, 546 F.2d 569.

State v. Easler, 471 S.E.2d 745 (S.C.App. 1996), *State v. Whitted*, 297 S.C. 260, 262-63, 305 S.E.2d 245, 247 (1983). See also *State v. Truesdale*, 278 S.C. 368, 296 S.E.2d 528 (1982). ("Plea of guilty are unconditional, and if an accused attempts to attach any condition or qualification there to, the trial court should direct a plea of not guilty." Further, no constitutional impediment exists in a trial judge refusal to accept a defendant's guilty plea since the result of his refusal is that the accused is subject to a trial by an impartial jury, which is a constitutional guarantee.

U.S. Const. art III, § 2; S.C. Const. art I § 14.
There is no merit in Appellants position in regard to the refusal by the trial court to accept his proffered pleas. Accordingly, for the reasons stated, the convictions and sentence of Kenneth Wayne Easler are Affirmed

Counsel was forcing the defendant to plea guilty instead of go to trial.

Counsel was putting force on me and my family to have them to put pressure on me. And telling my family the only way out of a death sentence. Is to plea guilty so that we can move on with our lives. That the only way out of the states and solicitor death sentence is to plea guilty. Counsel would tell me over and over again to take a guilty plea to save myself.

McMann V. Richardson, 397 U.S. 759, 770-72, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970). Therefore, a Lawyer who coerces a guilty plea fails to advise the accused competently about his arraignment; Representation by a competent Lawyer is prerequisite to a arraignment. (*McMann V. Richardson*, *Supra*; *Pennsylvania V. C. Laudy* 350 U.S. 116, 122-23, 76 S.Ct. 223, 100 L.Ed. 126 (1956). The Court emphasized in *Gideon V. Wainwright*, 372 U.S. 335, 344, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963) that the right to counsel was Fundamental and essential to a fair trial. If however, a prisoner's attorney becomes an instrument of coercion, the constitutional protection which *Gideon* sought to assure is destroyed.

In sum, when defense counsel coerces the accused to plead guilty, he corrupts both the plea and the arraignment.

Counsel found ineffective for not perfecting appeal for indigent defendant.

My Counsel never explained to me how a appeal works. Counsel failed to appeal my case after I was sentence. *Frasier V. State*, S.C., 410, S.E.2d 572 (1991).

Counsel and assistances showed no interest to the defendant case.

Counsel and assistances was telling me to plead guilty because I have no other chance. But to have the state and solicitor to put me to death. Counsel and assistances said that I have to help myself. Counsel and assistances put up no arguments or any kind of defense. To help me out on my behalf I had no protection. Assistant's Mr. Frank Epps and Dr. Price they were ineffective in failing said that we have no chance to win at a trial.

Strickland V. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984); Cronin V. U.S. 446 U.S. 648, 104 S.Ct. 2039, 80 L.Ed. 2d 657 (1984); Butler V. State, 286 S.C. 441, 334 S.E. 2d 813 (1985). And also In order to receive relief a guilty plea defendant must establish that there is a reasonable probability he would not have Plead guilty but for counsel deficient performance. Hill V. Lockhart, 474 U.S. 52, 1065 S.Ct 366 L.Ed. 2d 203 (1985). The Supreme court held that a claim that counsels assistance was so defective as to require a reversal of a conviction, mandates

that the defendant show that counsel's performance prejudiced the defense such that but for counsel's errors, the defendant might not have plead guilty.

Clearly, counsel's failure to adequately advise petitioner regarding sentencing consequences in the instant case constituted deficient legal representation in violation of Hill v. Lockhart, supra and the sixth and fourteenth amendments to the United States Constitution. But for counsel's error in this regard, a reasonable probability exists that petitioner would have elected a trial by jury and not plead guilty to the state's charges.

Counsel failed to respond back to defendant in this Matter.

I have wrote my counsel many of times and requested for my case file. Counsel has not responded to any of my Letters. I have wrote the 13th Circuit Public Defender Office, the Greenville County Clerk of Court, the South Carolina Bar, the Commission on Indigent Defense T. Patton Adams, Executive Director, the South Carolina Administration and now the Commission on Lawyer Conduct. I have filed a Complaints to all of the above. To Let them know I'm asking for my case file. So that I can move forward with a Post Conviction Relief (PCR). That I have a deadline to meet. And counsel is withholding my case file. The client's File belonged to him and should have been returned at his request.

Matter of Crosland, 243 S.E.2d 198. See also Matter of Haddock, 321 S.E.2d 601. Sup. Ct. Rules, Rules 32, Code of Prof. Resp., DR 6-101 (A)(3); Rules on Disciplinary Procedure, § 7, subd A(3)

ederick Anderson 577237-45240
24
y Correctional Institution
Oak Lawn Road
Izer, S.C 29669



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Greenville County Clerk of Court
305 East North Street
Greenville, S.C 29601

2011-CP-23- C 8447



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2011-CP-23-8447
COUNTY OF GREENVILLE	)	
	)	
Frederick Van Anderson,	)	
S.C.D.C. No. 344239,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed December 19, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Applicant was indicted at the July 2009 term of the Greenville County Grand Jury for murder (2008-GS-23-5740, count 1) and possession of a weapon during the commission of a violent crime (2008-GS-23-5740, count 2), first-degree burglary (2009-GS-23-5749), and discharging a firearm into a dwelling (2009-GS-23-5750). John I. Mauldin, Esquire represented the Applicant.

On June 15, 2010, the Applicant pled guilty before the Honorable Robin B. Stilwell and sentencing was deferred. On December 22, 2010, Judge Stilwell levied concurrent sentences of life imprisonment for murder, thirty (30) years for first-degree burglary, and ten (10) years for discharging a firearm into a dwelling. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions and the Applicant's records from the

South Carolina Department of Corrections. The plea and sentencing transcripts will be forwarded upon receipt.

II.

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

1. Ineffective assistance of counsel:
 - a. Provided no alternative options but to plead guilty.
 - b. Failed to fully apprise the Applicant of the sentencing consequences of his plea.
 - c. Forced the Applicant to plead guilty instead of going to trial.
 - d. Failed to show interest in the Applicant's case.
 - e. Failed to respond to the Applicant.

III.

The Respondent asserts the Applicant's allegation that her attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must

overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

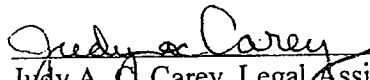
June 5, 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2011-CP-23-8447
	)	
FREDERICK VAN ANDERSON, 344239	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

**Frederick Van Anderson, 344239
Perry Correctional Institution
430 Oaklawn Road
Pelzer SC 29669**

DATED this 5th day of June, 2012.


Judy A. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2011-CP-23-8447
COUNTY OF GREENVILLE	)	
	)	
Frederick Van Anderson,	)	
S.C.D.C. No. 344239,	)	
	)	
Applicant,	)	
	)	AMENDED RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief (PCR) application filed December 19, 2011,¹ the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Applicant was indicted at the July 2009 term of the Greenville County Grand Jury for murder (2008-GS-23-5748, count 1), possession of a weapon during the commission of a violent crime (2008-GS-23-5748, count 2), first-degree burglary (2009-GS-23-5749), and discharging a firearm into a dwelling (2009-GS-23-5750). John I. Mauldin, Esquire and Frank Eppes, Esquire represented the Applicant.

On December 22, 2010, the Applicant pled guilty. The Honorable Robin B. Stilwell levied concurrent sentences of life imprisonment for murder, thirty years for first-degree burglary, and ten years for discharging a firearm into a dwelling. The Applicant did not appeal.

¹ Respondent submitted its original Return on June 5, 2012.

II.

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

1. Ineffective assistance of counsel:
 - a. Failed to inform that the Applicant's statements may have been made involuntarily and, if so, would be inadmissible at trial.
 - b. Provided no alternative options but to plead guilty.
 - c. Failed to fully apprise the Applicant of the sentencing consequences of his plea.
 - d. Forced the Applicant to plead guilty instead of going to trial.
 - e. Failed to show interest in the Applicant's case.
 - f. Failed to explain the appeal process or file an appeal.
2. Involuntary guilty plea:
 - a. Not advised of the sentencing consequences of his plea.
3. Perjury and prosecutorial misconduct by "Deputy Solicitor Paul B. Wickensimer" in processing illegal documents (the indictments).

III.

The Respondent asserts the Applicant's allegation that his attorneys were ineffective is without merit. The Respondent asserts the Applicant's attorneys rendered effective assistance well within the standard of "reasonableness within professional norms."

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Applicant’s assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An

Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

When determining issues relating to guilty pleas, the court will consider the entire record,

including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248.

V.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Amended Return, the Respondent requests that a hearing be held on the allegations raised in the PCR application.

Respectfully submitted,

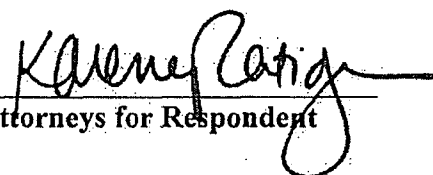
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P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

10
April 8, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2011-CP-23-8447

FREDERICK VAN ANDERSON, 344239)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

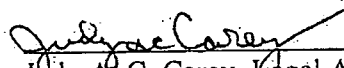
STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

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

Caroline M. Horlbeck, Esquire
101 Whitsett Street
Greenville SC 29601-3136

DATED this 10th day of April, 2015.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	2011-CP-23-8447
COUNTY OF GREENVILLE	)	
	)	
	)	
	)	
	)	
FREDERICK VAN ANDERSON,	)	
PLAINTIFF,	)	
	)	
Vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
DEFENDANT.	)	
	)	

April 23, 2015
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, JUDGE

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

CAROLINE M. HORLBECK, ESQ.
Attorney for the Plaintiff

KAREN C. RATIGAN, ESQ.
Attorney for the Defendant

CHERYL A. SMITH
Circuit Court Reporter

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(PW) - Denotes Plaintiff's Witness
(SW) - Denotes State's Witness

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EXHIBITS

	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
19		(Court's Exhibits)		
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P R O C E E D I N G S

MS. RATIGAN: May it please the Court, this is the case of Frederick Anderson vs. The State of South Carolina. The docket number is 2011-CP-23-8447.

Mr. Anderson was indicted for murder, possession of a weapon during the commission of a violent crime, first degree burglary, and discharging a firearm into a dwelling. He was represented on these charges by Mr. Mauldin and Mr. Eppes.

On December 22nd of 2010, he plead guilty before Judge Stilwell. He receive concurrent sentences of life for murder, 30 years for first-degree burglary, and 10 years for discharging a firearm into a dwelling. He did not file an appeal.

Your Honor, I would note that there is no plea transcript in this case. I have a letter from Court Administration that I'd like to make a court exhibit. It basically just states the reason we don't have a transcript is because the tape provided by the court reporter was blank. So I'd like to make this a court exhibit, if I could.

THE COURT: Yeah. Sure. I've got a copy of it.

(WHEREUPON, Court's Exhibit No. 1 was marked for identification.)

MS. RATIGAN: And, Your Honor, basically, the way that

1 I've been proceeding with these cases is attempting at the
2 PCR hearing to have the PCR hearing as to the issues and
3 the application, and then having, to the best of our
4 ability, a short reconstruction hearing. The thought
5 behind that is if we don't try and reconstruct the record
6 now, the first thing appellate defense will do on appeal is
7 file a motion to reconstruct. So my thought is since we
8 have all the parties here, to basically do two short
9 separate hearings, the PCR hearing and the reconstruction
10 hearing at the same time. Ms. Horlbeck and I have done
11 this before on another case, and it seemed to work out
12 well. It didn't get remanded. So I'd leave that to Your
13 Honor's discretion if you would like to do the PCR hearing
14 first or the reconstruction. I don't know that there's a
15 real difference either way.

16 THE COURT: Well, Mr. Anderson, will you raise your
17 right hand? You can sit right there. Do you swear to tell
18 the truth?

19 DEFENDANT ANDERSON: Yes, sir.
20 WHEREUPON,

21 FREDERICK ANDERSON,

22 After first having been duly sworn, testified as follows:

23 THE COURT: You hear what they're saying? You know,
24 this lady today is taking down everything that's said, and
25 at your plea, everything was taken down that was said by

1 everybody. And the court reporter who did that retired and
2 turned over all of her tapes to the Court Administration.
3 Well, it turns out the tape that had your plea on it was
4 blank, okay? She's gone, so we don't have a verbatim
5 record like we normally do, okay? Do you understand that?

6 DEFENDANT ANDERSON: Somewhat.

7 THE COURT: Well, tell me something you don't
8 understand.

9 DEFENDANT ANDERSON: I was going to get with her.

10 THE COURT: Yeah. Ask her about it.

11 (Pause in proceedings.)

12 THE COURT: Okay. Now here's what we're going to do.
13 Let me just tell you something, a transcript is great to
14 have, but as far as the constitutionality of your
15 proceedings, it's not essential, it's not necessary. What
16 is essential and necessary is that you entered a guilty
17 plea freely, voluntarily and intelligently, meaning nobody
18 forced you to do it and that you understood all your rights
19 and the consequences of what was going on at that
20 proceeding, okay? Does that make sense?

21 DEFENDANT ANDERSON: (Nods head affirmatively.)

22 THE COURT: All right. You have to speak ---

23 DEFENDANT ANDERSON: Yes, sir.

24 THE COURT: -- because we are taking down everything
25 today.

1 This is a little bit unusual that we don't have a
2 transcript. It's always very convenient that we have a
3 transcript when we're reviewing what went on before, but
4 since we don't have it, we do what we call a reconstruction
5 of what happened, and we've got people who were there when
6 it happened. You're one of them. We can go through that
7 exercise.

8 If you disagree with the fact that the judge went over
9 all your rights, went over what your rights were to a jury
10 trial, went over what the Constitution protects for people
11 charged with a crime, the State went through their
12 recitation of the facts, and they generally usually -- I
13 don't know specifically in this case, but they generally
14 have a written description of what happened that they read
15 to the Court. So I suspect that they have that in their
16 file. Your lawyers are here, and they are prepared to
17 testify about what was said and what was not said. But
18 since you're sort of the star of the show, what I'm asking
19 you is, do you agree that the judge went over all your
20 rights with you in court?

21 DEFENDANT ANDERSON: Yes, sir. He went over my
22 rights, but I didn't -- didn't understand.

23 THE COURT: Okay. Well, why do you think you didn't
24 understand?

25 DEFENDANT ANDERSON: Because I wasn't fully aware of

1 the laws and the rules and wasn't advised of --

2 THE COURT: Now, I'm not asking you to give up your
3 claims on your postconviction, okay? But you agree that
4 the judge told you about your right to a trial by jury
5 where you'd be presumed innocent unless and until the State
6 could prove you guilty beyond any reasonable doubt of each
7 and every element of each offense that you're charged with.
8 Do you agree that he did that?

9 DEFENDANT ANDERSON: Yes, sir. He did.

10 THE COURT: Do you agree that the day of your plea,
11 you were sober?

12 DEFENDANT ANDERSON: Yes.

13 THE COURT: Okay. I'm not trying to put words in your
14 mouth. Do you agree -- because we have heard stories about
15 them making moonshine down in prison, but you weren't
16 drinking or anything that day, were you?

17 DEFENDANT ANDERSON: No, sir.

18 THE COURT: Do you agree that you gave up those
19 rights, told the judge you were going to give up those
20 rights to enter a plea?

21 DEFENDANT ANDERSON: Yes. I recall saying ---

22 THE COURT: Okay. I don't think he would have taken
23 the plea if you hadn't said that. We don't do that.

24 Do you agree that you said that day that -- and I'm
25 not trying -- that you had met with your lawyer, something

1 to the effect that you were satisfied with your lawyer's
2 representation that day? Do you agree that you would have
3 said that?

4 DEFENDANT ANDERSON: That, I'm not sure on. On that
5 one, I'm not certain. I'm not sure.

6 THE COURT: Do you agree that you had been -- well,
7 this might get into the PCR. Do you agree that you told
8 the judge that you had met with your lawyers and gone over
9 the discovery? I'm not asking specifics and I'm not asking
10 whether you -- because I know what you may say today may
11 differ, but do you agree that you would have told the judge
12 that?

13 DEFENDANT ANDERSON: No. We didn't go over my
14 discovery.

15 THE COURT: Okay. Well, do you think you would have
16 told the judge that you had met with your lawyers and gone
17 over the discovery?

18 DEFENDANT ANDERSON: If I was advised of it, if he
19 said anything about it, I would have.

20 THE COURT: Okay. All right. And do you agree that
21 the State gave a summary of the facts that they would prove
22 at trial? Do you agree with that, that they told the judge
23 what they were going to prove at trial? They gave a
24 description of their case and what they would present
25 against you; do you agree that happened? What I'm getting

1 at is in order to accept a guilty plea, the judge has to be
2 of the opinion that there is a substantial factual basis
3 for the guilty plea. In other words, he can't say, well,
4 Jane Doe went into the store and stole a candy bar and then
5 she wants to enter a plea to forgery, okay? Do you
6 understand what I'm saying, that they've got to present
7 facts that form the basis for the charge against you? Do
8 you understand that?

9 DEFENDANT ANDERSON: Yes, sir.

10 THE COURT: Okay. And do you agree that the State did
11 that? I'm not asking you whether you agree with the facts.
12 I'm just asking whether you agree that the State presented
13 facts in this case.

14 DEFENDANT ANDERSON: Yes, sir. They presented, I
15 guess, what they had.

16 THE COURT: All right. Well, then I think that we --
17 well, let me ask Mr. Mauldin. Raise your right hand. Do
18 you swear to tell the truth?

19 MR. MAULDIN: (Nods head affirmatively.)

20 THE COURT: You have to speak.

21 MR. MAULDIN: Yes.

22 WHEREUPON,

23 JOHN MAULDIN,

24 After first having been duly sworn, testified as follows:

25 THE COURT: Okay. With respect to reconstruction of

1 the guilty plea record, do you agree that the judge advised
2 Mr. Anderson of his constitutional rights?

3 MR. MAULDIN: Yes, sir.

4 THE COURT: Do you agree that he was sober and
5 competent on the day of the event?

6 MR. MAULDIN: As far as I know, he was.

7 THE COURT: Okay. Do you agree that he freely and
8 voluntarily expressed to the Court that he was voluntarily
9 giving up those rights to enter a plea of guilty?

10 MR. MAULDIN: Yes, sir.

11 THE COURT: Do you agree that the State presented a
12 factual basis that covered the elements of the offenses to
13 which he was entering a plea?

14 MR. MAULDIN: Yes, sir.

15 THE COURT: Do you agree that Mr. Anderson agreed that
16 those facts were substantially true and correct at the
17 plea, that he did that at the plea?

18 MR. MAULDIN: Yes. And I will say I would have
19 objected had he not done that.

20 THE COURT: Okay. Did you object?

21 MR. MAULDIN: No.

22 THE COURT: Okay. And do you agree that he stated on
23 the record that he was satisfied with the representation of
24 his counsel?

25 MR. MAULDIN: Yes, sir.

1 THE COURT: And do you agree that he stated on the
2 record that he had had time and opportunity to review the
3 discovery in the case?

4 MR. MAULDIN: My recollection is yes.

5 THE COURT: Okay. All right. I'm going to find --
6 does that satisfy what we need to do to reconstruct the
7 record? I'll ask the State.

8 MS. RATIGAN: Beg the Court's indulgence. Let me
9 check my list.

10 THE COURT: Yeah.

11 MS. RATIGAN: The only other thing would be whether
12 the State presented any witnesses, not necessarily what
13 they would say, but just in terms of completing the record,
14 if they presented any officers who testified, if there were
15 any victims who testified. And same for the defense, did
16 the defense present family members.

17 THE COURT: Mitigation?

18 MS. RATIGAN: Yes, sir.

19 Again, they don't necessarily have to recount what was
20 said, but just in terms of completeness for the appellate
21 court to just whether or not the parties recall if that
22 happened.

23 THE COURT: Mr. Anderson, do you remember if any
24 police officers or victims spoke at your guilty plea?

25 DEFENDANT ANDERSON: No, sir.

1 THE COURT: You don't recall?

2 DEFENDANT ANDERSON: Not that I recall.

3 THE COURT: Okay. Do you recall whether or not any of
4 your friends or family members or anyone connected with the
5 defense spoke on your behalf.

6 DEFENDANT ANDERSON: No, sir.

7 THE COURT: All right. Mr. Mauldin, do you recall
8 whether or not -- well, let me ask, Ms. Strom, were you
9 present at this proceeding?

10 MS. STROM: I was, Your Honor.

11 THE COURT: Raise your right hand. Do you swear to
12 tell the truth?

13 MS. STROM: Yes, sir.

14 WHEREUPON,

15 BETTY STROM,

16 After first having been duly sworn, testified as follows:

17 THE COURT: All right. Your name is Betty Strom?

18 MS. STROM: Yes, sir.

19 THE COURT: You're a deputy solicitor?

20 MS. STROM: Yes, sir.

21 THE COURT: Do you recall whether or not any officers
22 or victims spoke at this guilty plea proceeding?

23 MS. STROM: Your Honor, Solicitor Ariail at the time
24 did the guilty plea. He did the factual recitation.
25 However, it was my practice to provide him a typed summary

1 of the evidence. I have that with me today. It shows
2 notations on where he checked it off as he went through.
3 It also states in there that two victims were prepared to
4 testify, to give victim impact. I also have a victim
5 impact statement that was prepared by Brenda Gray, one of
6 the family members, and it shows where I told them to take
7 out certain things. So my recollection was that Ms. Gray
8 did, in fact, speak to the Court.

9 THE COURT: Okay. I don't know if it's appropriate to
10 put that into the record or not. Is there some ---

11 MS. RATIGAN: I don't know that it's necessary, Your
12 Honor. Again, this is just for completeness for the
13 purposes of the record.

14 THE COURT: Well, I can say that having handled many
15 guilty pleas and guilty pleas involving when the solicitor
16 presented that what Ms. Strom has said sounds very accurate
17 to me, and that I knew it was Mr. Ariail's practice to rely
18 on those prepared documents when he presented his factual
19 basis.

20 Were there any -- Mr. Mauldin, do you recall whether
21 or not there were any -- you presented any mitigation
22 witnesses?

23 MR. MAULDIN: I do not recall that -- there were
24 family members, including Mr. Anderson's brother, Duane,
25 but I don't recall actually presenting information from

1 them.

2 THE COURT: Okay.

3 MR. MAULDIN: I do recall that there was a -- because
4 of the -- what would come out as the second incident that
5 night, there was victim presentation about that. I recall
6 that.

7 THE COURT: Okay. Mr. Eppes, were you co-counsel on
8 this case?

9 MR. EPPES: I was, Your Honor.

10 THE COURT: Raise your right hand. Do you swear to
11 tell the truth?

12 MR. EPPES: I do.

13 WHEREUPON,

14 FRANK EPPES,

15 After first having been duly sworn, testified as follows:

16 THE COURT: Okay. Does your recollection differ from
17 Mr. Mauldin's?

18 MR. EPPES: My recollection does not differ, Your
19 Honor. I'm not sure whether someone from Mr. Anderson's
20 family spoke, but I am fairly certain that someone from the
21 Gray family spoke.

22 THE COURT: All right. Now, Mr. Mauldin, you pointed
23 to a gentleman seated in the back row, Duane Anderson; is
24 that right?

25 MR. MAULDIN: Yes, sir.

1 THE COURT: Mr. Anderson, you're just sitting in
2 court. I don't mean to drag you into this, but if you
3 would like to contribute, I would -- the only question I
4 would ask you is do you recall if anyone, you or anyone,
5 family or friend of your brother spoke at the proceeding?
6 Do you recall?

7 MR. DUANE ANDERSON: Well, my stepdad, he spoke, but
8 no other family member spoke.

9 THE COURT: And your stepdad's name is?

10 MR. DUANE ANDERSON: James Drummond.

11 THE COURT: James Drummond. And he's here?

12 MR. DUANE ANDERSON: Yes, sir. He's right here.

13 THE COURT: Hey, Mr. Drummond. How are you?

14 MR. DRUMMOND. Fine. And you?

15 THE COURT: All right. I bet you didn't know you'd
16 get dragged into this, did you?

17 Do you recall speaking at the proceeding?

18 MR. DRUMMOND: Just -- yeah. I spoke, but it wasn't
19 really concerning the case. It just --

20 THE COURT: About how -- your feelings and ---

21 MR. DRUMMOND: That's true. And spoke how -- that
22 some of the stuff that led up to this was due to the -- his
23 girlfriend and the children, he was so afraid about the
24 children and things, and this stuff was going on. And --
25 well, to make a long story short, his children's mother

1 instigated a whole lot of this, and it never was -- it
2 never came out in court.

3 THE COURT: Okay.

4 MR. DRUMMOND: She instigated one man against the
5 other, one man against the other, and all this never come
6 out.

7 THE COURT: Okay. All right.

8 Is there anything else you think is necessary, from
9 the State?

10 MS. RATIGAN: I think that's good, Your Honor. Thank
11 you.

12 THE COURT: From the defense?

13 MS. HORLBECK: No, Your Honor.

14 THE COURT: Okay. I should say petitioner and
15 respondent, but we know who we're talking about.

16 Okay. All right. Well, I think that satisfies
17 reconstruction of the record. Now we're ready to proceed
18 on the postconviction relief.

19 MS. HORLBECK: All right. Your Honor, we would call
20 Mr. Anderson, Frederick Anderson.

21 THE COURT: Mr. Anderson, I will just remind you
22 you're still under oath ---

23 DEFENDANT ANDERSON: Okay.

24 THE COURT: -- okay? And ask you to come up and get
25 comfortable and then state your full name for the record.

1 Okay. State your full name, would you?

2 DEFENDANT ANDERSON: My name is Frederick Van
3 Anderson.

4 WHEREUPON,

5 FREDERICK ANDERSON,

6 After having previously been duly sworn, testified as
7 follows:

8 DIRECT EXAMINATION

9 BY MS. HORLBECK:

10 Q Mr. Anderson, how long did Mr. Mauldin and Mr. Eppes
11 represent you on this case?

12 A Since it was getting close to the trial or whatever,
13 but Mr. Mauldin got -- Jim Bannister was my attorney, and
14 then it got turned over to Mr. Mauldin.

15 Q Okay. So do you think Mr. Mauldin and Mr. Eppes
16 handled your case for, what, six months? a year? How long?
17 Just give me a ballpark idea.

18 A Well, Mr. Mauldin had it -- had it -- had my case
19 longer than Mr. Eppes.

20 Q Okay. All right. So you don't exactly know how long
21 then; is that correct?

22 A Not -- not right offhand.

23 Q Okay. And were you in the detention center the entire
24 time that Mr. Mauldin represented you?

25 A Yes, ma'am.

1 Q Okay. And you pled guilty to this case, to these
2 charges; is that correct?

3 A Yes, ma'am.

4 Q And then you filed an application for postconviction
5 relief?

6 A Yes, ma'am.

7 Q Okay. Let's talk about some of the allegations that
8 you made in your petition. You made an allegation
9 regarding some statements that were made. Do you recall
10 making that allegation in your petition?

11 A Yes, ma'am.

12 Q Okay. Tell me, just explain briefly, what statements
13 are you talking about? Are these statements you made to
14 the police or is this a letter you wrote?

15 A The police, the -- the families or whatever.

16 Q Right. But was this in the form of a letter, or did
17 you sit down and write out a statement for the police?

18 A No. I did not write a statement out to the police.

19 Q Did you make any verbal statements to the police?

20 A Yes.

21 Q Okay. Is this when you were arrested or ---

22 A I'm trying to think. I believe it was when I was
23 arrested.

24 Q Okay. All right. So is it fair to say there's a
25 letter and also some statements that you made to the

1 police?

2 A Yes. But I haven't seen anything in writing what I
3 said to them.

4 Q Okay. What did you -- what was the basic -- what are
5 you -- was it a verbal statement that -- because you made
6 some allegations about some statements. You're saying that
7 they weren't voluntarily made, so I'm trying to give the
8 Court an understanding of what statements you're talking
9 about.

10 A Well, the statements what I said is probably, you
11 know, what -- what happened, what -- what went on, but it
12 wasn't really no long speech or anything, you know. They
13 just said, "Well, aren't you the guy?"

14 Q Okay. Did you talk about your statements with your
15 attorneys?

16 A I believe I did.

17 Q Okay. And what was your understanding of any advice
18 they gave you about whether the statements were admissible
19 or not admissible?

20 A I -- I didn't know. I didn't know, you know, that I
21 was -- didn't know anything, like I said, about the rules
22 and the laws. I didn't -- didn't know anything about it,
23 so ---

24 Q All right. Do you recall whether your attorneys told
25 you these statements would be admissible against you if you

1 went to trial?

2 A No, ma'am.

3 Q No? Okay. All right.

4 So ultimately, did you think that these statements
5 were going to come in against you if you went to trial?

6 A I didn't know. I did not know.

7 Q Okay. All right. And are you saying what -- was it
8 your argument that these statements weren't voluntarily
9 made, or did you know?

10 A I mean, you know, if I said them, you know, I said
11 them, but I didn't know, like I say, the laws and the rules
12 or whatever. If I would have ---

13 Q Okay.

14 A -- known that, I wouldn't have -- wouldn't have said
15 anything.

16 Q Okay. All right. So are you trying to -- would it
17 have been your argument that your statements were not made
18 voluntarily if you'd gone to trial?

19 A Are you talking about if I accept terminating my --
20 what I said?

21 Q Right. Yes.

22 A Okay. Using them against me?

23 Q Yes.

24 A Yes.

25 Q Okay. All right. And you've alleged that your

1 attorneys didn't explain that to you; is that correct?

2 A No, ma'am.

3 Q Okay. All right. And you believe -- are you saying
4 today that you believe your statements were not admissible
5 in trial?

6 A What are you saying by that? What I said ---

7 Q I'm just asking you about your petition. It might
8 help for you to look at your petition.

9 MS. HORLBECK: I beg the Court's indulgence.

10 THE COURT: Yeah. Point him out where you're going.

11 BY MS. HORLBECK:

12 Q So let's look at your first allegation. You said that
13 your attorneys didn't explain to you that your statements
14 may not have been made voluntarily; is that what you're
15 saying today? Is that one of your allegations today?

16 A Yes.

17 Q Okay. All right. And so if your attorneys had
18 explained that to you, do you think you still would have
19 pled guilty?

20 A No, ma'am.

21 Q All right. Do you have enough understanding of the
22 law to be able to explain to the Court why you think those
23 statements were not voluntarily made and why they would not
24 have been used against you at trial?

25 A Well, the -- the stuff that I have learned, you know,

1 since I've been down or whatever, I wouldn't have -- you
2 know, I wouldn't have said anything, you know, that was
3 going to hurt me in any kind of way.

4 Q Okay. All right. And are you saying that your
5 attorneys didn't review the law regarding your statements
6 with you?

7 A No, ma'am.

8 Q Okay. All right. If they had, do you think you still
9 would have plead guilty?

10 A No, ma'am.

11 Q All right. What would you have done differently?

12 A Went on to trial.

13 Q Okay. All right. You've also alleged that your
14 attorneys didn't review your options with you. And when I
15 say "options," I mean whether or not you have the right to
16 a trial or whether or not you could plead guilty. Tell the
17 Court a little bit about that. Why are you saying -- why
18 is that one of your allegations?

19 A Well, I've been -- I've been trying to go to -- to
20 trial from -- from the beginning. But, you know, it would
21 just seem like when Mr. Mauldin took the case or whatever
22 over, it just seemed like it -- he didn't want me to go
23 that route. He was just wanting to plea and be done with
24 it. But he knows that I didn't want to do a plea.

25 Q All right.

1 A Because I didn't feel that, you know, I wouldn't get
2 the -- the right opportunity at a plea.

3 Q Why did you plead guilty then?

4 A Well, because I didn't -- I didn't know, like I say,
5 the laws or whatever. So Mr. Mauldin kept, you know, after
6 me and after me on the plea or whatever, and I was telling
7 him, you know, no, no, no, you know, the whole time. And
8 he just kept, you know, on me about pleading. But I was
9 telling him, you know, I didn't want to plea. But he was
10 saying, "Well, you've got to think about this." He said,
11 "Now, if you take this thing to trial, you know what's
12 going to happen," you know. He was telling me that, you
13 know, the solicitor and the State, they want me dead.
14 So ---

15 THE COURT: They want you what?

16 THE WITNESS: They want me dead.

17 BY MS. HORLBECK:

18 Q Okay. Did you explain any of this to Judge Stilwell
19 when you did plead guilty?

20 A No, ma'am.

21 Q Why is that?

22 A I really -- like I say, I don't know if Mr. Stilwell
23 asked me anything about that, because, like I said, I
24 didn't really understand. But I know before I pled guilty,
25 you know, Mr. Mauldin was telling me he's not going to

1 plea, told me straight up, said, "Just go out there and say
2 'yes' to all these facts and plead guilty."

3 Q Okay. You said that you wanted a trial the entire
4 time that your case was going on, so what ultimately made
5 you change your mind and plead guilty?

6 A Well, Mr. Mauldin come up to me, he was like, "Fred,"
7 he said, "we've got an opportunity. We've got an
8 opportunity to plead."

9 I said, "Well, what are we talking about?" I said,
10 "You know I don't want to plead."

11 He's like, "Well," he said, "the judge is looking to a
12 30- to 35-year sentence." He said, "You've got that little
13 light." He said, "We've got to take this. We've got to
14 take it."

15 I'm like, "30 to 35 years, Mr. Mauldin?" I said,
16 "That's a long time."

17 He said, "Look at me, Fred. You'll be my age when you
18 get out."

19 And I'm like, "Darn, Mr. Mauldin." I said, "That's a
20 long time. A long time." And I said, "You know what?" I
21 said, "Well, there's that little light, and there's that
22 little hope," so that -- that's -- that's what happened
23 that day.

24 Q Okay. The 30 to 35 years, is that what you thought
25 you were going to get as a sentence?

1 A Yes, ma'am. I thought 30 was the minimum and 35 was
2 the max.

3 Q All right. Did Mr. Mauldin or Mr. Eppes, did they
4 promise you that was the sentence you were going to get?

5 A No, ma'am.

6 Q Okay. All right. What did they tell you about the
7 sentencing range? What did they tell you about, okay,
8 here's what you could get? What did they tell you?

9 A They didn't -- they didn't advise me of the minimum or
10 the max or if the judge would, you know, give me a life
11 sentence without parole or a death sentence.

12 Q Okay.

13 A They didn't advise me of anything, what the options
14 are.

15 Q All right. Did they talk to you about the possibility
16 of life without parole?

17 A No, ma'am.

18 Q All right. They didn't tell you that was something
19 that the judge could give you if you pled guilty?

20 A No, ma'am.

21 Q All right. You just thought it was either 30 or
22 35 years?

23 A Yes, ma'am.

24 Q Okay. Did you think that was a guarantee?

25 A In my mind, yes.

1 Q Okay. If you'd known there was no guarantee you'd get
2 a 30- or 35-year sentence, would you still have pled
3 guilty?

4 A No, ma'am.

5 Q What would you have done differently?

6 A Went to trial.

7 Q All right. And did you file an appeal in this case?
8 I don't think there was one filed.

9 A No, ma'am.

10 Q Did you want to appeal your sentence?

11 A Yes, ma'am.

12 Q All right. Tell me about that. Why didn't you
13 appeal?

14 A Well, whenever the judge sentenced me or whatever and
15 I was trying to talk to Mr. Mauldin, while the judge was
16 talking or whatever, he was, you know, telling me, you
17 know, "Fred, it's all right," patting me on the back.

18 I'm like "Mr. Mauldin," I said, "this ain't right."
19 And the next thing you know, me and him going out the door
20 while the judge is still speaking.

21 And when I got to the Greenville County Detention
22 Center, I was in a holding cell seven days up on the
23 suicide watch, no pen, no paper, couldn't have no visit, no
24 nothing. "Mr. Anderson," they said, "ain't nothing we can
25 do." They said, "If your attorney shows up, he can

1 probably do something himself if he shows up." But they
2 said, "It's out of our hands. We've got to put you --
3 leave you up on suicide watch till you get transferred."

4 Q Did you have access to the telephone?

5 A No, ma'am. I didn't have none of that.

6 Q All right. And by the time you were released from
7 suicide watch, did you have an opportunity then to contact
8 your attorneys and let them know that you wanted to appeal?

9 A No, ma'am. Because when I got to Kirkland, you've got
10 to wait so many days to get a PIN number in order to use
11 the phone. So all that time, like I say, seven days at the
12 county, and then once I got shipped to Kirkland, all that
13 was, you know, a done deal. It was over.

14 Q All right. Do you recall Judge Stilwell telling you
15 you had 10 days to file an appeal?

16 A Like I say, I can't recall hearing that. Like I say,
17 once he told me the sentencing phase or whatever I got
18 sentenced, out the door we went while Stilwell was still
19 talking.

20 Q Did Mr. Mauldin or Mr. Eppes, did they ever talk to
21 you after the sentencing?

22 A Mr. Mauldin just said -- you know, just told me, he
23 said, "Fred, you know it's over. It's behind us now. Just
24 work on, you know, getting things straightened out in your
25 life."

1 Q At that point, did you mention that you wanted to
2 appeal?

3 A No, ma'am. Because I didn't know -- know anything
4 about, you know, doing an appeal.

5 Q Okay. All right. You mentioned something in your
6 petition. You said your attorneys failed to show interest
7 in your case?

8 A Yes, ma'am.

9 Q Tell me, what are you talking about there?

10 A What I'm talking about on that, it just seemed like
11 they just -- they just wanted me just to do a plea and not
12 to be, you know, getting too deep in my case or whatever,
13 just to plead it out and move on to the next one. That's
14 the way, you know, I felt. And then like on my motion of
15 discovery or whatever, I didn't -- they didn't try to go
16 with me on anything on that. The only thing they wanted to
17 do is just show me pictures. I didn't want to see no
18 pictures.

19 Q Do you recall any experts coming to the jail to
20 evaluate you?

21 A Yes.

22 Q How many?

23 A Two.

24 Q What are their names?

25 A The first one, I don't -- I can't recall his name.

1 But then the second was Dr. Price.

2 Q Okay. Did Mr. Mauldin or Mr. Eppes, did they review
3 with you the things that they were doing to prepare your
4 defense?

5 A They just -- he just told me that he was going to have
6 some doctors to come see me and try to, you know, get
7 things lined up because it was getting close to going to
8 trial.

9 Q Did they review with you the results of those doctor
10 visits?

11 A No, ma'am.

12 Q Okay. All right. You've also alleged perjury and
13 prosecutorial misconduct by -- you have Deputy Solicitor
14 Paul Wickensimer. Are you talking about the clerk of court
15 Paul Wickensimer?

16 A Yes. Yes, ma'am. I believe what I have ---

17 Q What did you want -- that's specifically -- that
18 allegation seems directed towards the clerk of court. How
19 are you saying your attorneys are involved with that?

20 A Because, you know, with my arrest warrants and my
21 indictments or whatever, I don't believe they, you know,
22 looked into that, you know, deep enough to find out if the
23 facts are true or not. Because once I looked at everything
24 or whatever ---

25 Q You mean the facts included in the body of the

1 indictment?

2 A Yes, ma'am.

3 Q All right. And you wanted your attorneys to look into
4 those facts and investigate, and you're saying they didn't?

5 A I don't -- I don't believe they did. And ---

6 Q Okay. All right. Are there any other allegations you
7 have today?

8 A Yeah. Well, I want to present, like I said, about the
9 indictments or whatever that was, you know, like I was
10 telling you about the ---

11 Q Go ahead.

12 A -- the general session or whatever that they said they
13 had on me that's supposed to have occurred on
14 July 28, 2009 ---

15 Q Right.

16 A -- yeah. I didn't have any court date or whatever
17 assigned on that date for the general session.

18 Q Okay. Are you talking about the date that the grand
19 jury convened?

20 A Yes, ma'am.

21 Q Is it your argument that the grand jury didn't have
22 the right to convene that day?

23 A No. Not -- not them not convening, but they didn't --
24 they didn't have it going by the court calendar on -- on
25 that day.

1 Q Okay. All right. What other allegations do you have?

2 A On that subject there?

3 Q No. Well, I think we've covered that subject.

4 A Okay.

5 Q Any other subjects we haven't covered?

6 A I believe -- I believe that's it on -- on that one.

7 Q All right. Anything else?

8 A Did we go over the prejudice of the case?

9 Q If you want to go into -- whatever you have. This is
10 your time to go into it.

11 A Okay. Yeah. Because I'm jumping from ---

12 Q Okay. Go ahead and explain to the Court what you're
13 talking about.

14 A What I -- what I said on that one there is it was just
15 like I didn't have enough understanding and they didn't
16 advise me of my rights and what I was doing on the -- on my
17 case. And they was like, you know, like they didn't really
18 want to show no interest of me on my case. It was just
19 like they just wanted me just to plead guilty and that was
20 -- that was it. And I didn't have no, you know, real
21 understanding of what they was trying to present to me.

22 Q Okay.

23 A Yeah. So that's -- that's the reason why I feel like
24 it was prejudice on their behalf because, I guess, the lack
25 of interest that they was showing me on that they just

1 wanting me to do.

2 MS. HORLBECK: All right. Please answer any questions
3 Ms. Ratigan may have for you.

4 THE COURT: Mr. Anderson, let me just straighten
5 something out. In your petition, you talk about Deputy
6 Solicitor Paul Wickensimer.

7 THE WITNESS: Uh-huh.

8 THE COURT: Just for the record, he is our duly
9 elected clerk of court.

10 THE WITNESS: Uh-huh.

11 THE COURT: So I think you probably just got confused
12 with perspective. You're not alleging that he prepared the
13 indictment, are you?

14 THE WITNESS: Yeah. Going by, I guess ---

15 THE COURT: Let me just -- I'm not trying ---

16 THE WITNESS: Okay.

17 THE COURT: I just want to straighten this out for the
18 record. He is the clerk of court, so his name appears on
19 the indictment ---

20 THE WITNESS: Okay.

21 THE COURT: -- as the clerk of court. And did you
22 just see that name and assume that he was the deputy
23 solicitor or a solicitor who prepared the indictment?

24 THE WITNESS: Yes, sir.

25 THE COURT: Okay. And so that's just a clerical

1 error. I mean, you just -- you don't know who specifically
2 prepared the indictment, do you?

3 THE WITNESS: No. No, sir.

4 THE COURT: Because generally speaking, it would not
5 be the clerk of court, okay? He just maintains the records
6 and keeps them all in his office. The solicitor who you
7 refer to prepares the indictment, okay? So you're -- I
8 don't want you to -- your issue to be muddled up because
9 you put the wrong name in there, okay?

10 THE WITNESS: Uh-huh. Okay.

11 THE COURT: Do you understand that?

12 THE WITNESS: Okay. Yes, sir.

13 THE COURT: Okay. So the name of whoever prepared the
14 indictment is unimportant, okay?

15 THE WITNESS: Okay. All right.

16 THE COURT: All right. And then the other thing is
17 you've alleged malicious prosecution, right? I want you to
18 get that issue out there. Where is it in here? Let me
19 look, see if I can find it where you said -- I could let
20 the attorney general straighten this out, but you said that
21 the deputy solicitor, and then you put Wickensimer's name,
22 but that's -- is responsible for preparing and processing
23 the indictment, held to the highest standards of
24 professional ethics to see that justice is done, but
25 instead you allege that the solicitor or their

1 representative caused false information to be printed in
2 the indictment; is that right?

3 THE WITNESS: Yes, sir.

4 THE COURT: Okay. Is there anything you want to
5 elaborate on about that?

6 THE WITNESS: Yeah. Because my indictments or
7 whatever on that subject there is not -- they're not -- not
8 signed by a grand jury foreman, and -- on the scheduling
9 date or whatever on July 28, 2009.

10 THE COURT: Let me -- you're looking at the court
11 calendar, and you see no General Sessions Court on
12 July 28th; is that ---

13 THE WITNESS: Right.

14 THE COURT: Well, see, the grand jury meets on
15 designated times, and they don't meet during a General
16 Sessions -- necessarily meet during a General Sessions
17 term. So that's separate from our general court docket,
18 okay? All right.

19 THE WITNESS: All right. I didn't -- I didn't ---

20 THE COURT: Yeah. Well, there's a lot of people don't
21 know that, but that's the way it works, okay?

22 THE WITNESS: Okay.

23 THE COURT: So is there anything false -- I mean, you
24 allege that they put false information in the indictment.
25 Is that what you're referring to is just ---

1 THE WITNESS: Yes, sir. Because it's not -- it's not
2 signed by a grand jury foreman on the indictments.

3 THE COURT: Well, let's look at that. How about that?
4 Do you have a copy of that indictment?

5 MS. RATIGAN: I've got a copy in the packet.

6 THE COURT: Do you see where it's signed? That's
7 interesting. It's stamped, but I don't see a signature on
8 there.

9 While we're going through the hearing -- we're going
10 to get the originals and see what the status of it is.

11 Yeah. Go ahead. She's just going to get the
12 originals. We're going to check out that allegation.

13 CROSS EXAMINATION

14 BY MS. RATIGAN:

15 Q Mr. Anderson, I believe you testified your first
16 attorney was Mr. Bannister?

17 A Yes, ma'am.

18 Q Did you have some meetings with him about your case?

19 A Short, yeah.

20 Q And what did you talk about in your meetings with
21 Mr. Bannister?

22 A Well, it was really, you know, he was getting with me
23 and my family or whatever, discussing us, you know, about
24 this case or whatever. And he probably wasn't on my case
25 probably not even two months, if that.

1 Q Okay. So he was just with you for a short time?

2 A Time. Yes, ma'am.

3 Q And then Mr. Mauldin got appointed?

4 A Yes, ma'am.

5 Q And did you have some meetings with him about your
6 case?

7 A Yes, ma'am.

8 Q Did you review the State's evidence against you?

9 A That, no, ma'am.

10 Q Okay. You didn't talk about any of the statements or
11 police reports or ballistics or the autopsy, nothing like
12 that?

13 A The only thing that Mr. Mauldin brought to me was
14 pictures, that was it, of my, you know, discovery in my
15 case. That was it.

16 Q You never reviewed your statement to the officers?

17 A No, ma'am.

18 Q Did you tell Mr. Mauldin your version of what had
19 happened that night?

20 A Yes, ma'am.

21 Q And the State served on you the notice of intent to
22 seek the death penalty; is that correct?

23 A Yes, ma'am.

24 Q And did you discuss that with Mr. Mauldin?

25 A No, ma'am. I believe he was telling me, you know,

1 what was going to happen.

2 Q Okay. So he basically told you what that notice meant
3 for the case?

4 A Uh-huh.

5 Q Okay. And even though the State had served that
6 notice, you still wanted to go to trial?

7 A Yes, ma'am.

8 Q And you testified that you spoke with Dr. Price down
9 at the jail?

10 A Yes, ma'am.

11 Q Did you also talk to Dr. Schwartz-Watts, blonde lady?
12 Did she come talk to you? If you don't recall, you can
13 say, "I don't recall."

14 THE COURT: A woman doctor, remember her?

15 BY MS. RATIGAN:

16 Q You don't recall her?

17 A Hu-uh.

18 THE COURT: You don't? She's kind of hard to forget.

19 THE WITNESS: The only woman I remember come seeing me
20 is Ms. Graham.

21 BY MS. RATIGAN:

22 Q You testified that Mr. Mauldin told you the judge was
23 looking at giving you between 30 and 35 years?

24 A Yes, ma'am.

25 Q Do you remember when he would have told you that?

1 A Yeah. When it was getting -- getting close to going
2 to trial.

3 Q Prior to -- you plead in December. Was it close to
4 that time?

5 A Yes, ma'am.

6 Q Do you recall coming up to the courthouse in June,
7 about six months before this plea, and attempt to plead
8 guilty that day?

9 A Yes, ma'am.

10 Q But you obviously didn't go through with it?

11 A No. Mr. Mauldin come to me that weekend, that
12 Thursday or that Friday, and he was telling me, you know,
13 "Fred, you know, we've got this opportunity." He said,
14 "You know, we need to go ahead and plead this thing on out
15 so we can get this stuff behind us."

16 Q Okay.

17 A I'm like, "Mr. Mauldin," I said, "you know I'm not
18 pleading guilty, you know, to these charges." I said, "I'm
19 not going to do it."

20 He said, "Fred, I'm telling you, we need to get this
21 stuff behind us." He said, "We need to move on." He said
22 -- he said, "I've got a good feeling that it's going to
23 work out on our behalf."

24 So I was like, "Mr. Mauldin," I said, "I'm not
25 pleading guilty."

1 And he was like, "Fred, I'm going to give you the
2 weekend to think about it."

3 And so the weekend came and come, then next you know
4 Monday or Tuesday come, I'm getting shackled up, going to
5 the courthouse.

6 Q Uh-huh.

7 A And I'm like, "What I'm doing at the courthouse?"

8 They're like, "We're pleading guilty to this charge."

9 I'm like, "I'm not pleading guilty to these charges."

10 And he done called family, friend, everybody. He know
11 that I wasn't going to plead guilty to the charge. That's
12 the reason why I got this here, this letter. That's the
13 reason why I didn't -- did plead guilty to this ---

14 THE COURT: What letter are you referring to, Fred?

15 THE WITNESS: Right here. After Mr. Mauldin had seen
16 and visited me, sir.

17 THE COURT: Show it to her and let her take a look at
18 it.

19 BY MS. RATIGAN:

20 Q Is it two pages or just this?

21 A Just that one. But this right here, that was in
22 my ---

23 MS. RATIGAN: Okay. (Reviews document.)

24 THE COURT: Show -- let her see what it is. I
25 don't . . .

1 BY MS. RATIGAN:

2 Q So it was about six months after this failed plea
3 hearing that you ended up pleading guilty?

4 A Yes, ma'am.

5 Q And can you explain to me again why you suddenly
6 decided after all this time you wanted a trial that you
7 decided you wanted to plead guilty?

8 A Yes. Because Mr. Mauldin come to me and told me, he
9 said, "We've got the little light that we was wanting," and
10 that it was going -- the judge was looking to 30 to
11 35 years. So there I felt like he was saying that's that
12 light we was looking for, and I was looking for, you know,
13 that myself instead of, you know, having a death sentence
14 or whatever.

15 I went like, "You know what?" I said, "Well, 30,
16 35 years," I said, "that's a long time. But you know
17 what?" It took me a minute, but I said, "Well, you know
18 what" ---

19 Q Even though they didn't promise you the sentence, you
20 were hopeful you would get it?

21 A Yes, ma'am. That's what I was hoping for, for the 30
22 or 35.

23 Q Do you recall whether or not you told Judge Stilwell
24 that you had been offered or you had been promised or led
25 to believe you'd get 30 to 35?

1 A I recall he was saying was I promised anything, and I
2 told him no because Mr. Mauldin told me to don't say
3 anything other than plead yes to the charges. Don't say
4 anything other than that.

5 Q And did Mr. Mauldin or Mr. Eppes tell you that the
6 maximum you could get at this plea would have been life?

7 A No, ma'am.

8 Q They never told you that? Okay.

9 And you testified you wanted an appeal because you
10 believed you got too much time. You were expecting that 30
11 to 35?

12 A Well, I didn't know anything about an appeal at that
13 time.

14 Q Okay.

15 A Because, like I said, I didn't know anything about the
16 law. But, you know, after I got sentenced or whatever,
17 yes, I was wanting to appeal because my mental health
18 counselor at the county or whatever, she talked to me and
19 tell me, you know, "You need to do something to try to, you
20 know, help yourself."

21 And I'm telling her, "I can't do anything. I can't
22 get out. I can't use a phone. I can't have pen and paper.
23 Nothing."

24 Q So after you were sentenced, you didn't want an
25 appeal. It was something you decided you wanted once you

1 were back at the jail?

2 A No. I -- I was wanting to appeal it.

3 Q Okay.

4 A But like I said ---

5 THE COURT: I think he's talking about when he was at
6 the Greenville LEC and the suicide watch. Isn't that what
7 you're talking about?

8 THE WITNESS: Yes, sir.

9 BY MS. RATIGAN:

10 Q When did you decide you wanted to file an appeal?

11 A When did I decide?

12 Q When did you decide I need to appeal this case?

13 A Oh, after I was sentenced.

14 Q Okay. Before you got back to the jail? Before you
15 got back to the LEC?

16 A No, ma'am. I believe once I got there and once
17 everything, I got to sit down and -- I guess once I left
18 the surroundings or whatever ---

19 Q I got you.

20 A -- got my thoughts together.

21 Q And why is it you wanted to file an appeal? What
22 error do you think the judge made?

23 A Yeah. Because I was looking -- I was looking at that
24 30 to 35 years, and I thought, you know, 30 was a minimum
25 and 35 was the max. And I was like -- and I was trying to

1 talk to Mr. Mauldin or whatever while the judge was
2 talking. But like I say, we just went on out the door
3 while he was still talking, so ---

4 Q And do you recall whether the judge advised you that
5 the maximum sentence for murder was life? Do you remember
6 if he told you that?

7 A He was -- he was saying some stuff or whatever, you
8 know, about that, yeah.

9 MS. RATIGAN: Okay. That's all I have, Your Honor.

10 THE COURT: Fred, these documents that you gave to the
11 attorney general that she gave to me, one is a memorandum.
12 It looks like it's written by John Mauldin to the file
13 dated June 15, 2010, and then this agreement confirming the
14 terms of guilty pleas that refers to you and refers to the
15 indictments. When did you have a copy of that document?

16 THE WITNESS: I ain't get a copy of that until I got
17 my motion discovery on March 6, 2012. That's when I --
18 that's when I got that paperwork.

19 THE COURT: And when was this case -- when was this
20 guilty plea?

21 MS. RATIGAN: December of 2010.

22 THE COURT: Oh. So you say you never saw that
23 agreement ---

24 THE WITNESS: No, sir.

25 THE COURT: -- when they asked you to sign it?

1 THE WITNESS: No, sir. Not at all.

2 THE COURT: Okay. Because you know in there it's got
3 the penalties in there. You know that.

4 THE WITNESS: Right, right.

5 THE COURT: Yeah. Okay. All right. Can I speak to
6 the clerk for a second?

7 Do you want these back or do you want to put them into
8 evidence? What do you want?

9 THE WITNESS: I'll take them back, sir.

10 THE COURT: You don't want to put them into evidence?
11 Okay. Here. Hang on one second.

12 (Pause in proceedings.)

13 THE COURT: This report with respect to these
14 indictments, the copies, and they're in Mr. Anderson's
15 case, and they are the subject of this action, the
16 originals are stored. And so the clerk's office has put a
17 rush on it. We're going to get copies of these
18 indictments. And the copies show a stamped true bill
19 without any notes, signature or initials by the jury
20 foreperson. So we're going to see what the originals hold.

21 Any more questions of Mr. Anderson?

22 MS. HORLBECK: No.

23 THE COURT: All right. Thanks. You can step down,
24 Fred.

25 Let's just take about a three-minute break.

1 (WHEREUPON, a recess is taken at 11:07 a.m.)

2 THE COURT: Ms. Horlbeck, do you have any other
3 witnesses?

4 MS. HORLBECK: No, judge.

5 MR. RATIGAN: Your Honor, the State would call
6 Mr. Eppes.

7 THE COURT: Yeah. He's still under oath. We're going
8 to make him state his full name, though.

9 MR. EPPES: My nickname is what?

10 THE COURT: Which one?

11 MR. EPPES: The only one everybody calls me. That's
12 the only one I acknowledge.

13 THE COURT: All right. If you would, state your full
14 name for the record. You're still under oath.

15 MR. EPPES: Frank L. Eppes.

16 THE COURT: Is that your full name?

17 MR. EPPES: Frank Langston Eppes.

18 THE COURT: Thank you very much.

19 WHEREUPON,

20 FRANK EPPES,

21 After having previously been duly sworn, testified as
22 follows:

23 DIRECT EXAMINATION

24 BY MS. RATIGAN:

25 Q Mr. Eppes, how were you involved in Mr. Anderson's

1 case?

2 A At some point after the death notice was served,
3 Mr. Mauldin asked me to help with the defense.

4 Q Did you have any meetings with Mr. Anderson?

5 A I believe every meeting I went to with Mr. Anderson
6 included Mr. Mauldin. But yes, I did.

7 Q And during these meetings, did you review the State's
8 evidence with Mr. Anderson?

9 A We discussed the State's evidence, but I do not
10 believe that we ever went through page by page, line by
11 line with the State's evidence. But I remember discussions
12 with him about it.

13 Q And did he tell you his version of what had happened
14 that night?

15 A Mr. Anderson was very taciturn. He didn't speak very
16 much. But he acknowledged in different ways what he
17 believed had happened that night.

18 Q Did Mr. Anderson want a trial on these charges?

19 A Most of the time, yes. Virtually all the time.

20 Q Do you recall there ever being an instance where the
21 judge said he would sentence Mr. Anderson between 30 and
22 35 years?

23 A There was never an instance where the judge said that.

24 Q Did you or Mr. Mauldin ever indicate your belief that
25 if he pled guilty, he would receive a 30- to 35-year

1 sentence?

2 A No. But the calculus of a guilty plea, we certainly
3 discussed the fact that if he pled guilty, the murder could
4 potentially involve the sentence of between 30 years and
5 life, whereas if he was found guilty at a trial, he would
6 either be -- the sentence would either be life without
7 parole or death.

8 Q Did he appear to understand these conversations with
9 you about the sentences he was facing?

10 A He did appear to understand our conversations.

11 Q And do you recall whether you or Mr. Mauldin ever
12 obtained the services of Dr. Schwartz-Watts?

13 A I'm 100 percent sure we had Dr. Price. I'm not as
14 certain about Dr. Schwartz-Watts. I believe so, but I do
15 not recall talking to her about Mr. Anderson. I do recall
16 speaking to Dr. Price about Mr. Anderson.

17 Q And did Dr. Price, did he generate any kind of report
18 for the defense?

19 A I think he did, but I don't recall it specifically.

20 Q Okay. And do you recall whether you discussed or in
21 your meetings with the defendant and Mr. Mauldin discussed
22 with him Dr. Price's report?

23 A I'm sure one of us or both of us did, but I don't have
24 a specific recollection of it.

25 Q Were you up at the courthouse -- strike that. Were

1 you involved in the case back in June of 2010 the first
2 time they tried to do -- attempted a plea?

3 A I believe so.

4 Q Were you at the courthouse that day?

5 A I believe so.

6 Q Did Mr. Anderson express why he decided not to go
7 through with the plea that you recall?

8 A I can't say that it was that day or another time, but
9 I'm certainly aware of why Mr. Anderson did not want to
10 plead guilty.

11 Q Why was that?

12 A Mr. Anderson believed that if people heard his side of
13 what happened, they would understand it better and
14 understand that he was not the only party at fault in the
15 situation. And he believed that he had been treated -- he
16 believed that he had been used in a way that was unfair and
17 deprived him of his rights to see his kids, and that his
18 relationship had been undermined.

19 Q Do you recall what the turning point was in
20 Mr. Anderson's decision to plead guilty instead of going to
21 trial?

22 A I have absolutely no idea. I remember being
23 pleasantly surprised by it. It was right before Christmas.
24 And whenever he started to make that decision, it was kind
25 of out of the blue. I think his family was talking to him

1 some, but I'm not sure.

2 Q Had you and Mr. Mauldin explained to him the kind of
3 pros and cons of a plea versus a trial?

4 A I'm sure we explained it to him. But really, the
5 evidence against him was overwhelming, and the pros and
6 cons of it were, as he said, that window of opportunity,
7 that spark of hope that we can convince Judge Stilwell to
8 give him a sentence of less than life.

9 Q Do you recall if you ever mentioned an appeal to
10 Mr. Anderson?

11 A I certainly did not.

12 Q Did he ever indicate to you that he wanted to file an
13 appeal after the plea?

14 A No. But I did not speak to him after his plea.

15 MS. RATIGAN: That's all I have, Your Honor.

16 CROSS EXAMINATION

17 BY MS. HORLBECK:

18 Q Mr. Eppes, do you recall any discussions with the
19 judge and the Solicitor's Office about sentencing?

20 A I do not.

21 Q Okay. Were there any discussions amongst you all
22 about what the judge was thinking about regarding
23 sentencing.

24 A Amongst me ---

25 Q Was there any discussion with the judge to say, "Hey,

1 what are the chances of a 30- to 35-year sentence"? Was
2 there any kind of discussion about a conversation with the
3 judge in the Solicitor's Office all together?

4 A I do not remember that, if there was.

5 Q Okay.

6 A The Solicitor's Office was pretty adamant. They
7 wanted Mr. Anderson to go to jail for life.

8 Q Right.

9 A It is not something I would have discussed or
10 Mr. Mauldin and I would have discussed with him as a
11 negotiation, because if they'd have offered 30 or 40 or 50
12 or 60, we'd have certainly told Mr. Anderson to take it.
13 We knew they were trying to get a life sentence.

14 Q Okay.

15 A Now, whether we would -- we discussed the case with
16 Judge Stilwell because it had been decided as a death
17 penalty case. Whether we all went in the back and
18 discussed how the plea would go, I do not have a memory of
19 it.

20 Q Okay.

21 A I am certain that there was no time when Judge
22 Stilwell telegraphed any type of thoughts about a sentence
23 to us. But we felt like Judge Stilwell was a good judge
24 for this case because he was in the service, and the issues
25 concerning firearms that were very significant in the case

1 were not going to shock him the way they might have another
2 judge.

3 Q Okay. Did you discuss with Mr. Anderson the
4 possibility of getting a 30- to 35-year sentence?

5 A We would have told Mr. Anderson that the range of
6 sentence was 30 years to life, and we would have told him
7 that we were certainly trying to get him the lowest
8 sentence possible. I do not have any memory of saying 30-
9 to 35-year sentences. And I, speaking for myself -- and
10 Mr. Mauldin, I don't think, would have been any different
11 -- I never promised a client a sentence.

12 Q Okay. Do you recall whether or not either you or
13 Mr. Mauldin asked the judge to give Mr. Anderson a 30- to
14 35-year sentence?

15 A Mr. Mauldin gave a very -- I thought very good
16 argument to the judge about a sentence less than -- less
17 than life. He may have argued specifically for 30 or
18 35 years, he may have made a broader argument. My memory
19 is that he argued more for 30 or 35 years than he would
20 have for 40 or 50.

21 Q Okay. All right. And during the plea, do you recall
22 whether or not Judge Stilwell reviewed the waiver of any
23 grand jury rights?

24 A I am very certain. Although I do not remember it
25 specifically, I'm certain that that detail would have stuck

1 out in my mind.

2 Q Okay.

3 A And if I looked at the sentencing sheet, I could tell
4 you if he signed it. I think that would have worked out in
5 my mind, but I've not seen the sentencing sheet.

6 THE COURT: There you go. Those are all the
7 sentencing sheets.

8 THE WITNESS: The judge has handed me the sentencing
9 sheets. So I can see on them that there is no waiver of
10 grand jury. And I feel 100 percent confidence that in a
11 case of this magnitude, if that box is not signed, the
12 judge did not discuss it. It's not initialed. Excuse me.

13 BY MS. HORLBECK:

14 Q And if the box is not initialed, then Mr. Anderson
15 would never have the chance to waive?

16 A He would not have waived it, we would not have
17 discussed it with him.

18 MS. HORLBECK: All right. That's all I have. Thank
19 you.

20 MS. RATIGAN: I have nothing else for Mr. Eppes. I
21 would ask he be released.

22 THE COURT: What, is it lunchtime?

23 THE WITNESS: I've got to go to Pickens.

24 THE COURT: Oh, okay.

25 THE WITNESS: Thank you, Your Honor.

1 MS. RATIGAN: The State would call Mr. Mauldin.

2 THE COURT: Yeah. You're still under oath. Please
3 state your entire name for the record.

4 THE WITNESS: John I. Mauldin.

5 THE COURT: What's your middle name?

6 MR. MAULDIN: Ingles.

7 THE COURT: Okay.

8 MR. MAULDIN: And, Your Honor, I apologize for my
9 hearing difficulty. I've got allergies beating me up.

10 THE COURT: Okay.

11 WHEREUPON,

12 JOHN MAULDIN,

13 After first having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. RATIGAN:

16 Q Mr. Mauldin, do you recall representing Mr. Anderson
17 on these charges?

18 A I do.

19 Q And did you, in fact, assume representation after
20 Mr. Bannister?

21 A Did I what?

22 Q Did you assume representation after Mr. Bannister?

23 A Our office was originally appointed in October of
24 2008, and I then assigned the case to Jim Bannister. It
25 was at that time a non-capital offense. And Jim was an

1 assistant public defender, and he was assigned to the case
2 by me to represent Fred.

3 Q So did you take the case once they served the death
4 notice?

5 A Yes.

6 Q Had discovery already been filed?

7 A Yes.

8 Q Did you review the State's evidence, all the discovery
9 with Mr. Anderson?

10 A I would have gone through the material, and my
11 recollection is, as Mr. Eppes testified, I don't know that
12 we would have gone one page at a time with Fred, but we
13 clearly would have reviewed the evidence of the State with
14 Mr. Anderson.

15 Q And because we don't have a transcript, we don't
16 really have an easily digestible factual summary. Can you
17 describe just very briefly the two different incidents in
18 this case?

19 A They -- just very briefly, Fred went to his former
20 girlfriend's residence, entered the residence unlawfully,
21 essentially constituting a burglary, and he was armed with
22 a firearm. The victim of the homicide was shot and killed,
23 and the girlfriend was hiding in a closet in the bedroom, I
24 believe it was. She gave information to law enforcement
25 that Fred called out for her or looked for her in the

1 house. He then left the house, proceeded to a second
2 location where the girlfriend's mother lived and fired
3 numerous shots into the house from the outside. He never
4 went into that house. He fired shots into the house, and
5 the house at the time was occupied by the mother and three
6 juvenile occupants. None of those people were actually
7 struck by the firearm's shots.

8 He then, if I recall correctly, had cell phone
9 communications with -- I can't remember whether it was his
10 brother or another member of his family. But he talked to
11 family members about what had happened, and upon their
12 urging, law enforcement was contacted and told to meet
13 Mr. Anderson at a location. They went to that location,
14 and Fred turned himself in within hours of the shootings.

15 Q Okay. Did he give any kind of statements to the
16 police; do you remember?

17 A I don't -- and this case is seven years ago, so my
18 recollection is pretty thin. I could go through the
19 discovery to determine whether a written statement was
20 given, but I do not think there was. I think that there
21 was a conversation by Mr. Anderson with the arresting
22 officers when he was taken into custody. Seems to me like
23 there may have been a conversation while he was in the
24 patrol car, but I don't think there was a written statement
25 given.

1 Q Okay. Is that something -- that oral statement, is
2 that something you would have discussed with Mr. Anderson?

3 A We would have. We would have discussed it with him,
4 but there really wasn't -- Fred never denied his
5 involvement in the incidents at any time to police, to us.
6 I mean, so I did not, at that particular point, consider
7 the conversations with law enforcement as being
8 particularly critical to the evidence in the case.

9 Q Would it be fair to say that Mr. Anderson always
10 wanted a trial?

11 A He -- initially, from reports given to me by
12 Mr. Bannister, my hope initially in the case was that Jim
13 Bannister would be able to negotiate a resolution through a
14 plea. Jim was unable to do that, and as a result of that,
15 the death notice was served. That essentially was pretty
16 clear evidence to me that Fred was insisting on being
17 tried, he was insisting on a trial. That to me was very
18 unwise from the very beginning.

19 And so in answer to your question, I will say that he
20 was determined to have a trial whether it was wise or not.

21 Q And had you explained to him the sentence ranges for
22 murder?

23 A Oh, yeah.

24 Q And did you explain to him that if he went to trial,
25 having had that notice served, that he was facing the death

1 penalty?

2 A I did. And I will -- let me elaborate on that. He
3 was charged with murder and he was also charged with
4 first-degree burglary. And the residence of the girlfriend
5 where the homicide victim was shot and killed was
6 burglarized. It was very clear that the entry into the
7 residence was clearly without permission. So my
8 discussions with Fred were that if he were tried, it was
9 very clear that the burglary would also result in a
10 conviction.

11 Burglary first degree is, of course, a statutory
12 aggravator, and what that would mean is that the range of
13 sentences for a penalty phase in this case were either
14 going to be life without parole or death because the
15 finding of an aggravator was very clear in the case. And
16 we did have lengthy discussions about the range of
17 sentences.

18 Q Okay. When Mr. Anderson, when y'all attempted to do
19 the plea with him in June of 2010, had you worked out
20 anything with the State in terms of a recommendation or was
21 it just going to be a straight up plea?

22 A That was -- after the death notice, the State was
23 willing in June of '10 to withdraw the death notice at the
24 plea, but never gave me any impression that they would ask
25 for anything less than natural life in prison. So it was

1 always they were going to ask for life. We were going to
2 ask for less than life, realizing that we could get as
3 little as 30 years. But the State was never going to
4 recommend anything less than life.

5 Q Did Mr. Anderson tell you why he didn't go through
6 with the plea that day in June?

7 A If you just give me one moment (reviews document).

8 Fred wanted all along to tell his story. He wanted to
9 tell his side of the story. He wanted to have his story
10 told in court. It was not an issue of guilt or innocence.
11 It was a story about how he -- he even said, and I wrote it
12 down. I wrote down in one of our meetings one of the
13 quotes that I thought was appropriate. He said that he
14 would feel better in my heart for a trial and more people
15 than just one to judge me. And these were quotes that came
16 from Fred. I mean, he wanted to tell his story.

17 And the frustration, of course, that I was having as
18 his counsel was that his story did not equate to any chance
19 of innocence. It wasn't a question of guilt or innocence.
20 It was just simply he wanted to explain the breakup of the
21 relationship with the woman and how he had just -- had --
22 what he did. And it was unfortunate, and he just could not
23 get past it. He wanted to avoid the consequence. He
24 wanted to kind of deny the responsibility through an
25 explanation which really did not constitute guilt or

1 innocence.

2 Q You set him up to talk with Dr. Price; is that
3 correct?

4 A I did.

5 Q And did he generate a report?

6 A He gave a preliminary report. We -- I was personally
7 -- and let me just say it this way. Fred was stoned, and I
8 was worried about his level of understanding about some of
9 the things. He -- when -- I was concerned about when he
10 would kind of lock down and not be communicating with me
11 when we would have our meetings. I wanted to get an
12 opinion about whether he was okay. And so Doc. Price did
13 an analysis of whether or not there was any level of mental
14 retardation or competency and gave me a preliminary report
15 that that was not the case, that Fred was not mentally
16 retarded. He had low IQ in terms of the testing, but it
17 did not constitute any retardation.

18 Q Did you ever arrange for him to speak with
19 Dr. Schwartz-Watts?

20 A I did.

21 Q And do you recall what the purpose of her meetings
22 with him would have been?

23 A Well, if I'm not mistaken, Dr. Schwartz-Watts did meet
24 with Fred on at least one occasion and gave us a
25 preliminary opinion. It wasn't a formal opinion, but it

1 was just simply a preliminary finding. This was, of
2 course, in preparation for a mitigation penalty-phase
3 trial. And so she did do that at my request. It, once
4 again, raised some possibilities for a presentation at
5 mitigation, but it did not raise to the level of a guilt or
6 innocence question.

7 Q Do you recall ever telling Mr. Anderson that the judge
8 had given you an indication he would sentence between 30
9 and 35 years?

10 A No. I do -- there was never -- there was never any
11 impression from Judge Stilwell that he would give any
12 particular sentence. He was -- he seemed to be very
13 impartial and open, but at the same time, he did not give
14 us any -- didn't give me the impression that he was going
15 to sentence one way or the other.

16 Q Did Mr. Anderson ever give you any kind of reason why
17 he decided to plead guilty in December of that year?

18 A Did he give us a reason why he decided to plead
19 guilty?

20 Q Yes, sir.

21 A The -- we had the date for a potential plea in June of
22 2010, I believe it was. Yeah. And when that failed, I
23 turned my attention to try to prepare for a capital trial.
24 Judge Stilwell had set the trial date for January of 2011,
25 and so I was hard at work attempting to deal with the

1 experts that we had gotten involved and making sure that we
2 were preparing for jury selection and so forth.

3 And -- but I also met with Fred several times between
4 June and December to make sure, because we knew that he was
5 going to be convicted, and we knew that the jury was going
6 to have the choice of life without parole or death. And so
7 I wanted to make sure that every effort I could make to try
8 to take that off the table was my primary focus during that
9 four or five months. And what necessarily would have
10 changed -- I spoke to Duane, his brother, had Duane a
11 couple of times at the office with me where I encouraged
12 Duane to make sure that he did everything he could to make
13 sure that Fred was making correct and legitimate decisions.

14 As to what actually led to Fred deciding that the plea
15 was the best process, I was strongly encouraging it, but
16 what led him to decide on that, I'm not real sure.

17 Q And did you tell him that he was facing between
18 30 years and life if he went ahead and pled guilty?

19 A Yes.

20 Q Did you ever advise Mr. Anderson about an appeal in
21 this case?

22 A No. There was a -- as best I can remember, sometime
23 mid-2011, which would have been six, seven, eight months
24 after the plea, there was communication from Fred about a
25 possible appeal, and I wrote Fred a letter telling him that

1 the direct appeal time had passed, but that he still could
2 file a postconviction relief, and he needed to speak to his
3 classification officer at SCDC about getting that done
4 because that also had a time period of one year.

5 Q And to circle back around to the indictment issue, did
6 you ever look at not the body of the indictment but the
7 front page of the indictment? Did you ever examine that;
8 do you recall?

9 A You know, until this morning, I just -- I had no
10 recollection at all. And I would simply say for the Court
11 that my procedure, I would not have looked at the -- what I
12 would call the back side of the indictment, which is where
13 the true bill stamp is. I would not have looked at that
14 before -- I just don't look at that for the court
15 appearance. If it has an indictment and it's not presented
16 as a waiver and the sentencing sheet has a place where it
17 has a waiver, then I just simply don't look at it.

18 In this particular case, I would say without any doubt
19 we had a capital trial scheduled for January of 2011. Jury
20 selection was to begin the first week of January. We pled
21 the case late December. The timing is such that there
22 would not have been a -- no indictment at that point. I
23 mean, that would have been completely -- or it would seem
24 to me like that would have been impossible because they
25 would not have been able to indict him before a January

1 trial.

2 MS. RATIGAN: That's all I have, Your Honor.

3 THE COURT: Cross?

4 CROSS EXAMINATION

5 BY MS. HORLBECK:

6 Q You said that the plea was December 22, 2010?

7 A Right.

8 Q Okay. And the trial was actually scheduled to begin
9 in January?

10 A The next month.

11 Q After Christmas?

12 A Yes.

13 Q Okay. All right. And I don't know if you've had
14 occasion to look at the sentencing sheets recently since
15 they were signed by yourself and Mr. Anderson. Take a look
16 at those. Is the box for a waiver of grand jury rights, is
17 that checked and has that line been initialed?

18 A No. What -- actually, it says the charge is as
19 indicted, and that's what has an X. The one with
20 "defendant waives" is blank.

21 Q All right. And you said that you just -- you would
22 not have looked at the indictment, that portion of the
23 indictment?

24 A Right. I would not have looked at what I'm showing,
25 which is what I call the back side of the indictment.

1 Q All right. And there is no signature. I understand
2 it says "true billed." It's been stamped. But there's no
3 signature on it?

4 A Right.

5 Q Okay.

6 THE COURT: Wait a minute. Let's be clear that that
7 is a file copy of the indictment. I've instructed the
8 clerk of court to obtain the originals.

9 MS. HORLBECK: All right. The file copy then. I
10 didn't know if the Court -- I saw some movement back there.
11 I didn't know if someone ---

12 THE COURT: We'll get to that in a minute.

13 MS. HORLBECK: All right.

14 BY MS. HORLBECK:

15 Q Then what we're talking about is just the file copy
16 and not the originals.

17 Do you recall when Judge Stilwell questioned
18 Mr. Anderson, do you recall Judge Stilwell reviewing
19 whether or not Mr. Anderson understood his grand jury
20 rights?

21 A I do not recall him mentioning grand jury rights, no.
22 I do not recall whether he did or not.

23 Q Okay. And certainly, since Mr. Anderson did not put
24 his initials on the sentencing sheets, you don't recall
25 going over the grand jury rights with Mr. Anderson, do you?

1 A I do not.

2 Q Okay. All right.

3 A And let me say, I don't know whether I did or not.

4 Q I understand.

5 A I just don't have a recollection of that.

6 Q Okay. All right. When you have an occasion where
7 it's necessary to review a client's grand jury rights, do
8 you also have the client initial the waiver if a waiver is
9 necessary in order to plead? Does that make sense?

10 THE COURT: That waiver box on the sentencing sheet,
11 is that what you're referring to?

12 MS. HORLBECK: Yes, sir.

13 THE COURT: Okay.

14 THE WITNESS: The ---

15 THE COURT: Would you like to look at that again?

16 THE WITNESS: Let me just -- let me just say it this
17 way. The cases that I handle almost never involve a waiver
18 of grand jury.

19 BY MS. HORLBECK:

20 Q I understand.

21 A So it's almost somewhat speculative for me to say.

22 Q Okay.

23 A I don't recall the last time I had a client waive
24 grand jury.

25 Q Okay. All right. Is it your normal practice prior to

1 a plea to review with a client their constitutional rights?

2 A Absolutely.

3 Q All right. And if necessary, if it was necessary to
4 review with a client their waiver of their grand jury
5 rights, you'd have done that, correct?

6 A If I were of the impression that this case had not
7 been indicted, I would have extensively discussed with Fred
8 the nature of a waiver of grand jury ---

9 Q All right.

10 A -- what that means, what a grand jury is. I would
11 have done that. And what I'm saying is I don't recall any
12 such conversation in this case.

13 Q And you said that normally in the cases you handle,
14 that's -- the waiver of grand jury is not an issue?

15 A That's right.

16 MS. HORLBECK: All right. That's all I have. Thank
17 you.

18 THE COURT: Mr. Mauldin, let me just ask you
19 something. If you had known about -- let's assume that the
20 file copy is correct and that this was not signed by the
21 grand jury foreperson. Knowing that, had you allowed the
22 case to proceed to the jury selection, impaneling and
23 swearing, what would an objection to the -- a
24 jurisdictional objection, what would that have accomplished
25 after the jury was sworn to these charges?

1 THE WITNESS: Well, you know, Judge, to some extent, I
2 would consider that rather speculative for me to imagine
3 that scenario. I cannot imagine going through a capital
4 jury selection without someone, the clerk, the judge,
5 someone recognizing that there was an appearance of a flaw
6 on the indictment. So I don't know exactly what I would
7 have done. I certainly would have said, "Judge, we can't
8 go forward."

9 THE COURT: I guess my question was, would jeopardy
10 have attached at that point?

11 THE WITNESS: Well, I don't know because it would have
12 been -- it seemed to me like it would have been a
13 jurisdictional flaw from the very beginning. So I don't
14 know whether jeopardy would then somehow attach at a
15 certain moment or not.

16 THE COURT: Okay. We're engaging in an essentary
17 [phonetic] argument about it.

18 THE WITNESS: But knowing me as I do, I certainly
19 would have tried to make as much out of it as I could.

20 THE COURT: That's what I thought. Okay.

21 Any other questions?

22 MS. RATIGAN: No, Your Honor.

23 THE COURT: Okay. Thank you, Mr. Mauldin.

24 All right. Do you have any other witnesses?

25 MS. RATIGAN: I have no further witnesses to call,

1 Your Honor.

2 THE COURT: All right. The movement that Ms. Horlbeck
3 referred to was Mr. Ford presenting me with a copy of the
4 grand jury report from the grand jury meeting
5 July 28, 2009. It was filed in the Clerk of Court's office
6 on August 3, 2009, at 9:34 a.m. It was signed by the chief
7 administrative judge for General Sessions Court on
8 July 31, 2009, and that judge was the Honorable Edward W.
9 Miller.

10 There is one no-billed indictment and three hundred --
11 by my count, 338 true bills. Three indictments involving
12 Frederick Van Anderson. 2009-5748, 5749, 5750 are listed
13 on the last page.

14 For the record, how this report is signed is that the
15 clerk presents to the administrative law judge -- or
16 administrative judge for -- chief administrative judge for
17 General Sessions a stack of the indictments with this
18 report on top. And I will just say that I have no
19 recollection, but it would not be my practice to go through
20 and review whether or not each indictment had been signed
21 by the foreperson.

22 So I'll make this -- unless somebody wants a certified
23 true copy -- I don't think anybody -- I'll just certify
24 that that's my signature and that the foreperson has signed
25 it, and we'll make that a Court's exhibit.

1 (WHEREUPON, Court's Exhibit No. 2 was marked for
2 identification.)

3 THE COURT: Okay. Is there anything in reply?

4 MS. HORLBECK: No, Judge.

5 MS. RATIGAN: I do have a case to cite, Your Honor.

6 THE COURT: What's that?

7 MS. RATIGAN: As I'm angrily typing on my phone,
8 Pringle vs. State, which has just also been handed up to me
9 by Ms. Strom. She found it as well. The citation is 287
10 S.C. 409 339 S.E.2d 127, and it's 1986. And I've got a
11 copy I can hand up, Your Honor.

12 THE COURT: Okay (reviews document). Well, it's
13 pretty clear what the law is with respect to that.

14 Yes, ma'am.

15 MS. HORLBECK: I just wanted to make a few comments if
16 this is the appropriate time.

17 THE COURT: Sure.

18 MS. HORLBECK: Judge, the case that was handed up to
19 you, Pringle vs. State, this says that the -- well, it says
20 it's preferable for the grand jury foreman to sign the true
21 bill. It does say the foreman's signature is not essential
22 to the validity of the indictment where the indictment is
23 in writing and published by the clerk. I don't believe
24 that there's been any evidence that it was published by the
25 clerk.

1 It also says -- and I think it's talking about in the
2 Pringle case down that same paragraph, it says there's
3 actual testimony by the foreman of the grand jury that
4 indicted the petitioner that the regular procedure was to
5 have the clerk publish the indictment in open court after
6 the grand jury returned a true bill. I don't think that
7 practice was followed here.

8 Judge, the function in my mind of the indictment is
9 twofold. One, it is a notice document. It is to notify
10 the accused of the specifics or the nature of the charge
11 that they face, but it is also to transfer jurisdiction.
12 It doesn't seem that these same procedures were followed as
13 the procedures in Pringle -- followed in Pringle were not
14 necessarily followed to the letter here. I don't believe
15 jurisdiction was transferred. I'm asking that the Court
16 consider overturning this conviction and granting
17 Mr. Anderson's petition.

18 THE COURT: Okay. Well, the clerk's office has
19 provided to me their original file, and I want to give the
20 attorneys an opportunity to review this if they want. But
21 I will represent to you that in the three indictments that
22 are the subject of this postconviction relief application,
23 the indictments are stamped but they are not signed by the
24 grand jury foreperson. None of them.

25 This is an extremely serious case. I will say that

1 the language of the Pringle case says while it is
2 preferable for the grand jury foreman to sign the true
3 bill, the foreman's signature is not essential to the
4 validity of the indictment when the indictment is in
5 writing and published by the clerk. Absence of evidence to
6 the contrary, the regularity of the proceedings of the
7 court of general jurisdiction will be assumed.

8 In that case, they had testimony from the foreman of
9 the grand jury that indicted the petitioner that the
10 regular procedure was to have the clerk publish the
11 indictment in open court after the grand jury returned a
12 true bill. That is not the practice in Greenville County.
13 I don't know where this Pringle case came from. I don't
14 know. It doesn't say who the judge was, it doesn't say
15 what county, that I can see. But I will note --

16 MS. RATIGAN: Pringle is Richland County, Your Honor.

17 THE COURT: Richland County. Second largest county in
18 the state.

19 My inclination would be to allow the record to stay
20 open for presentation of the -- I'm conflicted here because
21 the grand jury report, which I've made a court's exhibit,
22 clearly indicates that there was one indictment that was
23 no-billed and the remaining indictments were true-billed.
24 The grand jury foreperson signed the report along with
25 myself as administrative judge.

1 So I'm -- and I will say, in the past, I've seen grand
2 jury foreperson had a stamped signature, and because of the
3 number of indictments, it's impractical to ask a citizen to
4 sit there and sign their name on each and every indictment.
5 So they had a stamp, and that was okay.

6 What I'm going to do is allow the parties to brief the
7 issue and perhaps contact -- see if they can contact the
8 grand jury foreperson, and I would allow her to present
9 evidence by way of affidavit to constitute written
10 testimony that, in fact, this case was considered and
11 indicted.

12 I'll say this. On the back of the indictments, the
13 testifying officer from Travelers Rest signed the back of
14 the indictment. I think that this may well just be a
15 clerical issue. Although his signature is dated
16 September 7, '08.

17 Sort of a novel issue. Isn't that great? Because we
18 do not normally publish the indictments in open court.

19 MS. RATIGAN: Except at the beginning of the plea.
20 Usually the indictment's read by the clerk of court at the
21 start of a plea, but, of course ---

22 THE COURT: Well, it's announced. I'm not -- the body
23 of the indictment is not read by the clerk of court. I
24 don't know if it was in this case or not. It's my practice
25 in a guilty plea to read the indictment to the defendant.

1 I was not the judge in this case, so I don't know if Judge
2 Stilwell, if that's his practice or not. I have no idea.

3 So anyway, we'll -- I guess we'll have to hold this
4 one open. I think it's a -- I mean, my initial impression
5 is that this is a clerical oversight as opposed to a
6 substantive issue with respect to jurisdiction, but I'm
7 going to allow the parties to brief it and see if there is
8 a -- if they can obtain by way of affidavit or otherwise
9 evidence from the grand jury foreperson. And you can
10 obtain who that person is -- I'm not going to say it in the
11 open record -- from the clerk's office. Of course, it's in
12 the -- it's on the order I signed. Okay.

13 Anything else?

14 MS. RATIGAN: I don't have anything.

15 Do you have a time limit that you want the briefing or
16 what have you?

17 THE COURT: Two weeks. Is that enough? Three weeks?
18 Three weeks.

19 MS. HORLBECK: I would just -- whatever the name and
20 the contact information, I would just ask that that be
21 provided to us as well.

22 THE COURT: You can check with the clerk.

23 Mr. Anderson, I just want to tell you with respect to
24 all your other allegations, I find -- I don't find that you
25 have met your burden of proof to show that your counsel was

1 ineffective, so I'm going to deny your relief on those
2 grounds. We're going to check this other ground out. I
3 don't find that there was malicious prosecution based on
4 the other procedures followed in the indictment process.
5 So we'll check the rest of this out and a written order
6 will be forthcoming, okay?

7 DEFENDANT ANDERSON: Okay.

8 THE COURT: All right. Where are you? Where do they
9 have you?

10 DEFENDANT ANDERSON: Perry.

11 THE COURT: Perry. Are you doing okay down there?

12 DEFENDANT ANDERSON: Losing weight.

13 THE COURT: Are you? Maybe I should go to Perry. I
14 need to lose some weight.

15 DEFENDANT ANDERSON: It ain't a good place.

16 THE COURT: That's not it? Okay.

17 MS. HORLBECK: We can send you there.

18 THE COURT: I keep worrying about that.

19 All right. Well, best of luck to you, okay?

20 DEFENDANT ANDERSON: Yes, sir.

21 (WHEREUPON, a recess is taken at 12:14 p.m.)

22 THE COURT: We're back on the record in the case of
23 Frederick Anderson vs. The State. And I'm going to make
24 two documents Court's exhibits. They are the -- one is an
25 indictment immediately preceding Mr. Anderson's indictments

1 on the report, which is a previous court exhibit, and the
2 other indictment is a copy of the indictment immediately
3 following Mr. Anderson's indictments on that same report.
4 And the significance of these is that each of these is
5 signed by the foreperson of the grand jury juxtaposed to
6 Mr. Anderson's three indictments, none of which were
7 signed.

8 (WHEREUPON, Court's Exhibits 3 and 4 were marked for
9 identification.)

10 *****END OF TRANSCRIPT OF RECORD*****
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1
2
3 CERTIFICATE OF REPORTER

4 STATE OF SOUTH CAROLINA)

5 COUNTY OF GREENVILLE)
6

7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South Carolina,
9 do hereby certify that the foregoing is a true, accurate
10 and complete Transcript of Record of the proceedings had
11 and evidence introduced in the trial of the captioned case,
12 relative to appeal, in the Court of Common Pleas for
13 Greenville County, South Carolina, on the 23rd day of
14 April, 2015.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.
17

18 January 25, 2016
19
20

21 
22

23 Cheryl A. Smith, CVR-M

24 Court Reporter
25



South Carolina Court Administration
 South Carolina Supreme Court
 Columbia, South Carolina

ROSALYN FRIERSON
 DIRECTOR

1015 SUMTER STREET, SUITE
 200
 COLUMBIA, SOUTH
 CAROLINA 29201
 PHONE: (803) 734-1800
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June 5, 2014

Karen C. Ratigan
 Senior Assistant Deputy Attorney General
 P.O. Box 11549
 Columbia, SC 29211-1549

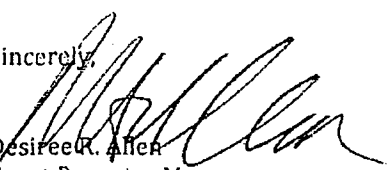
In re: State v. Frederick V. Anderson, 2008GS2305740.05749.05750

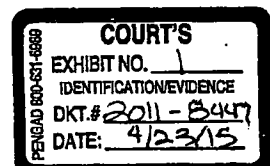
Dear Ms. Ratigan:

This is in response to your letter dated May 30, 2014, in which you recounted the steps taken to obtain a transcript in this matter.

Unfortunately, the cassette provided to Court Administration by Ms. DiGirolamo was blank. Without the record of the proceedings, we are unable to produce a transcript in this matter. If I may assist you further, please do not hesitate to call. My direct phone number is 803.734.1860.

Sincerely,


 Desiree R. Allen
 Court Reporter Manager



STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

GRAND JURY SESSIONS

July 28, 2009

IN THE COURT OF GENERAL SESSIONS

REPORT

TO: THE HONORABLE JUDGE EDWARD W. MILLER
PRESIDING JUDGE, THIRTEENTH JUDICIAL CIRCUIT

FILED
2009 AUG -3 AM 9:34
CLERK OF COURT
GREENVILLE

The Grand Jury makes the following report: We do hereby certify that at least twelve jurors have reviewed the indictments listed on the attached sheet and have rendered a true bill on each with the following exceptions:

INDICTMENT NUMBER

2008GS2309429

ACTION TAKEN

NO BILL

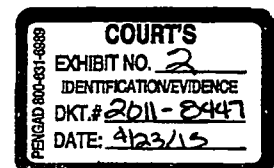
Respectfully Submitted,

Shannon M. Cummins
GRAND JURY FOREPERSON

I do hereby accept the Grand Jury's Report.

Ed W. Miller
HONORABLE EDWARD W. MILLER
PRESIDING JUDGE
THIRTEENTH JUDICIAL CIRCUIT

Greenville, South Carolina

7/31/09, 2009

<u>INDICTMENT #</u>	<u>NAME</u>	<u>STATUS</u>
2007-05015	Bryan Doll	Amended Indictment (TB)
2008-01233	Sherry Bowen Williams	TB
2008-01370	Elizabeth Ann Scott	TB
2008-01428	Jeffrey Eric Niel	TB
2008-01835	Michael Wayne Newcomb	TB
2008-02853	Ricky Dale Medford	TB
2008-02937	Kenneth Burnside	TB
2008-02938	Kenneth Burnside	TB
2008-02962	Tavarius Lamar Jones	TB
2008-02963	Tavarius Lamar Jones	TB
2008-02964	Tavarius Lamar Jones	TB
2008-03198	Vincent Gerald Williams	TB
2008-03305	Jeffrey Eric Niel	TB
2008-03306	Jeffrey Eric Niel	TB
2008-03660	Alexia Kiarra Griffin	TB
2008-03794	Martin Lane Brumagin	TB
2008-03804	Riodejaneiro Taylor	TB
2008-04018	Jonathan Delaney Mason	TB
2008-04019	Jonathan Delaney Mason	TB
2008-04126	Kenyatta Olando Tucker	TB
2008-04127	Kenyatta Olando Tucker	TB
2008-04324	Anthony Bernard Young	TB
2008-04325	Anthony Bernard Young	TB
2008-04326	Anthony Bernard Young	TB
2008-04327	Anthony Bernard Young	TB
2008-04513	Brandon Jermal Ramsey-Smith	TB
2008-04811	Curtis C. Heard	TB
2008-05397	Fred Martin Bennett, Jr.	TB
2008-05544	Denita Rejean Kelly	TB
2008-05545	Denita Rejean Kelly	TB
2008-06051	Darren Leon Harris	TB
2008-06052	Darren Leon Harris	TB
2008-06053	Darren Leon Harris	TB
2008-06054	Darren Leon Harris	TB
2008-06106	Terry Lamont Canada	TB
2008-06107	Terry Lamont Canada	TB
2008-06249	Rickellus Deonte Young	TB
2008-06250	Rickellus Deonte Young	TB
2008-06251	Otis Rodricka Jackson	TB
2008-06252	Otis Roderick Jackson	TB
2008-06281	Perry Lee Parker	TB
2008-06395	Lance Walker Robertson	TB
2008-06439	Wayne Charles Hughey	TB
2008-06440	Wayne Charles Hughey	TB
2008-06484	Melanie Ann Howard	TB
2008-06622	Shamel A. Golden	TB
2008-06679	Douglas Thompson	TB
2008-06882	Donna Lynne Ellis	TB
2008-06901	Anthony L. Hawkins	TB
2008-06997	John Bryan Martin	TB
2008-06998	John Bryan Martin	TB

2008-06999	John Bryan Martin	TB
2008-07000	John Bryan Martin	TB
2008-07001	John Bryan Martin	TB
2008-07002	John Bryan Martin	TB
2008-07003	John Bryan Martin	TB
2008-07030	Robert Seaborn	TB
2008-07050	Gloria Jeanette Templeton	TB
2008-07051	Gloria Jeanette Templeton	TB
2008-07052	Gloria Jeanette Templeton	TB
2008-07053	Gloria Jeanette Templeton	TB
2008-07054	Gloria Jeanette Templeton	TB
2008-07055	Gloria Jeanette Templeton	TB
2008-07056	Gloria Jeanette Templeton	TB
2008-07057	Gloria Jeanette Templeton	TB
2008-07063	Zachary Bruce Cisson a.k.a. Zachary	TB
2008-07202	Thomas Edward Bradley	TB
2008-07269	Charlene Denise Hawkins	Amended Indictment (TB)
2008-07282	Tracey Yvonne Posey	TB
2008-07549	Eddie Dean Williams	TB
2008-07567	Michael Brent Haynes	TB
2008-07582	Norman Thompson	TB
2008-07695	Ricky Dewayne Rice	TB
2008-07709	Tavarius Lamar Jones	TB
2008-07710	Tavarius Lamar Jones	TB
2008-07718	Gene Thomas Roy, III	TB
2008-07740	Christopher Ilja Smith	TB
2008-07866	Javaris L. Coleman	TB
2008-07867	Javaris L. Coleman	TB
2008-07869	Javaris L. Coleman	TB
2008-07870	Javaris Lawren Coleman	TB
2008-07871	Javaris Lawren Coleman	TB
2008-07969	Hubert Moon	TB
2008-08216	Ramon Robinson	TB
2008-08231	Bobby Mitchell Russell	TB
2008-08297	Darryl Anthony Davis	TB
2008-08375	Al Jerome McCloud	TB
2008-08379	Marie Rohling Nelson	TB
2008-08458	Donald Dickert Smith, Jr.	TB
2008-08521	Trevis Tremaine Sullivan	TB
2008-08522	Trevis Tremaine Sullivan	TB
2008-08532	James Edward Mayes, Jr.	TB
2008-08621	Larry Williams	TB
2008-08622	Larry Williams	TB
2008-08778	Jerrico Mercedes Bailey	TB
2008-08779	Jerrico Mercedes Bailey	TB
2008-08826	Anthony Bernard Young	TB
2008-08827	Anthony Bernard Young	TB
2008-08828	Anthony Bernard Young	TB
2008-08915	Andre Edwana Gambrell	TB
2008-09074	James Marquise Woodruff	TB
2008-09084	Thomas Mitchell Wallace	TB
2008-09085	Thomas Mitchell Wallace	TB

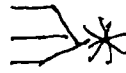
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2008-09087	Thomas Mitchell Wallace	TB
2008-09098	Jignesh Patel	TB
2008-09122	Tiffany Shawn Moon	TB
2008-09123	Tiffany Shawn Moon	TB
2008-09124	Tiffany Shawn Moon	TB
2008-09125	Tiffany Shawn Moon	TB
2008-09126	Tiffany Shawn Moon	TB
2008-09127	Tiffany Shawn Moon	TB
2008-09296	Harold Fonda Smith	TB
2008-09429	Randall Lee Ward	No Bill
2008-09439	Tavarius Lamar Jones	TB
2008-09440	Tavarius Lamar Jones	TB
2008-09466	Oscar Rodriguez Lopez	TB
2008-09467	Oscar Rodriguez Lopez	TB
2008-09495	Tiffany Shawn Moon	TB
2008-09561	Elenie Isham Parker	TB
2008-09571	James Nabors	TB
2008-09572	James Nabors	TB
2008-09621	Danny Charles Mullinax	TB
2008-09622	Danny Charles Mullinax	TB
2008-09623	Danny Charles Mullinax	TB
2008-09696	James Edward Mayes, Jr.	TB
2008-09732	Ruby Elizabeth Payne	TB
2008-09879	Kenneth Burnside	TB
2008-09880	Kenneth Burnside	TB
2008-09881	Kenneth Burnside	TB
2008-09887	Harold Andrew Case, Jr.	TB
2008-09888	Harold Andrew Case, Jr.	TB
2008-09889	Harold Andrew Case, Jr.	TB
2008-09890	Harold Andrew Case, Jr.	TB
2008-09982	Donald Ray Woody	TB
2008-10043	Lee Antonio Anderson	TB
2008-10044	Lee Antonio Anderson	TB
2008-10045	Lee Antonio Anderson	TB
2008-10085	Bobby Moore	TB
2008-10086	Bobby Moore	TB
2008-10087	Bobby Moore	TB
2008-10088	Bobby Moore	TB
2008-10242	James Philip Bowers a.k.a James Pt	TB
2009-00043	Stanley Vincent Quinn	TB
2009-00136	Michael Dustan Hall	TB
2009-00146	Thomas Mouyer Renrick, IV	TB
2009-00147	Thomas Mouyer Renrick, IV	TB
2009-00148	Thomas Mouyer Renrick, IV	TB
2009-00212	Holly Rae Cannon	TB
2009-00338	Vincent Gerald Williams	TB
2009-00425	Gladys Rene Bragg	TB
2009-00503	Rokeisha Quey Juanza Jerna Byrd	TB
2009-00530	Jeffrey Eric Niel	TB
2009-00531	Jeffrey Eric Niel	TB
2009-00532	Jeffrey Eric Niel	TB

2009-00562	Alvin W. Staton	TB
2009-00563	Alvin W. Staton	TB
2009-00564	Alvin W. Staton	TB
2009-00576	Marisa Ann Grove	TB
2009-00581	Danny Charles Mullinax	TB
2009-00582	Danny Charles Mullinax	TB
2009-00583	Danny Charles Mullinax	TB
2009-00705	William Thomas Coker	TB
2009-00744	Raymond Martinez, Jr.	TB
2009-00745	Raymond Martinez, Jr.	TB
2009-00749	Charles Augustus Chiles, Jr.	Amended Indictment (TB)
2009-00760	Danny Charles Mullinax	TB
2009-00910	Daniel Michael Fowler	TB
2009-00919	Riodejanerio Taylor	TB
2009-00930	Shannon Ladd Allison	TB
2009-01000	Melvin Todd Englisbe	TB
2009-01039	Steven Franklin Harper	TB
2009-01132	Aurthur Neopleon Ferguson	TB
2009-01188	Brandon Jermal Smith Ramsey	TB
2009-01189	Brandon Jermal Smith Ramsey	TB
2009-01190	Brandon Jermal Smith Ramsey	TB
2009-01239	Carl Lee Myers, Jr.	TB
2009-01250	Cynthia L. Noonkester	TB
2009-01293	Javaris L. Coleman	TB
2009-01407	Lee Ann Kral	TB
2009-01444	Larry Williams	TB
2009-01456	James Demetrius Cureton	TB
2009-01457	James Demetrius Cureton	TB
2009-01513	Marcus Tyree Parks	TB
2009-01514	Marcus Tyree Parks	TB
2009-01519	Marcus Tyree Parks	TB
2009-01622	Dale Boyd Rowe, Jr.	TB
2009-01664	William M. Jones	TB
2009-01791	David Michael Ashmore, Jr.	TB
2009-01792	David Michael Ashmore, Jr.	TB
2009-01793	David Michael Ashmore, Jr.	TB
2009-01794	David Michael Ashmore, Jr.	TB
2009-01799	William Zachary Hamilton	TB
2009-01813	Glenda Lissette Rodriguez	TB
2009-01847	Lee Ann Ray	TB
2009-01851	Christopher Lloyd Latham	TB
2009-01864	Danny Charles Mullinax	TB
2009-01902	Tykeya Michelle Lytle	TB
2009-01969	Joseph Searcy Justice	TB
2009-01990	Tina Melinda Mealer	TB
2009-02047	David Andrew Atkins	TB
2009-02055	Suellen Castilla	TB
2009-02056	Suellen Castilla	TB
2009-02061	Aaron J. Olson	TB
2009-02166	Buford Lee Crawford	TB
2009-02167	Buford Lee Crawford	TB
2009-02306	Qwellie Fuller	TB

2009-02307	Qwellie Fuller	TB
2009-02408	Spencer Terrell Witcher	TB
2009-02409	Spencer Terrell Witcher	TB
2009-02410	Spencer Terrell Witcher	TB
2009-02411	Spencer Terrell Witcher	TB
2009-02412	Spencer Terrell Witcher	TB
2009-02413	Spencer Terrell Witcher	TB
2009-02414	Spencer Terrell Witcher	TB
2009-02415	Spencer Terrell Witcher	TB
2009-02416	Spencer Terrell Witcher	TB
2009-02417	Spencer Terrell Witcher	TB
2009-02418	Spencer Terrell Witcher	TB
2009-02421	Randy Erin Jennings	TB
2009-02422	Randy Erin Jennings	TB
2009-02423	Randy Erin Jennings	TB
2009-02437	Christopher Brannon Collins	TB
2009-02501	Durrell Antonio Hunter	TB
2009-02502	Steven Ellis Gentry	TB
2009-02503	Anthony Lamar Gentry	TB
2009-02508	Samantha Louise Doutrich	TB
2009-02509	Samantha Louise Doutrich	TB
2009-02510	Christopher Brannon Collins	TB
2009-02511	Christopher Brannon Collins	TB
2009-02512	Spencer Terrell Witcher	TB
2009-02513	Spencer Terrell Witcher	TB
2009-02534	William Thomas Coker	TB
2009-02561	Telisha Ann Anderson	TB
2009-02575	Daniel Franklin Smith	TB
2009-02576	Daniel Franklin Smith	TB
2009-02610	Melissa Ann Rodgers	TB
2009-02613	James Nabors	TB
2009-02639	Quoc Phan	TB
2009-02680	Riodejanero Taylor	TB
2009-02728	Mary Ann Parks	TB
2009-02735	Melvin Todd Englisbe	TB
2009-02745	Melvin Todd Englisbe	TB
2009-02840	Keeber J. Lewis	TB
2009-02871	Shelia Demetric Mills	TB
2009-02876	Michael Eugene Kock	TB
2009-02927	Shannon Seth Woodward	TB
2009-02930	Crystal Danielle McGreen	TB
2009-02957	Veronica Belita Gray	TB
2009-02959	James Marquise Woodruff	TB
2009-02970	Telisha Anderson	TB
2009-03109	Timothy Marcus Owens	TB
2009-03260	David Michael Brozowski	TB
2009-03261	David Michael Brozowski	TB
2009-03289	Daniel Keith Morgan, Jr.	TB
2009-03397	Nicholas Daniel Jackson	TB
2009-03486	Caroline Vickery	TB
2009-03488	Caroline Vickery	TB
2009-03495	Shneida Jackson	TB

2009-03554	Marquis Creadale Wright	TB
2009-03608	Laquavis Howard	TB
2009-03609	Laquavis Howard	TB
2009-03610	Laquavis Howard	TB
2009-03611	Laquavis Howard	TB
2009-03612	Laquavis Howard	TB
2009-03628	Randy Erin Jennings	TB
2009-03651	Laquavis Howard	TB
2009-03685	Michael Daniel Stroud	TB
2009-03694	Thomascina Monique Moss	TB
2009-03794	Calvert Jason Drummond, Jr.	TB
2009-03795	Calvert Jason Drummond, Jr.	TB
2009-03796	Calvert Jason Drummond, Jr.	TB
2009-03891	Lulu Marie White	TB
2009-03892	Lulu Marie White	TB
2009-03893	Lulu Marie White	TB
2009-03909	Darryl Anthony Davis	TB
2009-03910	Darryl Anthony Davis	TB
2009-03921	Christopher D. Bryson	TB
2009-03922	Christopher D. Bryson	TB
2009-03923	Christopher D. Bryson	TB
2009-03990	Thomas Locklear	TB
2009-04027	Jerrico Mercedes Bailey	TB
2009-04224	Sheryl G. Bedoya	TB
2009-04481	John Henry McDonald, Jr.	TB
2009-04517	Ron McAdoo	TB
2009-04520	Jashaun Deck	TB
2009-04521	Quoc Van Phan	TB
2009-04550	Shannon Lynn Saunders	TB
2009-04551	Shannon Lynn Saunders	TB
2009-04552	Shannon Lynn Saunders	TB
2009-04553	Shannon Lynn Saunders	TB
2009-04554	Jacobie D. Potlow	TB
2009-04556	Christian Graza	TB
2009-04557	Jacobie D. Potlow	TB
2009-04625	Felix Rodriguez Gonzalez	TB
2009-04656	Tavarius Lamar Jones	TB
2009-04657	Tavarius Lamar Jones	TB
2009-04658	Tavarius Lamar Jones	TB
2009-04659	Tavarius Lamar Jones	TB
2009-04723	Dewayne A. Bell	TB
2009-04819	Lulu Marie White	TB
2009-04820	Lulu Marie White	TB
2009-05033	Branigan Oreilly Mills	TB
2009-05034	Branigan Oreilly Mills	TB
2009-05035	Branigan Oreilly Mills	TB
2009-05036	Branigan Oreilly Mills	TB
2009-05037	Branigan Oreilly Mills	TB
2009-05038	Branigan Oreilly Mills	TB
2009-05039	Branigan Oreilly Mills	TB
2009-05040	Branigan Oreilly Mills	TB
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2009-05042	Branigan Oreilly Mills	TB
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2009-05044	Branigan Oreilly Mills	TB
2009-05045	Branigan Oreilly Mills	TB
2009-05046	Branigan Oreilly Mills	TB
2009-05047	Branigan Oreilly Mills	TB
2009-05048	Branigan Oreilly Mills	TB
2009-05049	Branigan Oreilly Mills	TB
2009-05076	Michael Trevor Velchoff	TB
2009-05143	Kendall Baer	TB
2009-05198	Jerry Le Quinn	TB
2009-05199	James Garrett Fig	TB
2009-05200	James Garrett Fig	TB
2009-05209	Rafiq Shkore Latimer	TB
2009-05340	Glenn Sharaw Sanders	TB
2009-05748	Frederick Van Anderson	TB
2009-05749	Frederick Van Anderson	TB
2009-05750	Frederick Van Anderson	TB
2009-05791	Brandon Jermal Smith Ramsey	TB
2009-05792	Brandon Smith Ramsey	TB
2009-06035	Richey Alano Stoddard	TB
2009-06036	Clifford Tyrone Thomas	TB
2009-06037	Clifford Tyrone Thomas	TB
2009-06038	Clifford Tyrone Thomas	TB
2009-06039	Hubert Moon	TB
2009-06040	John Lawrence Kendall	TB
2009-06041	Henry David Griffin, Jr.	TB
2009-06042	Christopher Dennis Jones	TB
2009-06043	Clifford Tyrone Thomas	TB
2009-06044	Jimmy Brock Harris	TB
2009-06045	Jimmy Brock Harris	TB
2009-06046	Benny Perry Bell	TB



WITNESSES

C Maltby

Greenville County Sheriffs Office

2/23/2009

ARREST WARRANT NUMBER

1368974

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-23-

RDW

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2009

July

THE STATE

vs.

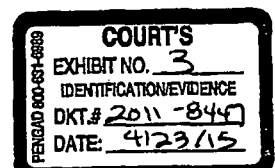
BRANDON JERMAL SMITH RAMSEY

Indictment for

3009

POSSESSION OF COCAINE BASE (CRACK
COCAINE)

VIOLATION § 44-53-0375



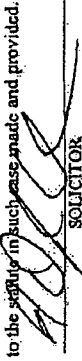
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF COCAINE BASE (CRACK COCAINE)

At a Court of General Sessions, convened on **JUL 28 2009** the Grand Jurors of Greenville,
County present upon their oath:

That **BRANDON JERMAL SMITH RAMSEY** did in Greenville County, on or about the 23rd day of February,
2009, willfully and unlawfully have in his possession and under his control a quantity of Cocaine Base (Crack
Cocaine), a controlled substance. This is in violation of §44-53-375 of the South Carolina Code of Laws (1976) as
amended.

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


SOLICITOR

WITNESSES

C Hill

Greenville County Sheriffs Office

10/11/2008

ARREST WARRANT NUMBER

1803646

ACTION OF GRAND JURY

TRUE BILL

NICKI CUMMINGS
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-23-

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2009

THE STATE

vs.

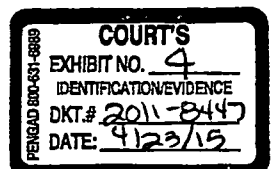
GLENN SHARAW SANDERS

Indictment for

0044

UNLAWFUL CARRYING OF A PISTOL

VIOLATION § 16-23-0020



STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
 UNLAWFUL CARRYING OF A PISTOL

JUL 28 2009

the Grand Jurors of Greenville

At a Court of General Sessions, convened on

County present upon their oath:

That GLENN SHARAW SANDERS did in Greenville County, on or about the 11th day of October, 2008,
 willfully and unlawfully carry about his person a pistol. This is in violation of §16-23-0020 of the South Carolina
 Code of Laws (1976) as amended.

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

[Signature]
 SOLICITOR

STATE OF SOUTH CAROLINE	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2011-CP-23-8447
COUNTY OF GREENVILLE	)	
	)	
Frederick Van Anderson,	)	
S.C.D.C. No. 344239,	)	
	)	
Applicant,	)	
	)	
v.	)	MEMORANDUM OF LAW
	)	
State of South Carolina,	)	
	)	
Respondent.	)	ENTERED COMPUTER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. MICHAEL
2015 JUL 21 AM 11 57

jm

I. PROCEDUARL HISTORY

Applicant was indicted at the July 2009 term of the Greenville County Grand Jury for murder (2008-GS-23-5748, count 1), possession of a weapon during the commission of a violent crime (2008-GS-23-5748, count 2), first-degree burglary (2009-GS-23-5749), and discharging a firearm into a dwelling (2009-GS-23-5750). John I. Mauldin, Esquire and Frank Eppes, Esquire represented Applicant.

On December 22, 2010, Applicant pled guilty. The Honorable Robin B. Stilwell levied concurrent sentences of life imprisonment for murder, 30 years for first-degree burglary, and 10 years for discharging a firearm into a dwelling. Applicant did not appeal.

Applicant filed this post-conviction relief (PCR) application on December 19, 2011. Respondent made its return on June 5, 2012 and an amended return on April 8, 2015. A PCR hearing/guilty plea reconstruction hearing was held on April 23, 2015. Applicant was present

and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented Respondent.

II. LAW/ANALYSIS

"No person may be held to answer for any crime...unless on a presentment or indictment of a grand jury of the county where the crime has been committed." *S.C. Const. art. 1, Section 11*. The law requires presentment of a grand jury as a condition precedent to the trial of a crime, excepting certain minor offenses. *State vs. Beachum*, 288 S.C. 325, 342 S.E. 2d 597 (1986). A conviction obtained without the presentment of a grand jury will be voided on appeal. *State vs. Hann*, 196 S.C. 211, 12 S.E. 2d 720 (1940). However, a facial irregularity does not render an indictment invalid "where the indictment in writing and published by the clerk." *State vs. Bultron*, 318 S.C. 323, 329, 457 S.E. 2d 616, 619 (Ct. App. 1995). "The regularity of grand jury proceedings is presumed absent clear evidence to the contrary; the burden is on the defendant to prove facts upon which a challenge to the legality of the grand jury proceedings is predicated." *State vs. Batchelor*, 377 S.C. 341, 344, 661 S.E.2d 58, 59 (2008)

Applicant argues he was never indicted by the Greenville County Grand Jury, that the regular indictment procedure was not followed and the Court lacked jurisdiction to accept his guilty plea and impose sentence. According the Grand Jury report for the July 2009 term 343 indictments were presented for deliberation. According to the report, the Grand Jury returned with Three hundred forty two (342) true bills and one (1) no bill. However, Applicant would show that Thirty Nine (39) indictments are missing. Applicant is unable to determine whether the missing indictments were signed by the foreperson or even stamped 'True Bill'. See Attachment A. Of the indictments located, Anderson's were the only indictments where the foreperson's signature was absent.

The State argues that the usual indictment procedure was followed during the July 2009 term and that the trial judge had jurisdiction because the regular procedure was followed.

However, the State has not demonstrated the regular indictment process was followed and has not demonstrated what, if any, procedure was followed in publishing the grand jury's findings.

In Bultron, the State presented the following in support of its argument:

"The State presented testimony from a Greenville County investigator whose employment duties include serving as "docket coordinator" for the grand jury and assisting the grand jury in every meeting. The investigator testified the grand jury's regular procedure was to deliberate on the indictments presented to them and then publish their finding in open court. The investigator further testified he was present during the April 13, 1993 term of the grand jury, the term during which Richard Gonzales was indicted, and the grand jury acted on every bill of indictment presented to them during that term and returned "true bills" on every bill of indictment. The State also presented testimony from the court reporter who was present when the clerk published the grand jury's findings. The court reporter, reading from the record of the court's proceeding on April 13, 1993 testified the clerk stated "the grand jury returned today with 771 true bills and no no bills, and all signed by Colleta V. Tucker, Foreman."

In the instant case, the foreperson was the only person interviewed regarding the regular process followed during deliberations. She had no recollection of Mr. Anderson's indictments.

The foreperson was unable to explain the absence of her signature on Anderson's indictments.

Further, it is important to note that thirty nine indictments reportedly true billed during the July 2009 term are missing and unavailable for Applicant to review for the presence or absence of the foreperson's signature. It is unknown whether these missing indictments were even stamped 'True Bill'. Given the absence of the foreperson's signature from Anderson's indictments, the foreperson's signature may also be absent from the thirty nine (39) missing indictments. The absence of the foreperson's signature from Anderson's indictments, the foreperson's inability to explain this absence and the missing status of 39 indictments reportedly true billed during the July 2009 term are indicative of the irregularity of the Grand Jury proceedings.

Further the State has failed to demonstrate that the indictments were published in open Court. In Bultron, the State presented the testimony of the court reporter present when the clerk published the grand jury's findings. In the instant case, the State had the opportunity to interview additional witnesses regarding the publication procedure followed subsequent the conclusion of Grand Jury deliberations. The foreperson was the only witness interviewed and she stated she did not know what happened to the indictments after deliberations concluded.

III. CONCLUSION

Applicant has overcome the presumption of regularity of the Grand Jury proceedings in his case. Applicant has demonstrated that the indictments were not published in open court after deliberations. Applicant has demonstrated that the absence of the foreperson's signature divested the court of jurisdiction. Applicant has met his burden of proving ineffective assistance of counsel and his Petition for Post-Conviction Relief should be granted.

Respectfully Submitted,



Caroline M. Horlbeck

July 21, 2015

ATTACHMENT A

STATE OF SOUTH CAROLINE	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2011-CP-23-8447
COUNTY OF GREENVILLE	)	
	)	
Frederick Van Anderson,	)	
S.C.D.C. No. 344239,	)	
	)	
Applicant,	)	
	)	
v.	)	AFFIDAVIT
	)	of
	)	ASHLEY FOY
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

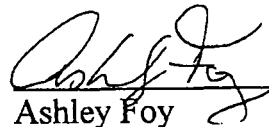
This affidavit is given by my own free will, without force or coercion or promise or threat. I, Ashley Foy, am an employee of Caroline Horlbeck and am writing this statement regarding the research I did on Frederick Anderson and the indictments that were presented to the Grand Jury during the July 2009 term. I was to note which indictments had been signed by the Foreperson and which ones had not.

During May 6th 2015 through May 8th 2015, I went to the Greenville County Courthouse and looked through the Clerk of Court's computer where I proceeded to look up three hundred and forty three indictments from July of 2009. I would type in the Defendants names on the computer located at the Greenville County Clerk of Court. Then I would locate the particular indictment number I was

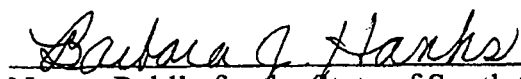
looking for. Sometimes I would have to go through every charge to find the indictment number since it wouldn't be listed on the main page. Once I found the indictment number I would click on the indictment to see if it had been signed by the foreperson.

Of the three hundred and forty three indictments I was only able to find three hundred and four. I could not find thirty nine indictments. When I asked the Clerk why these indictments were not showing up the Clerk could not explain why these indictments could not be found.

Through my research all the indictments I found were signed except for Mr. Frederick Anderson's. Mr. Anderson's indictments were stamped 'True Bill' but never signed by the foreperson.


Ashley Foy

Sworn to before me on this 21st day of July, 2015.


Notary Public for the State of South Carolina

My Commission Expires: 9-24-20

INDICTMENT #	NAME	STATUS
2007-05016	Bryan Doll	Amended Indictment (TB)
2008-01233	Sherry Bowen Williams	TB
2008-01239	~~Elizabeth Ann Scott~~	TB <i>Warrant # 83291EA True Bill signed</i>
2008-01428	Jeffrey Eric Niel	TB
2008-01835	Michael Wayne Newcomb	TB
2008-02853	Ricky Dale Medford	TB
2008-02937	Kenneth Burnside	TB
2008-02938	Kenneth Burnside	TB
2008-02982	Tavarus Lamar Jones	TB
2008-02983	Tavarus Lamar Jones	TB
2008-02984	Tavarus Lamar Jones	TB
2008-03198	Vincent Gerald Williams	TB
2008-03305	Jeffrey Eric Niel	TB
2008-03308	Jeffrey Eric Niel	TB
→ 2008-03680	Alexa Kiara Griffin	TB (only charge was 2010CP2304290)
2008-03794	Martin Lane Brumagin	TB
2008-03804	Riodejaneiro Taylor	TB
2008-04018	Jonathan Delaney Mason	TB
2008-04019	Jonathan Delaney Mason	TB
2008-04128	Kenyatta Olando Tucker	TB
2008-04127	Kenyatta Olando Tucker	TB
2008-04324	Anthony Bernard Young	TB
2008-04325	Anthony Bernard Young	TB
2008-04326	Anthony Bernard Young	TB
2008-04327	Anthony Bernard Young	TB
2008-04513	Brandon Jermel Ramsey-Smith	TB
2008-04811	Curtis C. Heard	TB
2008-05397	Fred Martin Bennett, Jr.	TB
2008-05544	Denita Rejean Kelly	TB not found
2008-05545	Denita Rejean Kelly	TB (Indictment not signed/True Bill Indictment is)
2008-06051	Darren Leon Harris	TB
2008-06052	Darren Leon Harris	TB
2008-06053	Darren Leon Harris	TB
2008-06054	Darren Leon Harris	TB
2008-06106	Terry Lamont Canada	TB
2008-06107	Terry Lamont Canada	TB
2008-06249	Rickellus Deonte Young	TB
2008-06250	Rickellus Deonte Young	TB
2008-06251	Otis Rodricka Jackson	TB
2008-06252	Otis Roderick Jackson	TB
2008-06281	Perry Lee Parker	TB
2008-06395	Lance Walker Robertson	TB
2008-06439	Wayne Charles Hughey	TB
2008-06440	Wayne Charles Hughey	TB
1428741 2008-06484	Melanie Ann Howard	TB Indictment not signed/True Bill signed
2008-06622	Shamel A. Golden	TB
2008-06679	Douglas Thompson	TB
2008-06882	Donna Lynne Ellis	TB
2008-06901	Anthony L. Hawkins	TB
2008-06997	John Bryan Martin	TB
2008-06998	John Bryan Martin	TB

2008-06999	John Bryan Martin	TB
2008-07000	John Bryan Martin	TB
2008-07001	John Bryan Martin	TB
2008-07002	John Bryan Martin	TB
2008-07003	John Bryan Martin	TB
2008-07030	Robert Seaborn	TB
2008-07050	Gloria Jeanette Templeton	TB
2008-07051	Gloria Jeanette Templeton	TB
2008-07052	Gloria Jeanette Templeton	TB
2008-07053	Gloria Jeanette Templeton	TB
2008-07054	Gloria Jeanette Templeton	TB
2008-07055	Gloria Jeanette Templeton	TB
2008-07056	Gloria Jeanette Templeton	TB
2008-07057	Gloria Jeanette Templeton	TB
2008-07063	Zachary Bruce Clason a.k.a. Zachary	TB
2008-07202	Thomas Edward Bradley	TB
2008-07269	Charlene Denise Hawkins	Attended Indictment (TB)
2008-07282	Tracey Yvonne Posey	TB
2008-07549	Eddie Dean Williams	TB
2008-07587	Michael Brent Haynes	TB
2008-07582	Norman Thompson	TB
2008-07695	Ricky Dewayne Rice	TB
2008-07709	Tavarus Lamar Jones	TB
2008-07710	Tavarus Lamar Jones	TB
2008-07718	Gene Thomas Roy, III	TB not found (2010CP2300311) no documents @ b6 b7 rc
2008-07740	Christopher Ija Smith	TB
2008-07866	Javaris L. Coleman	TB not found
2008-07867	Javaris L. Coleman	TB not found
2008-07869	Javaris L. Coleman	TB not found
2008-07870	Javaris Lawren Coleman	TB
2008-07871	Javaris Lawren Coleman	TB
2008-07869	Hubert Moon	TB not found
2008-08218	Ramon Robinson	TB
2008-08231	Bobby Mitchell Russell	TB
2008-08297	Darryl Anthony Davis	TB
2008-08375	Al Jerome McCloud	TB
2008-08379	Marie Rohling Nelson	TB
2008-08458	Donald Dickert Smith, Jr.	TB
2008-08521	Trevia Tremaine Sullivan	TB
2008-08522	Trevia Tremaine Sullivan	TB
2008-08532	James Edward Mayes, Jr.	TB
2008-08521	Larry Williams	TB
2008-08522	Larry Williams	TB
2008-08778	Jerrico Mercedes Bailey	TB
2008-08779	Jerrico Mercedes Bailey	TB
2008-08826	Anthony Bernard Young	TB
2008-08827	Anthony Bernard Young	TB
2008-08828	Anthony Bernard Young	TB
2008-08915	Andre Edwana Gambrell	TB
2008-09074	James Marquise Woodruff	TB
2008-09084	Thomas Mitchell Wallace	TB
2008-09085	Thomas Mitchell Wallace	TB

2008-09086	Thomas Mitchell Wallace	TB
2008-09087	Thomas Mitchell Wallace	TB
2008-09098	Jignesh Patel	TB
2008-09122	Tiffany Shawn Moon	TB
2008-09123	Tiffany Shawn Moon	TB
2008-09124	Tiffany Shawn Moon	TB
2008-09125	Tiffany Shawn Moon	TB
2008-09126	Tiffany Shawn Moon	TB
2008-09127	Tiffany Shawn Moon	TB
2008-09296	Harold Fonda Smith	TB
2008-09429	Randall Lee Ward	No Bill no indictment
2008-09438	Tavarus Lamar Jones	TB
2008-09440	Tavarus Lamar Jones	TB
2008-09466	Oscar Rodriguez Lopez	TB not found
2008-09467	Oscar Rodriguez Lopez	TB not found
2008-09495	Tiffany Shawn Moon	TB
2008-09561	Elenie Isham Parker	TB
2008-09571	James Nabors	TB
2008-09572	James Nabors	TB
2008-09621	Danny Charles Mullinax	TB
2008-09622	Danny Charles Mullinax	TB
2008-09623	Danny Charles Mullinax	TB
2008-09696	James Edward Mayes, Jr.	TB
2008-09732	Ruby Elizabeth Payne	TB
2008-09879	Kenneth Burnside	TB
2008-09880	Kenneth Burnside	TB
2008-09881	Kenneth Burnside	TB
2008-09887	Harold Andrew Case, Jr.	TB
2008-09888	Harold Andrew Case, Jr.	TB
2008-09889	Harold Andrew Case, Jr.	TB
2008-09890	Harold Andrew Case, Jr.	TB
2008-09982	Donald Ray Woody	TB
2008-10043	Lee Antonio Anderson	TB not found
2008-10044	Lee Antonio Anderson	TB not found
2008-10046	Lee Antonio Anderson	TB not found
2008-10086	Bobby Moore	TB ~~Case~~ not found
2008-10086	Bobby Moore	TB not found
2008-10087	Bobby Moore	TB not found
2008-10088	Bobby Moore	TB not found
2008-10242	James Philip Bowers a.k.a James P	TB
2009-00043	Stanley Vincent Quinn	TB
2009-00136	Michael Dustan Hall	TB
2009-00146	Thomas Mouyer Renrick, IV	TB
2009-00147	Thomas Mouyer Renrick, IV	TB
2009-00148	Thomas Mouyer Renrick, IV	TB
2009-00212	Holly Rae Cannon	TB
2009-00338	Vincent Gerald Williams	TB
2009-00425	Gladys Rene Bragg	TB
2009-00503	Rokeisha Quey Juanza Jerna Byrd	TB
2009-00530	Jeffrey Eric Niel	TB
2009-00531	Jeffrey Eric Niel	TB
2009-00532	Jeffrey Eric Niel	TB

2009-00562	Alvin W. Staton	TB
2009-00563	Alvin W. Staton	TB
2009-00564	Alvin W. Staton	TB
2009-00576	Marlies Ann Grove	TB
2009-00581	Danny Charles Mullinax	TB
2009-00582	Danny Charles Mullinax	TB
2009-00588	Danny Charles Mullinax	TB
2009-00705	William Thomas Coker	TB
2009-00744	Raymond Martinez, Jr.	TB
2009-00745	Raymond Martinez, Jr.	TB
2009-00749	Charles Augustus Chiles, Jr.	Amended indictment (TB) not found
2009-00790	Danny Charles Mullinax	TB
2009-00910	Daniel Michael Fowler	TB
2009-00919	Riodejanerio Taylor	TB
2009-00930	Shannon Ladd Allison	TB
2009-01000	Malvin Todd Englebe	TB
2009-01039	Steven Franklin Harper	TB not found
2009-01132	Aurthur Neopleon Ferguson	TB
2009-01188	Brandon Jermal Smith Ramsey	TB
2009-01189	Brandon Jermal Smith Ramsey	TB not found
2009-01190	Brandon Jermal Smith Ramsey	TB not found
2009-01239	Carl Lee Myers, Jr.	TB
2009-01260	Cynthia L. Noonkaster	TB
2009-01293	Javaris L. Coleman	TB not found
2009-01407	Lee Ann Kral	TB not found
2009-01444	Larry Williams	TB
2009-01466	James Demetrius Cureton	TB
2009-01467	James Demetrius Cureton	TB
2009-01613	Marcus Tyree Parks	TB
2009-01614	Marcus Tyree Parks	TB
2009-01519	Marcus Tyree Parks	TB
2009-01622	Dale Boyd Rowe, Jr.	TB
2009-01684	William M. Jones	TB
2009-01791	David Michael Ashmore, Jr.	TB
2009-01792	David Michael Ashmore, Jr.	TB
2009-01793	David Michael Ashmore, Jr.	TB
2009-01794	David Michael Ashmore, Jr.	TB
2009-01799	William Zachary Hamilton	TB
2009-01813	Glenda Lisette Rodriguez	TB
2009-01847	Lee Ann Ray	TB
2009-01851	Christopher Lloyd Latham	TB
2009-01864	Danny Charles Mullinax	TB
2009-01902	Tykeya Michelle Lytle	TB
2009-01989	Joseph Searcy Justice	TB
2009-01990	Tina Melinda Mealer	TB
2009-02047	David Andrew Atkins	TB
2009-02066	Suellen Castille	TB
2009-02066	Suellen Castille	TB
2009-02081	Aaron J. Olson	TB
2009-02188	Buford Lee Crawford	TB
2009-02187	Buford Lee Crawford	TB
2009-02308	Qwellie Fuller	TB not found

Whur

2009-02307	Qwelle Fuller	TB not found
2009-02408	Spencer Terrell Witcher	TB
2009-02409	Spencer Terrell Witcher	TB
2009-02410	Spencer Terrell Witcher	TB
2009-02411	Spencer Terrell Witcher	TB
2009-02412	Spencer Terrell Witcher	TB
2009-02413	Spencer Terrell Witcher	TB
2009-02414	Spencer Terrell Witcher	TB
2009-02415	Spencer Terrell Witcher	TB
2009-02418	Spencer Terrell Witcher	TB
2009-02417	Spencer Terrell Witcher	TB
2009-02418	Spencer Terrell Witcher	TB
2009-02421	Randy Erin Jennings	TB
2009-02422	Randy Erin Jennings	TB not found
2009-02423	Randy Erin Jennings	TB not found
2009-02437	Christopher Brannon Collins	TB
2009-02501	Durrell Antonio Hunter	TB
2009-02502	Steven Ellis Gentry	TB
2009-02503	Anthony Lamar Gentry	TB
2009-02508	Samantha Louise Doutrich	TB
2009-02509	Samantha Louise Doutrich	TB
2009-02510	Christopher Brannon Collins	TB
2009-02511	Christopher Brannon Collins	TB
2009-02512	Spencer Terrell Witcher	TB
2009-02513	Spencer Terrell Witcher	TB
2009-02634	William Thomas Coker	TB
2009-02581	Telisha Ann Anderson	TB
2009-02575	Daniel Franklin Smith	TB
2009-02578	Daniel Franklin Smith	TB
2009-02610	Melissa Ann Rodgers	TB
2009-02613	James Nabors	TB
2009-02639	Quoc Phan	TB
2009-02680	Riodejanetro Taylor	TB not found
2009-02728	Mary Ann Parks	TB
2009-02735	Melvin Todd Englebe	TB
2009-02745	Melvin Todd Englebe	TB
2009-02840	Keeber J. Lewis	TB
2009-02871	Shella Demetric Mills	TB
2009-02878	Michael Eugene Kock	TB no name came up
2009-02927	Shannon Seth Woodward	TB
2009-02930	Crystal Danielle McGreen	TB
2009-02957	Veronica Belita Gray	TB
2009-02988	James Marquise Woodruff	TB
2009-02970	Telisha Anderson	TB
2009-03109	Timothy Marcus Owens	TB
2009-03280	David Michael Brozowski	TB
2009-03281	David Michael Brozowski	TB
2009-03289	Daniel Keith Morgan, Jr.	TB not found
2009-03397	Nicholas Daniel Jackson	TB
2009-03486	Caroline Vickery	TB
2009-03488	Caroline Vickery	TB
2009-03495	Shneida Jackson	TB

2009-03554	Marquis Creedale Wright	TB
2009-03608	Laquavis Howard	TB
2009-03609	Laquavis Howard	TB
2009-03610	Laquavis Howard	TB
2009-03611	Laquavis Howard	TB
2009-03612	Laquavis Howard	TB
2009-03628	Randy Erin Jennings	TB not found
2009-03651	Laquavis Howard	TB
2009-03665	Michael Daniel Stroud	TB
2009-03694	Thomasina Monique Moss	TB
2009-03794	Calvert Jason Drummond, Jr.	TB
2009-03795	Calvert Jason Drummond, Jr.	TB
2009-03796	Calvert Jason Drummond, Jr.	TB
2009-03891	Lulu Marie White	TB not found
2009-03892	Lulu Marie White	TB not found
2009-03893	Lulu Marie White	TB not found
2009-03909	Darryl Anthony Davis	TB
2009-03910	Darryl Anthony Davis	TB not found
2009-03921	Christopher D. Bryson	TB
2009-03922	Christopher D. Bryson	TB
2009-03923	Christopher D. Bryson	TB
2009-03990	Thomas Locklear	TB
2009-04027	Jerrico Mercedes Bailey	TB
2009-04224	Sheryl G. Bedoya	TB
2009-04481	John Henry McDonald, Jr.	TB
2009-04517	Ron McAdoo	TB
2009-04520	Jashaun Deck	TB
2009-04521	Quoc Van Phan	TB
2009-04550	Shannon Lynn Saunders	TB
2009-04551	Shannon Lynn Saunders	TB
2009-04552	Shannon Lynn Saunders	TB
2009-04553	Shannon Lynn Saunders	TB
2009-04554	Jacobie D. Potlow	TB
2009-04556	Christian Graza	TB
2009-04557	Jacobie D. Potlow	TB
2009-04625	Felix Rodriguez Gonzalez	TB
2009-04656	Tavarus Lamar Jones	TB
2009-04657	Tavarus Lamar Jones	TB
2009-04658	Tavarus Lamar Jones	TB
2009-04659	Tavarus Lamar Jones	TB
2009-04723	Dewayne A. Bell	TB
2009-04819	Lulu Marie White	TB not found
2009-04820	Lulu Marie White	TB not found
2009-05033	Branigan O'Reilly Mills	TB
2009-05034	Branigan O'Reilly Mills	TB
2009-05035	Branigan O'Reilly Mills	TB
2009-05036	Branigan O'Reilly Mills	TB
2009-05037	Branigan O'Reilly Mills	TB
2009-05038	Branigan O'Reilly Mills	TB
2009-05039	Branigan O'Reilly Mills	TB
2009-05040	Branigan O'Reilly Mills	TB
2009-05041	Branigan O'Reilly Mills	TB

546092
546093
546094

Branigan O'Reilly Mills
 Branigan O'Reilly Mills
 Branigan O'Reilly Mills
 Branigan O'Reilly Mills
 Branigan O'Reilly Mills
 Branigan O'Reilly Mills
 Branigan O'Reilly Mills
 Branigan O'Reilly Mills
 Michael Trevor Velchoff
 Kendall Baer
 Jerry La Quinn
 James Garrett Fig
 James Garrett Fig
 Raif Shkore Latimer
 Glenn Sharaw Sanders
 Frederick Van Anderson
 Frederick Van Anderson
 Frederick Van Anderson
 Brandon Jermal Smith Ramsey
 Brandon Smith Ramsey
 Richey Alano Stoddard
 Clifford Tyrone Thomas
 Clifford Tyrone Thomas
 Clifford Tyrone Thomas
 Hubert Moon
 John Lawrence Kendall
 Henry David Griffin, Jr.
 Christopher Denrile Jones
 Clifford Tyrone Thomas
 Jimmy Brock Harris
 Jimmy Brock Harris
 Benny Perry Bell

not found
not found

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
C.A. No. 2011-CP-23-8447

COUNTY OF GREENVILLE)

Frederick Van Anderson,
S.C.D.C. No. 344239,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

MEMORANDUM OF LAW

ENTERED COMPUTER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 JUL 21 PM 4 11

Jw

I. PROCEDURAL HISTORY

Applicant was indicted at the July 2009 term of the Greenville County Grand Jury for murder (2008-GS-23-5748, count 1), possession of a weapon during the commission of a violent crime (2008-GS-23-5748, count 2), first-degree burglary (2009-GS-23-5749), and discharging a firearm into a dwelling (2009-GS-23-5750). John I. Mauldin, Esquire and Frank Eppes, Esquire represented Applicant.

On December 22, 2010, Applicant pled guilty. The Honorable Robin B. Stilwell levied concurrent sentences of life imprisonment for murder, 30 years for first-degree burglary, and 10 years for discharging a firearm into a dwelling. Applicant did not appeal.

Applicant filed this post-conviction relief (PCR) application on December 19, 2011. Respondent made its return on June 5, 2012 and an amended return on April 8, 2015. A PCR hearing/guilty plea reconstruction hearing was held on April 23, 2015. Applicant was present and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented Respondent.

II. ISSUES RAISED BY THE APPLICANT

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

1. Ineffective assistance of counsel:
 - a. Failed to inform that Applicant's statements may have been made involuntarily and, if so, would be inadmissible at trial.
 - b. Provided no alternative options but to plead guilty.
 - c. Failed to fully apprise Applicant of the sentencing consequences of his plea.
 - d. Forced Applicant to plead guilty instead of going to trial.
 - e. Failed to show interest in Applicant's case.
 - f. Failed to explain the appeal process or file an appeal.
2. Involuntary guilty plea:
 - a. Not advised of the sentencing consequences of his plea.
3. Perjury and prosecutorial misconduct by "Deputy Solicitor Paul B. Wickensimer" in processing illegal documents (the indictments).

At the conclusion of the PCR hearing, this Court instructed the parties to (1) contact the Grand Jury foreperson and (2) submit memoranda on the issue of whether the plea judge had jurisdiction to accept Applicant's guilty pleas to these charges.

III. LAW/ANALYSIS

Applicant argues he was not properly indicted by the Grand Jury. Applicant argues his indictments were not signed by the Grand Jury foreperson, so the plea judge did not have jurisdiction to accept his guilty pleas to those charges and impose sentence. This Court noted he was the judge who signed the Grand Jury report for the July 2009 term and that Applicant's three indictments were included.¹ Respondent submits Applicant failed to present an issue that would justify granting post-conviction relief. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP) (holding that, in a PCR action, "[t]he burden of proof is

¹ This was entered into the record as Court's Exhibit 2.

on the applicant to prove his allegations by a preponderance of the evidence.”).

On June 30, 2015, attorneys for the parties met with former Grand Jury foreperson, Shannon Nicole West f/k/a Shannon Nicole Cummins. Ms. West confirmed she was the foreperson of the Greenville County Grand Jury. Ms. West indicated the Grand Jury would vote all of the indictments related to one individual at the same time. Ms. West indicated she would set those indictments the Grand Jury voted “true billed” to one side and would later stamp and sign those indictments. Ms. West indicated she had two stamps – one was True Bill and the other was a stamp of her signature. Ms. West did not know why Applicant’s indictments were not stamped with the signature stamp. Ms. West had no knowledge of whether the indictments were ever published. At the conclusion of this meeting, Ms. West signed an affidavit, which was notarized and filed with the Clerk of Court. See Attachment A.

Respondent submits the case of Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986) is instructive. In Pringle, the indictments were stamped “True Bill” but the grand jury foreman’s signature was not on them. The Supreme Court found the trial judge had jurisdiction because the regular indictment procedure was followed. Similarly, in this case, Ms. West detailed the usual indictment procedure in her affidavit. The sole deviation appears to be that she stamped Applicant’s indictments with the True Bill stamp but not her signature stamp. Applicant cannot demonstrate any other aspect of the regular indictment procedure was not followed in his case. Respondent notes “[t]he regularity of grand jury proceedings is presumed absent clear evidence to the contrary; the burden is on the defendant to prove facts upon which a challenge to the legality of the grand jury proceedings is predicated.” State v. Batchelor, 377 S.C. 341, 344, 661 S.E.2d 58, 59 (2008). Respondent would further note that indictments are merely notice documents. See State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). The indictments

in this case were true-billed and clearly sufficient to put Applicant on notice of the charges he was facing. See State v. Tumbleston, 376 S.C. 90, 95-96, 654 S.E.2d 849, 852 (Ct. App. 2007). Applicant's attorneys did not testify they were not given notice of the charges Applicant was facing. To the contrary, attorney Mauldin testified he was preparing the case as a capital trial to be scheduled in January 2011.

Accordingly, Applicant has failed to overcome the presumption of regularity of the Grand Jury proceedings in his case. Applicant has failed to demonstrate the lack of a signature from the Grand Jury foreperson divested the plea judge of jurisdiction to accept his guilty pleas.

IV. CONCLUSION

Respondent submits Applicant has failed to meet his burden of proving he is entitled to post-conviction relief. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174. As such, this PCR application should be denied and dismissed with prejudice.

Respectfully submitted,

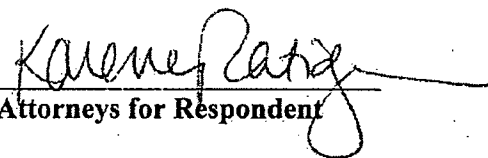
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

July 20, 2015

ATTACHMENT A

STATE OF SC
COUNTY OF GREENVILLE

I, the undersigned notary public, do hereby Affirm that Shannon West personally Appeared before me on June 30, 2015 and signed the above Affidavit.

Ashley A. Fay
my commission expires on

FILED - CLERK OF COURT

GREENVILLE

PAUL B. WICKENHED

I, Shannon Nicole West, do swear or affirm:

June 11, 2023

2015 JUN 30 P. 11:33

my legal name in July 2009 was Shannon Nicole Cummins.

2. I was the Foreperson of the Greenville County Grand Jury in July 2009.

3. The representative from the State would present all indictments related to a single defendant and then the Grand Jury would vote when the State representative left the room.

4. All indictments deemed True Billed would be set to the side in a pile and I would - at midday during a break - I would stamp True Bill & sign them.

5. To the best of my recollection, there were two separate stamps - one was a True Bill and the other was a signature stamp.

6. I would be the only person to use these stamps.

7. The indictments did not contain any stamps before they were presented to the Grand Jury.

8. I do not know if the indictments were ever formally published, as I do not know what happened to any of the ~~the~~ indictments after they were stamped.

9. I do not have any recollection of the facts of the Frederick Anderson case. I do not know why my signature is not on these indictments.
Further Affiant saith not.

I swear or affirm that the above and foregoing representations are true and correct to the best of my knowledge.

Shannon Nicole West 6/30/15
FKA - Shannon Nicole Cummins

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2011-CP-23-8447
COUNTY OF GREENVILLE	)	
	)	
Frederick Van Anderson,	)	
S.C.D.C. No. 344239,	)	
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 DEC 9 AM 11 14

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 19, 2011. Respondent made its return on June 5, 2012 and an amended return on April 8, 2015. An evidentiary hearing was held on April 23, 2015 at the Greenville County Courthouse.¹ Applicant was present and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Also testifying were Applicant's plea counsel, John I. Mauldin, Esquire and Frank Eppes, Esquire. The Court had before it the Greenville County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, and both the return and amended return.

At the conclusion of the PCR hearing, this Court instructed the parties to (1) contact the Grand Jury foreperson and (2) then submit memoranda on the issue of whether the plea judge

¹ This Court also conducted a reconstruction of the guilty plea transcript. Respondent introduced a letter dated June 5, 2014 from Court Administration indicating the transcript was unavailable. (Court's Exhibit 1). The parties who spoke at the reconstruction hearing were: Applicant, both plea attorneys, the prosecuting solicitor (Betty Strom), Applicant's brother (Dwayne Anderson), and Applicant's stepfather (James Drummond). This Court finds the guilty plea was able to be satisfactorily reconstructed.

had jurisdiction to accept Applicant's guilty pleas to these charges. The parties met with the Grand Jury foreperson and an affidavit from that individual was filed with the Clerk of Court on June 30, 2015. This Court has considered this affidavit and the parties' post-trial memoranda (both of which were filed on July 21, 2015).

PROCEDURAL HISTORY

Applicant was indicted at the July 2009 term of the Greenville County Grand Jury for murder (2008-GS-23-5748, count 1), possession of a weapon during the commission of a violent crime (2008-GS-23-5748, count 2), first-degree burglary (2009-GS-23-5749), and discharging a firearm into a dwelling (2009-GS-23-5750). He was represented by John I. Mauldin, Esquire and Frank Eppes, Esquire.

On December 22, 2010, Applicant pled guilty. The Honorable Robin B. Stilwell levied concurrent sentences of life imprisonment for murder, 30 years for first-degree burglary, and 10 years for discharging a firearm into a dwelling. Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. Failed to inform that Applicant's statements may have been made involuntarily and, if so, would be inadmissible at trial.
 - b. Provided no alternative options but to plead guilty.
 - c. Failed to fully apprise Applicant of the sentencing consequences of his plea.
 - d. Forced Applicant to plead guilty instead of going to trial.
 - e. Failed to show interest in Applicant's case.
 - f. Failed to explain the appeal process or file an appeal.
2. Involuntary guilty plea:
 - a. Not advised of the sentencing consequences of his plea.
3. Perjury and prosecutorial misconduct by "Deputy Solicitor Paul B. Wickensimer" in processing illegal documents (the indictments).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

Applicant alleges his guilty plea was involuntary and that he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct.

1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

Applicant stated his first attorney was Jim Bannister, then his attorneys were John Mauldin (and later Frank Eppes). Applicant stated he met with John Mauldin and reviewed the photographs in the case, as well as his version of events. Applicant stated he discussed the statements with Mauldin but Mauldin never said these statements would be admissible at trial. Applicant stated he wanted a trial but Mauldin did not. Applicant stated he was served with notice of intent to seek life imprisonment without parole and still wanted a jury trial. Applicant admitted he did not tell the plea judge he wanted a trial. Applicant stated he decided to plead guilty because Mauldin said this was an opportunity and he could receive 30-35 years. Applicant admitted Mauldin did not promise he would receive that sentence. Applicant confirmed the plea judge said life imprisonment was the maximum sentence but stated he did not know he would receive a life sentence. Applicant admitted he told the plea judge no promises had been made in this case but said he was hopeful he would receive a 30-35 year sentence. Applicant stated he spoke to two experts at the jail (one of whom was Dr. Price) but Mauldin did not review the results with him. Applicant stated he did not tell plea counsel after the plea that he wanted to appeal but wanted one now because "this ain't right."

John Mauldin was the lead attorney and confirmed attorney Bannister was involved when the case was non-capital. Mauldin testified he reviewed discovery materials with Applicant, which would have included his verbal statement to arresting officers. Mauldin

testified Applicant never denied involvement in the incidents. Mauldin testified he reviewed Bannister's reports and it appeared that once Bannister could not obtain a plea offer, the notice of intent to seek the death penalty was served. Mauldin testified Applicant was adamant that he wanted a trial, which he told him was unwise. Mauldin testified that, while he was preparing the case for a capital trial to be held in January 2011, he had several meetings with Applicant and his brother, Dwayne. Mauldin testified he strongly encouraged a guilty plea and asked Dwayne to speak to Applicant to make sure he was making correct decisions. Mauldin testified he explained the sentence range for the murder charge and explained the death penalty was an option if the case went to trial. Mauldin testified he never told Applicant the plea judge said he would receive a 30-35 year sentence. Mauldin testified he had Dr. Price and Dr. Schwartz-Watts meet with Applicant at the jail. Mauldin testified Dr. Price's preliminary report was that Applicant was stubborn but there were no competency or mental retardation issues. Mauldin testified Dr. Schwartz-Watts gave him a preliminary opinion in preparation for the mitigation portion of trial (not related to guilty or innocence). Mauldin testified he did not advise Applicant about an appeal.

Frank Eppes became associated with this case after the notice of intent to seek the death penalty was served. Eppes testified they reviewed the State's evidence with Applicant. Eppes testified Applicant often said he wanted a trial. Eppes stated there was overwhelming evidence against Applicant and explained to him the options of a guilty plea and a trial. Eppes testified he did not know why Applicant changed his mind and decided to plead guilty. Eppes testified neither he nor Mauldin told Applicant he would receive a 30-35 year sentence and that they told him the murder charge carried a term of 30 years to life imprisonment. Eppes testified they reviewed Dr. Price's report and was sure they discussed it with Applicant.

This Court finds Applicant failed to meet his burden of proving plea counsel failed to review the case with Applicant and prepare him for the plea hearing. Applicant argues plea counsel did not review all of the discovery materials with him (only the photographs). Applicant argues plea counsel did not discuss whether his statements could be admitted at trial. Applicant also argues plea counsel did not review the experts' reports with him. Mauldin and Eppes both testified they reviewed all of the discovery materials with Applicant. Mauldin specifically testified this would have included verbal statements. Eppes specifically testified they would have discussed Dr. Price's report with Applicant. This Court finds plea counsels' testimony is credible. This Court notes Mauldin and Eppes are experienced and respected criminal defense attorneys who have handled numerous capital cases. This Court finds plea counsel reviewed all of the State's evidence (as well as any reports or conclusions generated by defense experts) with Applicant prior to the guilty plea hearing. This Court finds Applicant was well aware of the evidence against him and how this evidence would have been used at trial. This Court finds Applicant has failed to demonstrate what more plea counsel should have done to review his case prior to the plea hearing and what impact any further review would have had upon his case. See, e.g., Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

This Court finds Applicant failed to meet his burden of proving plea counsel promised he would receive a lesser sentence if he pled guilty. While Applicant argues Mauldin told him the plea judge would sentence him to a sentence of 30-35 years, this Court finds this is not credible testimony. Eppes testified Applicant was advised the sentencing range for murder was 30 years – life imprisonment. Eppes testified neither he nor Mauldin told Applicant he would receive a

30-35 year sentence, though Mauldin did argue for a sentence in this range at the guilty plea hearing. Mauldin testified he did not tell Applicant the plea judge would sentence him to 30-35 years. Mauldin testified Applicant was advised of the sentence range for murder and that he could receive the death penalty on this charge if it went to trial. This Court finds Eppes and Mauldin are credible. This Court finds Applicant was aware of the sentence ranges on his charges and was also aware he was pleading guilty without a recommendation. Applicant signed all of his sentencing sheets, which have the box "Without Negotiations or Recommendation" clearly marked. See Holden v. State, 713 S.E.2d 611, 617, 393 S.C. 565, 575-76 (2011) (citing Roddy v. State, 339 S.C. 29, 36, 528 S.E.2d 418, 422 (2000)) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences.").

This Court finds Applicant failed to meet his burden of proving plea counsel should have filed an appeal. Plea counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). In order to make this determination, "courts must take into account all the information counsel knew or should have known." Id. (citing Strickland, 466 U.S. at 690, 104 S. Ct. at 2066). Although not determinative, a highly relevant factor will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because a plea may indicate the defendant seeks an end to judicial proceedings. Id. This Court finds plea counsel were not obligated to advise Applicant about an appeal because he entered a knowing and voluntary guilty plea to these charges. Applicant has failed to demonstrate there were any legal errors made by the plea judge, such that he would have wanted

an appeal. Applicant has also failed to demonstrate he asked counsel about an appeal. Rather, Applicant admitted he never asked plea counsel to file an appeal.

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in their representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsels' performance.

This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

Indictments

Applicant argued his indictments were improper because they were not signed by the grand jury foreperson. Mauldin testified he would not have noticed this because it is the back side of the indictment. Mauldin testified the case was set for a capital trial the month after Applicant pled guilty, and he had no issues with the indictments.²

This Court finds Applicant failed to meet his burden of proving there were irregularities with the Grand Jury procedure that invalidate his indictments. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174. The Grand Jury foreperson indicated the Grand Jury would vote all of

² As noted supra on pages 1-2, this Court instructed the parties to contact the Grand Jury foreperson and then submit written memoranda. This Court reviewed the affidavit from the foreperson as well as the memoranda. This Court also reviewed the Grand Jury report from July 2009 (Court Exhibit 2) and notes Applicant's indictments are all reported true billed.

the indictments related to one individual at the same time. The foreperson indicated she would set those indictments the Grand Jury voted “true billed” to one side and would later stamp and sign those indictments. The foreperson indicated she had two stamps – one was True Bill and the other was a stamp of her signature. The foreperson did not know why Applicant’s indictments were not stamped with the signature stamp.

In Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986), the indictments were stamped “True Bill” but the grand jury foreman’s signature was not on them. The Supreme Court found the trial judge had jurisdiction because the regular indictment procedure was followed. Similarly, in this case, the foreperson detailed the usual indictment procedure in her affidavit. The sole deviation appears to be that she stamped Applicant’s indictments with the True Bill stamp but not her signature stamp. Applicant cannot demonstrate any other aspect of the regular indictment procedure was not followed in his case. This Court notes “[t]he regularity of grand jury proceedings is presumed absent clear evidence to the contrary; the burden is on the defendant to prove facts upon which a challenge to the legality of the grand jury proceedings is predicated.” State v. Batchelor, 377 S.C. 341, 344, 661 S.E.2d 58, 59 (2008). This Court would further note indictments are merely notice documents. See State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). The indictments in this case were true-billed and clearly sufficient to put Applicant on notice of the charges he was facing. See State v. Tumbleston, 376 S.C. 90, 95-96, 654 S.E.2d 849, 852 (Ct. App. 2007). Plea counsel did not testify they were not given notice of the charges Applicant was facing. To the contrary, Mauldin testified he was preparing the case as a capital trial to be scheduled in January 2011. Applicant failed to meet his burden of proving either that his indictments were defective or that the plea judge did not have jurisdiction to impose sentence upon them.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel were not deficient in any manner and Applicant was not prejudiced by counsels' representation. Furthermore, Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 8 day of December, 2015.



Edward W. Miller
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

IN THE SUPREME COURT

Frederick Anderson,

Appellant,

-vs-

State of South Carolina,

Respondent.

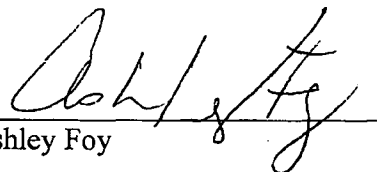
C.A. No. 2011-CP-23-8447

CERTIFICATE OF SERVICE

This is to certify that I am an employee in the law office of Caroline M. Horlbeck, attorneys for Applicant, and that I have this day caused to be served upon the person(s) named below Applicant's Notice of Appeal by placing copies of same in the United States mail, with adequate postage thereon, addressed as follows:

Ms. Lorie French
 S.C. Office of Appellate Defense
 PO Box 11433
 Columbia, SC 29211

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


 Ashley Foy

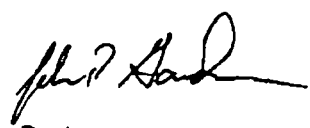
Greenville, South Carolina

1-8-2016, 2016

005748

WITNESSES

John Gardner



Travelers Rest Police Dept

9/7/2008

DOCKET NO. 2009-GS-23-
WIB

✓ The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2009

THE STATE

vs.

ARREST WARRANT NUMBER

I546091 and I546093

FREDERICK VAN ANDERSON

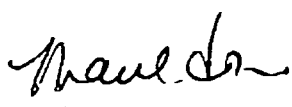


ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT



Indictment for

✓
0116/0549

**MURDER AND POSSESSION OF A WEAPON
DURING THE COMMISSION OF A VIOLENT
CRIME**

Foreperson of Petit Jury

Date:

VIOLATION § 16-03-0010 and § 16-23-0490

158

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
MURDER AND POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on JUL 28 2009 the Grand Jurors of Greenville
County present upon their oath:

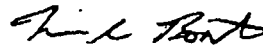
COUNT I - MURDER

That FREDERICK VAN ANDERSON did in Greenville County, on or about the 7th day of September, 2008,
unlawfully and with malice aforethought kill STEVEN GRAY by means of shooting him, and that STEVEN
GRAY died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws
(1976) as amended.

COUNT II - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That FREDERICK VAN ANDERSON did in Greenville County on or about the 7th day of September, 2008,
possess or visibly display a shotgun during the commission or attempted commission of a violent crime, to wit:
Murder. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATEGreenville
VS.

Frederick Van Anderson

AKA:

Race: B Sex: M Age: 38

DOB: SS#:

Address: BOX 94

City, State, Zip: TRAVELERS REST, SC 29690

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS2305748

A/W#: 1546091

Date of Offense: 9/7/2008

S.C. Code § : 16-03-0010, 0020

CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: *William Bouton* 15305 72885 SC Bar# *Frederick Van Anderson* Defendant *Paul B. Wislenski* Attorney for Defendant 3696 SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of LIFE days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation formonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

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

Other:

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

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
§ 47.12 (Public Def/Prob)	\$500 \$
§ 14-1-212 (Law Enforce. Funding)	\$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$100 \$
§ 50-21-114(BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
§ 90.7 (SCCJA Surcharge)	\$5 \$ 5.00
3% to County (if paid in installments)	\$
TOTAL	\$

Clerk of Court/ Deputy Clerk

Court Reporter: *D. Williams*

SCCA/217 (11/2009)

Presiding Judge

Judge Code: 2158

Sentence Date: 6-15-10-12/22/10

ARREST WARRANT

I-546091

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

Travelers Rest

THE STATE

against

TR08084825

Frederick Van Anderson

Address:

Travelers Rest, SC 29690-8271

Phone: (

Race: B

Height: 6

Weight: 256

DL State: SC DL #:

DOB: Agency ORI #: SC0230600

Prosecuting Agency: Travelers Rest Police Dept

Prosecuting Officer: John Gardner - 97

Offense: Murder / Murder

Offense Code: 0116

Code/Ordinance Sec: 16-03-0010, 0020

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant **FREDERICK VAN ANDERSON**
on **9/7/08**
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

City Of Travelers Rest
6711 State Park Road
Travelers Rest, SC 29690

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

Travelers Rest

AFFIDAVIT

Personally appeared before me the affiant John Gardner

being duly sworn deposes and says that defendant Frederick Van Anderson
did within this county and state on or about 09/07/2008State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Trav
in the following particulars:

DESCRIPTION OF OFFENSE Murder / Murder

I further state that there is probable cause to believe that the defendant in
the crime set forth and that probable cause is based on the following facts:AFFIANT STATES THAT ON SEPTEMBER 7, 2008, THE ACCUSED, FREDERICK
AND AFORETHOUGHT CAUSE THE DEATH OF STEPHAN GRAY, BY DISCHARGING
THE VICTIM'S BODY. THIS OFFENSE DID OCCUR WITHIN THE CITY LIMITS OF
COUNTY OF GREENVILLE, SC.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

Travelers Rest

Affiant's Address 6711 STATE PARK

TRAVELERS REST

Affiant's Telephone (864)834-9029

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE

It appearing from the above affidavit that there are

on or about 9/7/2008 defendant Frederick Van Anderson

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/☒ Municipality of

Travelers Rest

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
soon thereafter as is practicable

Sworn to and subscribed before me

on 09/07/2008

 (L.S.)

Shirley Burnette

Judge Code: 6546

Judge's Address 6711 State Park Road

Travelers Rest, SC

Judge's Telephone (864)834-1630

Issuing Court: ☐ Magistrate

WITNESSES

DOCKET NO. 2009-GS-23-

WB

005749

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2009

THE STATE

vs.

FREDERICK VAN ANDERSON

ARREST WARRANT NUMBER

1546092

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0079

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

**INDICTMENT FOR
BURGLARY FIRST DEGREE**

At a Court of General Sessions, convened on _____
County present upon their oath:

JUL 28 2009

the Grand Jurors of Greenville

That FREDERICK VAN ANDERSON did in Greenville County, on or about the 7th day of September, 2008, willfully and unlawfully enter the dwelling of NICOLE CRUELL located at _____, Travelers Rest, South Carolina, without consent and with the intent to commit a crime therein and with the intent to commit the crime of murder and/or the entering and/or remaining did occur during the nighttime hours and/or armed with a deadly weapon. This is in violation of §16-11-311 of the South Carolina Code of Laws (1976) as amended.

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

Rich Burt
SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATEGreenville
VS.

Frederick Van Anderson

AKA:

Race: B Sex: M Age: 38

DOB: SS#:

Address: BOX 94

City, State, Zip: TRAVELERS REST, SC 29690

DL#: SID#:

INDICTMENT/CASE#: 2009GS2305748

A/W#: 1546093

Date of Offense: 9/7/2008

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADS

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: *William Bouton* 15305 12885 SC Bar# *Frederick Van Anderson* Defendant *John L. Walden* Attorney for Defendant 3696 SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

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

Other:

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

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 36-3-2995 (DUI Assessment)

§ 36-1-286 (DUI Breath Test)

§ 47.12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 36-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (11/2009)

Presiding Judge

Judge Code:

Sentence Date:

2158

6-15-10 12-22-10

ARREST WARRANT

I-546093

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Travelers Rest

THE STATE
against

TR06034825

Frederick Van Anderson

Address:

Travelers Rest, SC 29690-8271

Phone: SSN: Sex: M Race: B Height: 6 Weight: 256DL State: SC DL #:

DOB: Agency ORI #: SC0230600

Prosecuting Agency: Travelers Rest Police Dept

Prosecuting Officer: John Gardner - 97

Offense: Weapons / Poss. weapon during violent crime, if
not also sentenced to life without parole or death

Offense Code: 0549

Code/Ordinance Sec: 16-23-0490

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant FREDERICK VAN ANDERSON
on 9/17/08C. Muller #11/287
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

City Of Travelers Rest
6711 State Park Road
Travelers Rest, SC 29690

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Travelers Rest

AFFIDAVIT

Personally appeared before me the affiant John Gardner

being duly sworn deposes and says that defendant Frederick Van Anderson
did within this county and state on or about 09/07/2008State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Travelers Rest
in the following particulars:

DESCRIPTION OF OFFENSE Weapons / Poss. weapon during violent crime, if not also set

I further state that there is probable cause to believe that the defendant in
the crime set forth and that probable cause is based on the following facts:AFFIANT STATES THAT ON SEPTEMBER 7, 2008, THE ACCUSED, FREDERICK
COMMISSION OF A VIOLENT CRIME (MURDER), POSSESS AND DISCHARGE A
SAID VIOLENT CRIME. THIS INCIDENT OCCURRED AT
LIMITS OF TRAVELERS REST AND GREENVILLE COUNTY, S.C.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Travelers Rest

Affiant's Address: 6711 STATE PARK
TRAVELERS REST
Affiant's Telephone (864)834-9029

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE

It appearing from the above affidavit that there are

on or about 9/7/2008 defendant Frederick Van Anderson
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of Travelers Rest

DESCRIPTION OF OFFENSE: Weapons / Poss. weapon during violent crime, if not also set

Having found probable cause and the above affiant having sworn before me, you are empowered and directed
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
soon thereafter as is practicable

Sworn to and subscribed before me

on 09/07/2008

Shirley Y. Burnette (L.S.)Signature of Issuing Judge
Shirley Burnette

Judge Code: 6546

Judge's Address 6711 State Park Road
Travelers Rest, SC

Judge's Telephone (864)834-1630

Issuing Court: ☐ Magistrate

WITNESSES

John Gardner

Travelers Rest Police Dept

9/7/2008

DOCKET NO. 2009-GS-23-

WB

005750

✓ The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July TERM 2009

THE STATE

vs.

FREDERICK VAN ANDERSON

ARREST WARRANT NUMBER

1546094

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

✓ Indictment for

0052

**DISCHARGING A FIREARM AT/INTO A
DWELLING**

VIOLATION § 16-23-0440

*Foreperson of Petit Jury**Date:*

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
DISCHARGING A FIREARM AT/INTO A DWELLING

At a Court of General Sessions, convened on **JUL 28 2009** the Grand Jurors of Greenville
County present upon their oath:

That FREDERICK VAN ANDERSON did in Greenville County, on or about the 7th day of September, 2008,
unlawfully discharge or cause to be discharged a firearm into a dwelling house occupied by Wilma Jean Cruell
and four juveniles, located at , Travelers Rest, South Carolina. This is in violation of
§16-23-440 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.
Frederick Van Anderson

INDICTMENT/CASE#: 2009GS2305750
A/W#: 1546094
Date of Offense: 9/7/2008
S.C. Code § : 16-23-0440
CDR Code #: 0052

AKA:
Race: B Sex: M Age: 38
DOB:

Address: BOX 94
City, State, Zip: TRAVELERS REST, SC 29690
DL#: SID#:

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Weapons / Discharging firearms into a dwelling

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-23-0440 of the S.C. Code of Laws, bearing CDR Code # 0052
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

ATTEST: *William Bouton* 15305 72885 *Frederick Van Anderson* *William Bouton* 3696
Bouton, William SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

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

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

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-23-20 or 16-23-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$
§ 14-1-206 (Assessments 107.5 %) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
§ 47.12 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$100 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
§ 90.7 (SCCJA Surcharge) \$5 \$ 5.00
3% to County (if paid in installments) \$
TOTAL \$

Obtain GED ☐
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

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

Clerk of Court/ Deputy Clerk

Court Reporter: *William Bouton*
SCCA/217 (11/2009)

Presiding Judge

Judge Code: 2158

Sentence Date: 6/18/10 12-22-10

ARREST WARRANT

I-546094

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Travelers Rest

THE STATE

TR06084826

against

Frederick Van Anderson

Address:

Travelers Rest, SC 29690-8271

Phone: _____ SSN: _____
 Sex: M Race: B Height: 6 Weight: 256
 Dt. State: SC DL #: _____

SC0230600

Prosecuting Agency: Travelers Rest Police Dept

Prosecuting Officer: John Gardner - 97

Offense: Weapons / Discharging firearms into a dwelling

Offense Code: 0052

Code/Ordinance Sec: 16-23-0440

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
 dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Frederick Van Anderson
 on 9/7/08

C. Mallet #11/287
 Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

City Of Travelers Rest
 6711 State Park Road
 Travelers Rest, SC 29690

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Travelers Rest

AFFIDAVIT

Personally appeared before me the affiant John Gardner

being duly sworn deposes and says that defendant Frederick Van Anderson

did within this county and state on or about 09/08/2008

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Travelers Rest
 in the following particulars:

DESCRIPTION OF OFFENSE Weapons / Discharging firearms into a dwelling

I further state that there is probable cause to believe that the defendant in
 the crime set forth and that probable cause is based on the following facts:

AFFIANT STATES THAT ON SEPTEMBER 7, 2008, THE ACCUSED, FREDERICK
 INTENTIONALLY DISCHARGE A FIREARM INTO A DWELLING HOUSE OCCU
 ONE (1) ADULT. THIS INCIDENT OCCURRED AT
 LIMITS OF TRAVELERS REST AND THE COUNTY OF GREENVILLE, SC.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Travelers Rest

Affiant's Address 6711 STATE PARK ROAD
TRAVELERS REST
 Affiant's Telephone (864)864-9029

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTA

ll appearing from the above affidavit that there are

on or about 9/8/2008

defendant Frederick Van Anderson

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of Travelers Rest

DESCRIPTION OF OFFENSE: Weapons / Discharging firearms into a dwelling

Having found probable cause and the above affiant having sworn before me, you are empowered and dire
 her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered
 soon thereafter as is practicable
 Sworn to and subscribed before me

on 09/07/2008

Shirley H. Burnett (L.S.)
 Signature of Issuing Judge

Shirley Burnett

Judge Code: 6546

Judge's Address 6711 State Park Ro
 Travelers Rest, SC

Judge's Telephone (864)834-1630

Issuing Court: ☐ Magistrate

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.
Frederick Van Anderson

AKA:

Race: B Sex: M Age: 38
DOB: SS#: 2

Address: BOX 94

City, State, Zip: TRAVELERS REST, SC 29690

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (After June 20, 1985) - First degree

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

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

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

ATTEST: *William Bouton* 7-15-305 SC Bar# *Frederick Van Anderson* Defendant *John A. Winkler* 3696 Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

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

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

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$
§ 14-1-206 (Assessments 107.5 %) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
§ 47.12 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$25.00
§ 14-1-213 (Drug Court Surcharge) \$100 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
§ 90.7 (SCCJA Surcharge) \$5 \$5.00
3% to County (if paid in installments) \$
TOTAL \$

Clerk of Court/ Deputy Clerk

Court Reporter: *William Bouton*

SCCA/217 (11/2009)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS2305749

A/W#: 1546092

Date of Offense: 9/7/2008

S.C. Code § : 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ paid to Public Defender Fund

Other:

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

Presiding Judge

Judge Code: 2158

Sentence Date: 11-15-10 - 12/22/10

ARREST WARRANT

I-546092

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

Travelers Rest

THE STATE

against

TR06084825

Frederick Van Anderson

Address:

Travelers Rest, SC 29690-8271

Phone:

Race: B

Height: 6

Weight: 256

DL State: SC

DL #:

SC0230600

Prosecuting Agency: Travelers Rest Police Dept

Prosecuting Officer: John Gardner - 97

Offense: Burglary / Burglary (After June 20, 1985) - First degree

Offense Code: 0079

Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Frederick VAN ANDERSON
9/7/08C. Miller #11/11/08
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

City Of Travelers Rest
6711 State Park Road
Travelers Rest, SC 29690

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

Travelers Rest

AFFIDAVIT

Personally appeared before me the affiant John Gardner

being duly sworn deposes and says that defendant Frederick Van Anderson

did within this county and state on or about 09/07/2008

State of South Carolina (or ordinance of ☐ County/☒ Municipality of

Trav

in the following particulars:

DESCRIPTION OF OFFENSE Burglary / Burglary (After June 20, 1985) - First degree

I further state that there is probable cause to believe that the defendant in the crime set forth and that probable cause is based on the following facts:

AFFIANT STATES THAT ON SEPTEMBER 7, 2008, THE ACCUSED, FREDERICK VAN ANDERSON ENTER INTO THE DWELLING HOUSE OF NICOLE CRUELL, WITHOUT CONSENT COMMIT THE CRIME OF MURDER. FURTHER, THE ACCUSED DID ENTER THE NIGHTTIME HOURS WHILE ARMED WITH A DEADLY WEAPON. THIS INCIDENT OCCURRED LOCATED WITHIN THE CITY LIMITS OF TRAVELERS REST AND GREENVILLE.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

Travelers Rest

Affiant's Address 6711 STATE PARK ROAD

TRAVELERS REST

Affiant's Telephone (864)834-9029

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE

appearing from the above affidavit that there are

on or about 9/7/2008

defendant Frederick Van Anderson

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/☒ Municipality of

Travelers Rest

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to appear before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant as soon thereafter as is practicable.

Sworn to and subscribed before me

on 09/07/2008

Shirley Burnette (L.S.)

Signature of Issuing Judge

Shirley Burnette

Judge Code: 6546

Judge's Address 6711 State Park Road

Travelers Rest, SC

Judge's Telephone (864)834-1630

Issuing Court: ☐ Magistrate