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JUN - 8 2016

SC SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Orangeburg County
Maite Murphy, Circuit Court Judge

YOREL WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002327

APPENDIX

LAURA R. BAER
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
 APPLICANT’S EXHIBIT 1 (LETTER, STATEMENT, AND CDs)**

¹ Applicant’s Exhibit 1 includes a letter, written witness statement, and compact disc(s). In compliance with Rule 243(f) and Rule 210(f), SCACR, copies of the letter and written statement are included in the Appendix. However, transportation of the original exhibit will be necessary in order for the disc(s) to be available to the Court.

MH
1

HARRIET P. BENNETT
Reporter, S.C. Court Administration
46 Regency Oaks Drive
Summerville, S.C. 29485

February 14, 2014

Ms. Kelly Oppenheimer
Legal Assistant
Office of the Attorney General
P. O. Box 11549
Columbia, S.C. 29211-1549

IN RE: State v. Yorel Williams
2013 CP 38 00960

Dear Ms. Oppenheimer:

Ms. Allen with Court Administration has forwarded to me records taken by Harry Dot Walker, now retired, from on or about September 12, 2012, so that I might locate and prepare the transcript in this case which you requested.

After a careful review of the records sent to me, I am sorry to tell you that this case cannot be found. We are unable to produce this record for you.

Very truly yours,

Harriet Bennett

copy to Ms. Desiree Allen
S.C. Court Admin.

RECEIVED
FEB 17 2014
S.C. COURT ADMINISTRATION
COLUMBIA, S.C.
11:00 AM

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF)

Yorel Williams)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013-GP38-00960

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LIEBER Correctional Institution, Campbell Thicket Road Ridgeway, SC 29412
2. Name and location of Court which imposed sentence Orangeburg County
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) _____
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) September 12, 2012
 - (b) Sentenced To 25yrs Due To Plea

RECEIVED

Revised 3/2003

AUG 30 2013

HARRIS (PCR) /dm
Referred to _____
Answered _____

(c) _____

6. Check whether a finding of guilty was made:

(a) ✓ after a plea of guilty *Applicant pleaded 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 "yes" to (7), list:

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

i. NOT APPLICABLE

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. NOT APPLICABLE

ii. _____

iii. _____

(c) the date of each such result:

i. NOT APPLICABLE

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. NOT APPLICABLE

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) NOT APPLICABLE

(b) _____

(c) PLEA

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

- (a) _____
- (b) _____ Applicant was Denied the Right TO EFFECTIVE Assistance of Counsel,
- (c) GUARANTEED By The 6th Amendment

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

- (a) Failed To investigate, counsel only met with Applicant A few Times during his stay
- (b) At Detention Jail. Counsel failed To Request Blair hearing To Determine Applicants
- (c) State of mind. At The Time of offense. Counsel was ineffective in That Counsel

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

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

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

(a) the specific nature thereof:

i. 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?
_____ N/A

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

(a) which grounds have been presented:

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

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

- i. _____ NOT APPLICABLE
- 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) _____ N/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? _____
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

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

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

- i. _____
- ii. _____
- iii. _____

Gerald Davis Law Firm
Orangeburg SC, 29115

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

- i. _____
- ii. _____
- iii. _____

plea Arraignment

FILED
 IN
 COURT
 OF
 COMMON PLEAS
 COUNTY OF
 WASHINGTON
 STATE
 2017 AUG 22 PM 3:17
 CLERK OF COURT

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

_____ Reversed OR Reconsideration

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

_____ No

STATE OF SOUTH CAROLINA)
)
County of)

VERIFICATION

I, Yorel Williams, 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.

Yorel Williams

SWORN to and subscribed before me this 13th
day of August, 2013.

Ludrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

2013 AUG 13 PM 10:17
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
AM

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

I, Vorel Williams, 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.

Vorel Williams
Applicant

SWORN or affirmed to and subscribed before me this
13th day of August, 2013.

Quedra Bryant
Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG)	FOR THE FIRST JUDICIAL CIRCUIT
)	
Yorel Williams, #352376,)	2013-CP-38-960
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
)	

Respondent, making its Return to the Application for post-conviction relief filed August 22, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was indicted during the January 2012 term of the Orangeburg County Grand Jury for Murder (2011-GS-38-0339). Applicant was represented by Gerald Davis, Esquire. On September 13, 2012, Applicant appeared before the Honorable Edgar W. Dickson, where he pled guilty to the lesser included offense of voluntary manslaughter. Judge Dickson sentenced Applicant to twenty-five years imprisonment. No direct appeal was taken.

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

II.

In his Application, Applicant alleges that he is being held in custody based on a claim of ineffective assistance of counsel, asserting that:

1. "Counsel failed to investigate;"
2. "Counsel only met with Applicant a few times during his stay at detention jail;"
3. "Counsel failed to request Blair hearing to determine Applicant's state of mind at time of offense;" and
4. "Counsel was ineffective in that Counsel did not evaluate Applicant's educational background to determine if Applicant could knowingly and intelligently take a plea."

Any claims not specifically enumerated in the application or amendments filed by counsel of record will be opposed by Respondent at an evidentiary hearing, and Respondent will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

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

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

professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

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

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

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

March 6, 2014.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
)
)
 YOREL WILLIAMS, #352376)
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 Applicant,)
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 vs)
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 STATE OF SOUTH CAROLINA,)
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 Respondent.)

IN THE COURT OF COMMON PLEAS

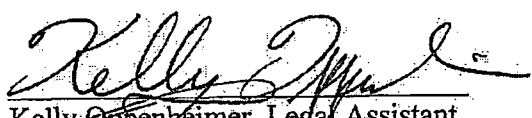
2013-CP-38-960

AFFIDAVIT OF SERVICE BY MAIL

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

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

DATED this 6th day of March, 2014.


 Kelly Oppenheimer, Legal Assistant
 For Respondent

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STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

COURT OF COMMON PLEAS
2013-CP-38-0960

YOREL WILLIAMS

)

TRANSCRIPT OF RECORD

)

VS.

)

)

)

MAY 20, 2015

STATE OF SOUTH CAROLINA

)

ST. GEORGE, SC

B E F O R E :

HONORABLE MAITÉ MURPHY

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

JONATHAN D. WALLER, ESQUIRE
Attorney for the Applicant

J. CLAYTON MITCHELL, ESQUIRE
Attorney for the State of South Carolina

Ruth L. Mott, RPR, CRR
Certified Court Reporter

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
YOREL WILLIAMS				
MR. WALLER	4			
MR. MITCHELL		18		
GERALD J. DAVIS				
MR. MITCHELL	26			
MR. WALLER		33		
CERTIFICATE OF REPORTER	37			

E X H I B I T S

NO.	DESCRIPTION	ID	EVD
A-1	LETTER, STATEMENT AND CD'S	4	35

1 MR. MITCHELL: May it please the Court.

2 THE COURT: Yes, sir.

3 MR. MITCHELL: This is Yorel Williams versus the State
4 of South Carolina, 2013-CP-38-0960. Mr. Williams was
5 indicted in January of 2012 for murder. He was represented
6 on these charges by Mr. Gerald Davis. He appeared before the
7 Honorable Edgar Dickson where he plead guilty to the lesser
8 included offense of voluntary manslaughter. He was sentenced
9 to 25 years' imprisonment on that. No direct appeal was
10 taken. Mr. Williams filed this application for
11 post-conviction relief August 22nd, 2013. Your Honor, we
12 have -- this case will be a bit different than the others.
13 We do not have a plea transcript, as one could not be
14 produced by Court Administration; so we're going to attempt
15 to reconstruct parts of the plea and just go over exactly
16 what was asked and what would have normally been asked by
17 Judge Dickson in a plea colloquy. We'll do that through both
18 Mr. Williams and through his attorney at the time, Mr. Davis.
19 We'll do that all at once so it will just be part of the
20 hearing and just be part of the normal questioning if that
21 suits you.

22 THE COURT: That's fine.

23 MR. MITCHELL: And I'd note that Mr. Williams is present
24 here today and represented by Mr. Jonathan Waller, and I'll
25 turn it over to him now.

1 THE COURT: Yes, sir.

2 MR. WALLER: Thank you, Your Honor. Your Honor, I would
3 call Yorel Williams.

4 THE COURT: Come on up, Mr. Williams, to the witness
5 stand.

6 (Applicant's Exhibit A-1 premarked for identification.)

7 YOREL WILLIAMS,

8 being first duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MR. WALLER:

10 Q. Good morning, Mr. Williams. How are you?

11 A. I'm fine.

12 Q. Mr. Williams, how did Mr. Davis come to be your
13 attorney?

14 A. I believe he was family appointed.

15 Q. What do you mean by family appointed?

16 A. He was already appointed to our family to handle any
17 legal situations, so if anything was to happen, he would be
18 the one that we would call. I didn't have to look him up or
19 anything like that.

20 Q. Had he represented you before in the past?

21 A. I believe he did.

22 Q. Okay. Now, what were you -- going back to January of
23 2011, what were you charged with?

24 A. January 2011, okay, that's this charge right here.

25 Q. Yes, sir.

1 A. That's the manslaughter charge.

2 Q. What were you originally charged with?

3 A. That was the original.

4 Q. Okay. Were you locked up or did you make bond?

5 A. I didn't have any bond hearing at all.

6 Q. Okay. When Mr. Davis first became your attorney or
7 while he was your attorney, how many times do you think you
8 and he met?

9 A. I was in the county for almost two years. I probably
10 seen him on a total of four -- four times maybe.

11 Q. Okay. During those meetings what did you all talk
12 about?

13 A. It was lot of negativity. Basically, it was about this
14 Facebook page. That's pretty much it. Every time he came in
15 he was saying that it wasn't looking too good. I would try
16 speak to him on some things on my behalf that I had going on
17 for me, but we really didn't touch bases on that for too
18 long, and the meetings were very short.

19 Q. Okay. When you say very short, how long do you mean?

20 A. Probably less than 30 minutes.

21 Q. So over the course of the two years you were locked up,
22 around four meetings, about 30 minutes apiece?

23 A. That's correct.

24 Q. Did you all discuss the charges against you?

25 A. We discussed the charges and also the amount of time

1 that could possibly be given to me, but it was never -- never
2 anything other than that.

3 Q. Okay. Did you all discuss the evidence that the State
4 had against you?

5 A. Just the Facebook page, and it was also they had an eye
6 witness that claimed to see something, but that was basically
7 it.

8 Q. Okay. Now several statements were given in this case.
9 Did you all discuss all of the statements?

10 A. No, just mine.

11 Q. Just yours. Okay. What was discussed about your
12 statement?

13 A. Well, he was basically trying to say that I admitted to
14 doing something, which I read the statement many times, and
15 I've never confessed to doing anything; and I also tried to
16 tell him that the statement I was given, it was not given
17 willingly, it was a forced statement. I didn't want to give
18 a statement at all, and I told him that, and I told him how
19 they did me, when I went down to the jail in Branchville, how
20 they took me in a room and they forced me to write out
21 whatever; and before any of that happened, they asked me did
22 I want to speak to my attorney, and I told them yes, and they
23 totally ignored that, and that's how that statement came
24 about.

25 Q. How did they force you?

1 A. I was -- I was taken into a closet, wasn't even a real
2 room, and they -- it was two other officers there, and they
3 basically, you know, they wasn't gonna let me go anywhere
4 until I put something down on paper, and I asked several
5 times to speak with my lawyer, but that request was ignored.

6 Q. Did you inform Mr. Davis of that?

7 A. I did.

8 Q. What was his response?

9 A. It didn't seem like he was -- it wasn't seem like he was
10 gonna make a move on what I was telling him. Obviously he
11 didn't address the police. I told him the names. I don't
12 remember the names now, but I know I knew them then, and I
13 told him about who had me back then and everything, and I
14 don't think he addressed them with the issue at all.

15 Q. Did you all talk about challenging your statement?

16 A. No.

17 Q. Did you ask him to challenge your statement?

18 A. At that time I wasn't too knowledgeable about the law at
19 that time, but that would have been the idea I thought that
20 should have been presented by my lawyer.

21 Q. Okay. Did you and Mr. Davis talk about any possible
22 defenses that you might have?

23 A. No.

24 Q. Did you give him any information about any possible
25 defenses that you might have?

1 A. Yes, I did. I told him about a witness that I had on my
2 behalf, and I also spoke to him about the swab test that was
3 taken within the six hours and they found nothing. It was no
4 gunpowder on my hands or clothes. And I spoke to him about
5 the -- the recordings that I had on my phone, and besides
6 that that's -- that's all that I had on my behalf, and that
7 was never brought up to be used on my defense or to present a
8 lesser charge than what I did get charged with.

9 Q. Okay. You brought, you said, swab tests. Is that --
10 are you talking about a GSR test, gunshot residue?

11 A. That's right.

12 Q. And what were the results of that test?

13 A. They found nothing.

14 Q. And was Mr. Davis aware of that?

15 A. I believe he was.

16 Q. Talking a little bit about your case now, what was your
17 relationship with the woman who died in this incident?

18 A. That was my daughter's mother.

19 Q. Okay. Had it been kind of an on-again/off-again
20 relationship?

21 A. That's correct.

22 Q. Had she ever threatened you before?

23 A. I've received threats before. It's been certain times
24 that I actually had to call her family to remove her from my
25 apartment. Not just that, but she has expressed violent acts

1 in front of my family. I've actually been to the hospital
2 for stab wounds, things like that, and I'm pretty sure my
3 family, they're willing to, you know, admit that they
4 witnessed this. And even her family, they can't deny that
5 they have been there, seen her get out of character plenty of
6 times.

7 Q. Okay. Had she ever threatened you over the phone?

8 A. Yes, that's -- that's what was on my phone as far as the
9 recordings. I believe I had maybe two, three recordings on
10 there.

11 Q. Okay. Do you recall when those recordings were?

12 A. I really don't, but I believe if you go to the details
13 of the recordings, it should be there as far as the date is
14 concerned.

15 Q. Okay. Essentially, what was the nature of the
16 recordings; what did she say?

17 A. If she was to ever found out that I was speaking with
18 someone, she would have me arrested. Some of them was even
19 violent threats as far as -- I'm not -- I don't really want
20 to say that she said that she would kill me, anything like
21 that, but I'm pretty sure it was some kind of violent nature,
22 and that's how I received the stab wounds because of the fact
23 that she thought that I was doing this and doing that, so
24 that's how I did get stabbed that time.

25 Q. Okay. About those recordings, where were they kept?

1 A. The recordings were kept on my phone.

2 Q. What kind of phone was it?

3 A. It was a Verizon -- no, it was an Alltel Hue II. It was
4 blue and silver.

5 Q. Was it a flip phone?

6 A. It's a flip phone, yes.

7 Q. Did you inform Mr. Davis of these threats?

8 A. Yes, I did, and the phone was actually given to him.

9 Q. Okay. What was his response about the threats?

10 A. That -- at that time when I gave him the phone it was
11 really around the time that the visits came to a stop. I
12 wasn't seeing him anymore after that until the week I was
13 about to go to trial or take this plea, that's when I seen
14 him and my motion was then presented to me. I've had no
15 motion that whole time I've been in the county.

16 Q. Okay. How did you provide Mr. Davis with your phone,
17 how did he get it?

18 A. My brother and my mother gave it to him on a lawyer
19 visit.

20 Q. Do you remember about when that was?

21 A. I really don't remember. I know I didn't waste any time
22 getting it to him though. Like from the time that I was
23 arrested, January 28th, it was within that year he was
24 presented that phone.

25 Q. Okay. Did you and Mr. Davis discuss the weapon that was

1 used?

2 A. Not really.

3 Q. You all didn't have any discussions about that gun?

4 A. No, sir.

5 Q. Okay. Did you have a Facebook account at the time?

6 A. I did.

7 Q. Did you and Mr. Davis talk about any of the postings on
8 that account?

9 A. Yes, sir, we did.

10 Q. What did he say about the postings?

11 A. He was making it seem like what was posted would be used
12 against me, but I explained to him that most of the postings
13 on there were just lyrics. They were not anything that came
14 from my mouth or from how I've been feeling or anything like
15 that per se. They were just basically, like I said, just
16 lyrics, that's it.

17 Q. What did he say that about that?

18 A. Well, he was making seem that just off of that alone,
19 and with the words and everything that some of the lyrics
20 said, that the jury would look at it a certain way and they
21 would definitely convict me; and, see, around that time,
22 that's when I really started feeling uncomfortable about him
23 representing me.

24 Q. Did you -- you said he had represented you in the past;
25 is that right?

1 A. Yes, sir.

2 Q. And was he appointed to you or did you hire him?

3 A. Once again, he was appointed.

4 Q. Okay. Ultimately you made the decision to plead guilty;
5 is that right?

6 A. I did.

7 Q. Was that in exchange for some type of deal?

8 A. It was no deal, but it was on a level as of he came to
9 me and said that I could receive higher or worse and that was
10 the best that I could probably get, which I didn't really
11 feel that was true, but at that time it was -- it was too
12 late in the case to get rid of him off of my case because,
13 like I said, he didn't come to me until the end with
14 everything so --

15 Q. Okay. Did you all talk about what the Judge would take
16 into account in coming up with a sentence?

17 A. No, no, sir.

18 Q. Did he tell you things the Judge would consider in
19 coming up with the sentence?

20 A. No, sir.

21 Q. What was your understanding of what the plea agreement
22 was?

23 A. Just 25 years was the plea agreement.

24 Q. So you understood that you were pleading to 25 years; is
25 that right?

1 A. I understood that.

2 Q. Did you give Mr. Davis some information on your
3 background growing up, things like that?

4 A. No, I didn't.

5 Q. Was he aware that you had a daughter?

6 A. Due to the situation, yes.

7 Q. Did you give him any information about where you worked?

8 A. Excuse me?

9 Q. Did you give him any information about where you may
10 have worked prior to this incident?

11 A. No, sir.

12 Q. Did you give him any information about your educational
13 background?

14 A. No, sir.

15 Q. At the plea what information did Mr. Davis present to
16 the Court in mitigation for you, if you recall?

17 A. I really don't recall. I know he didn't mention
18 anything about anything pertaining to this case. I know he
19 mentioned -- I don't know where he got the information from,
20 but he did mention something about I went to college, I
21 remember him saying something along those lines, but that's
22 pretty much it.

23 Q. Did you have any family members or friends in court with
24 you?

25 A. Yes, sir, I did.

1 Q. Did anybody speak on your behalf?

2 A. I believe a preacher spoke. He said a few words about,
3 you know, my background because he knows my family and
4 everything, so he said a few words for me, but that was it.

5 Q. Mr. Williams, I've asked all the questions that I have.
6 Is there anything you think I've left out or that you want
7 the Court to be aware of about your representation by Mr.
8 Davis?

9 A. Well, I did write something I wanted to address the
10 Court with if that's okay if I could.

11 THE COURT: Go ahead.

12 THE WITNESS: Okay. Get myself together. It says, I
13 would like to thank the Court for giving me the opportunity
14 to address you with my issues. The reason I'm here today is
15 because of the fact that I feel that I was misrepresented and
16 not just that but misled into taking the plea for 25 years.
17 25 years for a crime that I am innocent 100 percent has taken
18 me away from my family with some I have lost due to illness
19 and also missing my kids as they are forced to go through
20 life missing their father. Since I've been studying my case
21 I've filed two motions so far, a motion for dismissal on the
22 grounds of my 6th and 14th amendment. The 6th amendment is
23 when I feel counsel was ineffective --

24 MR. MITCHELL: Objection, Your Honor. We're getting
25 into legal argument. He's a fact witness. I'd just ask that

1 he sticks to what he knows and not argue the law.

2 THE COURT: He's just stating what he feels, how he was
3 misrepresented. I'll allow it.

4 THE WITNESS: Thank you, Your Honor. Okay. Where I
5 left off, a motion for dismissal on the grounds of my 6th and
6 14th amendment. The 6th amendment is when I feel counsel was
7 ineffective by being misleading. I feel I was misled and
8 forced into taking the plea when it could have been taken to
9 trial. My attorney failed to investigate all aspects of my
10 case. Also counsel failed to object to any questioning by
11 soliciting office. The 14th amendment is in violation
12 because the State has failed to produce my original
13 transcript so I may conduct my proper case for my PCR
14 hearing. I have no knowledge of the procedures of the
15 hearing and under my 14th amendment refuse to let my
16 transcript be reconstructed.

17 At the time when I was in the county I felt me and my
18 lawyer did not have a good relationship due to the fact he
19 was not coming to see me while at Orangeburg County Jail. I
20 was there for almost two years and I can count on one hand
21 how many times he visited me while in the detention center.
22 For a defendant who meets his lawyer after not establishing a
23 feel for him on the verge of trial it's hard to resist the
24 pressure to plea. I didn't appreciate the frustration and
25 sense of hopelessness because of the little contact with my

1 lawyer. As the innocent defendant, the option of going to
2 trial with a virtual stranger who was urging me to plead
3 guilty was far too risky. Not surprisingly, many innocent
4 defendants succumb to the pressure to plead guilty,
5 especially when the defendant is aware that counsel spend
6 little time preparing to defend his case.

7 Why do I ask for relief? Because my counsel was
8 ineffective for failure to investigate the surrounding facts
9 of my case. Samples from the swab tests show nothing, and it
10 was taken within the six-hour time frame in which probative
11 evidence should be found without any rules or criminal
12 procedures or case laws to support his opinion. Also this
13 makes counsel ineffective due to the fact he advised me to
14 take a plea for voluntary manslaughter when evidence clearly
15 showed no weapon was fired by me, the defendant.

16 With these things in my favor the proper charge of
17 involuntary or self-defense should have been an option. Had
18 counsel not misinformed and instructed the plea of voluntary
19 manslaughter, I would have went to trial. This plea was not
20 intelligent and involuntary. I plead guilty because I was
21 unaware of the law at the time and I wasn't enlightened about
22 the evidence at the time. I received my motion that final
23 week I was in the county. Why didn't my attorney bring up
24 any evidence in my case to be some defense on my behalf? Is
25 that not ineffective counsel? My 6th amendment was

1 definitely violated. The lack of investigating the obvious
2 discovering everything possible at pretrial investigation
3 provides a basis upon which most of the defense case must
4 rest. It is perhaps the most critical stage of the lawyer's
5 preparation. In this regard the 11th Circuit has ruled that
6 effective representation constant with the 6th amendment also
7 involves the independent duty to investigate and prepare.
8 That example can be shown in Barmore versus Gillies (ph.)
9 where counsel failed to familiarize themselves with the facts
10 and relevant law that made him ineffective. In result to
11 that I was wrongly convicted. That shows where counsel is
12 ill prepared that he fails to understand his client's factual
13 claims.

14 MR. MITCHELL: Objection, Your Honor. It sounds like
15 he's just reading holdings from various cases. I'd ask that
16 he move on from that.

17 THE COURT: Mr. Williams, if you can just tell me your
18 reasons. I understand the case law behind what you're trying
19 to allege, but if you'd just tell me something that you
20 haven't already testified to that you think is ineffective,
21 you can then proceed.

22 THE WITNESS: Well, that's pretty much what it is as far
23 as him being ineffective with the times that he visited me,
24 and also I'm here on my PCR because of the fact that they did
25 lose my transcript, and it's very hard to go off of what

1 happened back then because it was so long ago. And if I was
2 to sit here and try to put anything together, that would be
3 prejudice against myself. Basically, like I said, I've been
4 in the county for almost two years, and I really didn't see
5 too much of him; so my chances of going to trial, I really
6 felt uncomfortable, so that's really why the plea was given
7 and I -- I took it.

8 THE COURT: All right. Thank you, Mr. Williams.

9 MR. WALLER: Mr. Williams, I have one final question for
10 you.

11 THE WITNESS: Yes, sir.

12 Q. But for the allegations that you've raised here today,
13 would you have plead guilty?

14 A. Would I have plead guilty?

15 Q. If Mr. Davis had not acted the way that you're saying
16 that he did.

17 A. I would have definitely went to trial.

18 MR. WALLER: No further questions. Please answer any
19 questions Mr. Mitchell has.

20 THE COURT: Cross-examination.

21 CROSS-EXAMINATION BY MR. MITCHELL:

22 Q. Good morning, Mr. Williams.

23 A. Good morning.

24 Q. All right. Now, you plead guilty; is that correct?

25 A. That's correct.

1 Q. And you were charged with murder at the very beginning,
2 right?

3 A. I don't believe that was ever the charge.

4 Q. You were indicted with murder; is that right?

5 A. I think it might have been that on that indictment. I
6 don't really remember the paperwork. I don't have the
7 paperwork.

8 Q. Okay. Now, I know you said it was a while back, but
9 we're going to try to go through what did happen at the
10 guilty plea hearing, okay, so you can just answer as best as
11 you remember. Now, you pled before Judge Dickson; is that
12 right?

13 A. I don't remember the judge name.

14 Q. It was a man, do you remember that?

15 A. I do remember that.

16 Q. And that was in Orangeburg County, right?

17 A. Yes.

18 Q. Okay. Now, you plead guilty to voluntary manslaughter;
19 is that right?

20 A. That's correct.

21 Q. Now, did the Judge go over the maximum sentence you
22 could receive on that?

23 A. I really don't remember. That information you're asking
24 me, wouldn't that be present on the transcript?

25 Q. It would be -- it would normally be.

1 A. It would?

2 Q. It would. And that's what we're trying to do, trying to
3 go through to see what you remember did happen at the plea
4 hearing, okay? So did he read the charges in the indictment
5 against you, the Judge?

6 A. I'm not really -- I don't really remember.

7 Q. Okay. Did he read the facts of the indictment of what
8 you were charged with, the facts that led to the charge in
9 the indictment?

10 A. I believe I went to -- I went to take this plea about
11 maybe two years ago. I'm not really sure if I -- I can't
12 answer these questions specifically.

13 Q. I'm still going to go through it. If you can't
14 remember, you can just say you don't remember, okay?

15 A. Okay.

16 Q. Did he ask you if you understood the recommendation of
17 25 years?

18 A. I don't remember.

19 Q. There was a recommendation of 25 years though, correct?

20 A. That's true.

21 Q. And that's what the solicitor recommended?

22 A. That was the plea that was given to me.

23 Q. Right, okay. Now, the Judge asked you whether you were
24 promised anything in exchange for your plea; do you remember
25 that?

1 A. I don't remember that.

2 Q. Did he ask you if you were on drugs at the time or
3 taking any medication?

4 A. I definitely don't remember that question.

5 Q. Okay.

6 A. That one definitely would have stuck out.

7 Q. Did he ask you if you had any mental problems?

8 A. I don't remember if he asked me that.

9 Q. Or did he ask you if you'd had any mental illnesses
10 before?

11 A. I don't remember that question either.

12 Q. Did he advise you that you could go to trial if you
13 decided not to plead guilty, right?

14 A. I don't remember that question.

15 Q. Okay. Did he ask you if you were guilty?

16 A. I don't remember that question because at that point in
17 time I would have spoke and I would have said my part.

18 Q. Did you speak at all at the hearing?

19 A. I don't think I said anything.

20 Q. You don't think you said a word during the entire guilty
21 plea hearing?

22 A. Not as far as that question is pertaining.

23 Q. What about to other questions, do you remember talking
24 to the Judge back and forth?

25 A. It was no conversation that I had with the judge.

1 Q. You didn't have any kind of conversation; Judge didn't
2 ask you any questions and you didn't answer any of those
3 questions, is that what you're saying?

4 A. He didn't ask me any questions, not that I remember.

5 Q. Okay. Moving on from the plea, Mr. Davis had
6 represented you before; is that right?

7 A. Yes, sir, that's correct.

8 Q. What charges was that, was that a prior kidnapping
9 charge maybe?

10 A. I don't remember the charge exactly because it was in
11 like 2007, around there, around that time.

12 Q. So it was a while back when he represented you before?

13 A. It was a long time ago.

14 Q. And those charges, they ultimately were dismissed; is
15 that correct?

16 A. I believe so, yes.

17 Q. Something along those lines?

18 A. Yes.

19 Q. You never served any prison time on those charges; is
20 that right?

21 A. No.

22 Q. Okay. Now, the State recommended 25 years, and that's
23 the sentence you received; is that correct?

24 A. Yes.

25 Q. And you understood going in that the State was going to

1 ask for that amount of time?

2 A. I understood that, but what I learned later on was it
3 was two different kind of pleas that I at least could have
4 taken, and the other kind of plea was not even given to me as
5 an option.

6 Q. Okay. But you knew you were pleading to that when you
7 were going there.

8 A. Yes.

9 Q. Okay. Now, you did give a statement to investigators in
10 this case, right?

11 A. Yes.

12 Q. And in that statement did the solicitor characterize
13 that as a confession?

14 A. They tried to.

15 Q. They tried to say that you had confessed to the crimes?

16 A. Exactly.

17 Q. Right?

18 A. Exactly.

19 Q. In that statement you said something along the lines of
20 your mind went blank; is that right?

21 A. I believe so.

22 Q. Okay.

23 A. I haven't seen the statement in a while.

24 Q. Okay. But you did give a statement, though; you do
25 recall that?

1 A. Yes.

2 Q. And you signed a Miranda waiver form; is that right?

3 A. I don't remember signing a Miranda waiver form.

4 Q. Okay. So it would have been something that you wanted
5 to have challenged if you were to go to trial?

6 A. Yes.

7 Q. Is that right?

8 A. Yes.

9 Q. All right. Now, I know a lot of what you've said is
10 that you're innocent of the charge, but you did in fact plead
11 guilty; is that right?

12 A. Exactly.

13 Q. Isn't it really the case that you were expecting to get
14 about 20 years and not 25 years?

15 A. No.

16 Q. You weren't hoping to get 20?

17 A. I was hoping, just like what I said, involuntary or
18 self-defense. I do understand certain things have to be
19 involved for it to be the charge that I pled to, malice and
20 things like that. I didn't even approach the situation with
21 a weapon.

22 Q. Okay. Well, moving to the mitigation at the plea
23 hearing, you said that a pastor spoke; is that right?

24 A. Yes.

25 Q. Now, Mr. Davis, you said he didn't mention anything

1 about your job history; is that right?

2 A. That's correct.

3 Q. Okay. So he didn't mention anything about you being in
4 school and having two jobs?

5 A. Well, I remember --

6 Q. You recall that?

7 A. The part about the college part, I do remember that.

8 Q. Did you have two jobs at the time of the incident?

9 A. Yes, I did, I believe I did. I was working a job in
10 Walterboro, and I think I was still at a plant in Orangeburg
11 at the same time.

12 Q. Okay. Would it have been Reverend Hayes that spoke at
13 your sentencing?

14 A. I believe that's his name.

15 MR. MITCHELL: Okay. All right. Thank you, Mr.

16 Williams. No further questions.

17 THE COURT: Any redirect?

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

19 THE COURT: You may step down, Mr. Williams. Thank you.

20 Any other witnesses?

21 MR. WALLER: No further witnesses, Your Honor.

22 MR. MITCHELL: Your Honor, the State calls Mr. Gerald

23 Davis.

24 GERALD J. DAVIS,

25 being first duly sworn, testified as follows:

1 DIRECT EXAMINATION BY MR. MITCHELL:

2 Q. Good morning, Mr. Davis.

3 A. Good morning.

4 Q. How long have you been practicing law?

5 A. About 18 years.

6 Q. How much criminal defense work do you do?

7 A. That's mainly my practice, criminal defense.

8 Q. Okay. Where is your office located?

9 A. Orangeburg, 149 Center Street.

10 Q. Where do you handle the majority of your criminal cases?

11 A. Orangeburg.

12 Q. Orangeburg County? Have you had an opportunity to

13 appear before Judge Dickson numerous times?

14 A. I have.

15 Q. He's the resident judge in Orangeburg County?

16 A. He is.

17 Q. And he handles a significant amount of the General

18 Sessions work in Orangeburg County; is that correct?

19 A. I do.

20 Q. And Judge Dickson hears those case; is that right?

21 A. Well, he's there the majority of the time since he's the

22 resident judge.

23 Q. Yes, sir. All right. I'm going to go through a bit of
24 what Judge Dickson would normally go through, and let me just
25 ask you whether you recall this -- whether this happened at

1 this guilty plea hearing or not. Would Judge Dickson
2 normally read the indictment and the charges alleged in the
3 indictment?

4 A. He would.

5 Q. Do you recall if he did so in this case?

6 A. I'm convinced he did or else I wouldn't have proceeded.

7 Q. Okay. Now, would he have gone over the maximum sentence
8 that Mr. Williams was looking at at that point?

9 A. He would have.

10 Q. Okay. Does he normally go through the plea
11 negotiations, whether there was any recommendation from the
12 State?

13 A. He does, and as I recall, there was not a recommendation
14 of 25 years in this case. There was a statement given by Mr.
15 Williams, and when I handle cases, if there's a statement
16 given by the defendant, I always use a plea sheet, and I
17 cover that plea sheet with the individual myself. In this
18 particular case my notes tell me that it was a plea sheet
19 done. My normal procedure is to hand it to the court
20 reporter and she would pass it up to the Judge and we would
21 make it part of the record. I do not have that original
22 sheet. Normally it goes with the case file. But when I
23 received this information back from your office, there was
24 not the plea sheet in it. I simply can tell you that that is
25 my normal, customary practice, when there is a statement

1 given by the defendant, I would do a plea sheet.

2 Q. Okay. Would Judge Dickson normally ask whether the
3 defendant had -- was under the influence of any kind of
4 alcohol or medicine at the time?

5 A. He would, and there's a series of about 20 questions on
6 this form that -- that he would cover, and he does that even
7 if I don't give him a plea sheet, but in this particular case
8 I would have read along with him on this plea sheet to ensure
9 that he did not skip one; and if he did, I would have brought
10 it to his attention. I could tell you from my memory, you
11 know, I don't recall that he did; but let me just say that
12 had he omitted anything, I would have certainly brought it to
13 his attention.

14 Q. Okay. So he would have gone over his constitutional
15 rights that he was waiving at that time?

16 A. He would have.

17 Q. He would have gone over that he had a right to put up a
18 defense and challenge any evidence or statements that the
19 State would present; is that right?

20 A. He would have, and he would have additionally advised
21 him he could subpoena witnesses to testify on his behalf; we
22 could cross-examine those witnesses. As he gets towards the
23 end of this form he even asks the defendant, are you
24 satisfied with the services of your lawyer, which is a
25 crucial question to me because if somebody's unhappy with my

1 representation, certainly it's their last chance before the
2 plea to tell the judge, I'm unhappy with this man. That was
3 not done.

4 Q. And he would have asked -- he would have asked if the
5 defendant understood that the State had the burden?

6 A. He would have.

7 Q. Would he have asked whether he had any pending parole or
8 probation?

9 A. He would have and would have told him that he has no
10 control over whether or not the probation would have been
11 revoked pursuant to that plea.

12 Q. Okay. He would have asked you whether you had gone over
13 all this with him as well?

14 A. He would have.

15 Q. Did you go over all these rights with Mr. Williams?

16 A. I did.

17 Q. Mr. Williams testified that he did not speak at the plea
18 hearing. Do you believe that to be the truth?

19 A. No. He would have had to answer the questions for the
20 Judge. The Judge would have asked him, are you pleading
21 guilty freely and voluntarily, he would ask him are you in
22 fact guilty of the crime you are charged with, and he would
23 have had to answer in the affirmative.

24 Q. And if that was not the case, the plea would not have
25 gone forward, is that --

1 A. Absolutely, the plea would not have gone forward.

2 Q. You wouldn't have let it go forward, would you?

3 A. I wouldn't have let it go forward.

4 Q. Okay. Was there anything at this plea hearing that
5 stood out to you as problematic?

6 A. Not at the plea hearing. Again, as I recall, it was not
7 a specific 25 year amount. It was -- it was something that
8 was sort of an understood thing between the prosecutor and I.
9 We had even talked that if the judge elected to give him more
10 than 25 years, I would move to withdraw the plea. That
11 didn't happen, so it wasn't any need to proceed in that
12 direction.

13 Q. So had you advised Mr. Williams of that --

14 A. I did.

15 Q. -- 25 year point?

16 You say you had represented him in the past; is that
17 correct?

18 A. I have.

19 Q. What was the result of those charges?

20 A. I can tell you from memory, I don't have those files,
21 but I believe it was assault and battery of a high and
22 aggravated nature and kidnapping. As I recall, those charges
23 were dismissed at a preliminary hearing. I represented him
24 once for criminal domestic violence. Seems to me the victim
25 was deceased. That case was dismissed.

1 Q. Mr. Williams, he brought up the point that he did not
2 give the statements to investigators voluntarily. If you
3 went to trial, would you have challenged that statement?

4 A. Absolutely, we'd challenge any statements given; but as
5 I recall and after reviewing my notes, you know, early on,
6 after talking with Mr. Williams, I'd learned as soon as I got
7 the Rule 5 information that, you know, he had, after the
8 incident in question he had been taken to the St. George
9 Police Department by his uncle, then transferred back to
10 Branchville. His uncle gave a statement; Mr. Williams gave a
11 statement. In regards to him giving a statement against his
12 will, I simply say that he has never discussed that with me.
13 He told me that there was a recording of the statement given,
14 and I spoke with the police involved in it, and they say they
15 don't recall having done a recorded statement and that it was
16 not existing at that time.

17 Q. So you made attempts to look into that recorded
18 statement?

19 A. Oh, absolutely.

20 Q. Do you recall the mitigation that you put up in this
21 case?

22 A. In regards to --

23 Q. I guess whether -- what he was -- his education, his
24 skill set, whether he was working at the time.

25 A. Absolutely. And this was information that was furnished

1 to me by Mr. Williams. As I recall, Reverend Hayes Gainey
2 spoke at the plea. Mr. Williams was 27 years old. He
3 advised me he had two children, had a 12th grade education,
4 was a graduate of OC Tech, radiology and welding, he'd lived
5 on his own since he was 18, he'd worked two jobs while going
6 to school, he worked at the flag company in Colleton, he
7 worked at Husqvarna, that's the lawnmower place in
8 Orangeburg. He's been to AmeriCorps Family Healthcare. This
9 is information that I went over with him before we went to do
10 the plea. Simply, the facts differ somewhat, based upon what
11 the prosecution presented at the plea hearing. I simply
12 brought to the Judge's attention that there were difference
13 in the facts, but the ultimate issue turning this case was
14 Mr. Williams plead guilty to a lesser included charge.

15 Q. I'm glad you mentioned the facts. Would Judge Dickson
16 have asked Mr. Williams whether he agreed with the facts as
17 stated by the solicitor?

18 A. He would have.

19 Q. Do you remember if he did so in this case?

20 A. I can't remember specifically, but if there had been
21 some real, factual difference that would have made a
22 difference in the plea, we would have stopped the plea.

23 MR. MITCHELL: Okay. I have no further questions.
24 Please answer anything Mr. Waller has for you.

25 THE WITNESS: Thank you very much.

1 THE COURT: Cross-examination.

2 MR. WALLER: Thank you, Your Honor, may it please the
3 Court.

4 CROSS-EXAMINATION BY MR. WALLER:

5 Q. Mr. Davis, how long after you came to represent Mr.
6 Williams on this charge did you go see him?

7 A. I don't remember the exact date, but it was within a few
8 days.

9 Q. Okay. And at that initial meeting do you recall or have
10 any notes as to what you all would have discussed?

11 A. I can tell you initially I recall that we waived the
12 arraignment simply because there was so much press about it,
13 so many front page news stories. It was a given that he was
14 going to be arraigned. I just didn't want the newspapers
15 there taking pictures of it, flashing it all over the front
16 page, possibly prejudicing him in getting a fair trial.

17 Q. You mentioned on direct exam that if you had gone to
18 trial, you would have challenged any statements given. Did
19 you and Mr. Williams discuss his statement and potentially
20 challenging it before trial?

21 A. We did, but you must understand that the facts that I
22 had were chiselled in stone when he came to me. The mere
23 fact that they had taken him to St. George, he was
24 transported back to Branchville. I was furnished by the
25 prosecution a waiver he'd signed, actually been read his

1 rights, he agreed, pursuant to the police that I spoke to and
2 pursuant to the information that I had, that he gave those
3 statements. You don't have to accept them, you can challenge
4 them, but at the same time, early onset Mr. Williams
5 indicated that he wanted me to try to work out some kind of
6 deal for him. It was never an issue with Mr. Williams of
7 going to trial.

8 Q. Okay. Did you and Mr. Williams discuss some contents of
9 his phone, his cell phone?

10 A. Briefly, and I had an investigator to download his
11 phone, some text messages. I didn't see anything in there
12 that was earth-shattering, anything that would turn this case
13 around.

14 Q. Did you review the contents of that phone?

15 A. I did.

16 Q. Okay. I'm going to show you what's been marked for ID
17 purposes as Applicant's Exhibit A-1. Can you identify that?

18 A. It's a letter from my office back to you.

19 Q. Okay. And does it contain some disks with it?

20 A. It contains disks of information that we had that we
21 simply furnished you a copy.

22 Q. Is that the disks of the contents of the cell phone?

23 A. Let me just say, I can't really tell you if it's the
24 same disk, but we did send you some disks. This is a letter
25 from my office, yes.

1 Q. Do you recall how you had Investigator McDaniel get the
2 contents of the cell phone?

3 A. I believe the cell phone was dropped off by his -- his
4 mother and I gave it to the investigator and he was able to
5 download -- I say download. He actually took pictures, if I
6 recall, of the text messages.

7 MR. WALLER: Your Honor, at this time I'd move to admit
8 Applicant's A-1.

9 THE COURT: Any objection?

10 MR. MITCHELL: No objection.

11 THE COURT: It's in.

12 MR. WALLER: Thank you, Your Honor.

13 (Applicant's Exhibit A-1 admitted into evidence.)

14 Q. Mr. Davis, did you and Mr. Williams discuss his Facebook
15 page?

16 A. We did.

17 Q. What were those conversations about?

18 A. It was just briefly about -- and I can't remember the
19 contents that was on his Facebook pages, but it wasn't
20 something favorable to him. It was in my opinion they were
21 just trying to show that he was a boastful and bragging
22 individual. I don't recall the contents of those Facebook
23 pages.

24 MR. WALLER: Beg the Court's indulgence, please.

25 (Brief pause.)

1 MR. WALLER: No further questions.

2 THE COURT: Any redirect?

3 MR. MITCHELL: No further questions from the State.

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

5 Any other witnesses?

6 MR. MITCHELL: No further witnesses.

7 THE WITNESS: Your Honor, may I be excused?

8 THE COURT: Yes, sir. Any objection?

9 MR. WALLER: No, Your Honor.

10 THE COURT: All right. What I'll do is take the matter
11 under advisement and notify both parties of my opinion.

12 MR. WALLER: Thank you, Your Honor. If I can just
13 briefly, I guess to clarify for the Court, those are
14 recordings. It's a video of the investigator going through
15 the cell phone. The pertinent information is -- that I was
16 concerned with is on Disk No. 2 at about the 32 through 40
17 minute mark.

18 THE COURT: Okay.

19 MR. WALLER: And it's three recordings.

20 THE COURT: All right. Thank you.

21 --- END OF TRANSCRIPT OF RECORD ---

22

23

24

25

1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

3 COUNTY OF ORANGEBURG

4

5 I, the undersigned Ruth L. Mott, Certified Court
6 Reporter for the State of South Carolina, do hereby certify
7 that the foregoing is a true, accurate and complete
8 transcript of record of all the proceedings had and evidence
9 introduced in the matter of the above-captioned case,
10 relative to appeal, in the 1st Judicial Circuit Court for
11 Orangeburg County, South Carolina, on the 20th of May, 2015.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15

January 5, 2016

16

17

Ruth L. Mott

18

Certified Court Reporter

19

20

21

22

23

24

25

THE DAVIS LAW FIRM, P.C.

Gerald J. Davis
ATTORNEY AT LAW

TELEPHONE: 803-531-3888
FAX NUMBER: 803-531-3322

EMAIL: aquit1@aol.com
WEBSITE: orangeburglawyers.com

March 20, 2015

149 CENTRE STREET
P.O. Box 844
ORANGEBURG, S.C. 29116-0844

FILED JUN 22 A 1:02
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC

Jonathan Waller, Esquire
1720 Main Street
Suite 104
Columbia, SC 29201

RE: *State v. Yorel Williams*

Dear Jonathan:

I hope this letter finds you doing well. Per our conversation on March 20, 2015, please find enclosed copies of the CDs with Mr. William's phone information and the child's statement. If I can assist you further reference the above, please do not hesitate to call.

If you have questions concerning this matter, do not hesitate to contact my office.

Sincerely,

Gary Doremus

ATTEST: TRUE COPY

Winnija B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

DEFENDANT'S EXHIBIT #12
J. W. B. [Signature]

VOLUNTARY STATEMENT
(NOT UNDER ARREST)

I, R.I., am not under arrest for, nor am I being detained for any criminal

offenses concerning the events I am about to make known to Cpt. D. Bernette.
Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 12 years of age, D.O.B. and I live at

I was looking out my window waiting for my mother to get home. When the lady that got shoot, pulled up in her car and got out of the car. ^{And I} the man that shoot her came outside in ^{and} walk up behind her. ~~the~~ The position I saw him in was on the right of her side I couldn't ~~see~~ hear if they was talking or arguing. While I was looking I saw the flash of the gun. Then, I saw him take off running, and while he was running I saw him have on a hoodie. It was dark when this happen. When I saw him shoot the lady I heard the bang of the gun.

2015 JUN 22 A 1:02
FILED FOR RECORD
WINIFEA B. CLARK
CLERK OF COURT
ORANGEBURG, SC

ATTEST: TRUE COPY

Winifea B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

Dated at 3-9-2011, this 9 day of March, 2011

WITNESS: Rafael

WITNESS:

R. I.
Signature of person giving voluntary statement

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Yorel Williams, #352376,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2013-CP-38-0960

ORDER OF DISMISSAL

FILED FOR RECORDS
WINNIEFA B. CLARK
2015 OCT - 1 A 11:32
CLERK OF COURT
ORANGEBURG, S.C.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed August 22, 2013. Respondent made its Return on March 7, 2014, requesting an evidentiary hearing be convened. Johnathan D. Waller, Esquire, was appointed by the Orangeburg County Clerk of Court.

South Carolina Court Administration informed Respondent by written letter dated February 14, 2014, that a transcript of Applicant's guilty plea hearing could not be produced.

An evidentiary hearing was held on May 20, 2015, at the Dorchester County Courthouse. Applicant was present and represented by Counsel Waller. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Gerald J. Davis, Esquire. This Court had before it the Orangeburg County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the guilty plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was indicted

ATTEST: TRUE COPY

Winniefa B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

during the January 2012 term of the Orangeburg County Grand Jury for Murder (2011-GS-38-0339). Applicant was represented by Gerald Davis, Esquire. On September 13, 2012, Applicant appeared before the Honorable Edgar W. Dickson, where he pled guilty to the lesser included offense of voluntary manslaughter. Judge Dickson sentenced Applicant to twenty-five (25) years' imprisonment. No direct appeal was taken.

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

1. Involuntary guilty plea.
2. Ineffective assistance of counsel in failing to meet with Applicant an adequate number of times.

II. SUMMARY AND EVIDENCE PRESENTED AT THE PCR HEARING

Applicant's Testimony

At the PCR hearing, Applicant testified Counsel Davis was retained by his family to represent him on the charges he currently challenges. Applicant explained Counsel had represented him before on other charges. He noted he was originally charged with murder but pled guilty to voluntary manslaughter. He testified there was a lot of negotiating from Counsel's end and that he didn't feel like it was going well. He contested his guilt and stated that the only evidence against him was an eyewitness and posting from Facebook. When asked about his statement to law enforcement, which the State categorized as a confession, Applicant responded that the statement was forced. He explained that the incriminating statements posted to Facebook were just song lyrics. Applicant took issue with the amount of time Counsel spent with him. He did not feel it was adequate or that Counsel was prepared. He alleged that his guilty plea was not made knowingly and voluntarily.

Applicant testified he recalled where Judge Dickson asks him a number of questions. He did not recall the specifics of all the questions, but believed he was asked whether he was guilty

Counsel Gerald J. Davis's Testimony

Counsel testified that he was retained by Applicant's family to represent him. He noted that he has known and represented Applicant on a number of other charges. He noted he was successful in getting the prior charges dismissed. He testified he reviewed the charges of murder and voluntary manslaughter with Applicant. Counsel testified that it is his practice to prepare a plea sheet where he will review in detail the charges and rights the client would waive by pleading guilty. He noted that he believed he and Applicant reviewed this sheet thoroughly before he pled guilty. He also testified these are the same questions that a plea judge would ask a defendant.

Counsel testified he has represented a number of clients who have appeared before Judge Dickson and pled guilty. He explained that he is familiar with Judge Dickson's normal plea colloquy. Counsel did not recall the exact questions Judge Dickson asked Applicant, but agreed that in his experience it was any judge's normal practice to review with a defendant: indictment(s), potential sentences, whether the defendant was promised or threatened to plead guilty, whether the defendant had taken any medication, drugs, or alcohol in the previous 24 hours, a defendant's numerous constitutional rights, the State's recitation of facts, and any mitigation offered by the defendant. Counsel testified he did not believe there were any problems with the plea but noted that if there was he would have objected or made a motion to withdraw the plea, especially if he thought it was being involuntarily entered. He noted that was not the case here and that Applicant understood the rights he was waiving by pleading guilty. He also

testified he did not believe Judge Dickson would allow a guilty plea to go forward if any issues arose.

III. APPLICABLE LAW

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

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he

would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

Plea Transcript

This Court finds that although a transcript of the guilty plea proceeding was not available for review, it is not necessary to its determinations and ruling. See Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008) (In determining guilty plea issues in a PCR proceeding, it is proper to consider the plea transcript *as well* as evidence at the PCR hearing.) (emphasis added). A presumption of regularity attaches to proceedings in the Court of General Sessions. Pringle v. State, 287 S.C. 409, 411, 339 S.E.2d 127, 128 (1986) (citing State v. Britt, 235 S.C. 395, 111 S.E.2d 669 (1959); State v. Jones, 211 S.C. 319, 45 S.E.2d 29 (1947); State v. Waring, 109 S.C. 52, 95 S.E. 143 (1918)). It is incumbent upon one who challenges a proceeding to prove his

claims. See Tate v. State, 345 S.C. 577, 549 S.E.2d 601 (2001). This Court finds the record was adequately reconstructed at the PCR hearing for the purposes of this Court's decision. It is important to note that Applicant pled guilty before Judge Dickson, the resident Orangeburg circuit court judge, with whom Counsel has appeared before numerous times. Counsel is familiar with the structure of Judge Dickson's normal plea proceedings and testified that there is no reason to think Applicant's plea deviated from those practices. Applicant's testimony supports this finding. Applicant was asked a number of questions at the plea hearing including whether he wished to waive his constitutional rights, and whether he agreed with the solicitor's recitations of the facts. Therefore, this Court finds that the plea transcript is not necessary to its ruling and that the record was adequately reconstructed.

Involuntary Guilty Plea

Applicant argues he did not plead guilty knowingly and voluntarily because he believes his confession could have been challenged. This Court finds otherwise and concludes that Applicant's guilty plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870,

874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Applicant claims he did not plead guilty knowingly and voluntarily. This Court finds this contention without merit. This Court finds the record reflects Applicant was advised of the waiver of his constitutional rights by the plea court. This Court finds very credible Counsel's testimony regarding his preparation and advice concerning the case and the substance of those conversations. This Court finds Applicant's testimony not credible. This Court finds that Applicant presented *no* credible evidence that he pled guilty involuntarily. This Court finds Applicant's intent to plead guilty was made clear to the plea judge. Applicant was fully informed of the nature and consequences of his plea by his attorney and was advised further by the plea court. This Court finds Counsel's testimony credible and persuasive on the issue. Applicant knew he was pleading guilty, but explained that he felt forced because Counsel advised him he was likely to be convicted if he chose to go to trial. This Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. This allegation is denied and dismissed with prejudice.

Ineffective Assistance of Counsel

As to Applicant's contention that Counsel did not meet with him enough and was therefore not prepared, this Court finds the allegation without merit. The constitutional right to effective counsel does not include a specified number of face-to-face meetings between client and attorney. Moody v. Polk, 408 F.3d 141, 148 (4th Cir. 2005) ("As to Moody's claim that his counsel did not meet with him frequently enough, there is no established 'minimum number of

meetings between counsel and client prior to trial necessary to prepare an attorney to provide effective assistance of counsel.” (citing United States v. Olson, 846 F.2d 1103 (7th Cir. 1988)). Simply put, “brevity of time spent in consultation, without more, does not establish that counsel was ineffective.” Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). This Court finds Counsel adequately prepared Applicant’s case. The evidence against Applicant was substantial. It is noteworthy that Counsel was successful in getting the murder charge dropped to voluntary manslaughter, significantly limiting Applicant’s exposure. Counsel was not ineffective in any regard concerning his preparation of Applicant’s case.

Furthermore, Applicant presented no evidence as to what further information counsel would have gathered had he met with Applicant more often. See Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (“[Applicant] failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial.”). Applicant has failed to prove prejudice.

All Other Allegations

As to any and all allegations that were raised in the application and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsel’s performance was unreasonable under prevailing professional norms or that the outcome of his plea would have been different had counsel performed differently. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C.

559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

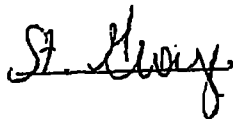
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 24 day of Sept, 2015.


 MAITÉ MURPHY
 Presiding Judge

 South Carolina

WITNESSES

D. Barnette

Branchville Police Department

ARREST WARRANT NUMBER

M214822

Arrested: February 1, 2011

TRIAL BILL
ACTION OF GRAND JURY

[Signature]

Date 1-11-2012

Foreperson of Grand Jury

Date: January 11, 2012

JAN 11 2012

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011GS38-0339

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

January 9, 2012 TERM

THE STATE

vs.

Yorel Leroy Williams

Indictment for

MURDER

SC Code: 16-3-10

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

62

Defendant

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

Defendant

Witness:

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

FILED FOR RECORD
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC

2012 JAN 11 11:28

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2011GS38-0339

At a Court of General Sessions, convened on January 9, 2012 the Grand Jurors of Orangeburg County present upon their oath:

MURDER

That in Orangeburg County on or about January 28, 2011, with malice aforethought, the defendant, Yorel Leroy Williams did kill one Darshai Brailsford by means of shooting the victim, and the victim did die as a proximate result thereof. This offense being in violation of the Common Law and Section 16-3-10, of the South Carolina Code of Laws, as amended.

ORANGEBURG COUNTY SC
CLERK OF COURT
JAN 31 2012

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

Thomas B. Scott, III

Thomas B Scott, III, Solicitor