

**RECEIVED**

JUN 24 2016

**SC SUPREME COURT**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Williamsburg County

Steven H. John, Circuit Court Judge

---

ANDRE WALLACE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002200

---

APPENDIX

---

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ATTORNEYS FOR RESPONDENT

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EXHIBITS

(There were no exhibits marked.)

1 THE COURT: Ms. Barr.

2 MS. BARR: Your Honor, if it please the Court.

3 THE COURT: Yes.

4 MS. BARR: We are back on the record concerning  
5 Indictment 2010-GS-45-28, State versus Andre Wallace, an  
6 indictment for murder.

7 We selected a jury yesterday and began trial.  
8 It's my understanding now that defendant wishes to change  
9 his plea from that of not guilty to guilty to murder upon  
10 the State and defense counsel's negotiated sentence of 35  
11 years concurrent to his current sentence if Your Honor  
12 please.

13 THE COURT: All right. Mr. Milling.

14 MR. MILLING: Thank you, Your Honor. May it  
15 please the Court.

16 Ms. Barr's recitation is correct, my client has  
17 indicated to me that he is willing to accept a negotiated  
18 sentence of 35 years pursuant to Alford versus North  
19 Carolina. The benefit of the bargain pursuant to Alford,  
20 if you will, is that in lieu of receiving -- the prospect  
21 of receiving a life sentence were he to be convicted at  
22 trial, he is under this negotiated sentence to receive a  
23 35-year sentence running concurrent with the 35-year  
24 sentence imposed previously by Judge James on the burglary  
25 charge. That sentence was originally imposed on August

1 21st -- or, excuse me, May 20th of 2011, such sentence  
2 being amended August 21st of this year.

3 My client and I have discussed his  
4 constitutional rights as they relate to a trial,  
5 proceeding to the trial which has already begun. He has  
6 advised me that he is willing to waive those  
7 constitutional rights and accept the imposition of a  
8 sentence by the Court pursuant to North Carolina versus  
9 Alford.

10 THE COURT: All right. If the defendant will  
11 come around.

12 All right. We'll swear him, please.

13 THE CLERK: Please raise your left hand on the  
14 Bible and raise your right hand.

15 ANDRE WALLACE, after being duly sworn, testified  
16 as follows:

17 THE COURT: All right. Mr. Wallace, you've  
18 decided to plead guilty in this case?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And the guilty plea and sentence  
21 sheet indicates that the basis for the guilty plea is a  
22 negotiated sentence of 35 years; is that right?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Where there's a negotiated sentence  
25 of 35 years, either I will accept the guilty plea and you

1 will be sentenced to 35 years in prison concurrent with  
2 the time that you're currently doing or I will not accept  
3 the guilty plea.

4 Do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: As you stand before me at this  
7 moment in time, we have selected the jury, we've started  
8 the trial. You have the right to continue with the trial.  
9 If you were to continue with the trial, you would have the  
10 right to remain silent. During the trial, the State will  
11 have to present evidence which convinces the jury beyond a  
12 reasonable doubt of your guilt. You have the right to  
13 challenge any incriminating statements you may have, to  
14 challenge any of the evidence the State may offer against  
15 you, as well as the right to present any defense that you  
16 might have to this charge.

17 Do you understand that, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you wish to waive each and every  
20 one of those rights and enter this guilty plea?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Are you satisfied with the  
23 representation of your lawyer, Mr. Milling?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Has he done everything that you

1 think that he could or can do to assist in representing  
2 you in this case?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you have any complaints that you  
5 want to make against him or anyone in law enforcement or  
6 anyone at all in connection with this case?

7 THE DEFENDANT: No, sir.

8 THE COURT: Have you had enough time to make up  
9 your mind as to whether or not you want to plead guilty?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand that you have a  
12 right to appeal the guilty plea and sentence provided that  
13 you do so within ten days?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Are you today under the influence of  
16 any drugs, alcohol or anything that might affect your  
17 ability to understand what you're doing?

18 THE DEFENDANT: No, sir.

19 THE COURT: Understanding the nature of the  
20 charge and the possible punishment, then how do you wish  
21 to plead to this charge?

22 THE DEFENDANT: Guilty, sir.

23 MR. MILLING: Your Honor, just so the record is  
24 clear, that's guilty pursuant to North Carolina versus  
25 Alford.

1 THE COURT: And do you understand, sir, when you  
2 said you're pleading guilty then -- and if I accept it, I  
3 accept it as a guilty plea regardless to whatever  
4 technical other words you place regarding it, guilty is  
5 guilty?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. Mr. Milling, you have  
8 worked on this case for how long now?

9 MR. MILLING: Over a year, Your Honor.

10 THE COURT: And during the course of that period  
11 of time you've gotten sufficient amount of information to  
12 properly represent --

13 MR. MILLING: Yes, sir, Your Honor. This was a  
14 case that was originally tried in May of 2011. I've  
15 reviewed the discovery in this case in depth as well as  
16 gone through the earlier trial transcripts to give me a  
17 good idea as far as the evidence which would be presented  
18 during the trial this week.

19 The earlier court resulted in guilty verdicts on  
20 the burglary, conspiracy and firearm offenses, and a hung  
21 jury on the murder. The evidence which would be presented  
22 this week I would anticipate would be the same, if not  
23 substantially similar evidence, as was presented at the  
24 earlier trial. I have had an opportunity to discuss all  
25 of that evidence with my client as well as possible

1 defenses that he would raise during this case. I believe  
2 that based upon our conversations, he understands what he  
3 would be facing here this week, understands the  
4 negotiations that we've entered into in this case and is  
5 making a knowing and intelligent decision to proceed here  
6 today under North Carolina versus Alford.

7 THE COURT: All right. And so you understand,  
8 that this charge that you're on trial for faces a  
9 maximum -- or a sentence from 30 years to life  
10 imprisonment.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And that under this negotiated  
13 sentence, you'll receive a 35-year prison sentence?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Ms. Barr.

16 MS. BARR: Your Honor, if it please the Court.

17 The death of Mr. Ernest Prosser occurred back on  
18 October 27th of 2009. He was killed inside his home on  
19 was which is located here in ,  
20 Williamsburg County. His body was discovered about three  
21 days later by his son, Ernest Prosser, IV.

22 The investigation into his death revealed that  
23 Andre Wallace, Tiffany Jones, Renetta Miller, and  
24 Cornelius McClary conspired to go into his home and rob  
25 him of guns or money or drugs or what have you.

1 Mrs. Jones and Ms. Miller actually knew Mr. Prosser and  
2 had spent several nights inside his home. Mrs. Miller --  
3 I'm sorry, Mrs. Jones considered herself to be a friend of  
4 the victim's.

5 The day that the killing occurred, the four of  
6 them were together and they decided that Ms. Jones would  
7 call the victim from Mr. Wallace's cell phone. They  
8 initially tried to get him to meet Ms. Miller someplace  
9 and he, for whatever reason, said he wasn't going to come  
10 out or couldn't come out, and so all of the defendants  
11 then drove to the victim's home.

12 Mrs. Miller again called the victim from the  
13 defendant's cell phone and said, I'm in the yard. The  
14 victim then comes out of his home, meets her in the yard,  
15 they go back into the house.

16 While the victim is in the shower, Ms. Miller  
17 then calls back from Mr. Prosser's cell phone to  
18 Mr. Wallace's cell phone basically giving them the okay,  
19 the coast is clear, you can come and go now.

20 At the time Mr. Wallace had a shotgun and  
21 Mr. McClary had a handgun. Those two males along with  
22 Tiffany Jones then exit the vehicle. Mr. Wallace enters  
23 the residence through the back door, goes into the  
24 victim's bedroom. The victim gets out of the shower and  
25 we believe hears noises inside his home, so when he goes

1 from the bathroom, he happens to see Tiffany Jones couched  
2 down outside the window in the kitchen, and he then  
3 proceeds to go down the hallway to his bedroom, which  
4 would have been on his right.

5 As he's going through the hallway to get to his  
6 bedroom, right in front of the bedroom door, of course, is  
7 the living room. There was a coffee table in which  
8 Mr. Prosser had his firearm. He picked up the firearm, he  
9 looks to his right into his bedroom and he sees the  
10 defendant, Andre Wallace, in his bedroom. He raises his  
11 hand with the firearm in it, prepared to defend himself,  
12 and he prepares to shoot at Mr. Wallace, and it's at that  
13 point that Mr. Wallace then fires the shotgun at him.

14 The testimony at trial was that when Ms. Jones,  
15 Ms. Miller and Mr. McClary hears the shotgun blast, they  
16 all run. Mr. Wallace leaves the victim's bedroom. They  
17 all run to the vehicle. As they're inside the vehicle  
18 getting away from the scene, for some reason Mr. McClary  
19 gets out of the car, sits his behind on the door frame and  
20 then fires a couple of shots from his handgun over the  
21 roof of the car and at the front door of the victim's  
22 home. Judge, that's corroborated by photographs from the  
23 crime scene.

24 When they left, apparently they bypassed a  
25 deputy's vehicle and there was some shouting in the car

1 and Mr. Wallace told the two female co-defendants that he  
2 thought that they had set him up and he was surprised that  
3 the police would have gotten there that quick. He thought  
4 that the police were coming in response to the shooting,  
5 but they were actually on a call somewhere else, and so  
6 there was a lot of fussing inside the vehicle. The  
7 defendant said that he had to shoot the victim because it  
8 was either him being the victim or himself, being the  
9 defendant.

10 They leave and then go to a convenience store, I  
11 believe, in the Cades community, and then they each kind  
12 of go their separate ways from there.

13 Mr. Prosser's son had not heard from him in a  
14 couple of days, which is unusual, so he goes to the  
15 residence on October the 30th. The back door was open,  
16 which was also unusual. He sees when he enters the  
17 residence that his father is seated on a sofa in the  
18 living room, and by this time because so many days had  
19 passed, his body had begun to decay and to bloat. His son  
20 then immediately called 911. When the investigators come  
21 out, they seal off the crime scene. They found in the  
22 yard the victim's cell phone. And the victim had  
23 apparently saved Renetta Miller's name and telephone  
24 number into the phone under the name "Netta," which is I  
25 guess her nickname, short for Renetta. He'd actually -- I

1 don't think he realized, but he actually saved in  
2 Mr. Wallace's cell phone number.

3 In addition to the cell phone being in the yard,  
4 it was also later discovered to be a shoe belonging to  
5 Renetta Miller. She had run so fast trying to get away  
6 from the scene that she's come out of one of her shoes.

7 They were pretty quickly able to tie the cell  
8 phone to Mr. Wallace. I believe it belonged to either his  
9 father or his stepfather, and eventually all of these  
10 defendants were arrested. The other three have been  
11 convicted.

12 As Mr. Milling stated, we did have a trial in  
13 connection with Mr. Wallace's case last year. The jury  
14 deadlocked 11 to 1 in favor of conviction on the murder  
15 charge. That's essentially the facts.

16 Judge, the only other thing is that the victim's  
17 body was taken to the Medical University of South  
18 Carolina, an autopsy was done. It was determined that he  
19 died as a result of the gunshot wound. Also, in some of  
20 the crime scene photographs, you could easily surmise that  
21 the victim had apparently gone from room to room looking  
22 for his cell phone. He didn't have a landline phone. And  
23 we base that assumption on the fact that he was found  
24 seated in the sofa in the front room, but there were blood  
25 spots on the back door in the kitchen area and on the

1 wall. The blood was determined to belong to that of the  
2 victim. So after he was shot, he apparently went room to  
3 room trying to, I'm assuming, find his phone and call for  
4 help, and he was not able to do that.

5 THE COURT: All right. And, Mr. Wallace, do you  
6 dispute any of the facts as outlined by the Solicitor?

7 MR. MILLING: Your Honor, we would submit that  
8 those are the facts that we believe would be presented at  
9 the trial this week. Those are the facts that were  
10 presented at the original trial.

11 As far as Mr. Wallace's role in that offense,  
12 again pursuant to North Carolina versus Alford, he  
13 maintains his innocence, but submits that there's a  
14 sufficient factual basis for his plea.

15 THE COURT: He maintains his innocence, but he's  
16 waived his right to remain silent.

17 MR. MILLING: Yes, sir.

18 THE COURT: So the question is for you. Do you  
19 dispute any of the facts as stated by the Solicitor?

20 THE DEFENDANT: No, sir.

21 THE COURT: All right. The basis for the plea  
22 negotiations, Solicitor?

23 MS. BARR: Judge, one, we know that as with any  
24 case, there's never a thing in the law in terms of  
25 certainty in terms of what a jury will do. The evidence

1 at the first trial will be the same evidence that will be  
2 submitted at the second trial. Apparently there's just  
3 one lone holdout juror who could not convict him of  
4 murder. But, of course, that one juror was the person who  
5 was the reason essentially why we had to retry the case.

6 The family of Mr. Prosser wants closure, if  
7 there's any such thing as closure. They certainly want  
8 the criminal case to come to an end. I think that the end  
9 of the case, particularly as it relates to who the State  
10 believes to be the shooter, will bring some measure of  
11 finality and justice to the case.

12 We also took into consideration that the  
13 co-defendant, Mr. McClary, although we don't believe and  
14 the evidence doesn't suggest that he was the shooter, he  
15 received a 25-year sentence in connection to his plea to  
16 burglary 1st, criminal conspiracy and possession of a  
17 weapon during the commission of a violent crime.

18 And so after having consulted with the family  
19 yesterday and again last night and again this morning,  
20 they're in agreement with a 35-year sentence.

21 THE COURT: All right. And did any family  
22 member wish to address the Court?

23 MS. BARR: No one from the Prosser family wishes  
24 to address the Court, Judge, but they thank you.

25 THE COURT: All right. Mr. Milling.

1 MR. MILLING: Thank you, Your Honor. May it  
2 please the Court.

3 THE COURT: I didn't get the prior record  
4 either.

5 MS. BARR: Judge, I think he had a magistrate  
6 court charge from several years back, maybe a driving  
7 under suspension. But with the exception of his  
8 convictions in connection with this crime, that's the  
9 extent of his record.

10 THE COURT: Mr. Milling.

11 MR. MILLING: Your Honor, by all accounts, he  
12 really hasn't been in any trouble prior to this incident  
13 coming up.

14 You have heard the Solicitor's recitation as to  
15 the evidence which she would intend to present in this  
16 case. There were a lot of conflicting stories as given by  
17 Ms. Renetta Miller, Ms. Tiffany Jones, Mr. Cornelius  
18 McClary in this case which may have had something to do  
19 the jury's willingness to enter a murder conviction in the  
20 first case.

21 I've discussed with my client at length what his  
22 rights are and his constitutional rights to the trial, but  
23 also the practical realities that he's facing right now,  
24 considering he's already received a sentence of 35 years  
25 on the burglary conviction. He recognizes on that charge

1 that he will be eligible for parole, and that on the  
2 murder charge he would not, so the murder 35-year sentence  
3 would be the driving sentence in this case.

4 I know that this has been difficult for he and  
5 his family. I know that it's been difficult for the  
6 Prosser family. This brings closure to all sides for the  
7 matter.

8 The benefit that he is receiving is avoiding a  
9 life sentence and having the opportunity to reunite with  
10 his children, who are a big part of his life, down the  
11 road. And I think that is the primary reason why we're  
12 here right now on this plea.

13 Your Honor, I've spoken to him and told him that  
14 he's got the right to address the Court at this time.  
15 He's indicated to me that -- I don't believe he wishes to  
16 address the Court, but we would both ask, as well as his  
17 family, that the Court proceed with the negotiations and  
18 impose the sentence of 35 years concurrent with the 35  
19 years on the burglary pursuant to North Carolina versus  
20 Alford.

21 THE COURT: All right. And anyone standing with  
22 you that would like to say anything?

23 MR. DIBBS: I'd just like to say that --

24 MR. MILLING: And this is his father or  
25 stepfather, James Dibbs.

1           MR. DIBBS: He's a good young man. Like what  
2 was already said, he hadn't been in any other trouble  
3 except for this. But I guess he based his decision on  
4 like what his attorney said, you know, one day wants to  
5 reunite with his kids, and that's the driving force behind  
6 the decision he made.

7           THE COURT: All right. Anything else?

8           MR. MILLING: No, sir, Your Honor.

9           THE COURT: Anything else, Ms. Barr?

10          MS. BARR: No, sir, Judge.

11          THE COURT: Well, I've jotted down a few things  
12 based on what I've heard in the past few minutes. The  
13 Solicitor, Ms. Barr, who is one of the top solicitors in  
14 the state. I go from place to place, county to county,  
15 and she is one of the best in the state prosecuting  
16 criminal cases, and she works very hard and diligent at  
17 getting to the bottom of all of these cases. And having  
18 sat through a couple of bond hearings in this case and  
19 hearing some of the earlier expressions to the Court at  
20 the bond hearings regarding the death of Mr. Prosser and  
21 how the State saw things preliminarily and now hearing the  
22 results of having worked on it for the period of time that  
23 she has and being from this community and knowing of  
24 Mr. Prosser as well, I recall him having used to own a  
25 trailer park out there and that he was at one point trying

1 to sell. And being a real estate person myself, I looked  
2 into it, so I'm familiar with him having owned that  
3 property out there, the Tindale Park area, somewhere out  
4 there. And just -- and I think he also owned -- is that a  
5 truck -- what do you call that?

6 MS. BARR: Easy.

7 THE COURT: Easy's, where we used to have lunch  
8 from time to time. So I would imagine he would come into  
9 contact with all types of people, which would include the  
10 crew that ultimately led to his death, or at least some of  
11 them.

12 Then Ms. Barr mentioned the jury deliberations  
13 and how the jury deadlocked on convicting Mr. Wallace of  
14 murder. And every time you have a jury trial, you get a  
15 collection of people from the community, and we don't have  
16 professional jurors, we just have whoever is due to serve  
17 and whoever the lawyers select to be on the jury, and they  
18 come in with their own life experiences, baggage and  
19 everything else, and sometimes they can reach a decision  
20 and sometimes they can't. I'm sure the State gained some  
21 additional information from having tried it at first, and  
22 the defense also has that same benefit, having the benefit  
23 of the transcript and being able to prepare a defense  
24 based on what was presented the first time around. So who  
25 knows what the results the second time around would be.

1 Of course, I've never -- I guess you can -- once jurors  
2 are off jury duty, they're willing to talk about how the  
3 deliberations stood and what the count was, and all those  
4 things, but it's hard to know what any jury would do at  
5 any point in time, so certainly I understand the State's  
6 willingness from that perspective, coupled with the fact  
7 that whether you have a jury or not, you don't know what  
8 the Judge's sentence will be for a person who commits a  
9 crime with no prior criminal record.

10 Shifting over to the defense comments about  
11 conflicting statements, I think in almost every case where  
12 you have co-defendants and where the State's case in part  
13 would be based on testimony of co-defendants, you're going  
14 to have conflicting evidence because at various points  
15 along the way, those co-defendants will tend to minimize  
16 their involvement, and also in many instances deny their  
17 involvement initially and at some point come to the truth  
18 of their participation. So it's typical that there would  
19 be conflicting statements and conflicting evidence.

20 Regarding this bringing the matter to closure  
21 for both families, I can feel certain speaking on behalf  
22 of the victim's family that they will never get closure to  
23 this senseless, brutal killing of a loved one in his own  
24 home by people he trusted enough to let into his home.  
25 I'm sure that will never bring closure.

1           As to Mr. Wallace's decision to participate in  
2 this robbery/burglary which resulted in a murder, I don't  
3 know that a person who commits a murder can ever bring  
4 themselves to a true confession about killing someone, can  
5 ever take themselves back to that moment in time when they  
6 decided to pull the trigger and take another man's life.  
7 I have sentenced many people who committed murder, many  
8 murderers, and I've yet to get one to tell me exactly how  
9 they killed someone else unless it involves someone who  
10 just has the joy of killing people, and you have a few of  
11 those out there. So it just appears that murder was not  
12 the goal, but any time you enter into someone's residence,  
13 any time you commit a burglary, any time you decide to go  
14 in someone else's home, whether you're armed with a weapon  
15 or not, a man's home is his castle and whenever you cross  
16 that threshold, you've made a decision to kill or to be  
17 killed. So that decision wasn't made when you were  
18 confronted by Mr. Prosser. That decision was made when  
19 you decided to participate in this scheme to go there and  
20 to have the girls who knew him gain access so you all  
21 could rob him and burglarize his home. So that's when you  
22 made the decision that you're willing to kill someone,  
23 particularly when you decided to go in there with a  
24 shotgun.

25           Did you all ever trace the ownership of the

1 shotgun?

2 MS. BARR: We never recovered the shotgun or the  
3 handgun, Your Honor.

4 THE COURT: And as I listen to the cases and  
5 listen to the waste of human lives on both parts and I  
6 think about the song, Oh, What Peace We Often Forfeit,  
7 just why you just forego your freedom and liberty and just  
8 throw it away in pursuit of essentially nothing.

9 Your father says that you're -- or your  
10 stepfather says that you're a good man, you know. I  
11 certainly put those three words in quotes. He says you're  
12 a good young man, you know. How can a good young man be  
13 standing before a judge being sentenced for murder, and  
14 not in self-defense, but a murder that he willingly  
15 through conspiracy with other people decided to  
16 participate?

17 I get good young men in court all the time. Of  
18 course, I'm not the ultimate judge of any of that, but  
19 good young men don't get shotguns and go in people's  
20 homes, recognizing what could occur and recognizing that  
21 he was prepared to carry out whatever dangers that he  
22 confronted at that moment in time. I don't know why you  
23 would do such, Mr. Wallace, I don't know you, but I can't  
24 co-sign about your stepfather's position that you're a  
25 good young man because good young men don't do what you

1 did. Good young men don't turn into cold-blooded killers.  
2 And that's the end result of this case.

3 And Mr. Prosser's family will never bring  
4 closure. This county will never bring closure. And it's  
5 this county, like many other counties, that are having  
6 young people running wild and doing wild and crazy things  
7 as if they're living in an uncivilized world.

8 But I'm going to accept the negotiated sentence.

9 I hope, Mr. Wallace, whatever your future holds,  
10 it will be one in which you endeavor to redeem yourself  
11 for this horrible deed to the extent that you can. And so  
12 I'm imposing a 35-year prison sentence. And I wish you  
13 the best.

14 MR. MILLING: Thank you, Your Honor.

15 (The proceedings were concluded.)

16 \*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*

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WITNESSES

SHERIFF'S OFFICE

Wayne McFadden

ARREST WARRANT NUMBER

M 061501, 508, 512, M 061500, 510, 511,  
M 061509, M 061506 & M 061507

D/A: 11/4/09

ACTION OF GRAND JURY

*Nancy McBride*

Foreperson of Grand Jury

Date: 5/5/11

VERDICT

Foreperson of Petit Jury

Date:

AMENDED  
DOCKET NO. 2010-GS-45-28

The State of South Carolina

County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

MAY TERM 2011

THE STATE  
vs.

ANDRE C. WALLACE

CORNELIUS MCCLARY

RONNETTA MILLER

TIFFANY JONES

Indictment for

CRIMINAL CONSPIRACY, BURGLARY  
- FIRST DEGREE, MURDER AND  
POSSESSION OF A WEAPON DURING  
VIOLENT CRIME

ERNEST A. FINNEY, III, SOLICITOR

11 MAY -5 2011:48  
CLERK OF COURT  
WILLIAMSBURG, S.C.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF WILLIAMSBURG ) **INDICTMENT FOR  
 CRIMINAL CONSPIRACY, BURGLARY – FIRST  
 DEGREE, MURDER AND POSSESSION OF A  
 WEAPON DURING VIOLENT CRIME**

At a Court of General Sessions, convened on May 5, 2011, the Grand Jurors of WILLIAMSBURG County present upon their oath:

**COUNT ONE – CRIMINAL CONSPIRACY - §16-17-410**

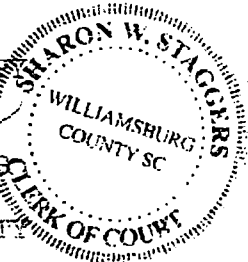
That **ANDRE C. WALLACE, CORNELIUS MCCLARY, RONNETTA MILLER** and **TIFFANY JONES** did in Williamsburg County between October 27, 2009 and October 30, 2009, violate Section 16-17-410 of the Code of Laws of South Carolina (1976), as amended, in that they did unlawfully, wilfully, knowingly, wickedly and feloniously unite, combine, conspire, confederate, agree between and among themselves and have a tacit understanding with each other for the purpose of committing the offenses of burglary, robbery and/or other criminal offenses.

**COUNT TWO – BURGLARY – FIRST DEGREE - §16-11-311**

That **ANDRE C. WALLACE, CORNELIUS MCCLARY, RONNETTA MILLER** and **TIFFANY JONES** did in Williamsburg County between October 27, 2009 and October 30, 2009, enter the dwelling of the victim, **Ernest William Prosser, III**, without consent and with the intent to commit a crime therein and said defendant entered or remained in said dwelling in the nighttime; and when effecting entry or while in the dwelling or in immediate flight therefrom, one or more of the participants in the crime was armed with a deadly weapon and caused physical injury to the victim, who was not a participant in the crime, in violation of Section 16-11-311, South Carolina Code of Laws (1976), as amended.

A CERTIFIED TRUE COPY

*Sharon W. Staggers*  
 SHARON W. STAGGERS  
 CLERK OF COURT  
 WILLIAMSBURG COUNTY



04:11 PM 5-11-11

**COUNT THREE - MURDER- §16-3-10**

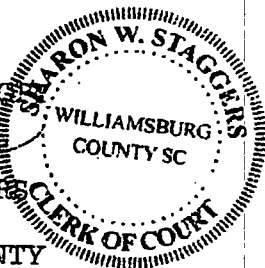
That **ANDRE C. WALLACE, CORNELIUS MCCLARY, RONNETTA MILLER** and **TIFFANY JONES** did in Williamsburg County between October 27, 2009 and October 30, 2009, in that they shot the victim, **Ernest William Prosser, III**, with malice aforethought, and caused his death.

**COUNT FOUR - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME - §16-23-490**

That **ANDRE C. WALLACE** and **CORNELIUS MCCLARY** did in Williamsburg County between October 27, 2009 and October 30, 2009, in that they did knowingly and willfully have possession of or visibly display what appears to be a firearm, while committing a violent crime, in violation of §16-23-490, South Carolina Law of South Carolina.

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

A CERTIFIED TRUE COPY  
*Sharon W. Stagger*  
SHARON W. STAGGER  
CLERK OF COURT  
WILLIAMSBURG COUNTY



*Ernest A. Finney III*  
ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA )  
 COUNTY OF Williamsburg )  
 STATE VS. )  
Andrea Courtney Wallace )  
 AKA: \_\_\_\_\_ )  
 Race: 2 Sex: M Age: \_\_\_\_\_ )  
 DOB: \_\_\_\_\_ SS#: \_\_\_\_\_ )  
 Address: \_\_\_\_\_ )  
 City, State, Zip: \_\_\_\_\_ )  
 DL#: \_\_\_\_\_ SID#: \_\_\_\_\_ )

IN THE COURT OF GENERAL SESSIONS

27  
30 yrs - lif ✓

INDICTMENT/CASE#: 2010-GS-45-0028  
 A/W#: M061501  
 Date of Offense: 10/27/2009  
 S.C. Code § : 16-03-0010  
 CDR Code #: 0116

SENTENCE SHEET

CONVICTED OF or  PLEADS

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

in violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC  §17-25-45  
 w/minor 1st or 2nd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State. 35y

ATTEST: Kimberly V. Barr 8443 Andrea Wallace 15679  
 Barr, Kimberly V. 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 35 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: May 20, 2011  
 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: \$ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_  
 Obtain GED   
 Attend Voc. Rehab. or Job Corp.  WILLIAMSBURG COUNTY

Recipient: \_\_\_\_\_  
 \*Fine: \_\_\_\_\_

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

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: Carol M. Thorne  
 Court Reporter: \_\_\_\_\_  
 SCCA/217 (03/2011)

Presiding Judge: C. Nour  
 Judge Code: 2127  
 Sentence Date: Sept 11, 2012

COUNTY OF Williamsburg  
STATE VS.  
Andrea Courtney Wallace  
AKA:  
Race: 2 Sex: M Age:  
DOB: SS#:  
Address:  
City, State, Zip:  
DL#: SID#:

INDICTMENT/CASE#: 2010-GS-45-0028  
A/W#: M061508  
Date of Offense: 10/27/2009  
S.C. Code §: 16-11-0311  
CDR Code #: 0079

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
In disposition of the said indictment comes now the Defendant who was  
TO: Burglary in the first degree

CONVICTED OF or  PLEADS

in violation of § 16-11-211 of the S.C. Code of Laws, bearing CDR Code # 0079  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC  §17-25-45 w/minor 1st or Lewd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)  
The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: Kimberly V. Barr 8443  
Bar, Kimberly V SC Bar# Defendant Attorney for Defendant SC Bar#  
Charles D. Barr

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
for a determinate term of 35 ~~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~~ SEE BELOW 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.

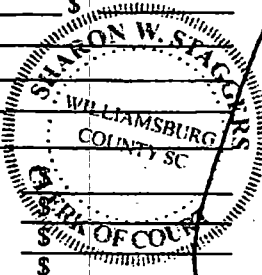
SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms:  
 Set by SCDPPPS

BTUP \_\_\_\_\_ 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: \_\_\_\_\_

Recipient: \_\_\_\_\_  
\*Fine: \_\_\_\_\_

§ 14-1-206 (Assessments 107.5 %)	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
% to County (if paid in installments)	\$
OTAL	\$



\* By order dated 8/30/12, all  
sentences imposed under  
this indictment are now  
concurrent. 8/30/12  
 Appointed PD or appointed other counsel,  
§ 47.12 requires \$500 be paid to Clerk  
during probation.

Clerk of Court/ Deputy Clerk: Carolyn J. Williams  
Court Reporter: Margaret Sullivan  
CCA/217 (03/2011)

Presiding Judge: \_\_\_\_\_  
Judge Code: \_\_\_\_\_  
Sentence Date: 8/30/12

STATE OF SOUTH CAROLINA )  
 COUNTY OF Williamsburg )  
 STATE VS. )  
Andrea Courtney Wallace )  
 AKA: \_\_\_\_\_ )  
 Race: 2 Sex: M Age: \_\_\_\_\_ )  
 DOB: \_\_\_\_\_ SS#: \_\_\_\_\_ )  
 Address: \_\_\_\_\_ )  
 City, State, Zip: \_\_\_\_\_ )  
 DL#: \_\_\_\_\_ SID#: \_\_\_\_\_ )  
 \*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-45-0028  
 A/W#: ~~2010-GS-45-0028~~ NO WARRANT  
 Date of Offense: 10/27/2009  
 S.C. Code § : 16-17-410  
 CDR Code #: 0049

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was TO: Criminal Conspiracy  CONVICTED OF or  PLEADS

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: Kimberly V Barr SC Bar# 8443 Defendant Charles J. Barr Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
 for a determinate term of 5 ~~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: Burglary sentence of 35 yrs.  
 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  
 Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
 Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

A CERTIFIED TRUE COPY  
 \_\_\_\_\_ days/hours Public Service Employment  
 Obtain GED  SHARON W. STAGGERS  
 Attend Voc. Rehab. or Job Corp. CLERK OF COURT  
 May serve W/E beginning WILLIAMSBURG COUNTY

Recipient: \_\_\_\_\_  
 Fine: \_\_\_\_\_

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

14-1-206 (Assessments 107.5 %)	
14-1-211(A)(1) (Conv. Surcharge)	\$100
14-1-211(A)(2) (DUI Surcharge)	\$100
56-5-2995 (DUI Assessment)	\$12
56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
14-1-212 (Law Enforce. Funding)	\$25
14-1-213 (Drug Court Surcharge)	\$150
50-21-114(BUI Breath Test Fee)	\$50
56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCJA Surcharge)	\$5
% to County (if paid in installments)	\$
TOTAL	\$

Other: By order dated 8/20/10, all sentences imposed under this indictment are now concurrent

Clerk of Court/ Deputy Clerk: Charles J. Williams  
 Court Reporter: Margaret Buller  
 JCA/217 (03/2011)

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

Presiding Judge: \_\_\_\_\_  
 Judge Code: 2193  
 Sentence Date: 5/27/11

STATE OF SOUTH CAROLINA

COUNTY OF Williamsburg  
STATE VS.

Andrea Courtney Wallace

AKA: \_\_\_\_\_

Race: 2 Sex: M Age: \_\_\_\_\_

DOB: \_\_\_\_\_ SS#: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

DL#: \_\_\_\_\_ SID#: \_\_\_\_\_

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was

TO: Poss. weapon during violent crime, if not also sentenced to life without parole or death

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-45-0028

A/W#: M061512

Date of Offense: 10/27/2009

S.C. Code §: 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

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  §17-25-45 w/minor 1st or Lewd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. \_\_\_\_\_ (defendant's initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST Ronnie A Sabb  
Sabb, Ronnie A

8443  
SC Bar#

Defendant

Attorney for Defendant Charles D. Barr SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 5 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 Free 21/24 Criminal Company sentence of 5 yrs  
 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

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

Payment Terms: \_\_\_\_\_

Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$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
§ 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
% to County (if paid in installments)	\$
OTAL	\$

Clerk of Court/ Deputy Clerk Carlye J. Williams

Court Reporter: Margaret Sullivan

PTUP \_\_\_\_\_ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. Sharon W. Staggars

May serve W/E beginning CLERK OF COURT

Substance Abuse Counseling WILLIAMSBURG COUNTY

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: 7/26 order dated 8/20/10

All sentences imposed under

this indictment are now

concurrent. 8/20/12

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

Presiding Judge \_\_\_\_\_

Judge Code: 2179

Sentence Date: 5/20/11

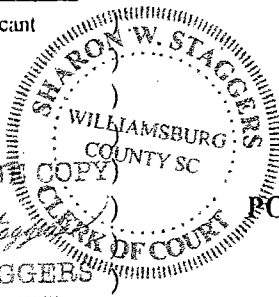
STATE OF SOUTH CAROLINA )  
 )  
County of Williamsburg )

IN THE COURT OF COMMON PLEAS

Andre Wallace #346096 )  
Full name and prison number (if any) of Applicant

v.

A CERTIFIED TRUE COPY )  
State of South Carolina )  
*Sharon W. Staggers* )  
SHARON W. STAGGERS )  
CLERK OF COURT )  
WILLIAMSBURG COUNTY )



APPLICATION FOR  
POST-CONVICTION RELIEF

FILED  
13 AUG - 1 MAIL: 13  
SHARON W. STAGGERS

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

---

2. Name and location of Court which imposed sentence Court of General Sessions in Williamsburg County

---

3. Name(s) of co-defendant(s) (if any) Cornelius McClary, Bonnetta Miller, Tiffany Jones

---

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
 (a) 2010-GS-45-0028 ( Murder )

SCANNED  
8/2/13

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) September 11, 2012 ( 35 yrs. )
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty Guilty Plea
- (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. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (c) the date of each such result:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

- (a) Counsel failed to file appeal at my request

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) 6<sup>th</sup> & 14<sup>th</sup> Amendment Violation
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) Ineffective Assistant of Counsel
- (b) Involuntary Guilty Plea
- (c) \_\_\_\_\_

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

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

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

- (a) the specific nature thereof:
  - i. 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. 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) First PCA Application
- (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? N/A
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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

- (a) the name and address of each attorney who represented you:
  - i. Jonathan M. Milling / 1614 Taylor Street, Suite C  
Columbia, SC 29201
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Guilty Plea Hearing
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

New Trial  
\_\_\_\_\_  
\_\_\_\_\_

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 Dorchester )  
~~Wilkes County~~ )

VERIFICATION

I, Andre Wallace, 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.

Andre Wallace  
\_\_\_\_\_

SWORN to and subscribed before me this 19<sup>th</sup> day of July, 2013.

Ludheen Bryant (L.S.)  
Notary Public

My Commission Expires: May 26, 2020



for Murder.<sup>1</sup>

Attached herewith and incorporated herein by reference are the records of the Sumter County Clerk of Court regarding the subject convictions and the records from the South Carolina Department of Corrections. The guilty plea transcript will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

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

- a. Ineffective Assistance of Counsel
- b. Involuntary Guilty Plea
- c. Due Process Violation
  - i. 6<sup>th</sup> and 14<sup>th</sup> amendments were violated.

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

## III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the 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.

---

<sup>1</sup> Applicant has a pending Direct Appeal based on the results of his trial May 20, 2012. Applicant has filed his Post-Conviction relief application (2013-CP-45-373) based on his guilty plea entered on September 11, 2012 to Murder.

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 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.

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

#### IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant 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 defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).

Respondent submits that 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 which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

#### V.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the

requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

## VI.

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

## VII.

WHEREFORE, having made its Return, the State 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

DANIEL GOURLEY  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

November 21, 2013

STATE OF SOUTH CAROLINA  
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS

2013-CP-45-373

ANDRE WALLACE, #346096,

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:

**Charles T. Brooks, Esquire**  
**Law Office of Charles T. Brooks, III**  
**309 Broad St.**  
**Sumter, SC 29150**

DATED this 21<sup>th</sup> day of November, 2013.

  
\_\_\_\_\_  
Caroline Kaiser, Legal Assistant  
For Respondent

STATE OF SOUTH CAROLINA )  
 COUNTY OF WILLIAMSBURG )  
 )  
 Andre Wallace #346096, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

---

IN THE COURT OF COMMON PLEAS  
 FOR THE THIRD JUDICIAL CIRCUIT

2013-CP-45-373

**AMENDED RETURN**

The Respondent, making its Return to the application for post-conviction relief filed April 18, 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 Williamsburg County Clerk of Court. Applicant was true bill indicted at the May 2011 term of the Williamsburg County Grand Jury for Criminal Conspiracy, Burglary in the First Degree, Murder, and Possession of a Weapon during a violent crime. Jonathan M. Milling, Esquire, represented the Applicant. On September 11, 2012, Applicant pled guilty as indicted to Murder. The Honorable Clifton Newman sentenced Applicant to a negotiated sentence of a thirty-five year term of imprisonment for Murder.<sup>1</sup>

Attached herewith and incorporated herein by reference are the records of the Sumter County Clerk of Court regarding the subject convictions and the records from the South Carolina Department of Corrections. The guilty plea transcript will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

---

<sup>1</sup> Applicant has a pending Direct Appeal based on the results of his trial May 20, 2012 stemming from his Criminal Conspiracy, Burglary in First Degree, and Possession of a Weapon charges. Applicant has filed his Post-Conviction relief application (2013-CP-45-373) based solely on his guilty plea entered on September 11, 2012 to Murder.

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

- a. Ineffective Assistance of Counsel
- b. Involuntary Guilty Plea
- c. Due Process Violation
  - i. 6<sup>th</sup> and 14<sup>th</sup> amendments were violated.

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. 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.

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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of 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.

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

#### IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant 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 defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).

Respondent submits that 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 which is not conclusively refuted by the

record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

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

## VII.

WHEREFORE, having made its Return, the State 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

DANIEL GOURLEY  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

April 8, 2014

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF WILLIAMSBURG )  
 )  
 )  
 )  
 ANDRE WALLACE, #346096, )  
 )  
 ) Applicant, )  
 )  
 ) vs. )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 ) Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

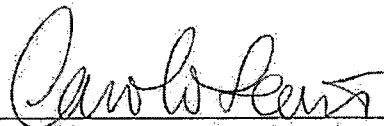
2013-CP-45-373

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 **Amended Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Charles T. Brooks, Esquire**  
**Law Office of Charles T. Brooks, III**  
**309 Broad St.**  
**Sumter, SC 29150**

DATED this 8<sup>th</sup> day of April, 2014.

  
 \_\_\_\_\_  
 Caroline Kaiser, Legal Assistant  
 For Respondent

State of South Carolina	)	Court of Common Pleas
	)	Third Judicial Circuit
County of Williamsburg	)	Case No. 2013-CP-45-00373
	)	
Andre C. Wallace,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

July 14, 2015  
Sumter, South Carolina

B E F O R E:

The Honorable Steven H. John, Judge

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

Charles Brooks III, Esquire  
Attorney for the Plaintiff

Daniel Gourley, Esquire  
Attorney for the Defendant

Krystal J. Smith  
Court Reporter

I N D E X

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WITNESS/DESCRIPTION

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

1 JULY 14, 2015

2 (WHEREAS this matter was scheduled for a post-conviction  
3 relief hearing, the applicant appeared along with his  
4 counsel of record. The hearing began at 2:24 p.m.)

5 THE COURT: All right. Mr. Attorney General?

6 MR. GOURLEY: Yes, Your Honor. This is Andre Wallace  
7 versus the State of South Carolina, Docket Number 2013-CP-45-  
8 373. He's presently confined in the South Carolina Department  
9 of Corrections pursuant to orders of commitment of the  
10 Williamsburg County Clerk of Court.

11 He was true-bill indicted at the May 2011 term of the  
12 Williamsburg County Grand Jury for criminal conspiracy,  
13 burglary in the first degree, murder, and possession of a  
14 weapon during a violent crime. Mr. Milling represented him.

15 On September 11<sup>th</sup>, 2012, he pled guilty pursuant to North  
16 Carolina v. Alford to murder, and the Honorable Clifton Newman  
17 sentenced the applicant to a negotiated sentence of 35 years.  
18 The applicant filed a timely application for PCR on April 18<sup>th</sup>,  
19 2013, alleging that he was being held in custody unlawfully  
20 based off of ineffective assistance of counsel, involuntary  
21 guilty plea, and a due process violation. The State filed its  
22 amended return on September 26<sup>th</sup>, 2014, and he's represented in  
23 this matter by Mr. Brooks.

24 THE COURT: All right. Mr. Brooks?

25 MR. BROOKS: Judge, we're ready to begin.

ANDRE WALLACE - DIRECT BY MR. BROOKS

1 THE COURT: All right, sir. If you want to call your  
2 client, please?

3 MR. BROOKS: We would call Andre Wallace.

4 THE COURT: All right, sir. Please come around to be  
5 sworn.

6 THE CLERK: Place your left hand on the Bible and raise  
7 your right hand. State your name, please.

8 THE APPLICANT: Andre Wallace.

9 THE CLERK: Do you solemnly swear or affirm your  
10 testimony to the Court shall be the truth, the whole truth,  
11 and nothing but the truth, so help you God?

12 THE APPLICANT: I do.

13 THE CLERK: Thank you. Have a seat up here, please.  
14 Please state your full name and spell your last name for the  
15 record.

16 THE APPLICANT: Andre Wallace, W-a-l-l-a-c-e.

17 THE COURT: All right. Go ahead, Mr. Brooks.

18 MR. BROOKS: All right.

19 ANDRE WALLACE, being first duly  
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. BROOKS:

23 Q: Mr. Wallace, I'll just ask you a couple of quick  
24 questions to make sure you understand you're here for a post-  
25 conviction relief. Do you understand that?

## ANDRE WALLACE - DIRECT BY MR. BROOKS

1 A: Yes, sir.

2 Q: Do you understand that the only remedy is -- if we  
3 convince the judge, the only remedy you can get is to get a  
4 new trial?

5 A: Yes, sir.

6 Q: And you understand if you got that, it could expose you  
7 to potentially more time?

8 A: Yes, sir.

9 Q: Okay. We talked about that and you said you still wanted  
10 to go forward and get a new trial; is that correct?

11 A: Yes, sir.

12 Q: Okay. Now, you ended up having Jonathan Milling as your  
13 court-appointed counsel; is that correct?

14 A: Yes, sir.

15 Q: And you pled guilty in front of Judge Newman back on  
16 September 11<sup>th</sup>, 2012?

17 A: Yes, sir.

18 Q: Okay. Now, it was a negotiated sentence of 35 years and  
19 that's what the judge gave you?

20 A: Yes, sir.

21 Q: Okay. Now, why did you end up taking this plea?

22 A: Because Mr. Milling at the time was my attorney and he --  
23 he really persuaded me because he was -- like, I could get a  
24 life sentence, more time than I already had. I already was  
25 looking at 45 years when I went back, but they took ten off in

ANDRE WALLACE - DIRECT BY MR. BROOKS

1 reconsideration; so it took it down to 35 and he was telling  
2 me I would get more time than I already had.

3 Q: Okay.

4 A: But I didn't understand that. And the Court at the time,  
5 they couldn't bring up the previous charges I was already  
6 convicted of.

7 Q: All right.

8 A: I was just going up for the murder.

9 Q: All right. And just for background information, you went  
10 to trial before this on burglary first, murder, and what else?

11 A: And criminal conspiracy.

12 Q: Criminal conspiracy.

13 A: And possession of a weapon during a violent crime.

14 Q: Possession of a weapon during a violent crime. Now, at  
15 the first trial, you were convicted of the possession of a  
16 weapon, criminal conspiracy, and burglary; is that correct?

17 A: Yes, sir.

18 Q: And you had gotten -- and you had a hung jury on the  
19 murder charge?

20 A: Yes, sir.

21 Q: And you were sentenced to 45 years on those charges you  
22 were found guilty of?

23 A: Yes, sir.

24 Q: And then there was a motion for reconsideration and your  
25 charges were reduced to 35?

## ANDRE WALLACE - DIRECT BY MR. BROOKS

1 A: Yes, sir.

2 Q: Okay. Then you ended up having Mr. Milling as your  
3 attorney and you pled guilty to the negotiated 35 and that ran  
4 concurrent?

5 A: Yes, sir.

6 Q: Okay. Now -- so do you understand that if you get this  
7 PCR granted, you're back in that situation you were in before  
8 September 11<sup>th</sup>, 2012, and you -- you could get a life sentence  
9 for murder? Do you understand that?

10 A: Yes, sir. I understand.

11 Q: Okay. So did you talk with Mr. Milling for a great  
12 length of time about this case?

13 A: No. I --

14 Q: What was going on?

15 A: Actually, he was -- he was appointed to me, but I was at  
16 another institution. But they had shipped me to Lieber, where  
17 I'm at now currently, but he only saw me, like, two times and  
18 really ain't nothing but, like, 20 minutes a piece every time.  
19 They got the log-in sheets and all at the prison.

20 Q: Okay.

21 A: Any he talked to me, like, right before trial when they  
22 had brought me back to Williamsburg County right before trial.  
23 I went and picked a jury and everything. I was willing to go  
24 to trial, but that's when he started telling me that I could  
25 get a life sentence, this and that, but I just didn't

ANDRE WALLACE - DIRECT BY MR. BROOKS

1 understand that at the time.

2 Q: What do you know now that you didn't know then?

3 A: I mean I know -- I know that they couldn't bring up my  
4 previous charge I was convicted of because I was only going up  
5 on one.

6 Q: Okay.

7 A: That was really the main problem I didn't understand at  
8 that time.

9 Q: Okay. So that's what you didn't know back then that you  
10 know now?

11 A: Yes, sir.

12 Q: Okay. Now, anything else went on with you and Mr.  
13 Milling? Were there discussions in preparation of the case?

14 A: I mean I had -- I had told him to file my -- my appeal  
15 after -- after the guilty plea and it wasn't even filed.

16 Q: Okay. All right. After Judge Newman had given you 35,  
17 you wanted him to appeal?

18 A: Yeah. I just wanted him to appeal it. Since my other  
19 three convictions were already on appeal, I had wanted to put  
20 that in appeal too, and it wasn't filed.

21 Q: Okay. Anything else about Mr. Milling you want to tell  
22 the judge?

23 A: No, sir.

24 Q: All right. Now, are you sure? This is the day. We're  
25 here to convince Judge John --

ANDRE WALLACE - DIRECT BY MR. BROOKS

1 A: I mean that's it. That's the only two issues I really  
2 had.

3 Q: Okay. I mean take a deep breath. This is the day.  
4 We're here. You told me you wanted your PCR. We're here to  
5 convince Judge John to give you a new trial. Is there  
6 anything else we haven't covered that you want to tell him?

7 A: No, sir.

8 Q: All right.

9 MR. BROOKS: No other questions. Answer any of questions  
10 of the attorney general.

11 THE COURT: Cross-examination?

12 MR. GOURLEY: Thank you, Judge.

13 CROSS-EXAMINATION

14 BY MR. GOURLEY:

15 Q: Mr. Wallace, you met with Mr. Milling twice before your  
16 plea?

17 A: Yes, sir.

18 Q: And that lasted about 20 minutes each?

19 A: Yes, sir.

20 Q: During those meetings, did y'all have an opportunity to  
21 go over the discovery or anything like that?

22 A: I mean he really just asked a lot of questions. I mean  
23 he went over a couple of things, but not really. Not -- not  
24 the main part I was really concerned about.

25 Q: Okay. You had went to trial on these charges beforehand;

## ANDRE WALLACE - CROSS BY MR. GOURLEY

1 right?

2 A: Yes, sir.

3 Q: So you already were aware of what the State was going to  
4 allege against you?

5 A: Yes, sir.

6 Q: Okay. And prior to that trial, y'all had gone over some  
7 defenses and everything like that?

8 A: Yeah.

9 Q: Okay. So you had a pretty good understanding of what was  
10 going on with this murder trial; right?

11 A: Yes, sir.

12 Q: Do you recall waiving your constitutional rights during  
13 your plea?

14 A: Yes, I did.

15 Q: Okay. And do you recall telling the plea judge that you  
16 were satisfied with Mr. Milling's services?

17 A: Yes, sir.

18 Q: Okay. And that you wanted to plead guilty pursuant to  
19 North Carolina v. Alford?

20 A: Yes, sir.

21 Q: And you were told the facts being stated by the State  
22 during your plea hearing?

23 A: Yes, sir.

24 Q: Okay. So the State offered you a plea deal that would  
25 run concurrent with your burglary first conviction and

## ANDRE WALLACE - CROSS BY MR. GOURLEY

1 everything like that?

2 A: Yes, sir.

3 Q: It was negotiated and, if I understood your testimony  
4 correctly, you accepted that plea deal to avoid a possible --

5 A: Yes, I did.

6 Q: -- life?

7 A: Yes, I did.

8 Q: Okay. And you stated that you wanted to appeal this  
9 plea?

10 A: Yes, I did.

11 Q: What -- what about this plea did you want to appeal?

12 A: I mean I just -- I already had my other three previous  
13 charges in appeal; so I just had wanted to put that in there.  
14 I didn't -- really I didn't know nothing about nothing because  
15 this was my first time ever being in anything.

16 Q: Right.

17 Q: So I didn't really understand. You know, I had to go  
18 read up and do a lot of reading myself --

19 Q: Okay.

20 A: -- to find out the little stuff that I do know.

21 Q: Well, what -- what about this plea do you feel needed to  
22 be appealed?

23 A: I mean because I just had feel that I had rather -- me, I  
24 had rather take a chance and gone to trial.

25 Q: Well, you started a trial though; right?

ANDRE WALLACE - CROSS BY MR. GOURLEY

1 A: Yeah. But when he told me about the life sentence, I  
2 didn't know at the time that I couldn't -- that he couldn't  
3 bring up my previous charges. I was scared that they was  
4 going to tell them I was convicted and make them convict me of  
5 the murder --

6 Q: Okay.

7 A: -- without even hearing me out.

8 Q: Well, during your first trial, do you recall the trial  
9 judge going over your rights to testify?

10 A: Yes, sir.

11 Q: And they went over your prior record during your first  
12 trial?

13 A: Yes, sir.

14 Q: And there was no prior possible impeachments; right?

15 A: Yes, sir.

16 Q: Okay. Did Mr. Milling discuss that with you at that  
17 point in time leading up to your guilty plea?

18 A: I mean he just tell me -- he was talking about my prior  
19 record and stuff like that, but that was -- that was really  
20 it.

21 Q: Okay. And I guess during that first trial did the judge  
22 explain to you that, if you testified, you could be impeached  
23 with your prior record; right?

24 A: Yes.

25 Q: Okay. So in this situation had you testified at trial --

ANDRE WALLACE - CROSS BY MR. GOURLEY

1 had you gone to trial and testified, you could have been  
2 impeached with your prior record; right?

3 A: Yes.

4 Q: But if you didn't testify, then obviously you couldn't be  
5 impeached?

6 A: Yes.

7 Q: Is that correct?

8 A: Yes, sir.

9 Q: Okay.

10 MR. GOURLEY: Your Honor, I don't have any other  
11 questions.

12 THE COURT: All right.

13 MR. GOURLEY: Thank you, Mr. Wallace.

14 THE COURT: Let me -- let me ask you a question, Mr.  
15 Wallace.

16 THE APPLICANT: All right.

17 THE COURT: In the transcript of record, looking at it,  
18 the solicitor in this particular matter, Ms. Barr, is giving  
19 the facts of the case to the trial judge, Judge Newman, as to  
20 what the State would present. I understand you're pleading  
21 under North Carolina versus Alford, but she starts on page 8  
22 of the transcript on line 16. It goes through the rest of  
23 page 8 on the facts of the case, all of page 9, all of page  
24 10, all of page 11, all of page -- page 12, and ends up at the  
25 top of page 13, which is a pretty long description of the

ANDRE WALLACE - DIRECT BY THE COURT

1 facts of the case.

2           And then you look on page 13 and the judge says -- the  
3 Court -- he maintains his innocence, but he's waived his right  
4 to remain silent, and the attorney says, yes, sir. And so the  
5 Court asked you a question. So the question is for you,  
6 talking to you, the defendant. Do you dispute any of the  
7 facts as stated by the solicitor, that multiple-page statement  
8 of facts of what the State said you did to commit this murder,  
9 and your answer to Judge Newman is, no, sir. You don't  
10 dispute word one of that multiple-page fact statement;  
11 correct?

12           THE APPLICANT: Yes, sir.

13           THE COURT: All right. Any questions from the defense?

14           MR. BROOKS: No, sir.

15           THE COURT: The attorney general?

16           MR. GOURLEY: No, Your Honor.

17           THE COURT: You may step down, sir.

18           MR. BROOKS: We would call Jonathan Milling.

19           THE COURT: All right, sir. If you would come around to  
20 be sworn, sir?

21           THE CLERK: Place your left hand on the Bible and raise  
22 your right hand. State your name, please.

23           THE WITNESS: Jonathan McKee Milling.

24           THE CLERK: Do you solemnly swear or affirm your  
25 testimony to the Court shall be the truth, the whole truth,

## JONATHAN MILLING - DIRECT BY MR. BROOKS

1 and nothing but the truth, so help you God?

2 THE WITNESS: Yes, sir, I do.

3 THE CLERK: Thank you. Have a seat up here, please.

4 Please state your full name and spell your last name for the  
5 record.

6 THE WITNESS: Jonathan McKee Milling, M-i-l-l-i-n-g.

7 THE COURT: Go ahead, Mr. Brooks.

8 JONATHAN MILLING, being first  
9 duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BROOKS:

12 Q: Mr. Milling, how are you?

13 A: Good. How about you, Mr. Brooks?

14 Q: I'm doing good. You represented Mr. Wallace in this  
15 case?

16 A: In the retrial, yes, sir.

17 Q: Okay. And you were court-appointed; is that correct?

18 A: Correct.

19 Q: Do you recall how often you met with him to discuss the  
20 case?

21 A: I don't recall. This was a unique situation simply  
22 because we had a retrial, and so a large part of what I was  
23 trying to do was go back through and see what evidence had  
24 already been presented in the initial trial. And I hired Amos  
25 Jones as the investigator to help me try and combat what had

JONATHAN MILLING - DIRECT BY MR. BROOKS

1 already been presented and mount the defense that way.

2 I met with Mr. Wallace I know when he was I believe at  
3 Kirkland and also at Lieber. I had an opportunity to go back  
4 and look through my file and there were several fax cover  
5 sheets that we had sent to the South Carolina Department of  
6 Corrections requesting permission to visit with Mr. Wallace,  
7 both myself and Mr. Jones. But how many times, I don't  
8 recall.

9 Q: Okay. Do you recall what the gist of the State's case  
10 was against Mr. Wallace?

11 A: I do.

12 Q: What was it?

13 A: The long and short of it was that Mr. Wallace I believe  
14 and two females and one other male traveled to the victim's  
15 house. There was a scheme that was concocted where the  
16 females would go in first. I believe, if I remember  
17 correctly, that the females had been romantically involved  
18 with Mr. Prosser. That they would attempt to distract --

19 Q: And Mr. Prosser is the victim?

20 A: Correct. Yes, yes.

21 Q: All right.

22 A: They would attempt to distract him and then the males  
23 would go in and rob him. I believe, if I remember correctly,  
24 the girls thought that he had a substantial amount of cash  
25 that he had out at his place. I'm not from Williamsburg

JONATHAN MILLING - DIRECT BY MR. BROOKS

1 County, but I believe from what other people told me that the  
2 family -- the Prosser family was well-to-do out there and  
3 maybe owned a business or something like that. That the  
4 victim in this case was someone who may have gone astray  
5 somewhat, maybe not as reputable as the rest of the family,  
6 had gotten involved in some other things, but that the family  
7 was still very well known.

8 Mr. Wallace had given a statement to law enforcement and,  
9 as I recall, he acknowledged being with the girls on the night  
10 in question, driving them out into the country. That they  
11 paid him some money to drive out there, but he denied knowing  
12 what they were doing out there with him. So he had already  
13 acknowledged being with the girls that night and driving out  
14 to the incident location, but denied going into the house or  
15 having any involvement with it.

16 Q: Okay. Now, was there any deal struck with any of the  
17 codefendants to testify against Mr. Wallace?

18 A: Well, the codefendants had testified, but I don't believe  
19 -- well, I know that they had not been sentenced, at least the  
20 two females. They were sentenced, as I recall, the same day  
21 that Mr. Wallace was sentenced. What they got, I don't recall  
22 off the top of my head, but they certainly negotiated a deal  
23 and that was something that when they were cross-examined  
24 during the initial trial, they were able to testify, no, we  
25 have not -- we pled guilty because we are guilty. You know,

JONATHAN MILLING - DIRECT BY MR. BROOKS

1 the standard stuff that we as defense attorneys deal with on a  
2 -- on a regular basis. So I don't think that there was a deal  
3 that was struck. I do, if I remember correctly, think that  
4 they got some jail time. How much, I don't -- I don't know.

5 Q: Okay. When it came time to plead, did you tell him  
6 anything about the solicitor being up to -- being able to  
7 bring up the convictions from the previous trial?

8 A: No. The convictions from the previous trial wouldn't  
9 have been admissible, but I feel certain that we would've  
10 talked about things such as his statement putting himself  
11 there at the incident location. The -- we knew what the girls  
12 were going to say. He had already put himself in touch with  
13 the girls on the night in question.

14 What impact the prior convictions would have had -- I  
15 mean he had been convicted of entering the house, having a  
16 gun, and, you know, being involved in a criminal conspiracy at  
17 that point in time. I believe the vote was eleven to one to  
18 convict on the murder at the original trial. That's what Mr.  
19 -- Mr. Barr told me. I believe that there was a substantial  
20 likelihood that if he had gone to trial that -- that he would  
21 have been convicted and would have received more time than he  
22 already had, and I told him that. I do know that I told him  
23 that.

24 We -- the original offer was 40 years concurrent. It  
25 wasn't until after we had picked the jury and we had lost

JONATHAN MILLING - DIRECT BY MR. BROOKS

1 several pretrial motions -- I filed a motion. There was some  
2 tape recordings which had gone missing, as they would say,  
3 after they were taken, and I filed -- I believe it was a  
4 Trombetta motion trying to dismiss the charges against him  
5 based upon the destruction of the evidence trying to do  
6 whatever I could to minimize what the State could do.

7 I know that we filed a motion in limine to exclude any  
8 reference to the earlier trial or the results or anything like  
9 that, and several other motions that we filed pretrial. I  
10 know that we lost the destruction -- the due process violation  
11 motion. I think the judge took under advisement until after  
12 he heard the evidence as it would be presented at trial.

13 But there was -- there was a lot of -- a lot of evidence  
14 against him. And during the trial was when Solicitor Finney  
15 told me for the first time that they would accept a 35-year  
16 sentence on an Alford plea, backdating it to when he was  
17 originally convicted. So basically the 35 years would start  
18 the same time that the original 35 years ran.

19 I want to say that Judge James reduced the sentence in  
20 August of '12 and we went to trial in September of '12. So we  
21 had just learned that the sentence had been reduced. And  
22 after I received the offer from -- from the solicitor,  
23 chronologically I can't recall whether or not we had already  
24 given opening statements or not.

25 But Judge Newman did give me an opportunity to discuss

JONATHAN MILLING - DIRECT BY MR. BROOKS

1 the plea with him. I think we took a recess for the rest of  
2 the afternoon. Mr. Wallace was given the opportunity to sleep  
3 on it overnight and then he came back the next morning and  
4 that's when he told me that he would take the plea and that's  
5 when we took the plea the next morning.

6 Q: Okay. Now, just to be clear, you didn't try it the first  
7 time?

8 A: Correct.

9 Q: Charles Barr tried it the first time?

10 A: Correct.

11 Q: And somehow he got off the case and you were appointed?

12 A: Yeah. And I don't recall whether he was retained the  
13 first go-round and there may not have been sufficient funds  
14 for a retrial. I don't recall off the top of my head, but in  
15 any event, I want to say Judge Newman saw me in a court  
16 meeting one night and asked me if I be willing to take the  
17 case down in Kingstree.

18 Q: That's how you got involved?

19 A: Right.

20 Q: Okay.

21 MR. BROOKS: I beg the Court's indulgence, Your Honor.

22 THE COURT: Yes, sir.

23 MR. BROOKS: No other questions, Judge.

24 THE COURT: Cross-examination?

25 MR. GOURLEY: Yes, Your Honor. May it please the Court.

JONATHAN MILLING - CROSS BY MR. GOURLEY

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. GOURLEY:

4 Q: Mr. Milling, did you discuss the impact of applicant's  
5 prior record when y'all come to trial?

6 A: I would have discussed everything about the upcoming  
7 trial, the advantages of, you know, everything from him  
8 testifying to the evidence that we would've expected to be  
9 presented based upon the trial of the original case. I would  
10 have discussed with them likely that Ms. Barr would have  
11 changed how she tried the case, but at the same time we knew  
12 what the witnesses were going to testify to based upon what  
13 the trial testimony was under oath. I don't specifically  
14 recall what his prior record was.

15 Q: Okay. Were you prepared to try the case?

16 A: We started the trial.

17 Q: Right.

18 A: We picked the jury. We did opening statements. And at  
19 that point in time, we broke for me to discuss the plea offer,  
20 which that day was the first day that we had received anything  
21 below a 40-year plea.

22 Q: Okay. Did -- did Mr. Wallace ever ask you to file an  
23 appeal upon the guilty plea?

24 A: No.

25 Q: Okay.

JONATHAN MILLING - CROSS BY MR. GOURLEY

1 A: And I will tell you I went back and I looked because I  
2 anticipated something like that coming up. He told me on the  
3 day of the plea that he didn't want me to. I got a call about  
4 a week later from his mother indicating that -- or asking  
5 about the appeal or something to that effect.

6 Based upon that, I typed up a letter and I found it in my  
7 system that -- and I want to say it was maybe September 18<sup>th</sup> or  
8 something like that of 2012 -- saying, listen, you told me on  
9 the day of the plea not to file the appeal. Your mom called  
10 me. You -- I need to know what you want me to do. If you  
11 want me to file the appeal, I need you to contact me  
12 immediately.

13 I also had a fax cover sheet sending down to Lieber for  
14 that following -- I think that same Friday, Friday of the week  
15 we're talking about, asking for a telephone call with -- with  
16 Mr. Wallace to discuss this with them because I understand,  
17 you know, with mailings and things like that I didn't know how  
18 quickly he would've gotten the letter. And if -- if he had  
19 told me at any point in time to file the appeal, it's a simple  
20 form. It would have been easy to do.

21 Q: Okay.

22 MR. GOURLEY: Your Honor, I don't have any other  
23 questions. Thank you, Mr. Milling.

24 THE COURT: All right. And, Mr. Milling, you had told  
25 the Court that -- in the transcript of record that you had

JONATHAN MILLING - DIRECT BY THE COURT

1 discussed with your client at length what his rights are,  
2 constitutional rights to trial, but also the practical --  
3 practical realities that he's facing now considering he's  
4 already received a sentence of 35 years on a burglary  
5 conviction, and he recognizes on that charge he'll be eligible  
6 for parole and then on a murder charge he would not. So the  
7 murder 35-year sentence would be the driving sentence in this  
8 case. So that reflects you discussed that with --

9 THE WITNESS: Yes, sir.

10 THE COURT: -- the defendant, the applicant here?

11 THE WITNESS: Yes, sir. And we recognized that as an  
12 issue, but by trying to backdate when the start date was, we  
13 were trying to benefit him as much as we could to give him  
14 that 35 years starting as early as possible.

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

16 THE WITNESS: Thank you.

17 THE COURT: No further questions. Anything else, Mr.  
18 Brooks?

19 MR. BROOKS: No, sir.

20 THE COURT: Mr. Attorney General?

21 MR. GOURLEY: No, Your Honor.

22 THE COURT: You may step down. Do you wish the witness  
23 to be excused? Any objection?

24 MR. GOURLEY: No objection.

25 MR. BROOKS: That's fine.

1 THE COURT: All right, sir. You are released from your  
2 subpoena to go back to your regular work, sir.

3 THE WITNESS: Thank you, Judge.

4 THE COURT: All right. Any further witnesses on behalf  
5 of the applicant, Mr. Brooks?

6 MR. BROOKS: Judge, that is the applicant's case.

7 THE COURT: All right, sir. Witnesses on behalf of the  
8 State?

9 MR. GOURLEY: No, Your Honor.

10 THE COURT: All right, sir. Mr. Brooks, anything you  
11 would like to say to the -- to the Court?

12 MR. BROOKS: Our position is that Mr. Wallace should be  
13 granted a new trial based on the testimony that he has given  
14 to the Court. He wants his PCR granted. He wants his plea  
15 set aside. Thank you, Judge.

16 THE COURT: Very good. Mr. Attorney General?

17 MR. GOURLEY: Yes, Your Honor. I think Mr. Milling's  
18 testimony here today, coupled with the colloquy with Judge  
19 Newman, sufficiently shows that Mr. Wallace entered a knowing  
20 and intelligent plea, and we'd ask that you deny the  
21 application.

22 THE COURT: All right, sir. Very good. In this  
23 particular matter regarding the PCR application, the test that  
24 the Court undertakes is, first, that the defendant must show  
25 that his counsel's performance was deficient and it falls

1 below an objective standard of reasonableness.

2       Secondly, the defendant must establish a reasonable  
3 probability that, but for counsel's unprofessional errors, the  
4 result of the proceeding would have been different. And in a  
5 plea, the applicant must show that counsel departed from the  
6 professional norms resulting in prejudice.

7       And the -- when there's been a guilty plea -- and here it  
8 is a plea under North Carolina versus Alford, but it's treated  
9 for sentencing purposes -- it's a plea. He must prove  
10 prejudice by showing that, but for counsel's errors, there is  
11 a reasonable probability that he would not have pled as he did  
12 and instead would have insisted on going to trial.

13       The Court finds that from the record presented there is  
14 no evidence that Mr. Milling -- the trial counsel's  
15 performance departed from the professional norms. There is no  
16 evidence of trial counsel's error in this particular matter.

17       Here, from the record, from the testimony of the  
18 applicant, testimony of the attorney, he was clearly apprised  
19 of his situation. He knew his situation. He'd already gone  
20 through a trial, had heard the entirety of the State's case  
21 already one time, had been found guilty of all the other  
22 crimes, and apparently was within a hair's breadth of being  
23 found guilty of murder the first time he went to trial.

24       But there was a mistrial on that and he came up for trial  
25 and was already in the proceeding of a trial when the

1 negotiations came up, and he accepted the negotiations and so  
2 informed the trial judge. There was a lengthy description of  
3 the facts of the case, to which he had no objection to. Even  
4 though he was pleading under North Carolina versus Alford, he  
5 raised absolutely no objection to the facts as presented.

6 He also indicated in the plea he understood all of his  
7 constitutional rights, that he was knowingly waiving them,  
8 that he was satisfied with the services of his attorney. That  
9 he understood the significance of the plea, what result there  
10 would be from the plea.

11 And again, the Court finds that there's no evidence that  
12 the counsel's performance was deficient or fell below the  
13 objective standard of reasonableness and, therefore, the post-  
14 conviction relief application is denied.

15 Thank you very much. Mr. Attorney General, will you do a  
16 proposed order to that effect and send it to the Court,  
17 please?

18 MR. GOURLEY: Yes, Your Honor.

19 (Whereupon, the proceedings ended at 2:54 p.m.)

20

21 --- END REQUESTED TRANSCRIPT ---

22

23

24

25



STATE OF SOUTH CAROLINA )  
COUNTY OF WILLIAMSBURG )

IN THE COURT OF COMMON PLEAS )  
FOR THE THIRD JUDICIAL CIRCUIT )

Andre Wallace #346096, )

2013-CP-45-373 )

Applicant, )

v. )

**ORDER OF DISMISSAL**

State of South Carolina, )

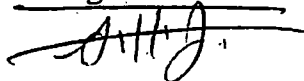
Respondent. )

2015 SEP 16 AM 10:35  
CLERK OF COURT  
SUMTER COUNTY

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on April 18, 2013. Respondent made its return on September 26, 2014. An evidentiary hearing into the matter was convened on July 14, 2015, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Charles Brooks, III, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

**PROCEDURAL HISTORY**

The records before this Court indicate that The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. Applicant was true bill indicted at the May 2011 term of the Williamsburg County Grand Jury for Criminal Conspiracy, Burglary in the First Degree, Murder, and Possession of a Weapon during a violent crime. Jonathan M. Milling, Esquire, represented the Applicant. On September 11, 2012, Applicant pled guilty as indicted to Murder. The Honorable Clifton



Newman sentenced Applicant to a negotiated sentence of a thirty-five year term of imprisonment for Murder.<sup>1</sup>

### ALLEGATIONS

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

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea
3. Due Process Violation
  - i. 6<sup>th</sup> and 14<sup>th</sup> amendments were violated.

### SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Johnathan Milling, Esquire. (hereinafter "Plea Counsel"). This Court also had before it a copy of the plea transcript, the Williamsburg County Clerk of Court records, Applicant's South Carolina Department of Correction records, the PCR application, and return.

Applicant testified that Mr. Milling (Plea Counsel) was his appointed counsel. When testifying regarding his discussion with Plea Counsel, Applicant said "he told me I would get more time than I already had." Applicant testified that he met with Plea Counsel only two (2) times for about twenty (20) minutes a piece each time. When testifying about Plea Counsel, Applicant said that Plea Counsel never said they "couldn't bring up my previous charge[s] I was convicted of." Applicant also said he told Plea Counsel to file his appeal.

When asked about the contents of the discussion the Applicant and Plea Counsel had during their meetings, Applicant said of Plea Counsel "really only asked a couple of questions." However Applicant did agree that he and Plea Counsel reviewed possible defenses. Applicant

---

<sup>1</sup> Applicant filed a Direct Appeal based on the results of his trial May 20, 2012, stemming from his Criminal Conspiracy, Burglary in First Degree, and Possession of a Weapon charges. Applicant has filed his Post-Conviction relief application (2013-CP-45-373) based solely on his guilty plea entered on September 11, 2012, to Murder.

said he accepted the plea deal to avoid the possibility of life in prison. When asked what specifically the Applicant wanted to appeal about his guilty plea, Applicant said that he wanted to appeal his guilty plea because he "already had three previous charges in appeal." When the question was rephrased, Applicant could not identify any specific part of the plea that he wanted to appeal. Applicant claimed that he pled guilty because he was afraid that if the jury knew about his previous convictions that they would convict him of another charge. Applicant said he was "scared they would tell me I was convicted."

Following both direct and cross examination, this Court asked if Applicant disputed any of the numerous details of the crime as relayed by the State at the time of the plea, the Applicant said he did not dispute the details. This Court and Applicant acknowledged that the Applicant did not dispute "word one" of the multiple page description.

Following Applicant's testimony, Plea Counsel was called to testify. Plea Counsel testified that this was a "retrial" and therefore it was a "unique situation." Plea Counsel testified that because this case had been heard one time that he had a lot of information; so much information that Plea Counsel testified he chose to hire an Investigator, Mr. Amos Jones, to help him go over what had already been presented in the first trial. Plea Counsel said that he did not recall specifically how many times he met with the Applicant. Plea Counsel reviewed the details of the case for the PCR Court by first saying that there were two females who were going to go into the victim's house. Plea Counsel continued by saying that he was not from Williamsburg County but that the victim's family (the Prosser Family) was known as a "well-to-do family" in the Williamsburg Community. Plea Counsel said that it was known that this family was wealthy and said that he believed the family owned a business. Plea Counsel said that it was the plan that after the two females were allowed into the victim's house, the males would go in and rob him.

Plea Counsel said he believed the two girls knew the victim and that he believed the victim was not as reputable as the rest of the family.

Plea Counsel said that afterward the Applicant acknowledged being with the girls the night of the murder and driving the girls around. However, Plea Counsel said that the Applicant denied going into the house. Plea Counsel said the females involved in the crime were sentenced the same day as Applicant was sentenced for the other charges but that the females negotiated a deal. Plea Counsel said that even though the previous convictions would not have been admissible in Applicant's new trial, the Applicant's statement would have been brought up in trial. Plea Counsel said that the previous trial had a hung jury of eleven jury members for the conviction of murder to one jury member against the conviction of murder. Plea Counsel said that there was a "substantial likelihood" that Applicant would have been convicted and received more time.

Plea Counsel said that he tried to dismiss the charge based on the destruction of evidence (destruction of tapes) and that he made arguments about the Applicant's due process being violated. However, Plea Counsel said he lost the Motion. Plea Counsel said that there "was a lot of evidence against [the Applicant]." Plea Counsel said that the plea deal was that the thirty-five year sentence for Murder would start at the same time as the recently reduced thirty-five year sentence for the other charges. Plea Counsel said that when they received that offer the Court recessed. Plea Counsel said the Applicant "slept on it" before choosing to take the deal. Plea Counsel said that Charles Barr had tried the case the first time and was possibly retained as counsel. Plea Counsel said that he (Plea counsel) and the Applicant "discussed everything" including the Applicant testifying and the evidence from the last trial, as they knew what witnesses were going to say. Plea Counsel said they had picked a jury and were in opening

~~A.H.G.~~

statements when they received the plea offer. Plea Counsel said that this offer was the first plea deal for less than forty (40) years. Plea Counsel said that if the Applicant "would have told [him] at any time to file an appeal" that he would have; Plea Counsel reasoned that to file an appeal is a "simple form." Plea Counsel also said that he and the Applicant discussed the parolability of the charge.

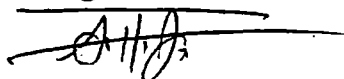
#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

#### INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must



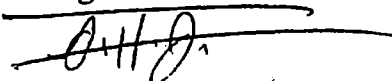
overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

### ALLEGATIONS

#### 1. Ineffective assistance of counsel for failing to investigate.

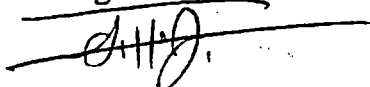
Applicant alleges that he received ineffective assistance of counsel due to plea counsel's failure to investigate and meet with him enough. This Court finds Applicant's allegation is meritless. The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). First, this Court finds credible Plea Counsel's testimony that he reviewed the evidence presented at the Applicant's first trial. Plea Counsel testified that he retained an investigator to sort out all of the evidence presented at his first trial. Plea Counsel stated that he filed a motion to dismiss the charges based off of the destruction of evidence. This Court notes Plea Counsel was able to recall the facts of the case with vivid detail. This Court finds the Applicant has failed to present



sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms.

Furthermore, this Court notes Applicant did not offer any evidence or credible argument as to how Plea Counsel's alleged lack of preparation prejudiced him. See Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (noting mere speculation and conjecture on the part of respondent is insufficient to substantiate allegation that counsel's deficient performance was prejudicial to respondent).

Finally, this Court notes, Applicant had no objection to the recitation of facts outlining his involvement in the murder of the victim. (Pl. p. 8 line 16—p. 13 line 20). Furthermore, Applicant failed to present any evidence or credible argument regarding how the outcome of his plea would have been different had Plea Counsel spent more time with him. See Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (finding PCR judge erred in finding counsel ineffective in preparing respondent's case where respondent failed to show how his counsel's lack of preparation prejudiced him given respondent did not “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”); Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (holding record did not support PCR judge's conclusion that counsel's deficient performance was prejudicial to respondent given respondent did not show how additional preparation would have resulted in a different outcome); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997) (finding applicant was not entitled to post-conviction relief where there was no evidence presented at the PCR hearing to show how additional preparation would have had any possible effect on the result of the trial). Based off of the foregoing, this Court finds Applicant has failed to present specific and compelling evidence that Plea Counsel



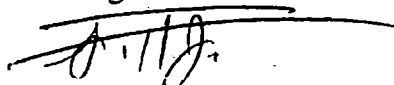
committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel’s performance. This Court finds Applicant’s allegation should be denied and dismissed with prejudice.

**2. Ineffective assistance of counsel for failing to advise that his prior convictions would not be admissible at trial if he did not testify.**

This Court notes Applicant argues that Plea Counsel was ineffective in failing to advise him that his prior convictions were not admissible if he proceeded to trial and did not testify. This Court finds Applicant’s allegation is meritless. First, this Court finds credible, Plea Counsel’s testimony that he advised Applicant that his prior convictions were inadmissible. Plea Counsel further advised Applicant that his statement would have been admissible at trial. This Court notes Applicant had already proceeded to trial and was convicted guilty on all charges except for his murder charge. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, this Court finds Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel’s performance. This Court finds Applicant’s allegation should be denied and dismissed with prejudice.

**3. Ineffective assistance of counsel for failing to file an appeal.**

This Court finds Applicant’s allegation that he received ineffective assistance of counsel for failing to file an appeal stemming from his guilty plea to be wholly meritless. The United States Supreme Court has rejected a “bright-line rule that counsel must always consult with the defendant regarding an appeal.” Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036,

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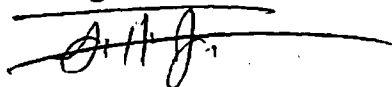
145 L. Ed. 2d 985 (2000). They instead held that “counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.” Id. “[A]lthough not determinative, a highly relevant factor in this inquiry 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 such a plea may indicate that the defendant seeks an end to judicial proceedings.” Id.

This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving trial counsel failed to file an appeal on his behalf. This Court finds credible Plea Counsel’s testimony that Applicant never requested him to file an appeal. Plea Counsel testified that he would have filed a notice of appeal on Applicant’s behalf if Applicant requested him to file one. This Court notes Applicant was advised of the ten day time period to file an appeal by the plea court. (Pl. p. 6 lines 11-14). This Court notes Applicant received a negotiated thirty five year sentence for murder. This Court finds that there is no evidence that a rational defendant would want to appeal or that the Applicant indicated he wanted to appeal.

#### **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 the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

#### **CONCLUSION**



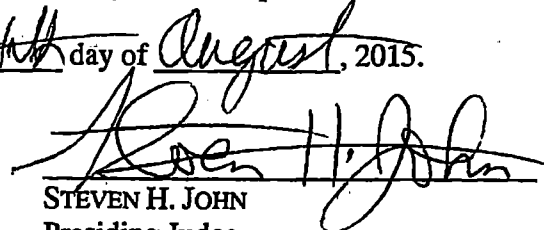
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

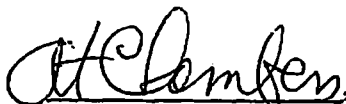
This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right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

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 4th day of August, 2015.

  
 STEVEN H. JOHN  
 Presiding Judge  
 Third Judicial Circuit

 South Carolina

