

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

Brooks P. Goldsmith, Circuit Court Judge

RECEIVED

JUL 14 2016

SC SUPREME COURT

ANTHONY OGDEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000139

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JUSTIN HUNTER
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
<u>NORTH CAROLINA V. ALFORD</u> PLEA TRANSCRIPT DATED JULY 17, 2014.....	1
SENTENCING TRANSCRIPT DATED AUGUST 11, 2014	24
<u>NORTH CAROLINA V. ALFORD</u> PLEA WAIVER FORM	55
APPLICATION FOR POST-CONVICTION RELIEF	59
RETURN	71
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED NOVEMBER 3, 2015.....	77
ORDER DENYING APPLICANT'S MOTION FOR COUNSEL TO BE RELIEVED	132
ORDER OF DISMISSAL	134
INDICTMENT AND SENTENCING SHEET	144

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2014-GS-46-01879

STATE OF SOUTH CAROLINA)
))
vs.) TRANSCRIPT OF RECORD
))
ANTHONY LAMAR OGDEN)

July 17, 2014
York, South Carolina

BEFORE THE HONORABLE FRANK ADDY

APPEARANCES:

WILLY THOMPSON, DEPUTY SOLICITOR
YORK, SOUTH CAROLINA

ATTORNEY FOR THE STATE

HARRY DEST, CHIEF PUBLIC DEFENDER
YORK, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

NO TESTIMONY TAKEN

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
C-1	PLEA WAIVER FORM	4	

1 (WHEREUPON, PLEA WAIVER FORM IS MARKED AS COURT'S
2 EXHIBIT 1.)

3 (WHEREUPON, ANTHONY LAMAR OGDEN IS DULY SWORN BY
4 THE DEPUTY CLERK.)

5 MR. THOMPSON - May it please the Court, Your
6 Honor.

7 THE COURT - Yes, sir.

8 MR. THOMPSON - This is the State of South
9 Carolina vs. Anthony Lamar Ogden. It's Indictment 2014-GS-
10 46-01879 wherein the Defendant's pleading guilty under
11 North Carolina vs. Alford to DUI-Felony causing death. The
12 Indictment has been true billed by the grand jury. He's
13 represented by the Public Defender, Harry Dest. There is a
14 recommendation by the State in this case and that is for a
15 cap of 15 years, but we would be asking the Court today to
16 simply take the guilt portion of his plea and would ask to
17 defer the sentencing to a later date, and we're
18 anticipating doing it the week of August 11th in front of
19 Your Honor in Cherokee County.

20 THE COURT - All right. And I appreciate y'all's
21 willingness to accommodate me in that regard due to the
22 obligations. I know this was set for tomorrow, but I've
23 got obligations I have to attend to back at the office and
24 I want to tell you at the outset I appreciate y'all helping

1 me with that. Mr. Dest, you're representing Mr. Ogden.

2 Correct?

3 MR. DEST - I do, Your Honor. Yes, sir.

4 THE COURT - I'm told he wants to plead guilty to
5 Felony-DUI involving death. The penalty range is a minimum
6 of a year up to 25 years I believe. There's a mandatory
7 minimum \$10,000 fine?

8 MR. DEST - Yes, sir, and one year.

9 THE COURT - And one year. You've explained then
10 to Mr. Ogden the penalties involved with this offense, all
11 his constitutional rights and the full ramifications of
12 this plea?

13 MR. DEST - I have, Your Honor.

14 THE COURT - And do you agree with his decision to
15 plead guilty?

16 MR. DEST - Yes, sir.

17 THE COURT - From your investigation of the facts
18 and circumstances surrounding this incident, do you believe
19 that the State possess sufficient credible evidence to
20 prove his guilt to a jury beyond a reasonable doubt, and
21 that if he were to proceed to trial his conviction would be
22 likely?

23 MR. DEST - Yes, sir.

24 THE COURT - Mr. Ogden, you are Anthony Lamar
25 Ogden?

1 MR. OGDEN - Yes, sir.

2 THE COURT - They're telling me, sir, you want to
3 plead guilty to Felony-DUI involving death ---

4 MR. OGDEN - Yes, sir.

5 THE COURT - --- or resulting in death. Is that
6 correct?

7 MR. OGDEN - Yes, sir.

8 THE COURT - Do you understand the minimum penalty
9 involving in this case is one year and a fine of \$10,000,
10 the maximum penalty is 25 years and a \$25,000 fine. In
11 this case, however, you, your attorney and the State have
12 agreed upon a cap of 15 years, meaning whatever time you
13 receive the Court would not exceed that cap. Do you
14 understand that, sir?

15 MR. OGDEN - Yes, sir.

16 THE COURT - Now, Mr. Ogden, in the last 24 hours
17 have you taken any medication or any substance that affects
18 your thinking?

19 MR. OGDEN - No, sir, not my thinking.

20 THE COURT - Okay. You are currently receiving
21 medication though. Is that correct?

22 MR. OGDEN - Yes, sir.

23 MR. DEST - Your Honor, if I may?

24 THE COURT - Sure.

1 MR. DEST - I've obtained the records from the
2 jail. He's taking several different types of medication,
3 Spiriva, which is an inhaler, Qvar, which is also an
4 inhaler, but he's also taking Trazodone, Citalopram and
5 Namenda. And as I indicated, Your Honor, in chambers
6 earlier, that Namenda is a drug dealing with memory loss
7 and dementia and the other ones, from what I've told by Dr.
8 Morgan, deal with mental health issues for mood swings to
9 depression.

10 THE COURT - All right, but they're non-narcotics
11 so far as you're aware of. Is that correct, Mr. Ogden?

12 MR. OGDEN - Yes, sir.

13 THE COURT - Now, Mr. Ogden, your attorney had
14 represented to me earlier that you had been seen by a
15 physician. I assume you're being treated for depression,
16 mental issues of that nature?

17 MR. OGDEN - Yes, sir.

18 THE COURT - You do understand, however, what's
19 going on here?

20 MR. OGDEN - Yes, sir.

21 THE COURT - Have you ever been treated for any
22 major mental illness such as schizophrenia or anything that
23 causes you to not understand what's happening?

24 MR. OGDEN - No, sir.

1 THE COURT - Now, Mr. Ogden, again, I'm told you
2 want to plead guilty to this charge. Are you, in fact,
3 guilty of this?

4 MR. OGDEN - Yes, sir.

5 THE COURT - I'm going to ask the Solicitor to
6 give me the facts. I need you to listen very closely.
7 Okay? Once he's done speaking, I'll ask if you agree that
8 that's what you did. All right, sir? Go ahead.

9 MR. THOMPSON - May it please the Court, Your
10 Honor. This occurred on January 31st of this year here in
11 York County ---

12 THE COURT - Hold on one second. Wherever that's
13 beeping is coming from, if we can silence it, please.

14 (WHEREUPON THERE IS A BEEPING IN THE COURTROOM
15 FROM ONE OF THE NEWS MEDIA'S CAMERAS.)

16 THE COURT - Just start over, Solicitor.

17 MR. THOMPSON - Your Honor, this occurred on
18 January 31st here in York County. It happened on Highway 21
19 just as you're leaving Rock Hill heading towards Fort Mill.
20 Once he crossed over the Catawba River bridge there,
21 there's a stop light there at Sutton Road where Highway 21
22 crosses Sutton Road. The defendant was driving his vehicle
23 that evening at 6:45 in the evening. As he reached that
24 stopped light -- this stoplight was red -- two vehicles
25 were stopped in front of him -- he slammed into the back of

1 a vehicle of Alva Terrell who was an elderly man who was 74
2 years old who was stopped at the stoplight which caused him
3 to then move forward -- lurch forward and run into the back
4 of another person that -- who was not injured during her
5 accident but was hit and had suffered some property damage
6 but had no long-lasting injuries. When the defendant did
7 that it just so happened that the highway patrol was just
8 coming up near the intersection immediately after that, so
9 within really a minute or two of the accident happening, a
10 highway patrolman happened upon it. As he arrived there,
11 his light -- he turned his lights on; his camera came on.
12 You could see the defendant's vehicle there and I'll
13 elaborate a little more since it's an Alford plea to tell
14 the Court of what we would present had we gone to trial.
15 At that point the trooper went forward and started talking
16 to each person that was in each car. When he talked to the
17 victim, the victim was conscious and awake and didn't --
18 and was able to get up and around at that point, too,
19 shortly after the officer being there, but wasn't feel
20 well, and so he was taken by ambulance to Carolina's
21 Medical Center to see if there was anything wrong with him
22 at the time, but at the time he left the scene, the officer
23 did not realize that he had been severely injured and
24 neither did the victim. The defendant was obviously
25 intoxicated to the officer; his speech was very slurred.

1 The officer had to tell him to put his car into park,
2 because it was in drive; he kept slightly moving forward
3 and tapping the back of the victim's car as the officer was
4 there and according to what the officer told us, that the
5 officer -- there was a conversation between the two of them
6 and the officer was telling him to put the car in park and
7 he's saying it is in park, and the officer said, no it's
8 not, put it in park, and finally the officer was able to
9 reach in and get it put -- the car placed into park.
10 During that time that the defendant was disoriented as to
11 where he was, at one point, thinking he was in Mecklenburg
12 County, and of course, a quite distance from Mecklenburg
13 County at that point in time, thought he was heading
14 another way, that he was heading home, when actually he was
15 heading away from where his home would've been in Gaston
16 County. As the -- the officer went ahead and charged him
17 with a -- just a regular DUI at that point, but the
18 defendant complained of chest pains and asked to be taken
19 to Presbyterian Hospital in Charlotte where he was taken
20 and ultimately treated and released there, but while he was
21 there, they did a blood draw to determine what his alcohol
22 level was. Unfortunately the nurse who drew the blood for
23 the law enforcement did not draw a sample large enough to
24 test. The only thing SLED was able to test for was that it
25 was actually positive for alcohol and not anything else.

1 They weren't able to get reading off of it, but the
2 hospital itself did do a blood draw for medical purposes in
3 which they had a reading of .069 which would be technically
4 under the legal limit, but that was three hours after the
5 actual incident had occurred. On scene when talking with
6 the defendant, the defendant admitted to the officer that
7 he had had at least three twenty-four ounce beers just a
8 little bit earlier in the day and that he had just gotten
9 money to pay for his prescription medications and he was on
10 a number of prescription medications, he said seven. And
11 while he couldn't remember the name of all of them, he knew
12 that one of them was Xanax and that he had taken the Xanax
13 along with drinking the alcohol, and as I said, it appeared
14 obvious to the officer that he was impaired at that point
15 and should not have been driving from his conduct
16 throughout that. As the investigation went on, the
17 officers didn't realize how badly the victim was injured.
18 He apparently had had a fracture of the spine that caused
19 internal bleeding but slow internal bleeding that caused a
20 blood collection around his kidneys and ultimately also cut
21 off the blood flow to his bowels, which then put him into
22 critical condition very quickly when that started
23 happening. He died two days later in the hospital in
24 Charlotte. When the police learned of his death, they then
25 started doing things like trying to get SLED to test the

1 blood which they did not realize at the time did not have a
2 sufficient sample, and that sort of thing in order to bring
3 this out as a Felony-DUI. They made a warrant for it and
4 then began looking for the defendant, because they had
5 withdrawn the other DUI warrant -- double jeopardy issue.
6 The defendant, of course, doesn't live in York County; he
7 lives in Gaston County, just across the state line, so it
8 took some time to actually find him again. Now, they left
9 notes and try to tell people they were looking for him, but
10 that the defendant ultimately at some point found out and
11 somewhat eluded or stayed away from the normal places he
12 would be so the police wouldn't know where to find him.
13 But ultimately he worked part-time with a painter that does
14 work here in York County and they were able to find him at
15 work one day -- or with whoever the painter was going to
16 paint that particular day. The officers through their
17 investigation also talked with some of the people who he
18 worked with who gave statements to the officers and told
19 them that the day that this occurred, he had arrived to
20 work, that he was intoxicated around noon when he arrived
21 to work, and that they couldn't let him work because he was
22 too intoxicated at the time, that he was -- I think one of
23 them -- one of the things that they said is that he was
24 popping the Xanax pills like candy and he was taking over
25 what would be the prescription for them at the time

1 throughout that day. They allowed him to stay at their
2 place at the Rock Hill hotel so that he wouldn't have to
3 drive back to Gaston County because they feared that he was
4 too intoxicated, but ultimately he drank more there and
5 then at some point left from there, and that's when this
6 accident occurred, this wreck occurred. Those would be the
7 basic facts that we would present to the Court to show the
8 defendant's intoxication level and to show the victim did
9 die as a result of the injuries he received in this
10 accident or in this wreck. The defendant does have a prior
11 record, Your Honor, and I don't know if you want to go into
12 that today. We could probably do that during sentencing.

13 THE COURT - All right. Why don't we address that
14 at sentencing. Mr. Ogden, you have heard what the State
15 alleges happened back on January 31st of this year. I
16 realize this is an Alford plea. Your lawyer has indicated
17 to me that you have difficulty remembering some of the
18 circumstances around this incident. Is that right?

19 MR. OGDEN - Yes, sir.

20 THE COURT - Those facts that the State presented
21 a few moments ago, are those essentially the facts that the
22 State would attempt to use to convict you at trial as you
23 understand them?

24 MR. OGDEN - I guess so. I mean I seen a tape,
25 okay, ---

1 THE COURT - Okay.

2 MR. OGDEN - --- a video, and that's what was on
3 the video. Okay. So as far as me remembering it, no, sir,
4 I don't.

5 THE COURT - All right. But basically you would
6 rather accept punishment for this as opposed to going to
7 trial.

8 MR. OGDEN - Yes, sir.

9 THE COURT - All right. And you'd rather accept
10 the State's offer of a cap of 15 as opposed to going to
11 trial.

12 MR. OGDEN - Yes, sir.

13 THE COURT - Mr. Ogden, you do understand that for
14 purposes of a guilty plea or for purposes of punishment
15 rather, a Alford plea is treated the exact same way as a
16 guilty plea. You understand that?

17 MR. OGDEN - Yes, sir.

18 THE COURT - I need to review with you some rights
19 that you're giving up, Mr. Ogden. If you don't understand
20 something I'm telling you, I want you to stop me. Okay? I
21 want you to talk to your attorney as long as you need to.
22 You do understand, sir, that you don't have to plead
23 guilty. You can have a jury trial in this case. You
24 understand that?

25 MR. OGDEN - Yes, sir.

1 THE COURT - Of course at a jury trial you and
2 your attorney would pick 12 people from York County; they'd
3 sit right over there. They would be the jury, and the
4 State would have the burden of proving your guilt beyond a
5 reasonable doubt to the satisfaction of all 12 of those
6 jurors. You understand, Mr. Ogden?

7 MR. OGDEN - Yes, sir.

8 THE COURT - The way the State would try to meet
9 that burden is they would call witnesses to testify against
10 you. You and Mr. Dest would have a chance to see, hear,
11 confront and cross examine those witnesses, meaning you
12 could ask them any question that was relevant to any issue
13 involved in this particular case. You understand, sir?

14 MR. OGDEN - Yes, sir.

15 THE COURT - At a trial you have no burden of
16 proof at all. The burden is always on the State to prove
17 your guilt beyond a reasonable doubt. If you wanted to,
18 however, you could certainly call your own witnesses to
19 testify. You understand?

20 MR. OGDEN - Yes, sir.

21 THE COURT - If those witnesses did not want to
22 come to Court you could subpoena them; you could force them
23 to come to Court. They wouldn't have a choice; they would
24 have to appear. You understand that, sir?

25 MR. OGDEN - Yes, sir.

1 THE COURT - Additionally, at trial if you wanted
2 to take the witness stand yourself, you would be free to do
3 that. Understand, Mr. Ogden, that you would largely be
4 subject to the same rules of cross examination as any other
5 witness, so if you have certain convictions or criminal
6 convictions against you and the Court determined that the
7 probative value of those convictions outweighed the
8 prejudice to you, the Court would allow the State to cross
9 examine you about those convictions. You understand, Mr.
10 Ogden?

11 MR. OGDEN - Yes, sir.

12 THE COURT - So if you decided that you didn't
13 want to testify for whatever reason, I would explain to the
14 jury they couldn't hold that against you or even talk about
15 it in deciding whether you were guilty of this particular
16 offense. You understand?

17 MR. OGDEN - Yes, sir.

18 THE COURT - That's your Fifth Amendment right
19 against self-incrimination; by pleading guilty obviously
20 you waive that right. You understand?

21 MR. OGDEN - Yes, sir.

22 THE COURT - Now, Mr. Ogden, at trial you would
23 also be presumed innocent. You understand what that
24 means?

25 MR. OGDEN - Yes, sir.

1 THE COURT - Basically, what it means is right now
2 in the eyes of the law, sir, you're not guilty of these
3 charges. You're an innocent man, because you haven't had a
4 jury trial yet and I have yet to accept your guilty plea.
5 You understand that, sir?

6 MR. OGDEN - Yes, sir.

7 THE COURT - And I would essentially explain that
8 same presumption of innocence to the jury at trial. At
9 trial you would also be able to present any defenses you
10 might have. I have no way of knowing if you have any
11 defenses to this charge or not. I'm sure that's something
12 that you talked to Mr. Dest about. Is that correct?

13 MR. OGDEN - Yes, sir.

14 THE COURT - A defense could be something as
15 simple as I wasn't intoxicated. You understand that?

16 MR. OGDEN - Yes, sir.

17 THE COURT - And I'm told that there was a blood
18 draw that was performed at the hospital where it was about
19 a .68 (sic) or something of that nature, below the legal
20 limit. I don't know if that blood draw would be admitted
21 into evidence. I don't know if sufficient chain of custody
22 was maintained on that blood draw at the hospital then
23 three hours after the accident, so it's entirely possible
24 that if there's not a sufficient chain, that blood draw
25 would be inadmissible. You understand that?

1 MR. OGDEN - Yes, sir.

2 THE COURT - That means the jury would never hear
3 about it. What I'm telling you, Mr. Ogden, is that at
4 trial you could present any defenses you might have; you
5 can challenge any of the evidence the State as against you.
6 You understand that?

7 MR. OGDEN - Yes, sir, I do.

8 THE COURT - Obviously, if you plead guilty you
9 don't get to present a defense or to challenge the State's
10 evidence. Mr. Ogden, all these are very important rights.
11 Are you sure you want to give them up and plead guilty?

12 MR. OGDEN - Yes, sir.

13 THE COURT - You understand, Mr. Ogden, that this
14 offense -- this offense is actually classified as a violent
15 and a serious offense. Do you understand what the means,
16 sir?

17 MR. OGDEN - Yes, I do.

18 THE COURT - For the purposes of a serious
19 offense, if you were to be convicted in the future of two
20 other additional serious offenses, the third time around
21 the State could seek life without the possibility of parole
22 against you, meaning the Court would have no discretion
23 whatsoever. The Court would have to sentence you to life
24 imprisonment if you were convicted of a third most serious
25 offense. You understand that, sir?

1 MR. OGDEN - Yes, sir.

2 THE COURT - So this is basically the first of
3 three strikes, three potential strikes. Additionally,
4 because of the nature of this offense, you'll have to serve
5 85% of whatever sentence the Court imposes. You understand
6 that, sir?

7 MR. OGDEN - Yes, sir.

8 THE COURT - So just to make math simple, you
9 plead guilty and I were to give you a 10 year sentence,
10 you'd have to serve 8 and ½ years before you could ever
11 hope to be released from prison. Do you understand that,
12 sir?

13 MR. OGDEN - Yes, sir.

14 THE COURT - Mr. Dest, are you satisfied with the
15 discovery response from the State?

16 MR. OGDEN - Yes, sir, Your Honor.

17 THE COURT - You've reviewed that with Mr. Ogden -
18 --

19 MR. DEST - Yes, sir.

20 THE COURT - --- to the extent he's wanted or
21 needed to see it?

22 THE DEST - Yes, sir, if I just may clarify.

23 THE COURT - Sure.

24 MR. DEST - The tape that he was referring to was
25 the in-car video of the officer and it does capture exactly

1 what Solicitor Thompson had described as when they came
2 upon the scene. In addition to that, he's -- there's also
3 a audio-tape of his interview with -- I believe Officer
4 Sisler of the highway patrol in which he waives his rights
5 and tells them, I just don't remember anything regarding
6 that night in terms of specifics, so hence the Alford plea.
7 I just wanted to make that clear to the Court.

8 THE COURT - Okay. Thank you. Mr. Ogden, are you
9 happy with the way that Mr. Dest has represented you on
10 this case?

11 MR. OGDEN - Yes, sir.

12 THE COURT - Do you have any complaints to make
13 against him?

14 MR. OGDEN - No, sir.

15 THE COURT - Have you understood everything he's
16 explained to you?

17 MR. OGDEN - Yes, sir.

18 THE COURT - Do you need more time to talk to him?

19 MR. OGDEN - No, sir.

20 THE COURT - So you're totally happy with his
21 help?

22 MR. OGDEN - Yes, sir.

23 THE COURT - Do you have any complaints to make
24 against the Solicitor, law enforcement, Court personnel or
25 anyone involved in this case?

1 MR. OGDEN - No, sir.

2 THE COURT - And aside from the cap of 15 years,
3 has anyone promised you anything else or held out any other
4 hope of reward to get you to plead guilty?

5 MR. OGDEN - No, sir.

6 THE COURT - Has anyone tried to threaten you,
7 force you or coerce you in any way to get you to plead
8 guilty?

9 MR. OGDEN - No, sir.

10 THE COURT - Have you had enough time to make up
11 your mind on how you want to proceed with these charges?

12 MR. OGDEN - Yes, sir.

13 THE COURT - You need more time to think about
14 this?

15 MR. OGDEN - No, sir.

16 THE COURT - Mr. Ogden, you've been truthful in
17 all your responses to my questions?

18 MR. OGDEN - Yes, sir.

19 THE COURT - Is there anything that you need to
20 ask me about anything that we've gone over?

21 MR. OGDEN - No, sir.

22 THE COURT - Do you need anymore time to talk to
23 your lawyer about anything we've discussed?

24 MR. OGDEN - No, sir.

1 THE COURT - Mr. Ogden, are you pleading guilty
2 then of your own free will under North Carolina vs. Alford?

3 MR. OGDEN - Yes, sir.

4 THE COURT - I do find there's a substantial,
5 factual basis for this plea and it's freely, voluntarily,
6 knowingly and intelligently made; Mr. Ogden's happy with
7 the services of his attorney. I will accept his plea. All
8 right, I know that there's a number of individuals who want
9 to speak in mitigation, also in aggravation, so we will
10 adjourn this matter, and whenever y'all want to set this
11 for in a couple of weeks, I'll be more than happy to hear
12 it at that point in time. Okay? If you could, just
13 perhaps give me a quick e-mail to let me know which day
14 it's going to be and what time you want to do it and I'll
15 be there. All right?

16 MR. DEST - Thank you, Your Honor.

17 MR. THOMPSON - Thank you.

18 THE COURT - Mr. Ogden, we'll see you in a couple
19 of weeks. Okay, sir?

20 MR. OGDEN - All right, thank you, sir.

21 (END OF TRANSCRIPT)

22

23

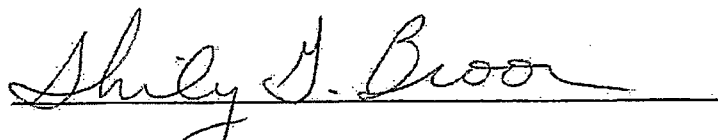
24

25

C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 23 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of The State of South Carolina vs. Anthony Lamar Ogden, as taken by me in the Court of General Sessions for the Sixteenth Judicial Circuit on July 17, 2014 and provided by me this the 16th day of January, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina.

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK) OF THE SIXTEENTH JUDICIAL CIRCUIT
CASE NO.: 2014-DR-46-1879

STATE OF SOUTH CAROLINA)
vs.) TRANSCRIPT OF RECORD
ANTHONY LAMAR OGDEN)

AUGUST 11, 2014
GAFFNEY, SOUTH CAROLINA

BEFORE THE HONORABLE FRANK ADDY

APPEARANCES:

WILLY THOMPSON, DEPUTY SOLICITOR
YORK, SOUTH CAROLINA

ATTORNEY FOR THE PLAINTIFF

HARRY DEST, CHIEF PUBLIC DEFENDER
YORK, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

NO TESTIMONY TAKEN

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
S-1	8x10 copy of photo	4	
S-2	8x10 copy of photo	4	
S-3	8x10 copy of photo	4	
S-4	Transcript of Plea	4	
C-1	Report of Dr. Morgan	29	

1 (DOCUMENT MARKED AS STATE'S EXHIBITS 1 THROUGH
2 4.)

3 THE COURT - Okay, if we may, we'll go back on the
4 record in case 14-GS-46-1879. This is the State of South
5 Carolina vs. Anthony Lamar Ogden. This is the plea, which
6 according to the Court's notes, the Court took on July 17th
7 of this in York County at -- the plea started at 2:25 in
8 the afternoon. The sentencing was deferred until today.
9 The Court had some logistical issues with taking this plea
10 on the 18th and so everyone was kind enough to allow the
11 matter of sentencing to be held today here in Cherokee
12 County. The record should reflect, obviously, Mr. Ogden's
13 present along with his attorney, Mr. Dest. Where I left
14 off, gentlemen, I know that the State had some issues or
15 some statements in aggravation. The defense also wanted to
16 offer mitigation evidence. I am aware that this case was a
17 cap of 15 years, so the most I could give Mr. Ogden would
18 be 15 years. I also had an opportunity to review the
19 transcript of that plea. That was forwarded to me or given
20 to me earlier today, and I've also had the opportunity to
21 review the report of Dr. Morgan, which Mr. Dest provided to
22 me a short while ago. I think that's where we are. I'll
23 be making the report of Dr. Morgan a Court's Exhibit.
24 Normally the way I handle this, Mr. Dest, is I'm be happy
25 to hear anything in terms of victim input and in terms of

1 Mr. Ogden's prior criminal history and then I'll turn it
2 over to you and certainly hear anything that you might want
3 to present or anyone who may want to speak.

4 MR. DEST - Thank you, Your Honor.

5 THE COURT - All right, if you could maybe start
6 with his criminal history and then I'll be happy to
7 consider any victim input.

8 MR. THOMPSON - All right, if it would please the
9 Court, Your Honor, ---

10 THE COURT - Yes, sir.

11 MR. THOMPSON - --- as I begin I would -- I do
12 have a record of the transcript from the plea itself that I
13 would ask to make part of the plea today. This is the
14 State's Exhibit 4 and the Court Reporter was kind enough to
15 hurry that through to get it to us in time for today's
16 sentencing, but I will make that a Court's Exhibit for the
17 purpose of this plea so that it will be with it regarding
18 any appeals or any other PCRs or things that might occur
19 following this. In addition, Your Honor, I would point out
20 that the Defendant does have a record in which he has three
21 prior DUI convictions. They start in 1997; that's a South
22 Carolina conviction out of Clover. Then in 2000, a
23 conviction out of Gaston County in North Carolina, then out
24 of 2012 another conviction in Gaston County in North
25 Carolina. In addition, Your Honor, in 2007 in South

1 Carolina he was convicted of grand larceny, and in 2007 he
2 was convicted in North Carolina of communicating threats.
3 He has numerous minor traffic violations like speeding and
4 things of that nature, careless driving throughout his
5 record as well, but those are really quite too numerous to
6 go into and most of those are longer ago than just the last
7 five or six years, so they would be a longer period back,
8 but that would be a summary of his record, Your Honor. As
9 far as some of the victim's family, many of them have
10 traveled from long distances to come to speak to the Court
11 today. Tracey Church, the victim's daughter would like to
12 address the Court and then we'll have two other members of
13 the victim family following her. Her sister -- the
14 victim's sister, Susan Whitten, will also address the Court
15 and then Ben Terrell will address the Court last. So, Ms.
16 Church, if you'll come up now.

17 THE COURT - If you could, just state your name
18 for the record.

19 MS. CHURCH - Tracey Church.

20 THE COURT - I'll be happy to hear anything that
21 you might want to tell me, Ms. Church.

22 MS. CHURCH - I'd just like to say that the person
23 that was killed in the accident was my dad. We didn't get
24 along a lot when I was younger, but we had started to form
25 a very good relationship as we both had aged. I was going

1 back to college; he was my best supporter. I mean when I
2 told him my grades, he acted like I was 10, and it was the
3 greatest thing he'd ever heard. I called him at least once
4 or twice a week. He worked at Walmart in my area. Every
5 time I went in Walmart, I'd go aggravate him, give him a
6 hug. I miss the fact that we were building a relationship
7 that I can't complete. I miss the fact that I don't have
8 my supporter while I finish college. I miss the fact that
9 he'll never see my granddaughter, his granddaughter get
10 married or grow up. I'm mad at the fact that when this
11 person goes to jail, he'll be entitled to free medical
12 care, and I can't afford to go to the doctor, and my
13 biggest hope is that you keep him off the street so he
14 doesn't do this somebody else's family. That's all.

15 THE COURT - Thank you, Ms. Church. Ms. Whitten?

16 MR. THOMPSON - Ms. Whitten.

17 MS. WHITTEN - The victim, Alva Terrell is my
18 brother, and there were three of us. Alva has a twin
19 brother, Andrew, who's in the courtroom. And the three of
20 us grew up in a small town in North Carolina. Our parents
21 taught us to be responsible people. They taught us to have
22 fun. They had suffered a lot of sadness in their lives
23 growing up, but they wanted us to learn to be responsible
24 people and to look for happiness wherever we could. I was
25 always so proud of being the little sister of the Terrell

1 twins as they were known in Henderson and later in college
2 and Wake Forrest. Everybody that knew them talked about
3 them, referred them. They had a wide -- wide range of
4 friends, and I was always proud to be the little sister to
5 the Terrell twins. Alva, the things that I -- I have some
6 pictures to show you of the ---

7 THE COURT - Sure. Just hand them over to the
8 Solicitor and they can pass them up.

9 MS. WHITTEN - --- just to -- to show you the
10 relationship between the twins; Andrew and Alva were close
11 all of their lives. If they went several weeks without
12 seeing each other, whenever they would be together, they
13 would be touching each other, slapping each other on the
14 back, talking and laughing, teasing each other, and it was
15 a wonderful relationship that they had. It was a wonderful
16 relationship that the three of us had, and we grew up with
17 that love for each other and for our families as we each
18 married. Losing Alva has been devastating to us. What I
19 would want you to know about his life that was lost is that
20 Alva was a loving person; he was a responsible person; he
21 was a fun person. He faced each day looking for the
22 happiness and for the good. He made instant relationships
23 with people. He was always trying to help people. He was
24 a wonderful father to his children, and he was fun. He
25 loved playing tennis; he was a -- he was a -- had a wide

1 circle of friends. He was a good man, and he was a man
2 that should not have died the way that he did. He should
3 not have gone into a hospital alone mortally injured and
4 faced death alone as he did. It was not fair, and, Your
5 Honor, I would hope that when you are sentencing this
6 Defendant, you keep in mind that nobody should have this
7 happen to them. No family should lose as we have. Thank
8 you.

9 THE COURT - Thank you for sharing this with me.

10 MR. THOMPSON - Ben Terrell.

11 THE COURT - Mr. Terrell.

12 MR. TERRELL - I'm Ben Terrell. I'm Alva's son.

13 Alva and I were very close. You think about what he meant,
14 and I heard Susan say it severing times, he was a very
15 loving person. He loved us when we were good, and he loved
16 us when we were bad. One of his favorite expressions was,
17 he's a guy that'll hold the rope, and to me that meant he
18 had great character. We believed the things he believed to
19 the point that even if were detrimental to him, he would
20 stand with you. I miss him. I'd rather think about the
21 things he did that were good to me. He was a very good
22 friend to me. I turned 50 day before he passed away, and I
23 think if I'd had a father like him til I was 50, I would've
24 signed up for that when I was born.. I was very fortunate
25 in that. So I want to sit up -- come up and tell you that

1 Alva was a loving person. He loved all of us. Our family
2 was very diversified. We have a broad range of people in
3 our family, and he never turned from any of them. I'm the
4 administrator of his estate and my responsibility is to
5 continue that and to make sure they're treated fairly in
6 the settlement of the estate and other things, and I guess
7 that's what I would have to say.

8 THE COURT - Thank you very much, Mr. Terrell.

9 MS. THOMPSON - And, Your Honor, I would point out
10 that Mr. Terrell's family are on the front row here, and
11 they've come from a long distance away to be here today,
12 many from various parts of other states and they would, you
13 know, was no farther to come here than to York County, but
14 they had a way to travel, either way they were coming. I
15 can tell in my meeting with the family even just before the
16 plea that they're all very concerned and that they've all
17 asked that I mention to the Court their desire that he get
18 the maximum in the recommendation that he faces, and so I
19 would let the Court know that's their desire that they've
20 expressed to me. And as well I would point out a number of
21 things that I would like the Court to consider in
22 aggravation. I have State's Exhibits 1 through 3 which
23 I've shown to Mr. Dest which are photos turned over in the
24 discovery, the first two of the Defendant's car and the
25 third one of the back of the victim's car giving you an

1 idea that it was quite an impact at the intersection that
2 day. Once again, this was at 6:45 in the evening. It's
3 not a late time. It's not when you would expect to
4 necessarily run into someone who was intoxicated on the
5 road. It was an intersection that is well-lit. It's an
6 intersection that is a fairly newly renovated intersection
7 that is large, has right -- a large right-turn lane, a
8 large left-turn lane and then a center lane that goes
9 through and heads towards Fort Mill. The lights there are
10 very clear and large. The stoplight where these cars were
11 stopped, the Defendant from with the highway patrol can
12 tell appears likely never hit his brakes when he hit into
13 the back. Now, he might not have been speeding either, but
14 he was obviously going fast enough that it caused
15 considerable damage, but there was no signs if anyone --
16 skid marks or things of that nature, no hard breaking prior
17 to the actual collision, and it was enough that it pushed
18 the victim's car into another car in front of them, which
19 if I were to show the pictures of those, wouldn't show a
20 whole lot of damage even though there was a fair amount of
21 damage, because those parts of the car, the plastic bumpers
22 kind of bounce back and don't show those as much, but you
23 can see from the rear-end of the victim's car and from the
24 front-end of the Defendant's that the initial impact was
25 rather devastating. There are a number of things that I

1 want the Court to consider. I know that the possibility of
2 the victim's advanced age in this case is 74 made his more
3 susceptible to serious injury in a collision like this, and
4 we had already addressed the Court with the fact that there
5 was some problems with the blood draw that the highway
6 patrol had and that the nurse didn't draw enough blood to
7 truly test, however, we did have solid evidence both from
8 the Defendant and from independent witnesses that the
9 Defendant had had a lot to drink that afternoon. As he
10 arrived at work around noon, the testimony would've been
11 that he was too intoxicated to paint, that they had -- that
12 started sending him home at that time. As well, two of his
13 friends who he worked with said just rather than going back
14 to Gaston County, all the way back in your State, how about
15 just going, you know, a little over here to where we're
16 staying at the Rock Hill motel and you stay at our room for
17 a while, which he did, and apparently while he was there,
18 he drank more, and he admitted to officers on the scene
19 that he had three 24 ounce beers earlier that afternoon.
20 He admitted that he had just recently, and as you see from
21 Dr. Morgan's report, he confirmed that with Dr. Morgan, had
22 had his prescriptions filled just the day before this
23 occurred, and in those prescriptions, it's seven I think
24 various prescriptions, Xanax was one of them, and that he
25 was taking that that day as well, and from what one of the

1 witnesses told us, that he appeared to be popping those
2 Xanax well and above what would've been the recommended
3 therapeutic dose. As a matter of fact, I think that that
4 witness said that it was almost as if he was popping them
5 like candy, that he was putting them in so frequently and
6 taking Xanax pills at that time. It is obvious from the
7 roadside video, the officer having arrived just moments
8 after this happened, just fortuitously he happened to be in
9 the area and come upon this accident, that the Defendant is
10 disoriented because of his intoxication, that he was
11 slurring his speech, that at one point thinks he's in
12 Mecklenburg County, when of course he was in York County
13 and quite a distance from Mecklenburg County. As well,
14 he's thinking he's heading back to his home in Gastonia.
15 He was actually heading in the opposite direction of that.
16 At times as well when the officer first arrived, the
17 Defendant's car was still in drive and the officer had to
18 argue with him about putting the car back into park, and
19 ultimately reached in and put the car in park, because the
20 Defendant kept insisting that it was not in drive, it was
21 in park during the course of that conversation. That shows
22 I think the level of intoxicated nature that he had at that
23 point, that how much he had -- the Xanax that combined with
24 the alcohol that he had to drink and ultimately the
25 Defendant -- the Defendant complained of chest pains and

1 was taken to the hospital of his choice of Presbyterian
2 Hospital in North Carolina, and of course it took -- this
3 happened on January 31st that evening about 6:45. It was at
4 11:50 a.m. on February 2nd that the victim was pronounced
5 dead, and, of course, at the scene they did not realize he
6 was injured as badly as he was. As I'd said in the plea
7 itself, he had a fracture in his spine that caused him to
8 bleed, and it caused blood to pool around his organs,
9 especially kidneys in that area, which ultimately caused
10 his demise. The -- as the victim's family has said, the
11 victim appears to have been a wonderful man to his family
12 and someone who will be sorely lost, but a couple other
13 things I would like to point out, this Defendant was
14 driving an uninsured vehicle at the time. He was driving a
15 vehicle that had no tag. He had a suspended North Carolina
16 driver's license, but he had somehow obtained a South
17 Carolina driver's license that was valid at that point in
18 time. As well, the witnesses who knew the Defendant and
19 ultimately talked to the police about what they saw on the
20 day that this occurred, also told the police that the young
21 lady, and specifically, had asked him not to leave when he
22 was called to go and take the car back home, and that she
23 begged him not to go with her and her sister, that her
24 husband had just gone -- after he had arrived back, had
25 just gone out to the store and was due to come back, and

1 she said just at least wait until my husband gets back and
2 we'll drive you; one of us will drive you in your car and
3 the other one will drive in another car and that way you
4 won't have to leave anything here; we can drive you where
5 you need to go, but he insisted on leaving at that point in
6 time on his own when they knew that he was not in the shape
7 to be driving. So they would've testified to that had we
8 had to go to trial. In addition, there was a period of
9 time before the Defendant was arrested and they -- he
10 relayed certain things to them when they would ask him
11 about the accident in which the man died, and he told them
12 at one point that it was -- that the victim had died of a
13 heart attack and that it had nothing to do with the car
14 wreck and that he wasn't in any trouble, that he had just
15 had a regular DUI and nothing -- nothing further, and he
16 would even joke a little bit about the wreck itself, and
17 when they became suspicious that he truly was in more
18 trouble than he let on, they were actually the ones who
19 told the police where to find him at that point in time.
20 So I would point out to the Court that the Defendant with
21 his prior record and with the facts of this case, I think
22 it kind of shows anyone who gets caught that many times and
23 convicted of a DUI in their lifetime from '97 til now, and
24 this being the fourth one, it's kind of like Russian
25 roulette; they're getting in a car on a regular basis,

1 because we can only imagine how many times it happened that
2 he didn't get caught. Even from what Dr. Morgan says is
3 someone who is an alcoholic and has been for quite some
4 time, and what he does is get in that car and drive and
5 obviously it's caused him to do some other things
6 throughout his lifetime from some of the other record that
7 he has from the grand larceny, the communicating threats.
8 Those are generally things that often times from alcohol is
9 come from their actions as alcoholics, but I would point
10 out that someone with the convictions he has, it is someone
11 who actually warrants a stronger sentence, and I would
12 point out again that while the family has asked that he
13 receive up to the 15 years that he's facing, that he
14 receive that 15 years, the State in formulating the plea
15 agreement or the plea offer, has taken into account many of
16 the things that I think the Court often takes into account
17 in these cases. We've taken into the account whatever
18 problem with the actual blood not being able to be tested
19 as the way we would've liked, but we have strong evidence
20 besides that. We've taken into the account the fact that
21 the victim was someone who, while older may be more
22 susceptible to serious injury that a younger person may not
23 have been, but still this was a serious accident and still
24 a younger person could've suffered the same fate. But
25 we've taken that into consideration in making a

1 recommendation, so the State would also ask the Court
2 respectfully that the Court consider giving him the 15
3 years that he faces on the State's recommendation as an
4 appropriate sentence. Thank you, Your Honor.

5 THE COURT - Thank you, Solicitor. All right, Mr.
6 Dest, I'll be happy to hear anything you'd care to present
7 in mitigation and certainly anything that Mr. Ogden would
8 care to present. Attached to the doctor's reports also, of
9 course, is the age distribution chart that you've provided
10 from SCDC, and my notes reflect I think your client is 59
11 years of age or in that ballpark. Be happy to hear from
12 you, sir.

13 MR. DEST - Yes, sir. Your Honor, I've
14 represented Anthony for 116 days since the inception of
15 this case. I can tell the Court there's not a day that
16 goes by that he doesn't think about what his actions did on
17 that evening to Mr. Terrell. Judge, I've been a defense
18 lawyer for over 24 years, and I know that cases like this
19 are extremely, extremely sad and tragic and that no words
20 that I can say can bring comfort to anyone in this
21 courtroom, but I do know that these cases from my
22 perspective are much different than most cases. And what I
23 mean by that, Your Honor, as a defense lawyer, clearly no
24 one starts out their day thinking about harming another
25 individual. No one starts out their day thinking about

1 potentially killing another individual based upon their own
2 deficiencies and deficits, and alcoholism is a disease,
3 Your Honor. We know that, but Mr. Ogden is plagued with
4 more than just alcoholism, and I'll allude to that in a
5 moment, but, Judge, this case is tragic on so many levels,
6 the loss of Mr. Terrell's life, obviously to a very loving
7 and caring family that certainly has distinguished
8 themselves here before the Court today, and their loss is
9 real; their emotions are real, but the question is, what
10 happens with Mr. Ogden. He is 59 years old. I would
11 submit to the Court that the Court has within its power to
12 give him a sentence that would be the equivalent to life
13 without parole if you were to give a sentence of 15 years,
14 and I mean that, Judge, I -- we respect the power of the
15 Court, and that's how dire this situation is, and so I
16 would ask the Court to look at some objective factors,
17 which I know the Court will in its analysis of this case.
18 And if I may speak briefly to the accident itself, which
19 tragic, loss of life; there's no question that my client
20 was impaired. As I indicated to the Court back in July,
21 we've reviewed the video-tape, and as the Court knows he's
22 pleading under North Carolina v. Alford, because he simply
23 doesn't recall what happened, and much of that is based
24 upon not just alcohol but a combination of alcohol and
25 Xanax. Your Honor, but the accident itself, and I would

1 submit to the Court respectfully, is really a tragic and
2 freakish type of accident. I know the Solicitor described
3 the accident, but I would like to just point out a couple
4 of things from an objective standpoint that in reviewing
5 the discovery, the MAIT report that describes what the
6 accident really was in terms of the collision and the
7 impact and the estimated speed. There's no question that
8 my client's car ran into Mr. Terrell, rear-ended his car at
9 an intersection, and then Mr. Terrell's car subsequently
10 moved forward and did collide a minor collision with the
11 car in front of him. Judge, in looking at the MAIT report,
12 it's clear that based upon the text of it, no one initially
13 thought that it was a very serious accident. Tragically,
14 as the Solicitor indicated in his rendition of the facts,
15 there was a fracture to the spine, which resulted in, as I
16 understand it, Judge, a internal bleeding, a sort of slow
17 bleeding that occurred over time. In fact, the Solicitor
18 in his rendition of the facts in July talked about the fact
19 that Mr. Terrell was communicating quite clearly with the
20 officer at the scene and appeared to be fine. Judge, I say
21 that not to minimize the accident, but, Judge, in my
22 experience most of the time in a felony DUI case where
23 death is involved, I've seen excessive speed as always one
24 of the indicators of a fatality, excessive speed where
25 someone drives off the road or collides head-on or hits a

1 pedestrian. Those are what you normally find in my view,
2 Your Honor, respectfully submit in felony DUI cases. In
3 this case, in the MAIT report it indicates that the
4 collision, which was not, "initially thought to be serious.
5 The officer indicated no pictures were taken, no evidence
6 was marked and although the speed limit at that particular
7 portion of York County was 45 miles an hour, I believe the
8 MAIT report indicate that the speed -- estimated speed may
9 have been 45. I've looked at documentation; the medical
10 evidence indicates 40, so I would -- I would submit, Your
11 Honor, he was traveling 40 to 45 miles an hour. Again, Mr.
12 Terrell being 74 years. It was tragic that he suffered the
13 type of injuries he suffered, but I would submit it was
14 different than most that I have seen in my 24 years. In
15 looking at the MAIT report it describes the back of Mr.
16 Terrell's Impala. It just says moderate rear damage. In
17 fact, it indicates that the front of his car there was
18 minor front damage. The car that he actually hit, there
19 was minor damage to the rear and that that passenger was
20 not hurt at all, thankfully. Judge, I say that to you,
21 because I do think that has to be considered in terms of
22 what type of accident it actually was. Your Honor, Mr.
23 Ogden is 59 years old. He has three children or had three
24 children. His two children that are alive are -- his two
25 boys are 23 and 32. His family is seated over here behind

1 me. Many of them have traveled a great distance to come
2 here. Judge, he did have a daughter who tragically and
3 ironically died at the age of 14 as a result of an
4 automobile accident. In looking at his life history, there
5 are several things that -- that I think affected him, and
6 that one is the death of his 14 year old daughter in 2004
7 from all accounts, everyone I talked to was an extremely
8 difficult and pivotal, tragically pivotal moment in his
9 life which led to his downward spiral, but prior to that he
10 had worked in many different industries. He was a
11 construction worker; he was at one time a truck driver; at
12 the age of 17 he was in the Air Force and honorably
13 discharged. He worked on oil rigs -- off-shore oil rigs.
14 He installed carpets and carpentry, and he was married for
15 over 28 years to his wife, Connie, who is in the audience
16 and will address the Court in a few moments, but, Judge, I
17 think 2003, 2004 in looking at his life history really were
18 quite traumatic. He suffered an injury, a work-related
19 injury, which he's now on disability for. He broke his
20 shoulder, and then there was ironically some seizures that
21 were associated with that, and so about seven years ago he
22 was on disability. Now he receives about nine hundred and
23 twenty-four dollars a month. Judge, just after that, that
24 work-related injury, was when his daughter was in an
25 automobile accident and subsequently died. Everyone that

1 I've talked to that's family members, friends, and of
2 course, Dr. Morgan whose report you have seen, clearly
3 indicates that was a very tragic and impactful moment in
4 his life that led to the downward spiral. Since 2004, the
5 Court has the records, that he has been treated for anxiety
6 disorder, bipolar disorder and severe depression. Judge,
7 in addition to that, in addition to his physical ailments,
8 he also has dementia, which is substantiated by the
9 medication that he was taking prior to the incident.
10 Judge, those mental issue -- mental health issues, coupled
11 with his alcoholism, obviously created a very explosive
12 situation, a volatile situation in this life. And the
13 Solicitor is right that the day this occurred he was out of
14 it. As Dr. Morgan indicated and our investigation of the
15 case revealed, he actually received some medication the day
16 before, and if I may, Your Honor, just for the record ---

17 THE COURT - Sure.

18 MR. DEST - --- state what those specific
19 medications were and what they were for, if I pronounce
20 them correctly, Citalopram, which was an anti-depressant he
21 received a day before the accident, Zyprexa, which is a
22 anti-psychotic medication dealing with bipolar disorder was
23 prescribed, Alph -- Alpharafrom (phonetic), which is a
24 generic name for Xanax, which is for anxiety. He also was
25 receiving Carbamazepine, which is for seizures and mood

1 disorder and also Namenda, which is for dementia, Your
2 Honor. So he was taking those medications; unfortunately
3 and tragically he was abusing the Xanax portion of his
4 medication. Judge, I also would like the Court to note
5 that although he has those mental health issues, and there
6 is a record, nothing in Dr. Morgan's report in talking with
7 Dr. Morgan that would indicate that he has any type of
8 propensity for predatory violence, and so from what Dr.
9 Morgan is saying and I think the recommendations are clear,
10 all of these issues that he has, the mental health issue,
11 the alcoholism can be treated; they can be treated, and I
12 recognize that he is 59 years old, and, Judge, at 59 years
13 old he needs to understand that he can't drink, that he
14 needs the type of medication and the type of help that will
15 hopefully get his life back together. Judge, I would
16 submit, as I indicated in the report that I submitted from
17 the Department of Corrections, there's less than 2.4
18 percent of the general population of the Department of
19 Corrections that's 60 and over. My -- my request, Your
20 Honor, and my -- my request on behalf of my client for you
21 to consider is possibly a split sentence. I recognize that
22 the cap is 15 years, but, Judge, I believe that if the
23 Court were to give him some time, obviously a split
24 sentence, where he would be in the Department of
25 Corrections long enough to receive treatment for mental

1 health issues and alcoholism and then hang the 15 years
2 over his head so that if he's on probation and he violates
3 the term of probation, then he would go back to jail. I
4 would submit, Your Honor, that that type of sentence would
5 be more productive. That type of sentence would give him a
6 chance to at least get out of jail and still have life
7 ahead of him. Your Honor, at this time I would like the
8 Court to hear from his wife of 28 years, Connie Ogden, who
9 now lives -- they are no longer together -- he -- she now
10 lives in Maryland, and she is here because -- Judge, she's
11 here to support him, and she knows about all these issues
12 and can speak, I think, from the heart regarding what --
13 what she knows. Just state your name for the Court,
14 please.

15 MS. OGDEN - My name is Connie Marie Ogden.

16 THE COURT - Be happy to hear from you, ma'am. Be
17 happy to hear from you anything that you want to tell me.

18 MS. OGDEN - Thank you. Your Honor, our daughter
19 was killed in 2004 due to an automobile accident. From
20 that day on my husband went -- we all -- we all died. It
21 tore a piece of us (sic) a part that you cannot replace,
22 and it was very, very hard on us, however, my husband he
23 would not get out of bed. He grieved so bad, and we had
24 him back and forth to the psychiatrist and whatnot, and
25 they put him on this medication to try to help him, and for

1 three years that man laid in the bed. God as my witness.
2 He would not get up. He was in such depression, that it
3 was all I could do to get this man to eat. Had I had not
4 left him, he would never have gotten up out of that bed.
5 But Tony is a very good man. He would go anything for
6 anybody. He would go out of his way to make everybody
7 happen, but with our daughter being killed and the things
8 that took place after that, it nearly tore him apart. And
9 after I left that's whenever he turned to this alcohol and
10 whatever else, but until that day he wasn't drinking or
11 nothing like that. And to be honest with you, the reason -
12 - I feel personally the only reason he even turned to this
13 alcohol was just for the simple fact that he was still
14 lost. I don't know if you've ever lost a child before but
15 it's -- it's the worse thing in the world that can happen
16 to you. A mother and a father is one thing. Lose a child.
17 A brother and a sister is another thing, but a child is so
18 different. It's unreal. And my heart deeply goes out to
19 this family. It does. My heart goes out to you, but I can
20 guarantee you from the bottom of my heart, that he did not
21 do this on purpose. It was an accident. Yes, he had no
22 right of drinking on this medication, but it was an
23 accident. And Lord God knows he meant no harm in killing -
24 - he had no intentions of ever killing anybody, that I can
25 promise you. And it has torn this man apart; it has torn

1 this family apart once again just with the threads that we
2 have picked up from losing my daughter or our daughter.

3 Thank you.

4 THE COURT - Thank you, Ms. Ogden.

5 MR. DEST - Your Honor, I again would ask the
6 Court to consider -- respectfully consider structuring a
7 sentence that punishes Mr. Ogden, also allows him to get
8 the treatment that he needs and then hopefully can get out
9 some time in the future and still have plenty of life ahead
10 of him. As I indicated, Judge, he clearly is not a man who
11 is well, both either physically or mentally. The number of
12 people his age in the Department of Corrections is around
13 2.4 percent. I would submit that a split sentence perhaps
14 with -- in the single digit range followed by intensive
15 probation with 15 years hanging over his head would be
16 something that would certainly be punitive but yet also
17 constructive in trying to get his life on the right track.
18 Thank you. Your Honor, I think Mr. Ogden would like to
19 address the Court as well.

20 THE COURT - Mr. Ogden, I'll be happy to hear
21 anything that you want to say, sir.

22 MR. OGDEN - Yes, sir. Yes, sir, I just want to
23 apologize to the family. I didn't mean for anything like
24 this to happen. Nothing like this has ever happened before
25 in my life, and I'm truly sorry that such a thing has

1 happened. The only thing I can do is ask them for their
2 forgiveness, because that's just all I can do. And I am
3 very sorry that it has happened.

4 THE COURT - Thank you, sir. Mr. Dest, anything
5 else?

6 MR. DEST - Nothing, Your Honor.

7 THE COURT - (Pause) Well, Mr. Ogden, your
8 attorney, Mr. Dest, is correct when he says that cases of
9 this nature are very hard, both from his perspective and
10 certainly I'm sure from the Solicitor's perspective and
11 definitely from my perspective. The reason they're hard,
12 sir, is because you have an individual, just from my
13 perspective, who obviously did not intend what happened.
14 It's like your attorney said, you didn't wake up that
15 morning looking to go out and to kill someone. And that's
16 different from a situation where a person decides to pick
17 up a gun and confront them with that gun and shoot and kill
18 them or where someone intentionally goes into a store
19 looking to rob. And your wife, her characterization of
20 this as an accident, that's not far from the truth. And
21 understand, Mr. Ogden, I've never lost a child. My
22 grandparents buried my father; I am terribly and deeply
23 sorry for the child that you lost. I've got two children
24 of my own. It would destroy me; it would rip me apart if
25 something were to happen to one of them, and I cannot

1 envision the grief that you went through those years ago,
2 and it helps explain -- it doesn't excuse -- but it
3 certainly helps explain how I find you here today or how
4 you came to be here in front of me today. I know Mr. Ogden
5 that you did not do this on purpose. And from the way that
6 the victim's family described Mr. Terrell, he sounds like
7 the kind of person who would've always looked for the best
8 in anybody, and that probably even includes you, and I'm
9 sure that he was the sort of fellow who would've looked for
10 the best in you and can still great things in you. I can
11 still see goods things in you, positive things in you.
12 But, Mr. Ogden, you have to understand, sir, when -- when I
13 have to impose a sentence, I have to take into account a
14 number of things. In '97 you had a DUI; in 2000 you had a
15 DUI; 2012 you had a DUI. This is a recurring problem, and
16 I understand that maybe in your mind I'm punishing you for
17 just being unlucky that day, but you've had several
18 opportunities it sounds like that day, Mr. Ogden, to avoid
19 this situation, to avoid what happened here, sir. And you
20 just didn't do it. Part of the purpose in the law is
21 deterrence. Part of it is to try and keep this kind of
22 thing from ever occurring again. I understand how Mr.
23 Terrell's family was devastated by this, but, Mr. Ogden,
24 I've looked at all of the factors involved here; I have
25 considered thoroughly the situation that you find yourself

1 in, sir, both mentally and physically, and I've taken into
2 account everything that's being said here. In all candor,
3 sir, I have to agree that the State has been fairly
4 generous in imposing a 15 year cap under these facts. So
5 what I have done, Mr. Ogden, is I have sentenced you to 15
6 years and ordered you to pay the mandated fine of ten
7 thousand dollars. I've given you credit for time that
8 you've served in jail since April the 17th. It comes to 116
9 days, I believe. While in SCDC, Mr. Ogden, I'm
10 recommending that you be screened for the Addictions
11 Treatment Unit, sir. I wish you luck, sir.

12 MR. THOMPSON - Thank you, Your Honor.

13 (DOCUMENT MARKED AS COURT'S EXHIBIT NUMBER 1.)

14 (END OF TRANSCRIPT)

15

16

17

18

19

20

21

22

23

24

25

- 
- 1
 - 2
 - 3
 - 4
 - 5
 - 6
 - 7
 - 8
 - 9
 - 10
 - 11
 - 12
 - 13
 - 14
 - 15
 - 16
 - 17
 - 18
 - 19
 - 20

C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 30 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of The State of South Carolina vs. Anthony Lamar Ogden, as taken by me in the Court of General Sessions for the Sixteenth Judicial Circuit on August 11, 2014 and provided by me this the 16th day of January, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina.

PLEA WAIVER FORM

55

STATE OF SOUTH CAROLINA
COUNTY OF YORK COUNTY

IN THE COURT OF GENERAL SESSIONS

COURT'S SB	
EXHIBIT NO. <u>1</u>	IDENTIFICATION/EVIDENCE
DKT. #	DATE: <u>7/17/14</u>

STATE OF SOUTH CAROLINA

CERTIFIED TRUE COPY

2014 DEC 17 PM 1:05

VS

alo = defendant's initials required

Anthony Lamar Ogden

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

Total Time Served (days): 116

I want to plead guilty, no contest, or enter a plea under N.C. v. Alford to the charges listed below. I understand that the minimum and maximum penalties as well as some of the collateral consequences for the charges to which I am pleading are listed below:

Truebilled ☒ Waiver ☐

Indictment #: **2014-GS46-01879** CDR: 0395 Statute #: 56-05-2945 (A)(2)

Original Charge: **Felony Driving Under the Influence Resulting in Death**

Pleading To: **as charged**

Misdemeanor ☐ Felony ☒

Penalty: **1 year and \$10,100 fine up to 25 years and \$25,100 fine**

☐ Non-Violent ☒ Violent ☒ Serious ☐ Most Serious ☒ No Parole ☐ Sex Offender Registry

☐ Mandatory GPS ☒ Increased Punishment for Future Offenses ☐ Murder Day for Day

List General Sessions Charges Being Dismissed: **None**

List Pending General Sessions Charges not being resolved: **none**

YOA: ☐ Eligible ☒ Ineligible due to: ☒ Age ☒ Offense ☐ Other: Click here to enter text.

List Prior Convictions: **2012 NC DUI, 2007 SC Grand Larceny, 2007 NC Communicating Threats, 2001 NC DUI, 1997 SC DUI, and Numerous Traffic violations.**

Currently on Probation? ☐ Yes ☒ No Is this plea a violation of the probation? ☐ Yes ☐ No

alo I have agreed to plead guilty, no contest, or enter a plea under N.C. v. Alford as part of a plea arrangement. The Solicitor, my lawyer, and I have informed the court that the following contains all of the terms of conditions of my plea:

Type of Plea ☐ Guilty ☒ N.C. v. Alford ☐ Nolo
Recommendation ☒ Negotiated ☐ Without Recommendation ☐

alo State is recommending or the negotiation is: **The State Recommends a Cap of 15 Years**

alo This plea is not the product of any other promises or any threats whatsoever, except as indicated below:

The State is recommending a Cap of 15 Years.

☒ I understand that, upon entering a plea under N.C. vs. Alford, I will be treated as being guilty whether or not I admit that I am in fact guilty.

☐ I understand that a no contest plea is treated by the Court the same as a plea of guilty.

☒ The Solicitor is making a recommendation to the judge, as listed above. I understand the Judge is not required to accept the recommendation given by the Solicitor and the Judge may accept it, may go below the recommendation, or may go above the recommendation.

☐ This plea is a negotiated plea and the negotiation is listed above. I understand the Judge may refuse to accept the negotiation and that if the Judge refuses, the plea will not go forward.

☐ This plea is without negotiation and I understand I could receive from the minimum to the maximum sentence on each charge to which I am pleading guilty and that those sentences could also be run consecutive to other.

☒ I am not currently under the influence of any intoxicants, drugs, or narcotics.

☒ I currently DO take the following prescribed medications:

☒ I am entering my plea today freely, voluntarily, knowingly, and intelligently.

☐ I understand that I have the right to be represented by a lawyer at all stages of the proceedings. I can hire my own lawyer, or the court will appoint a lawyer for me if I cannot afford one. I understand an attorney would be of benefit to me, and since I am not an attorney, there is a danger in my representing myself. Understanding this, I give up this right.

☒ I understand that I have the right to plead not guilty and be tried by a jury, and that I am presumed innocent until such time as the jury is convinced of my guilty beyond a reasonable doubt. Understanding this, I give up that right.

☒ I understand I have the right to have the Court issue subpoenas to bring my witnesses and evidence to a trial at no cost to me. Understanding this, I give up that right.

☒ I understand I have the right to testify or remain silent at trial. Understanding this, I give up this right.

☒ My lawyer has reviewed with me all the factual and legal issues surrounding my case, including any defenses I may have and he or she has done everything I have asked him to do. I am satisfied with his or her services.

☒ I understand that I have the right to remain silent, that is, the right against self-incrimination. Understanding this, I give up this right.

☒ I understand that in a jury trial I have the right to see and hear all witnesses called to testify against me and to confront, cross-examine, and question them.

57
I give up, for each of the charges listed above, my right to a jury trial, my right to a bench trial (trial by Judge with no jury), my right to confront and cross examine witnesses, my right to remain silent and not incriminate myself, and my right to produce evidence and to present a defense, including my right to testify on my own behalf.

☒ I understand that by my pleading to each charge, I am waiving all defenses, including, but not limited to the right to challenge any evidence the State may have used in its case against me and the voluntariness of any statements made to law enforcement.

☒ I understand that upon my conviction I may be ordered to pay restitution to any persons directly and proximately injured as a result of my commission of these crimes and that a civil judgement in favor of each person may be docketed against me and will be a lien against any real estate I own now or may own in the future.

☐ I understand that if I am not a citizen of the United States, my plea of guilty, no contest, or my plea under N.C. v. Alford may result in my deportation, exclusion from re-entry to the United States, and denial of naturalization and amnesty.

☒ I understand that I have 10 days within which to appeal this guilty plea.

☒ I understand that I am pleading guilty, no contest, or under N.C. v. Alford to the charges shown above.

☐ I now personally plead () guilty; (☒) under N.C. v. Alford; () no contest to the charges above.

Acknowledgement

I have read or have had read to me this form and have initialed each of the items that applies to my case. If I have an attorney, I have discussed each item with my attorney. By putting my initials next to the items in this form, I am indicating that I understand and agree with what is stated in each item that I have initialed. The nature of the charges, possible defenses, the effects of any prior convictions and enhancements, have been explained to me. I understand each of the rights outlined above, and I give up each of them to enter my plea.

Defendant's Signature: Xanetha J. Dyer Date: X 7-17-14

Defense Counsel's Statement

I, the attorney for the defendant in the above entitled case, personally read and explained to the defendant the entire contents of this plea form and any addendum thereto. I discussed all charges, all discovery provided by the State, and possible defenses with the defendant and the consequences of the plea, including any immigration consequences. I personally observed the defendant fill in and initial each item, or read and initial each item to acknowledge his or her understanding and waivers. I observed the defendant date and sign this form and any addendum. I concur in the defendant's plea and waiver of constitutional rights.

Print Name: HARRY DEST Harry Dest Bar # 11871
Date: 7/17/14 Attorney Signature
Circle One: ☒ PD ☐ Retained ☐ Appointed

I have reviewed this form as completed by the Defendant or by the Defendant with his Defense Attorney for completeness and accuracy.

Solicitors Signature: Willy Thompson

Bar # 65118

Date: 7-17-14

Judge's Confirmation

Upon consideration of the record, evidence or factual presentation offered, answers of defendant, and statements of the lawyer for the defendant and the prosecutor and the contents of this plea and waiver form, the undersigned finds that:

1. There is a factual basis for the entry of the plea,
2. The defendant is satisfied with his/her lawyer's legal services,
3. The defendant is competent to stand trial, and
4. The plea is the informed choice of the defendant and is made freely, voluntarily, knowingly, and intelligently.

The defendant's plea is hereby accepted by the Court.

Judge's Signature

Judge's Code: _____ Date: _____

FORM 5

STATE OF SOUTH CAROLINA)

County of York County)

IN THE COURT OF COMMON PLEAS

2014CP404880

Anthony L Ogden 361018)

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

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

FILED-RECEIVED
2014 DEC 16 AM 11:39
DAVID HAMILTON
C.C.P. & SS
YORK COUNTY, S.C.INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention mass Justice center York county
York S.C.
2. Name and location of Court which imposed sentence on Back of Paper →
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2014-6546-01879

CERTIFIED TRUE COPY
2014 DEC 16 PM 4:37
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, S.C.

(2) Name of Court + Location which ~~was~~ imposed sentence,

I ~~was~~ took a plea in York County, Moss Justice Center
But I was sentenced in Cheokee County, Gaffney
S.C.

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) York County S.C. Mass Justice Center ~~date~~ Signed Plea 1-15 yrs
- (b) Gaffely S.C. Cherokee County 1-15 yrs
- (c) 8-11-14 Cherokee County 2-17-14 York County
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty /
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. Columbia S.C.
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. MA
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. N/A
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. N/A
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) N/A

- (b) NA
- (c) NA
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Just want to see About a Time Reduction
- (b) no useable Blood work (Alpha Plea) also took Plea
- (c) in York county - sentenced in chester county ~~jurisdiction problem~~ Back
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) I was told By my attorney that I would receive
- (b) 3 to 7 yrs if I took the Plea, he called it
- (c) the Low end (no Blood work) Alpha Plea
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? on BACK
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. NA
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. NA
- iii. _____

12.

D

I applied for an appeal S.C court of Appeals
no answer yet

(10) Prosecutor ~~when~~ went Back 17 YRS for DUI conviction

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

N/A

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) The Judge stated this was An
 (b) Accident with no useable Blood work
 (c) Alpha Plea (on Back)

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

(a) your arraignment and plea? Yes This is my First PCR Appeal
 (b) your trial, if any? _____
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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

(a) the name and address of each attorney who represented you:
 i. Harry Dest sixteenth Circuit Public Defender office
mass Justice center 1675-1E York Highway
 ii. P.O Box 691 York S.C. 29745
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. arraignment & Plea Agreement
Sentencing
 ii. _____
 iii. _____

16. ~~I was sentenced in~~

I Took A PleA Agreement in york County. then was
sentenced in cheochee county not sure if this is proper
grounds or not (Jurisdiction)

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

Time Reduction - possible ATU Program
Alcohol Treatment unit

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

N/D

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of York county)

VERIFICATION

361018

I, Anthony Lamar Ogden, 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.

Anthony Lamar Ogden

SWORN to and subscribed before me this 11th
 day of December, 2014.

Tamara Cmwell (L.S.)
 Notary Public

My Commission Expires September 25, 2023

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

I, Anthony LAMAR OGDEN 361018, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

Anthony Lamar Ogden
Applicant

SWORN or affirmed to and subscribed before me this

11 day of December, 2014.

Tamara Conwell
Notary Public

My Commission Expires: September 25, 2023

Anthony L Ogden
Q4-B206 Perry Correction Inst.
430 OAKLAWN LN
Pelzer S.C. 29669

CASE #

2014-6546-01879

I am 60 yr old, I have been married for 28 yrs, I ~~have~~ recently found out that my wife has cancer, she was told she had 4 year left to live (pancreatic cancer) my father is 83 yr old, he had two strokes in July 2014 he is not doing well, my mother is in her ~~seventy's~~ seventy's, they have nobody else, this is one reason I am asking for some time reduction

Thank you for your
consideration

Anthony L Ogden

Anthony L Ogden 361018
 Q4-B206 Perry Correction Inst
 430 Oaklawn Ln
 Pelzer S.C. 29669

RECEIVED

DEC 11 2014

P.C.I. MAILROOM

Clerk of Court's Office
 P.O. Box 649
 York S.C.

29745-0649

29745064949

11/11/14 11:11:11

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Anthony L. Ogden, #361018,

2014-CP-46-4080

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post conviction relief (PCR) filed December 16, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted at the June 2014 term of the York County Grand Jury for DUI Felony Causing Death (2014-GS-46-1879. The Applicant was represented by Harry Dest, Esquire. On July 17, 2014, the Applicant pled guilty before the Honorable Frank R. Addy, Jr. and was sentenced by Judge Addy on August 11, 2014 to confinement for fifteen (15) years.

A Notice of Appeal was filed on the Applicant's behalf but the South Carolina Court of Appeal dismissed his appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) SCACR. The Remittitur was issued on January 23, 2015.

Attached herewith and incorporated herein are the records of the York County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina

Department of Corrections and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Just want to see about a time reduction"
 - a. "I was told by my attorney that I would receive 3 to 7 years if I took the plea. He called it the law and (no blood work) Alpha(sic) plea."
2. "No useable bloodwork (Alpha(sic) plea) also took plea in York County- sentenced in Cherokee County
 - a. "Jurisdiction problem"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

III.

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

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

Applicant also alleges that his sentence is too harsh. The court has broad discretion in imposing criminal sentences. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976). Absent a

showing of partiality, prejudice, oppression or corrupt motive by the sentencing court, or absent a showing that the statutory punishment in and of itself constitutes cruel and unusual punishment, the post-conviction relief court has no authority or jurisdiction to review or change a sentence falling within statutory limits. State v. Cogdell, 273 S.C. 563, 257 S.E.2d 748 (1979).

Furthermore, the Applicant did not object to the sentence handed down by the trial court. The Applicant's failure to object has waived any allegation that his sentence was excessive or otherwise improper. Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979); Peeler v. State, 277 S.C. 70, 283 S.E.2d 826 (1981). The Court should summarily dismiss this ground for relief.

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

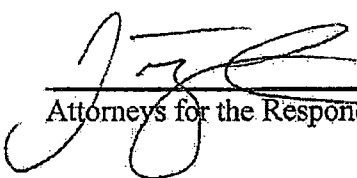
JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

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

March 5, 2015.

By: 
Attorneys for the Respondents

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2014-CP-46-4880

ANTHONY L. OGDEN, 361018

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

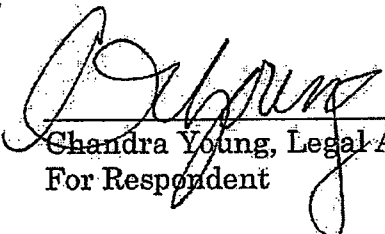
STATE OF SOUTH CAROLINA,

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(s) by depositing same in the United States mail, postage prepaid:

Leah B. Moody, Esquire
235 East Main Street; Suite 115
Rock Hill, SC 29730

DATED this 5th day of March, 2015.


Chandra Young, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA

2 -----x

3 ANTHONY OGDEN,

4 Petitioner,

5 Case No.

6 -against- 2014-CP-46-4080

7 STATE,

8 Respondent.

9 -----x

10 November 3, 2015

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE BROOKS P. GOLDSMITH

15

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

17 LEAH MOODY, Esquire

18 Attorney for the Petitioner

19

20 JUSTIN HUNTER, Esquire

21 Attorney for the Respondent

22

23 Aileen Butler

24 Official Court Reporter

25

1		<u>I N D E X</u>			
2	WITNESS	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Anthony Ogden				
4	Ms. Moody	13			
5	Mr. Hunter		29		
6	Harry Dest				
7	Mr. Hunter	34			
8	Ms. Moody		44		
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					

1 Plaintiff Atty: May it please the Court. This is
2 Anthony Ogden versus State of South Carolina,
3 2014-CP-46-4080. Your Honor, he was indicted in the
4 June 14, 2014 of York County Grand Jury for DUI felony
5 causing death, 2014-GS-46-1879. Your Honor, he was
6 represented by Mr. Harry Dest. On June 17, 2014 he
7 plead under Alford as indicted before the Honorable
8 Frank Addy. Sentencing was deferred until August 11,
9 2014 in Cherokee County where Judge Addy sentenced him
10 pursuant to recommendation to 15 years imprisonment.
11 Your Honor, he filed a notice of appeal, however the
12 Court of Appeals dismissed it for failing to provide
13 sufficient explanation as required under Rule 203. The
14 remitter was issued January 28, 2015.

15 On December 16th -- I am sorry on December 6, 2014
16 he filed this current application. The State filed it's
17 return. He is present today represented by Miss Leah
18 Moody and I believe she has a motion for the Court.

19 MS. MOODY: Actually I don't have a motion. It's
20 Mr. Ogden's motion to be relieved. He wants to relieve
21 me.

22 THE COURT: Yes, sir.

23 THE DEFENDANT: I filed --I sent her the paperwork.
24 Suppose to have it forward to have her relieved. This
25 is first time I ever met the lady and I talked to her

1 twice on the telephone. Once about ten minutes and once
2 maybe about 15 or 20 minutes and since then I come up
3 with several different things on my case and she just
4 doesn't -- she knows my previous attorney and she
5 doesn't seem to believe what he had told me on the
6 sentencing. And you know, that's one issue. But the
7 biggest issue I haven't sit down and went with her my
8 case. I mean, we only talked twice on the phone. I'm
9 in Perry Correctional Institution and she's up here.

10 MS. MOODY: Your Honor, if I may.

11 THE COURT: Sure.

12 MS. MOODY: Yes. We have talked twice and we
13 talked lengthy times. I actually have the time kept in
14 my office. I put a timer going every time I speak with
15 my clients. I have to schedule conference calls with
16 them. If I get on the road and go to Perry when I
17 called before they had it locked down so what I've done
18 in the past is schedule conference calls with the
19 Department of Corrections and I arrange that time by a
20 letter to the warden and I get to talk to my clients up
21 to two hours. So we talked about him wanting to relieve
22 me. I did explain to him that I knew Harry Dest because
23 he was the public defender over here in York County. I
24 did go over his information. Some of the information
25 that he provided to me was in conflict because of what

1 the transcript said. Under the transcript on that day
2 that he entered his plea, he entered a North Carolina v.
3 Alford on a felony DUI, death situation. Based on what
4 his lawyer said and what was said to the Court on that
5 day it appears that he did not remember what exactly
6 happened because of the alcohol and drugs in his system
7 on that day and there was a level of depression.

8 I'm just going off the transcript. I wasn't there.

9 THE DEFENDANT: There was no alcohol.

10 MS. MOODY: May I finish?

11 THE COURT: Let her finish please.

12 MS. MOODY: This is a DUI, felony death. At the
13 time when he was in the accident it was the victim's car
14 was hit from behind and then there was another injury to
15 another victim in front of the victim, the decedent.
16 Based on that he was taken to the hospital because he
17 said he had chest pains. Three hours later there was
18 blood taken but it wasn't a sufficient sample that could
19 yield the alcohol content. The hospital took a sample
20 as well, but that was not enough. But it did have
21 alcohol present in his system. It was just below the
22 legal limit.

23 I want to say from the transcript it was like .6.
24 So based on the theory that the longer you wait and the
25 statements given to the law enforcement officer and the

1 video in the case it was understood from Mr. Dest's
2 position that there was alcohol that was ingested by the
3 defendant along with Xanax. Three hours later the
4 alcohol concentration in his blood was lower which is
5 consistent with DUI if you are not arrested immediately
6 and observed for 20 minutes the amount of alcohol is
7 going to dissipate from your system. So based on that
8 and based on the fact that he did not have a significant
9 memory, Mr. Dest -- according to the transcript that was
10 the basis for the plea.

11 He was given a recommendation from the State of a
12 cap of 15 years and there was some other insinuating
13 circumstances that led to his situation and what has
14 happened over the course of his life; the loss of a
15 child. All of those things. But his recommendation
16 from the State was 15 years whereas a DUI felony death
17 carries up to thirty-years in prison. And so my
18 discussions with him were that he would have to prove
19 two things. That his lawyer was basically ineffective
20 in terms of representing him and not competent to the
21 level of a normal lawyer practicing in this area, as
22 well as that he was prejudiced to some degree and and if
23 he had gone to trial there would have been a different
24 outcome. Based on reading the transcript and based on
25 the information that I do have and based on following up

1 with his prior lawyer and talking to him, it was my
2 opinion that he probably would not be successful in his
3 attempt to get his case reheard.

4 I think his request of relief that he sought was --
5 beg the Court's indulgence. He wanted a time reduction,
6 possible ATU program, alcohol treatment unit. And I
7 tried to explain to him that this Court can not reduce
8 his time, as well as that he would start over. If he
9 got his relief he starts completely over. Like reset.
10 Everybody starts over, the State included. So if there
11 was an offer on the table that there is no guarantee the
12 offer would be there or if he got another judge the
13 judge might not accept his offer and give him up to the
14 maximum. And so I just discussed that with him and
15 based on that he felt that I knew Harry Dest and that I
16 was, you know, making some decision based on my
17 relationship with Harry Dest, which I know pretty much
18 all the lawyers in York County and that is not the basis
19 of my analysis on his case.

20 I did talk to him prior to this hearing to let him
21 know we would be here and I did discuss his case in
22 full, just to get to go over it again and I listened to
23 what he had to say, but my opinion as to the case hasn't
24 changed.

25 THE COURT: Well, let me ask you a question Miss

1 Moody. Do you think you talked to him or discussed with
2 Mr. Ogden the matters that he says are new to him or
3 hasn't been brought up.

4 MS. MOODY: Well, there aren't any new matters,
5 Your Honor, based on what he indicates in his
6 application is that he was told by his attorney that he
7 would received three to seven years if he took the plea.
8 He called it a law and no blood work, Alfa -- which I
9 think he is talking about Alford plea, and then his
10 second issue is no useable blood work, Alford plea, also
11 took the plea in York County. He questions having plead
12 in York County and being sentenced in Cherokee County
13 and said there was a jurisdictional problem.

14 He does have the alcohol concentration, and there
15 wasn't anything, but I believe the State would have
16 presented testimony that they did try to take the blood
17 and that they would get into the science of how much
18 alcohol was in his system possibly and that would have
19 been a jury decision as to whether or not he was guilty
20 of DUI felony death. He indicated to me earlier that he
21 had a prior and they shouldn't have used it. This is
22 not an enhanceable offense. It is just felony DUI and
23 it is up to thirty years and he did have priors, but --
24 but I don't think that would have come out in this case.
25 It was whether he was the proximate cause of the death

1 obviously because there is death, and was he driving
2 while under the influence. They could have charged him
3 with -- the State could have probably charged him with
4 reckless homicide, but that wasn't on the table. The
5 only thing they charged him with was the DUI felony
6 death.

7 THE COURT: Let me interrupt the two of you. Mr.
8 Ogden, you heard what Miss Moody said she thinks your
9 case is all about. Are you telling me earlier that you
10 have other matters that she doesn't know about.

11 THE DEFENDANT: Well sir, I haven't heard her say a
12 thing about dementia. I have been taking medicine for
13 dementia for quite a while, and as a matter of fact I
14 didn't get my medicine yesterday or today, but I have
15 been taking that medicine quite a while, and dementia is
16 a brain disorder. It goes several different ways and I
17 got papers from SLED and all this is in my work there
18 about me having dementia and the different problems. I
19 also had a lung collapsed, you know, and all these
20 things is in my paperwork there. Nobody has brought any
21 of this up because see when I was in that wreck my
22 sternum right here (indicating) it was fractured top and
23 bottom. That's why I had to go to hospital. There was
24 no alcohol. I don't know, according to what they say in
25 here there was very little there, if any, by SLED.

1 That's from SLED. I just got that in the mail. And the
2 biggest thing is this dementia. I mean, I don't
3 remember nothing. That is one thing about the wreck I
4 don't remember, but I have been taking that medicine for
5 years and that hasn't been brought up at all here. He
6 mentioned it a couple of times but as far as making me
7 any -- I don't feel that the Court had enough
8 information on dementia to understand what it is, you
9 know. Because it wasn't alcohol involved in this. I
10 mean, I got the report here from SLED, you know, on
11 there alcohol level and as well as the hospital that's
12 in there.

13 MS. MOODY: Your Honor, on page 11 of the
14 transcript. The hospital did draw blood for medical
15 purposes in which they had a reading of .069. Let me
16 correct myself, I think I said .6, but it is .069 which
17 is technically under the legal limit. They did discuss
18 that and they did discuss something else. He couldn't
19 remember whether he took -- this is from his attorney --
20 it says that he had stated to the officer and there was
21 a video, that he had at least three 24 ounces of beer.
22 Three 24 ounce beers just a little bit earlier in that
23 day and he had just gotten money to pay for his
24 prescription medication and he was on a number of
25 prescription medications. He said several and while he

1 couldn't remember the name of all of them he knew that
2 one of them was Xanax and he had taken Xanax along with
3 drinking the alcohol and as I said it appeared obvious
4 to the officer that he was impaired so that's how they
5 got into the alcohol, the mention of it, and it was on
6 the video and after having asked his attorney what lead
7 him to think that he needed to enter the plea, that was
8 something that would have been coming out. He said
9 memory loss, but he did not say -- I don't recall in
10 this record -- he's correct -- that it said dementia. He
11 said he could not remember what happened on the day of
12 the accident.

13 THE DEFENDANT: Your Honor, I got the other
14 transcript where dementia was mentioned, but Your Honor,
15 they never really give the definition of dementia, which
16 dementia like I said it's a brain disorder it makes you
17 disorder. You are just not functionable, and that like
18 I said, I don remember whether I took my medicine that
19 day or whether I didn't. Just like right now I don't
20 remember a whole lot of things period, but I do know for
21 a fact that I don't see how they can say alcohol when
22 nothing there is in the limit. Everything is way, way,
23 way below any anything. Any limit.

24 THE COURT: Let me ask you this Mr. Ogdan. It
25 sounds to me as though Miss Moody has got a pretty good

1 handle on your case. You say she doesn't know
2 everything and you all haven't talked about it. It
3 sounds like to me she knows virtually everything about
4 your case based on what she has been saying to me and to
5 you, and what you told me.

6 Let me ask the attorney general, do you have a
7 position on the motion, the motion is for Miss Moody to
8 be relieved?

9 MR. HUNTER: As far as her being relieved, Your
10 Honor, I have no position. However in PCR hearing he
11 doesn't have a right to get counsel of his choice. He
12 can either go pro se, or hire someone, but can't ask to
13 appoint someone else. That's our position.

14 THE COURT: Well, let me ask you this. Let's
15 suppose that the Court grants the motion. It would have
16 to be a continuance. You're you asking for a different
17 attorney is that what you want ultimately?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: So if the Court did that we would have
20 to continue the case. If the Court denied the motion,
21 the case would go forward today or not. I don't know.
22 Is the State ready to go forward.

23 MR. HUNTER: The State is ready.

24 THE COURT: Miss Moody, are you ready.

25 MS. MOODY: Yes, sir. I mean, it's a plea and I

1 guess the testimony that he has to show that he was
2 prejudiced. That is the whole point of me going through
3 all of it with me is that he has the burden and I
4 haven't gotten anything.

5 THE COURT: The two of you have a disagreement. I
6 understand. That happens all the time.

7 Mr. Ogden, I am going to deny your motion to
8 relieve your attorney based on our discussion here this
9 morning.

10 THE DEFENDANT: Okay.

11 THE COURT: So, the Miss Moody are you ready to
12 proceed?

13 MS. MOODY: Your Honor, I think he wanted to go
14 forward with Mr. Harris since he was from Spartanburg
15 first before we went forward with Mr. Ogden.

16 MR. HUNTER: That's because I couldn't find Mr.
17 Dest.

18 MS. MOODY: Your Honor, we are ready to proceed.
19 We call Mr. Odgen to the stand.

20 ANTHONY ODGEN, called as a witness, having been
21 duly sworn by the clerk, was examined and testified as
22 follows:

23 DIRECT EXAMINATION

24 BY MS. MOODY:

25 Q Mr. Odgen, can you please state your full name for the

1 record.

2 A Anthony Lemar Ogden.

3 Q And where are you currently incarcerated?

4 A Perry, Perry Correctional.

5 Q And before being incarcerated at Perry were you living
6 in the State of South Carolina?

7 A North Carolina.

8 Q And what town were you living in North Carolina?

9 A Gastonia.

10 Q And how long had you been a resident of Gastonia?

11 A I don't remember. It has been a long time.

12 Q All right. Are you originally from Gastonia?

13 A Yes, ma'am.

14 Q And as a result of your charges for DUI felony death
15 you are now at Perry Correctional?

16 A Yes, ma'am.

17 Q And what sentence did you receive regarding that
18 charge?

19 A Fifteen years.

20 Q And who was your attorney?

21 A Harry Dest.

22 Q And did you have opportunity to met with Mr. Dest?

23 A Yes. Yes, ma'am.

24 Q Do you recall how often you met with Mr. Dest?

25 A No.

1 Q You initially met with Mr. Dest and discussed your
2 case?

3 A Yes, ma'am.

4 Q And when you discussed your case did you provide him
5 with any information of what happened on the day of this -- this
6 charge?

7 A As far as I remember I do. I mean -- but, you know,
8 the biggest thing was -- sealed the thing -- sealed the case for
9 me was -- I know you don't ask was this video when I seen. But
10 then when I get these records back showing ---

11 Q Okay, so, let's go back to that. On January 31, 2014,
12 you recall being in an accident?

13 A Yes, ma'am.

14 Q And the video that you are talking about that video
15 showed you that accident?

16 A Yes, ma'am.

17 Q And did you have opportunity to watch that video with
18 Mr. Dest?

19 A Yes, ma'am.

20 Q Okay, and do you recall what you saw on that video?

21 A It showed me very disoriented.

22 Q And what do you mean by very disoriented?

23 A From what I remember it was I kept telling the guy I
24 needed to go to the hospital because my chest was hurting me and
25 I tried telling him about my lung had collapsed before -- and I

1 don't remember what else I told him. But I know I went to the
2 hospital shortly after that.

3 Q So when you indicated what sealed the case for you, you
4 indicated that sealed it for you as to this case.. What do you
5 mean by that?

6 A Well, everybody kept telling me I was drunk. I mean
7 even Harry Dest kept saying you look drunk, impaired. Well,
8 there was no alcohol containers whatsoever in the vehicle and
9 then with them drawing blood showing way under the limit I can't
10 see how it can be a felony DUI. It's just -- it's just not --
11 dementia is like I said a major thing and if your chest is
12 already hurting. You're already in disarray or whatever you
13 want to call it.

14 Q But would you say that they --

15 A -- what I am saying is like my mind wasn't working
16 right, I mean.

17 Q Okay. Let's break that down.

18 A And I feel sure that it was due to dementia not any
19 type of alcohol or drugs because again if it had been drugs or
20 anything they would have found them and there was none there. I
21 just don't remember everything that happened.

22 Q Hold on.

23 A Yes, ma'am.

24 Q So, your issue that you have with this case is being
25 charged with DUI, with a DUI, correct?

1 A Yes, ma'am.

2 Q Okay. You don't disagree that someone died based on
3 your accident on that day?

4 A I don't necessary disagree with that because I was
5 driving that day as far as I remember, you know. I don't
6 remember driving. I just remember looking at the video.

7 Q When you looked at the video did you see where your car
8 impacted another car?

9 A Yes, ma'am.

10 Q And the victim that died that in that case in that car
11 was a victim in your case, correct?

12 A Yes, ma'am.

13 Q Okay. So there is no dispute as to whether somebody
14 died?

15 A No, ma'am.

16 Q Okay. There is no dispute as to whether you hit their
17 car?

18 A No, ma'am.

19 Q The only dispute you have is whether or not you were
20 under the influence of alcohol that day?

21 A That's the biggest dispute and if uh -- and if the car
22 was -- I don't remember -- I just don't remember, you know.

23 Q Well, did you see anybody else on the vehicle that was
24 driving the car or in your car with you?

25 A No, ma'am, not on the video.

1 Q So it's safe to say you were the person driving the
2 car?

3 A Yes, ma'am.

4 Q Okay. And as far as the dispute that you have you are
5 saying that you have dementia and because of the dementia that's
6 why you were disoriented on the video?

7 A Yes, ma'am.

8 Q Okay. There was some alcohol in your system. Do you
9 recall? There was something in your blood, do you recall that?

10 A Yeah, by reading it, yes, ma'am. But -- okay.

11 Q And you're saying that alcohol was not enough for them
12 to charge you for DUI?

13 A No, ma'am. That wasn't enough for them to charge me
14 with DUI and that wasn't what caused the accident. Because I
15 don't remember anything about the accident so I don't know if I
16 blacked out or what. I was only running forty miles an hour
17 supposedly is what they got in these transcripts.

18 Q So if you are saying you don't remember what caused the
19 accident how can you say it wasn't a DUI that caused the
20 accident? Your driving with alcohol?

21 A Because there was no alcohol in the vehicle. If I had
22 been drinking or anything there would have been something in the
23 car. That's just logical. And there would have been a whole
24 lot more in my system than what's showing here from SLED. I
25 mean, that's logical and dementia is another step, you know.

1 Q All right. Hold on for a second. Did you discuss this
2 with Harry Dest at any point in time since you saw the video and
3 you had to make a decision as to whether you were going to
4 plead?

5 A I don't believe I went in to no detail like that with
6 Mr. Dest. No, ma'am, I don't believe I did.

7 Q Why not?

8 A Because I didn't know. I didn't know the alcohol level
9 or the dementia problem or -- like I said, I didn't remember any
10 of this. I just didn't remember and then when they sent me
11 these papers I got to reading. I don't remember what exactly
12 happened, you know.

13 Q So at the time that you were driving the car and I just
14 want to be clear. You stated that it is not because you had
15 alcohol and the logic is that there was nothing in the car for
16 them to say that you were driving under the influence but then
17 you say that you did not discuss this with your attorney because
18 you didn't know about the dementia. Had you been diagnosed with
19 dementia at the time of of the accident?

20 A Yes, ma'am. I don't know -- I don't know how to
21 explain it to you. I know I have had dementia and I have had it
22 for years, okay.

23 Q Prior to the accident?

24 A Yes, ma'am.

25 Q Did you tell your attorney that?

1 A I guess so. I 'm not sure, I don't remember. I mean
2 I'm just going by what's off of the transcripts here, you know.

3 Q Okay.

4 A I just don't remember.

5 Q So your issue, or the reason why you filed your post
6 conviction relief hearing -- I mean request, is because your
7 attorney didn't do something. What is it that you're saying
8 that your attorney did not do?

9 A Okay. There's two things. First thing I do not feel
10 like he explained anything to do with the dementia to any
11 satisfaction. Like I said it is mentioned, but I don't believe
12 the definition of it has ever been explained. And then the
13 second thing was talking about this moving jurisdiction. It
14 wasn't so much the jurisdiction as is Mr. Dest told that if we
15 would follow this particular judge, I believe his name was -- I
16 forget -- but if we followed this particular judge one county to
17 the other he had researched it. I believe that is what I had
18 written down. And that I would get I believe it was a single
19 digit sentence and that's why I moved from -- that's why I went
20 from York County to Cherokee. I took the plea in York County
21 and that's why I went to Cherokee County to get sentenced
22 because that's what Mr. Dest had told me. If I had known that
23 wasn't going to the case then I would have went ahead and took
24 this to a jury trial.

25 Q So because you were going to a different -- so you're

1 stating that you took a plea because if you went through and
2 plead before this judge you would get one particular sentence?

3 A Yes, ma'am.

4 Q Okay. And had you known that the judge was going to
5 give you the 15 years you would have gone to a trial?

6 A Yes, ma'am, and also if I would have knew more about
7 this dementia. I didn't know about it.

8 Q Let's be clear with the Court now, you just testified
9 earlier that you had been diagnosed with dementia some years
10 prior?

11 A Yes, ma'am, but I didn't know the definition or the
12 seriousness of dementia. Okay. You don't know what it is until
13 you read about it and see what it is, you know.

14 Q When did you start reading about dementia?

15 A Not too long back. I can't give you no exact date, but
16 just been couple of months back or so.

17 Q So you can't remember when you started reading about
18 dementia?

19 A No, ma'am.

20 Q Okay. And so when Mr. Dest told you to plead in front
21 of Judge Addy on July 17, 2014, you did it because you thought
22 you would get a better sentence and you would go where the judge
23 was. That's what you are saying?

24 A Yes, ma'am, I guess so.

25 Q And so when you all negotiated with the State and you

1 had a recommendation of a cap of 15 years, did you express to
2 Mr. Dest that that was not going to keep you within the single
3 digits?

4 A No, it wasn't necessary because like I said he had told
5 me that if we would follow this particular judge from York
6 County to whatever county I just said, that he had researched
7 him earlier and that it would be in the single digits. Now
8 that's what I got wrote down.

9 Q Okay.

10 A I've done read it, read it, and read it this morning.

11 Q All right. So --

12 A I just don't feel like it's -- I just don't feel like
13 it's its justice, you know. I understand a gentleman died and
14 I'm very sorry for that. I really am, but in the same degree
15 you can't blame it on alcohol when alcohol is not the fault. I
16 mean, granted I deserve something for this, but not this type of
17 sentence. I don't feel like I do.

18 Q And so if I am clear, because you didn't get a single
19 digit in the sentence that you received from Judge Addy as well
20 as there was not a legal limit of alcohol -- the legal limit,
21 you were not in violation of having alcohol in your system in
22 the legal limit and because you moved from one county to the
23 other; from York County to Cherokee, you feel that your attorney
24 did not provide you legal assistance to the level that he should
25 have?

1 A Okay, and earlier you kept saying something about --

2 Q Can you answer that question. You feel that your
3 attorney did not provide you legal assistance?

4 A Yes, ma'am.

5 Q To the level?

6 A Yes, ma'am.

7 Q Okay, and you were getting ready to say?

8 A Okay, and another thing that you had mentioned earlier,
9 ma'am, was you kept saying something about some pills or Xanax
10 or some other kind of pills and all this, well see none of this
11 was any kind of blood work. You know, . None of this was found
12 in any kind of blood work. If that was that in my system I
13 believe they would have found something, you know. I'm not a
14 doctor. I don't know, but I believe they would have found
15 something if that was in my system.

16 Q Okay, but when you did the plea and they mentioned
17 Xanax did you tell your attorney that was not in your system?

18 A I don't remember.

19 Q Do you recall questioning him about Xanax?

20 A Ma'am, I just have to go back to the transcript to be
21 honest with you. I just don't remember all that.

22 Q Okay, but if you read the transcript are you relying on
23 the transcript or are you saying that they're not telling the
24 truth in the transcript?

25 A Well, I remember something about telling him something

1 about some Xanax, but not that I was taking any Xanax or
2 anything like that because I just don't see where I would have
3 been or they would have been in my blood. You know, honestly I
4 think they would have been in my blood.

5 Q So are you saying that your attorney should have
6 objected to that?

7 A Yes, ma'am. I think he should have objected period. He
8 should have brought up the fact that dementia is a serious thing
9 and you should have brought up the thing the fact about the
10 alcohol level, you know. And again, they kept mentioning pills
11 and Xanax is mentioned. I believe it was mentioned several
12 times if I remember right, and that's kind of like putting a
13 nail on a coffin. Some words people don't like to hear and
14 that's one of them, you know. I just don't feel that was
15 discussed enough or even, you know, because no such things was
16 ever showed up in any type of blood work.

17 Q When you say that it wasn't discussed are you saying it
18 wasn't discussed with the Court or with you?

19 A Well, discussed with the Court or discussed with me,
20 period. Either one. Both of them, okay.

21 Q Okay. And so can you tell the Court how you feel that
22 your lawyer's lack of discussion with the Court about the pills
23 and Xanax and the alcohol concentration and then going from York
24 County to Cherokee, as well as receiving 15 years on this
25 charge, how it prejudiced you?

1 How are you prejudiced that you feel that the Court should
2 grant you the relief?

3 A Well, I personally feel like -- what do they call it?
4 Erroneous advice, because I took his advice in order to do these
5 different things, you know.

6 Q What do you mean do these different things?

7 A The one thing is going from one county to the next, you
8 know. To follow this particular judge from one county to the
9 next. I done that under his advice.

10 Q Okay.

11 A Okay, and then the next thing he told me was just say
12 yes to everything that the man said. You know, when you take
13 the plea say yes sir, yes sir, or no whenever no was necessary.
14 Right. Okay and --

15 Q So did he tell you the fact --

16 A -- and I believe I discussed that with you on the phone
17 too.

18 Q Did he tell you to say yes and go -- did he have all
19 the questions that he went through with you?

20 A Yes, ma'am.

21 Q And when you answered did he tell you to change your
22 answer at any point?

23 A No, ma'am, that I remember.

24 Q When you say that, you're saying that he told you to
25 ina the judges questions or he told you specific questions to

1 say yes to?

2 A If I remember right he just told me to say yes to the
3 questions period, you know. Just yes, you know and that's what
4 I did.

5 Q And that prejudiced you in terms of the outcome of this
6 plea?

7 A Yes, ma'am, everything put together.

8 Q Okay. And had you gone to trial, what are you telling
9 this Court the outcome would have been?

10 A I have no idea what the outcome would have been, but my
11 way of thinking is if the Court or the jury or anybody would
12 have looked at the evidence -- the evidence and seen like number
13 one the blood alcohol content. Number two, my medical records
14 were never brought out. I had a seizure a few years back. I
15 went in to coma for six weeks. My left lung collapsed and I was
16 on numerous meds. None of these meds were brought out, you
17 know, and then again none of it was discussed.

18 Q Okay. Well, more importantly did you discuss it with
19 your attorney to tell him all that that, that you had?

20 A I did tell him that I was on these numerous meds and
21 that type of deal, and I believe you just read that a minute ago
22 saying all the meds I was on earlier. I don't remember -- or I
23 read it in here.

24 Q I am asking you, did you convey to the lawyer you had a
25 stroke and you had a collapsed lung and all these different

1 things?

2 A Yes, ma'am.

3 Q Prior to you going up before the Court to enter your
4 plea?

5 A Yes, ma'am, because it surprised me that he hadn't
6 asked for any previous doctor records.

7 Q Who surprised you didn't ask you for any?

8 A Mr. Dest.

9 Q Okay,. And so that prejudiced you and from that you
10 feel you would not have been found -- if you had gone to trial
11 you would not have been found guilty of DUI felony death?

12 A Yes, ma'am.

13 Q And what relief are you seeking from the Court here
14 today?

15 A I just need this -- I don't see where it's a felony DUI
16 to be honest with you, okay.

17 Q But you still have to be seeking a relief from the
18 Court. In your application you stated a time reduction,
19 possible ATU program, which is the alcohol treatment unit?

20 A I guess, yeah. Yes, ma'am.

21 Q Is that the relief you are seeking from the Court?

22 A Well, I guess so ma'am.

23 Q You understand that this judge can not grant a time
24 reduction on your sentence?

25 A Yes, ma'am, but that's why I was talking about going

1 back to jury trial on this and having it turned over but I don't
2 reckon he is going to do that.

3 Q Well, I guess that's what I trying to get you to --

4 A That is what I'm trying to say. I don't know nothing
5 about the law and I had no sleep since midnight Sunday night.
6 That's when they picked me up in Perry.

7 Q Okay, but the relief you got to tell the Court?

8 A That's why I want to go back on jury trial.

9 Q You would like another trial?

10 A Yes, ma'am.

11 Q Or you would like a trial?

12 A Yes, ma'am.

13 Q And you would like him to vacate this --

14 A Yes, ma'am.

15 Q -- conviction?

16 A Yes, ma'am.

17 Q Or sentence I should say?

18 A Yes, ma'am.

19 Q Is there anything else you feel you need to tell the
20 Court at this time related to this PCR?

21 A No, ma'am, not that I can put my tongue on anyway.

22 Q Okay.

23 MS. MOODY: No further questions. Can you please
24 answer the questions from the State.

25 THE COURT: Cross examination.

1 CROSS EXAMINATION

2 BY MR. HUNTER:

3 Q May it please the Court, Your Honor.

4 You say you meet with Mr. Dest how many times?

5 A I really don't remember.

6 Q You don't recall?

7 A No, sir.

8 Q Do you recall at all signing the plea waiver form?

9 A I remember signing a bunch of paper work. I don't
10 remember exactly what everything was, you know.

11 Q At the time did you know what it was?

12 A I presume I did or I wouldn't have signed it.

13 Q Okay. I am just making sure. And you knew what the
14 State's recommendation was?

15 A Yes, sir.

16 Q That was a cap of 15 years?

17 A Yes, sir.

18 Q And do you remember when the judge asked you if you had
19 been promised anything? I believe you said no; is that correct?

20 A I don't remember.

21 Q Okay. Well, the judge did advise you on the potential
22 sentence you could face at the beginning, is that correct? At
23 the beginning of the hearing.

24 A Yes, sir, I believe he said it was one to 15 years or
25 something like that I believe.

1 Q Now as far as your medications are concerned, Mr.
2 Defendant did bring that out to the judge, didn't he?

3 A Not that I remember, no.

4 Q And I believe it was the sentencing hearing he said
5 that you had your prescriptions filed from a Doctor Morgan?

6 A I don't remember that.

7 Q You don't remember that?

8 A No, sir.

9 Q Do you remember telling the police officer that you had
10 prescriptions for seven prescription drugs?

11 A I knew I was on different medications, but I don't
12 remember if it was seven of them or not.

13 Q Do you remember telling the officer that one of them
14 was Xanax and that you had taken Xanax along with drinking the
15 alcohol that night?

16 A No, sir.

17 Q You don't recall saying that?

18 A No, sir.

19 Q Do you remember the solicitor telling that to the
20 judge?

21 A No, sir. And again not to interrupt, but if I had been
22 drinking that night I believe it would have showed a whole lot
23 more alcohol level, blood level or whatever you call it or drug
24 level.

25 Q Are you aware they took the sample three hours

1 afterwards?

2 A I'm not aware of when they took that sample because I
3 don't remember the accident.

4 Q Okay. And you aware that you could have a DUI with
5 more than alcohol, correct?

6 A Yes, sir.

7 Q Now, as far as your dementia is concern you said that
8 you did not tell any of that to Dest because you didn't know
9 what it was. You didn't have a reason to tell him?

10 A Well, I told him -- if I remember right I told him
11 about dementia or my wife might have told him or I think he
12 talked to my mom. I don't remember exactly, but from my
13 understanding from what I read none of this was really brought
14 out in to Court.

15 Q You stated you were on dementia medication in the
16 court?

17 A Well, okay, then without me just telling you what
18 dementia was what's your definition of dementia? I mean
19 according to Webster's dictionary it's a heavily brain disorder.

20 Q Certainly.

21 A Which can can make you have mental illness. Insanity I
22 believe is the word they used.

23 Q Now, do you have any records right now to show that you
24 were insane at the time?

25 A No, sir.

1 Q Okay.

2 A Not that I reckon of.

3 Q I am still trying to understand your issue with Mr.
4 Dest and dementia. I mean, he was apparently aware. He was
5 aware that you had it and that you were you taking medication
6 for it, but you think he should have brought it up. He brought
7 up the fact that you took medication for it. How is he suppose
8 to know unless you don't explain it to him?

9 A I didn't know myself. I mean by him being an attorney
10 that this is what they do. It's just like my medical records.
11 I have been seeing a psychiatrist for over ten years. There was
12 ever any medical records brought from my psychiatrist

13 Q Did you tell him who your psychiatrist was?

14 A Yes.

15 Q And he just refused?

16 A I don't know whether he refused or not. I remember
17 giving all that information out though and I think if I'm not
18 mistaken my wife or my mom might have done the same. I just
19 don't remember. I would have to ask them.

20 Q Now, you said you told him you had seizures and that he
21 should have gotten those records too from the doctor?

22 A Yes, sir. Yes, sir.

23 Q Other than just he should have gotten this from someone.
24 did you ever tell him when you had seen the doctor? Who this
25 doctor was? How often you would see this doctor? Did you ever

1 provide him with any of this information?

2 A I am not sure to be honest with you. I just don't
3 remember. I am not sure if I did or not.

4 Q Now, I'm having a hard time understanding the
5 jurisdiction issue.

6 A I don't know if it's a jurisdiction issue. It's just
7 the fact that he had like I had stated earlier that, you know,
8 he had researched this particular judge and that if we followed
9 him -- see I took the plea I believe here in York County and
10 Harry Dest -- Mr. Dest said if I would follow this judge then in
11 instead of me taking the sentence here in front of whatever
12 judge would have been here because this was a visiting judge,
13 then if I would follow this visiting judge to whatever county he
14 was going to on done the road then I would get a better sentence
15 there. That was what I was trying to say, you know. So that's
16 why we follow. Instead of me going in front of Judge Hayes or
17 somebody like this, or this particular Honor here, he just said
18 I would get a better -- a single digit sentence by going in
19 front of this other judge.

20 Q So he promised you would get a single digit sentence?

21 A I don't know if he promised. He said it. I can't
22 remember if he promised or not.

23 Q But when you didn't get a single digit it sentence did
24 you object to the Court?

25 A No, sir.

1 Q And you did sign the plea waiver form where it
2 describes the recommendation of it with a cap of 15 years?

3 A Yes, sir, I guess so.

4 MR. HUNTER: Your Honor, I don't have any else.

5 THE COURT: Redirect.

6 MS. MOODY: Nothing further, Your Honor.

7 THE COURT: All right. Thank you. You may step
8 down.

9 THE DEFENDANT: I broke my glasses or I would have
10 been able to read.

11 THE COURT: Call your next witness.

12 MS. MOODY: Your Honor, we have no other
13 witnesses.

14 THE COURT: All right. Mr. Hunter.

15 MR. HUNTER: The State would call Harry Dest,
16 please.

17 HARRY DEST, called as a witness, having been duly
18 sworn by the clerk, was examined and testified as
19 follows:

20 DIRECT EXAMINATION

21 BY MR. HUNTER:

22 Q Good afternoon.

23 A Goods afternoon.

24 Q How long have you been practicing law and in particular
25 criminal law?

1 A I have been practicing criminal law for over 25 years.

2 Q Now, regarding this particular case how is it you
3 became in Mr. Ogden's case?

4 A Well, I am currently the 16th Circuit Public Defender
5 and I was a 16th Circuit Public Defender when this case was
6 pending. This case of course is a felony DUI where death is
7 involved and generally I handle cases where there is either
8 20-year sentence or up to life. So it was one of the cases that
9 is in my category of cases that I handle on a yearly basis.

10 Q Okay. Now when did you first met him and how often did
11 you all meet before the plea?

12 A Well, Mr. Ogden was charged back in January, or
13 actually February of 2014. I met him shortly after that. After
14 he was incarcerated and was appointed to our office and had
15 numerous conversations with him regarding his case, which
16 included going over all of the discovery which not only was the
17 documentation of the case, but the videos and audios that were
18 supplied to us or given to us in the discovery process by the
19 solicitor's office.

20 Q So was there anything from discovery that you wanted
21 that wasn't turned over? Anything that he wanted that wasn't
22 turn over?

23 A No, I believe the State complied fully with the
24 discovery. There was numerous photographs -- not photographs
25 but audios. There was an audio tape. There was video audio

1 tape of the accident when the officer arrived at the scene.
2 There was a subsequent audio tape when the highway patrolman
3 interviewed my client some time prior to being arrested. There
4 was a Miranda statement. I think it was officer Sisler
5 (phonetics). There was medical records turned over to us and of
6 course in interviewing Mr. Ogden I learned a little bit about
7 his history which we did get into and explored regarding his
8 mental conditions.

9 I hired Doctor Harold Morgan who is a forensic scientist.
10 Mr. Ogden did tell me early on he had been suffering from
11 depression. He also had some anxiety issues. He also told me
12 about his dementia and so I felt that early on the most
13 appropriate thing or prudent thing to do would be to get the
14 opinion of an expert to see how that may have affected this case
15 not only on the night in question but in any mitigating factors
16 as well.

17 It is important to note that, you know, he was charged with
18 felony DUI, but early on in the process through my investigation
19 and in talking with Mr. Ogden really I was more concerned about
20 the consumption of xanax that day then alcohol. It is clear
21 that in the Miranda statement that he gave and the statement
22 that he gave to the officer at the scene that he was drinking
23 alcohol that day. He tells the officer at the scene and the
24 officer who took the Miranda statement that he had three 24
25 ounce beers and that he had been taking Xanax. The Xanax I

1 think was probably in my view an even greater factor in this
2 case based upon the video that he talked about. We did look at
3 that together. We looked at every piece of evidence together
4 and it was clear from the video that he was not coherent. His
5 speech was slurred. The officer could tell that there was some
6 alcohol. He could smell alcohol on his breath and in fact when
7 the officer arrived at the scene he had to actually put the car
8 in park because Mr. Ogden thought the vehicle was in park but it
9 clearly wasn't. It kept moving forward. It was obvious to me
10 that he was impaired in some way.

11 Q Right.

12 A So what made the case more complicated from, you know,
13 just my standpoint was that he could not remember the accident.
14 He could not remember running into the vehicle. This happened
15 and of course in York County on Sutton Road, between Sutton Road
16 and Highway 21. The collision was at an intersection. Mr.
17 Ogden's car rammed into the victim's car traveling according to
18 the report about 40, to 45 miles an hour. The gentleman who was
19 driving the vehicle in front of him, the victim was 74-years
20 old. The collision caused a fracture in his cervicale spine,
21 just near the kidney area which subsequently caused internal
22 bleeding and the gentleman died two days later. But also there
23 would have been evidence from people who saw Mr. Ogden that day,
24 that A, he was drinking alcohol, and B, that he was also taking
25 Xanax and taking a good number of those pills.

1 So, based upon what he told me, based upon the facts of the
2 case, I thought that the most appropriate way to handle it would
3 be to try to convince a judge of giving him a sentence in the
4 single digit range. That's what I told him I would try to do.
5 That's what I told him our objective was, but I certainly did
6 not promise him that.

7 In fact ultimately we came up with a cap of 15 years was
8 what the prosecution agreed to to at less limit the amount of
9 time that he was exposed too. So, it was my belief that and I
10 told this to Mr. Ogden, that I thought his best chances of
11 getting a more lenient sentence was to get it in front of Judge
12 Addy based upon what I had been told. I had not been in front
13 of Judge Addy before but given the court's schedule I thought
14 that would probably the best thing that we could do and that was
15 the strategy in the case.

16 There were a lot of mitigating factors. I think one
17 clearly was in my view it was a rather freakish accident in that
18 normally -- and I've done a lot of felony DUI's -- when there is
19 a fatality there is usually a high rate of speed. Gross
20 reckless driving. That necessarily wasn't the case here. We
21 had a victim who was 74-years old and when the officer arrived
22 at the scene he was talking with the officer. In fact I don't
23 believe that Mr. Terrell, was his name -- I don't believe he went
24 to the hospital until later that evening. So it was kind of
25 weird set of circumstances which I tried to emphasis in

1 mitigation. I tried to also emphasis that Mr. Ogden had these
2 deficiencies and Doctor Morgan looked into that, but in no way
3 did those mental health deficiencies or issues regarding
4 dementia effect his capacity to stand trial. And I never felt
5 that way in talking with him. We always had good conversations
6 other then he couldn't remember the accident. And so, the other
7 factor was tragically Mr. Ogden had a daughter who was killed in
8 an automobile accident or as a result of an accident back 2014
9 and from what I could determine based upon talking with family
10 members and friends that was really the event that turned him
11 into sort of a spiral, his life out of control, drinking and
12 using drugs excessively.

13 That's a long explanation, but there is really a lot to this
14 more than just -- and for the record I think the transcript does
15 reveal that I did hand up to Judge Addy the report that doctor
16 Morgan filed and made it part of the court's exhibit and I have
17 a copy of that here today which does outline the various
18 medications that he was on and the reasons for them. And doctor
19 Morgan did clearly stated that in his psychiatric examination
20 that Mr. Ogden did not show any signs of confusion, memory loss,
21 or psychotic thinking or mood disturbance with respect to his
22 examination. He does acknowledge that he was on medication for
23 dementia but really was for the onset of Alzheimer's. The
24 medication was called Namenda which is for dementia and the
25 beginning stages of Alzheimer's.

1 Q Okay, and I read that correct too, that you did hand up
2 to the Court during the sentencing hearing. And just to go back
3 over a couple of other things. When you all went over the
4 statements and the videos, the audio, what did he tell you? Did
5 he indicate that's not me? I wasn't Mirandized properly or did
6 he just not remember?

7 A He didn't remember the accident, but today he says on
8 the stand when he looked at that video and realized that he was
9 impaired. That is true. Anyone objectively looking at the
10 video would come to that same conclusion and that's why
11 certainly that was something that was important that I had to
12 show him. That he needed to see. He has every right to see it
13 because that would be in my view would have been the major piece
14 of evidence, direct evidence if you will, of his impairment that
15 a jury would have seen.

16 Q Right, and did he give you any sort of defenses,
17 witnesses, alibis?

18 A No. No, I mean -- he acknowledged that was him. He,
19 you know, as I remember he was doing some work, some either as a
20 painter on or some type of work hire in Rock Hill and that was
21 his reason for being in York County. He would never deny that
22 was him driving.

23 Q With relative to his alcohol consumption and his blood
24 work, did that set off any red flags for you?

25 A Well, first of all it's true that his blood alcohol

1 level was below the legal limit, but it was barely below the
2 legal limit. It was .069 is what the reading was from the
3 hospital. There are two blood samples that are taken. One was
4 at the hospital for SLED and apparently there wasn't a
5 sufficient enough of a sample to get a reading. The other blood
6 sample was the one taken while treating Mr. Ogden some three
7 hours later and they did not test for any other drugs. So the
8 blood alcohol level was point .069. Again, that would have been
9 something if we had gone to trial, but that would in my view
10 would not have been definitive in the sense showing that he was
11 not impaired because I was more concerned about the use of Xanax
12 based upon what he told me. So, I think it's a combination of
13 Xanax and alcohol combined and as been said here in Court today
14 that was three hours later. One could reasonably argue that his
15 blood alcohol level was above the legal limit at the time of the
16 accident.

17 Q Right.

18 A So, I mean, it wouldn't be the decision or factor to
19 say let's go to trial.

20 Q Okay.

21 A There is no way. I mean if you had the opportunity to
22 look at the video and the audio any -- in my view -- any
23 reasonable minded person would have believed that he was
24 impaired in some way.

25 Q Okay. As far as his plea negotiations --

1 A Right.

2 Q -- did you convey everything to him that the solicitor
3 conveyed to you?

4 A I did. And you know, you have to take a step back.
5 Felony DUI in South Carolina carries a maximum sentence of 25
6 years, a minimum sentence of one year. I felt that again our
7 best chances because of Mr. Odgen's age. That was another
8 thing. He was 59 years old at the time of the plea. I
9 presented statistical information to the judge to show him that
10 less than two percent of the general population at the
11 Department of Corrections was in the age bracket of 55 to 65.
12 So, because of his deficiencies, because of his physical
13 problems as well, I basically said that a fifteen-year sentence
14 in my view would be a life sentence, and I tried to argue for a
15 single digit sentence. His term, "single digit", yes, that's
16 exactly what I told the Court as what I believed would be a
17 sentence. If the judge were to give him what was called a split
18 sentence, hanging time over his head, but also making it such
19 that he would not be in jail in the double digits because I felt
20 that would be -- and still believe that would be a life
21 sentence.

22 Q Did you feel ultimately that pleading was in his best
23 interest?

24 A I do. I do. I would not have advised him to go to
25 trial.

1 Q As far as the plea hearing was concerned, did you have
2 any issues or did you question his ability to understand what
3 the judge was going through that day?

4 A No, I did not. And the only reason why we went to
5 Cherokee County was because Judge Addy had some things that were
6 scheduled that week that he had to attend too. We were
7 originally going to do the plea on a Thursday and he asked
8 Solicitor Thompson and myself if we could move the qualifying
9 plea to Wednesday and that he would retain jurisdiction and
10 ultimately sentence him in Cherokee County.

11 Q And you had no problem with that?

12 A No.

13 Q Okay. At the end of the day was it his decision to
14 plead under Alford?

15 A Yes.

16 Q And he was well informed of the sentence he was facing?

17 A Yes.

18 MR. HUNTER: No further questions.

19 THE COURT: Cross examination.

20 CROSS EXAMINATION

21 BY MS. MOODY:

22 Q Good afternoon Mr. Dest.

23 A Good afternoon.

24 Q You indicated that you went through the evidence with
25 Mr. Ogden?

1 A Yes, I did.

2 Q And did he appear to understand what you communicated
3 to him?

4 A Yes, ma'am.

5 Q And I might have missed it but you thought it was in
6 his best interest to accept the plea offer from the State?

7 A Yes, I did.

8 Q And as far as going to the county -- well, excuse me
9 coming from York County going to Gaffney county, or Cherokee
10 County I should say, you all discussed how this situation works
11 or how following the judge would be?

12 A Yes, we did because the plea offer included a cap of 15
13 years which gave me the opportunity to ask for something less
14 than 15 years which I told Mr. Ogden I would. I told him I
15 would be asking for I single digit sentence. The plea bargain
16 also included to plead in front of Judge Addy. That was a
17 condition of the agreement and in order to do that we had to do
18 it that term of Court and like I said to accommodate Judge
19 Addy's schedule we decided to qualify the plea on Wednesday and
20 subsequently he was leaving and we would take it up in Cherokee
21 County the following month. That was all planned out so he
22 would retain jurisdiction to handle the plea.

23 Q Okay. So when he decided to accept the offer -- when
24 Mr. Ogden decided to accept the offer was it that he accepted it
25 that day or was not ready to go, to be taken into custody?

1 A No, no, he accepted it a long time before that day. It
2 was just that the circumstances of us doing the entire plea that
3 week changed when Judge Addy had to attend to something in his
4 home circuit. That's when he reschedule the sentencing portion
5 for the following month.

6 Q Okay.

7 A It wasn't that day that we just decided to do it. We
8 had decided several weeks prior to that actually to go in front
9 of Judge Addy.

10 Q Okay. So, was there a timeline or time limit that you
11 could accept the offer from the State?

12 A Yes, there was. Quite frankly, I don't remember when
13 that he was.

14 Q Okay.

15 A But that really wasn't an issue for us, because we had
16 worked it out to get in front of Judge Addy.

17 Q So in essence when you all talked about accepting the
18 plea you went through and explained this to Mr. Ogden?

19 A I did. I did.

20 Q At any point did he seem to not understand what you
21 were saying?

22 A I thought the whole time he understood what I was
23 saying. I felt like he understood what we were trying to
24 achieve. I told him what I was going to ask for. I told him I
25 would have his wife there which she did show up. His wife,

1 ex-wife, and I would have a report from Doctor Morgan explaining
2 to the judge some of the issues that we discussed regarding his
3 mental health issues. All that would be done. All that was
4 presented to Judge Addy.

5 Q And so your testimony here today is as far as the
6 single digit sentence that was not something you promised him?

7 A No, I did not promise him that, but I did tell him that
8 would be what I would ask for and the reasons why I would ask
9 for it. But I never promised him that because as you know, cap
10 of 15 means the judge can go up to 15 years.

11 Q And going back to that, when you say cap of 15, did he
12 understand that it was a cap of 15?

13 A Yes, ma'am.

14 Q Okay. So as it relates to the -- I asked you about the
15 jurisdiction. You talked about the blood alcohol content?

16 A Right.

17 Q And you indicated that from the time, three hours later
18 after the accident, did you go back and look at the timing of
19 when the accident happened and when the blood was taken?

20 A I did, but like I said before, I was really more
21 concerned about the Xanax then I was the alcohol.

22 Q You indicated that they tested the blood for the
23 alcohol but they did not test the blood for Xanax?

24 A No.

25 Q Did Mr. Ogden understand that they had not tested for

1 any other drugs?

2 A I am sure that I told him that, yes.

3 MS. MOODY: Beg the Court's indulgence.

4 THE COURT: All right.

5 Q Now, at the time when you discussed this with Mr. Ogden
6 you indicated that he didn't have a memory of what happened in
7 the car accident?

8 A No. What he did have memory -- and this is what I want
9 to get too to make crystal clear -- he had a memory of drinking
10 that day when I talked to him and he had a memory of taking
11 Xanax pills more than what was prescribed for him and that was
12 my concern.

13 Q So he actually told you that?

14 A Yes.

15 Q In your meeting with him?

16 A Yes.

17 Q And then I believe your testimony earlier he had made
18 some statements to law enforcement on the video?

19 A Yes.

20 Q Did he mention Xanax on the video or was it just
21 alcohol?

22 A I think he mentioned Xanax with -- with -- at the
23 scene.

24 Q At the scene?

25 A Yes.

1 Q After you spoke with him did you subsequently learn
2 where he had the alcohol? Where did he drink the alcohol, or
3 was there the theory that he drank the alcohol within the car?

4 A No. No, it wasn't in the car. It was during the
5 course of the day.

6 Q Okay. Over several hours?

7 A He wasn't real specific about that.

8 Q At any point did you know where Mr. Ogden was going or
9 where he was coming from right before the accident occurred?
10 Did you all discuss that?

11 A Yeah, I think he was he was at a job site in York
12 County and he was trying to get back to Gaston County but, as
13 indicate in the plea he was going really more toward Mecklenburg
14 County when the accident occurred because he was going up 21
15 towards Fort Mill just across the bridge from Rock Hill, and you
16 know, when he's at the scene the officer said, "Do you know
17 where you are?" And he says, "I think I'm in Mecklenburg
18 County." So I'm not sure where he was going. I know he said he
19 want to get back home, but he thought at the time of the
20 incident he was in Mecklenburg County which was some 10, 12
21 miles away, or at least 15 miles away.

22 Q Were there any other witnesses that would have been
23 with Mr. Ogden? Did you find out if there were any other
24 witnesses?

25 A No, no. I know the solicitor said that there were

1 several people that would have substantiated that he was using
2 alcohol and popping pills that day, but again that would have
3 been consistent with what he told me.

4 Q Was there anything else that he disclosed to you that
5 you did not utilize in trying to mitigate this case?

6 A I think I tried to give as much of his life history as
7 I could, as much as his mental history and also sort of unique
8 and somewhat freakish circumstances of the accident to ask for a
9 single digit it sentence.

10 Q Now, did you have any issues with the SLED analysis or
11 the toxicology report?

12 A I don't remember.

13 Q So, when you obtained the discovery from the
14 solicitor's office and you realized that there wasn't the legal
15 limit in the blood, what if anything did you discuss with Mr.
16 Ogden?

17 A But that would have been something that would have been
18 brought out at trial as an indication of his blood alcohol
19 level. The State would have argued that it would have been
20 higher at the time of the incident. It would have just been one
21 factor amongst many that the jury would have been able to
22 consider. But again, to me looking at the case the most
23 damaging piece of evidence was the video and audio of his
24 condition at the scene.

25 Q Okay. Now when you got the discovery you received the

1 toxicology report as well?

2 A Yes.

3 Q And that's why you were able to discuss it?

4 A Yes.

5 Q Now, if there had not been any mention of Xanax would
6 this have made the case something different since they did not
7 test the blood for any other drug and all they had was the test
8 that was run on the blood for the alcohol?

9 A You know, you look at the video and you would have been
10 convinced he was impaired in some way. That's my view in
11 looking at the video and sharing with him, which of course he
12 concurred with my assessment of it. So, you know, I don't know
13 if it would have changed it or not.

14 Q But I believe your testimony earlier was that Xanax was
15 mentioned on the video as well?

16 A Yes, and what he told me. So the Xanax portion of this
17 case again is still the most troubling because of the abuse of
18 the use of Xanax, and I think that would have been in my view
19 been difficult to overcome his ability to remember the accident.

20 MS. MOODY: No further questions for this witness.

21 Thank you.

22 MR. HUNTER: I have nothing else, Your Honor.

23 THE COURT: All right. Thank you, Mr. Dest, you
24 may step down.

25 MR. HUNTER: That's the State's case.

1 THE COURT: The State rests. Anything in reply?

2 MS. MOODY: No, sir, Your Honor.

3 THE COURT: I will be glad to hear argument. Miss
4 Moody.

5 MS. MOODY: Your Honor, I would ask the Court to
6 grant the relief that Mr. Ogden is seeking. He
7 indicates that based on his understanding of the alcohol
8 content in this case, that it did not rise to the legal
9 limit that he would have been charged with. He
10 shouldn't have been convicted of DUI felony death. He
11 indicates that he felt there should have been more
12 information presented to the Court as to his dementia
13 and he indicates that that was his defense that he had
14 dementia. And he relied on what his attorney, at least
15 what he thought his attorney was stating to him. That
16 his attorney knew that he -- or insured he would receive
17 a single digit sentence in terms of three to seven years
18 and that along again, with the state's lack of evidence
19 in terms of the alcohol blood content that he should
20 have been sentenced a lot less than what he was
21 sentenced too. He indicates that he didn't realize or
22 he didn't understand the amount of alcohol that he
23 needed -- what the State would have to prove in terms of
24 what was obtained from the sample that was submitted to
25 SLED to test, as well as what was from the hospital,

1 what the hospital tested and the hospital testing was
2 .069.

3 He indicates that he did not understand fully what
4 was going on in terms of what where he was suppose to go
5 to be sentenced and apparently he was not made aware of
6 Judge Addy's schedule that he would have to go to
7 Cherokee County to be sentenced and he feels that based
8 on that he did not adequately waive the jurisdiction in
9 order for his plea to be taken over there or for Judge
10 Addy to keep the jurisdiction of the case.

11 Your Honor, he is seeking a new trial in this
12 case. Ultimately he is trying to get a time reduction
13 as it relates to this charge, and again, it is based on
14 the fact that his position is that alcohol was not a
15 factor that contributed to this accident, but his mental
16 state of dementia, which there was no evidence presented
17 or taken with regard to what was his actual mental state
18 at the time of the accident and he was taken to the
19 hospital from the scene. And with that, Your Honor, we
20 would ask that you grant him relief.

21 THE COURT: All right. Thank you. Mr. Hunter.

22 MR. HUNTER: Just briefly, Your Honor. The State
23 would request that you deny his relief. I think the
24 plea transcript and the sentencing transcript and the
25 plea waiver form all speak for themselves. He was

1 properly questioned by the judge. His attorney was also
2 questioned by the judge and it's apparent that he knew
3 what was going on that day. He knew what the
4 recommendation was about.

5 Your Honor, I think especially coming from Mr.
6 Dest it is important to note that alcohol is just one
7 small piece of evidence in this whole thing given the
8 evidence of the prescriptions that he had, given the
9 witness statements, his statements and there was audio
10 and video of those, given the scene of the accident,
11 Your Honor, the State feels like he that he knew what
12 was happening during the plea hearing.

13 As far as jurisdiction goes, Your Honor, even
14 though he doesn't quite understand it, the State
15 believes Mr. Dest says he explained it to him. Your
16 Honor, we believe that he received effective assistance
17 of counsel and even if he wasn't prejudiced by anything
18 that Mr. Dest did we ask that you deny relief.

19 THE COURT: All right. Thank you, Mr. Hunter.
20 Miss Moody, despite your excellent argument made in this
21 case the Court agrees with the position and argument
22 made by the State in this case. For all of those
23 reasons as just stated moment ago by Mr. Hunter the
24 Court denies application.

25 Mr. Hunter, would you please prepare an Order?

1

MR. HUNTER: Yes, Your Honor.

2

(END OF TRANSCRIPT)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 3rd day of November, 2014.

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

February 28, 2016

Aileen Butler

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

Anthony L Ogden

FILED-RECEIVED FORM 4
2015 NOV -6 AM 9:06
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP4604080

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: Applicant's motion to have attorney Moody relieved is denied.

Post Conviction Relief Application heard & denied. Office of Attorney General to prepare order.

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Brooks P. Goldsmith
Circuit Court Judge

2139

Judge Code

Date

November 3, 2015

For Clerk of Court Office Use Only

This judgment was entered on November 10, 2015, and a copy mailed first class or placed in the appropriate attorney's box on November 10, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

Leah B. Moody 235 E. Main St., Ste 115 PO Box 1015 Rock
Hill, SC 29730

ATTORNEY(S) FOR THE PLAINTIFF(S)

Justin James Hunter PO Box 11549 Columbia, SC 29211-
1549

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter: Aileen Butler

David Hamilton - Clerk of Court

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

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

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Anthony L. Ogden,
S.C.D.C. No. 361018,

Applicant,

v.)

State of South Carolina,

Respondent.)

IN THE COURT OF COMMON PLEAS
OF THE SIXTEENTH JUDICIAL CIRCUIT

2014-CP-46-4080

ORDER OF DISMISSAL

2015 JUN 15 PM 1:58

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed December 16, 2014. Respondent made its Return on or about March 5, 2015. An evidentiary hearing into the matter was convened on November 3, 2015, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Leah Moody, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, Harry Dest, Esquire, testified. This Court had before it a copy of Applicant's records from the York County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's PCR Application, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the June 2014 term of the York County Grand Jury for DUI Felony Causing Death (2014-GS-46-1879). Applicant was represented by Harry Dest, Esquire (hereinafter "Counsel"). On July 17, 2014,

Applicant pled under North Carolina v. Alford¹ before the Honorable Frank R. Addy, Jr. and was sentenced on August 11, 2014 to confinement for fifteen (15) years.

A Notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals dismissed the appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) SCACR. The Remittitur was issued on January 23, 2015.

In this PCR action, Applicant alleged he was being held unlawfully for the following reasons:

1. "Just want to see about a time reduction"
2. "No useable bloodwork (Alpha Plea) also took the plea in York County – sentenced in Cherokee County. Jurisdiction problem"
3. Counsel did not know the definition or seriousness of dementia and did not properly present Applicant's dementia to the Court.

II. SUMMARY OF THE TESTIMONY

Applicant's Testimony

Applicant testified that he did not recall how many times he met with Counsel. Applicant testified that he watched the video from the accident with Counsel and that it depicted him to be disoriented. Applicant testified that he took issue with the police saying that he was drunk and further testified that he did not have any alcohol. Applicant testified that he did not remember driving on the night of the incident. He testified that he did not tell Counsel his entire story including his assertion that there was no alcohol in the vehicle.

Applicant testified that Counsel told him that he would receive only a single-digit sentence. Applicant also testified that Counsel did not know the definition of dementia or the seriousness of dementia and believes that that would have helped his case. He testified that he told Counsel that he suffered from seizures and that Counsel should have asked for his medical records.

¹ North Carolina v. Alford, 40 U.S. 25, 91 S.Ct. 160 (1970).

Counsel's Testimony

Counsel testified that he had numerous conversations with Applicant prior to the plea. He testified that he believed it was in Applicant's best interest to plead. Counsel also testified that he received full discovery from the State including videos and audio from the accident and Applicant's mirandized statement from the Highway Patrol. He testified that he reviewed Applicant's medical records and history. Counsel further testified that he talked to a forensic psychologist, Dr. Harold Morgan, about Applicant's depression, anxiety, and dementia and gave this report to the plea court.

Counsel testified that he went over the witness statements with Applicant. He testified that the witness statements stemming from Applicant's felony DUI asserted that Applicant had alcohol and Xanax that day. Counsel testified that he was more concerned with Applicant's use of Xanax. He testified that Applicant told him that he had memory of drinking that day and taking more Xanax than prescribed. He testified that from the video, it was clear that Applicant was not coherent as the responding officer had to put Applicant's car in "park" for him. Counsel testified that the case was difficult because Applicant could not remember anything from the accident.

Counsel testified that he explained to Applicant that the SLED blood alcohol report would have definitively exonerated him at trial as it would have been one factor out of many for the jury to consider.

Counsel testified that Applicant wanted a single-digit sentence but Counsel did not promise him that he would receive such a sentence. Counsel testified that he believed that the plea judge gave him the best deal he could receive. He testified that he argued mitigating factors such as the unusual nature of the accident and Applicant's cognitive deficiencies. Counsel



testified that he had no concerns about Applicant's understanding of what was going on during the plea hearing.

Counsel testified that he explained to Applicant that there was no jurisdiction issue, involving the sentencing taking place in Cherokee County. He testified that Applicant understood what was occurring during the plea and sentencing. The record shows that the plea judge had a scheduling conflict and the parties agreed to accommodate his schedule by having the sentencing hearing several weeks after the plea in a neighboring county.

III. APPLICABLE LAW

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

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any

deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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



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

Ineffective Assistance of Counsel

Sentence Reduction/Counsel promised single-digit sentence.

This Court finds that Applicant failed to meet his burden of proving that his plea counsel was ineffective. This Court finds Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813.

First, to the extent that Applicant seeks a time reduction on his sentence, this Court finds that PCR is not the appropriate venue for an inmate seeking a reduction in a lawful sentence arising from his plea. This Court can find nothing in the record to indicate Applicant's sentence was unlawful. The sentence was well within the statutory range provided for the crime to which Applicant pled. See State v. Hall, 224 S.C. 546, 80 S.E.2d 239 (1954). Furthermore, this Court finds Applicant waived his right to challenge his sentence by failing to contemporaneously object to his sentence or raise the issue on direct appeal. See Peeler v. State, 277 S.C. 70, 283 S.E.2d 826 (1981). See Also Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979).

Next, to the extent that Applicant alleged that Counsel promised him a single digit sentence, this Court finds that such an allegation to be without merit. This Court finds that Counsel did not promise Applicant a single digit sentence. This Court also finds the record clearly shows that this was not the case. It is clear that Applicant was told many times during the

plea hearing that the State was recommending a cap of fifteen years. Additionally, when asked by the plea judge if he was promised anything, he answered that he was not. (Plea Tr. p. 21, ll. 2-5). Moreover, the plea waiver form initialed and signed by Applicant shows that he understood that the charge carried a sentence of one year to fifteen years, the recommendation was for a cap of fifteen years, and the judge was not required to accept the recommendation. Accordingly, this Court finds that Applicant has failed to show that Counsel was deficient in this regard and this allegation must be dismissed.

*Counsel failed to understand Applicant's dementia
and present this information to the plea court*

This Court finds that Applicant's allegation that Counsel failed to present Applicant's dementia to the plea court is without merit. First, the record reflects that Counsel did bring these issues to the Court. During the plea, Counsel testified:

I've obtained the records from the jail. He's taking several different types of medication, Spiriva, which is an inhaler, Qvar, which is also an inhaler, but he's also taking Trazodone, Citalopram and Namenda. And as I indicated, Your Honor, in chambers earlier, that Namenda is a drug dealing with memory loss and dementia and the other ones, from what I've told by Dr. Morgan, deal with mental health issues for mood swings to depression.

(Plea Tr. p. 7, ll. 1-9). Additionally, Counsel testified extensively at the sentencing hearing during mitigation that Applicant suffered from and was treated for a variety of mental ailments including dementia. (See Sentencing Tr. pp. 21-24). Additionally, Counsel testified at the PCR hearing, and the record reflects, to the fact that he consulted a forensic psychologist who evaluated Applicant and prepared a report on his findings. Counsel testified, and the record reflects, that he provided this evaluation to the plea judge. Thus, this Court finds that Counsel was more than thorough in understanding Applicant's dementia and in presenting this information to the plea judge. Accordingly, Applicant has failed to carry his burden of proving

that Counsel was deficient in this regard. Even more, Applicant has failed to prove prejudice as he has made no showing that but for Counsel's alleged errors he would not have pled but instead gone to trial.

Jurisdiction Issue

Applicant's claim that the plea court lacked jurisdiction to sentence him in Cherokee County after accepting his guilty plea in York County is meritless. Essentially, Applicant is referring to the sentencing court's venue and not jurisdiction. This Court notes Applicant pled guilty on June 17, 2014 in York County in front of the Honorable Frank R. Addy, Jr. Following the acceptance of his guilty plea, all parties agreed to defer sentencing and reschedule in Cherokee County due to a scheduling conflict. (Plea Tr. pp. 4-5). On August 11, 2014, all parties reconvened in Cherokee County and Judge Addy issued his sentence. This Court notes at no point in time did Applicant object to sentencing being deferred or venue being moved to Cherokee County. This Court finds Applicant's acquiescence to sentencing being deferred, venue being moved to Cherokee County, and then further failing to object at any point in time during the proceedings amounts to a waiver of venue. Additionally, this Court finds, and the record reflects, that all parties involved appeared to understand that sentencing was deferred because of the plea judge's scheduling issue. (See Plea Tr. pp. 4-5; Sentencing Tr. p. 4, ll. 5-12). Clearly, the plea court had the appropriate jurisdiction to accept the plea and sentence.

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.

V. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

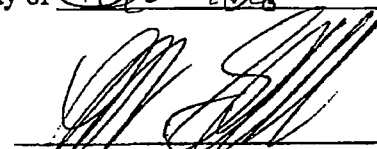
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a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



IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 28 day of December, 2015.


BROOKS GOLDSMITH
Presiding Judge
Sixteenth Judicial Circuit

2
_____, South Carolina

WITNESSES

SCHP / Bradshaw

ARREST WARRANT NUMBER

2014A4610300043

ACTION OF GRAND JURY

RECEIVED

Rebecca M. Means
Foreperson of Grand Jury
Date: *6/19/14*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014-GS46- 01879

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JUNE 19, TERM 2014

THE STATE

vs.

ANTHONY LAMAR OGDEN

Indictment for

DUI FELONY CAUSING DEATH

SC Code: 56-5-2945
CDR Code: 0395

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

Defendant

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

as charged

Anthony Ogden
Defendant

Witness:

Rebecca M. Means
C.C.C. PLS. AND G.S. *Specialist*

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

CERTIFIED TRUE COPY

2014 DEC 17 PM 1:05

At a Court of General Sessions, convened on June 19, 2014, the Grand Jurors of York County present upon their oath

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

DUI FELONY CAUSING DEATH

Anthony Lamar Ogden did on or about January 31, 2014, while driving a vehicle under the influence of alcohol, drugs, or a combination thereof, perform an act forbidden by law or neglect a duty imposed by law in the driving of the vehicle. The Defendant committed one or more of the following unlawful acts and/or neglected one or more of the following duties imposed by law while driving under the influence of alcohol and/or drugs causing the deadly wreck: failing to exercise due care, failing to maintain proper control of his vehicle, reckless driving, driving too fast for conditions and/or following too closely. The Defendant's unlawful act or neglect proximately caused the death of Alva Lee Terrell in violation of Section 56-5-2945, *Code of Laws of South Carolina* (1976), as amended. The crime occurred on SC Highway 21 south of Fort Mill in York County, South Carolina.

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


DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF York
 STATE VS.
Anthony Lamar Ogden

AKA:

Race: WHITE Sex: M Age: 59DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL#: [REDACTED] SID#: SC 01043910*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: DUI / Felony driving under the influence, death resultsin violation of § 56-05-2945(A)(2) of the S.C. Code of Laws, bearing CDR Code # 0395

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

Walter W. Thompson 65118 Walter W. Thompson 11871
 Thompson, Walter W. 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 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ yearsand/or to pay a fine of \$ 10,000; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and appliedby the State Department of Corrections. Since April 17, 2014 (116 days)☐ 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)	\$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 (SCCA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Clerk of Court/ Deputy Clerk Brenda M. BeeCourt Reporter: Shirley Brown

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014-GS46-01879A/W#: 2014A4610300043Date of Offense: 1/31/2014S.C. Code § 56-05-2945(A)(2)CDR Code #: 0395

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 56-05-2945(A)(2) of the S.C. Code of Laws, bearing CDR Code # 0395

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

Walter W. Thompson 65118 Walter W. Thompson 11871
 Thompson, Walter W. 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 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ yearsand/or to pay a fine of \$ 10,000; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and appliedby the State Department of Corrections. Since April 17, 2014 (116 days)☐ 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 _____ 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: * ATT *

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

Presiding Judge FulbrightJudge Code: 2159Sentence Date: 8/11/14

11:26:02 Monday, January 12, 2015

147

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 01/12/15
OMCOMITA RELEASE DATE SCREEN C056368
SCDC# > 361018 LOC: PERRY
OGDEN, ANTHONY LAMAR SCDC CLASSIFICATION...: VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: N
SEXUAL PREDATOR...: NOT APP
DNA STATUS...: COMPLETED
GPS REQUIREMENT...: N
PREA DECISION...:
CURRENT SENTENCE: 015-00-000 CONSECUTIVE SENTENCE ...: N
015-00-000 CURRENT SENT START DATE: 04/17/2014
PROJECTED COMPLETION DATES
MAXOUT DATE: 12/05/2027 CURRENT EWC ..: NOT CURRENTLY EARNING EWC
YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED: 000024 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ..: 000005 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS: 000000 CATEGORY 4 OR 5 OFFENSE
TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE...: 00/00/00
TOTAL SERVICE TIME EARNED ...: 000269 ISS.....:

PFKEYS: 5:HISTORY OF DATE CHANGES

148

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 01/12/15

C0239

OGDEN, ANTHONY LAMAR FBI # 124616CB1 SID# SC01043910 SCDC # 361018

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ...: PERRY CORR INST

SECURITY/CUST.: 3 MINIMUM IN

CURR INCARC SENT...: 15 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: NO

SOCIAL SECURITY #...: [REDACTED]

DORM.....: Q4B0206B

RACE....:W SEX...:M

PROJ MAXOUT DATE: 12/05/2027

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: NO CURRENT JOB

EDUC PGM...: NO CURR EDUC PROGRAM

EWC LEVEL: 0 EEC LEVEL:

ASSIGNMENT...: GENERAL DETAIL UNEM.

CURRENT PROGRAM...: COURT-ORD ATU

AGE...: 59 DATE OF BIRTH...: [REDACTED]

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES

FELONY DUI-DEATH RESULTS

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

DETAINERS (HOLD, WANTED, NOTIFY):

NO DETAINERS

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES WHILE IN CUSTODY

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

10/15/14 REFUSING TO WORK

DROPPED

CHARG

HISTORY OF MOVEMENTS:

9/24/14 PERRY

INCARCERATED

ADMINISTRATIVE

8/14/14 KIRKLAND

INCARCERATED

NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB	START	END	TERMINATION	JOB
DESCRIPTION	DATE	DATE	REASON	LVL
FOOD SERVICE AIDE	09/25/14	10/23/14	MEDICAL	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC	START	END	TERMINATION
DESCRIPTION	DATE	DATE	REASON

NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****